

## **END-USER LICENSE AGREEMENT FOR SOFTWARE DATA COMPLIANCE SYSTEM (DaCS™)**

**IMPORTANT—READ CAREFULLY:** This End-User License Agreement ("EULA") is a legal agreement between you, either an individual or a single entity, ("LICENSEE") and ABB Limited, ("ABB") for the ABB software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation ("PRODUCT"). By installing, copying, or otherwise using the PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install or use the PRODUCT; you may, however, return it to ABB for refund as stipulated in the Purchase Agreement for the PRODUCT.

### **PRODUCT LICENSE**

The PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The PRODUCT is licensed, not sold.

### **1. DEFINITIONS**

- a. PRODUCT means all components supplied by ABB including, but not limited to, the computer software, online electronic documentation, HTML files, help text, and PDF files, and may include associated media or printed materials.
- b. LICENSE means the right for a single individual ("USER") to use the PRODUCT on a computer running one of the following operating systems: Windows 95, Windows 98, Windows NT Workstation, Windows 2000 Professional, Windows Me, or Windows XP as set forth in Section 2(b) below.
- c. MAINTENANCE means any product and security updates, patches, product upgrades, product components, and support services provided by ABB for the PRODUCT.

### **2. GRANT OF LICENSE**

ABB grants you the following rights provided that you comply with all terms and conditions of this EULA:

- a. Subject to the terms and conditions of this EULA, ABB grants the LICENSEE a non-exclusive, non-transferable LICENSE to install and use the PRODUCT.
- b. The PRODUCT may only be installed on computers that are used solely for the LICENSEE'S own personal or internal business. This EULA does not grant any rights to use or install the PRODUCT on computers used primarily to service or to benefit persons not having either an employment or contractual business relationship with the LICENSEE, such as a web server servicing the public, or to use the PRODUCT for timesharing, outsourcing, hosting, or service bureau purposes or to otherwise allow others, or third parties benefit from the use of the PRODUCT.
- c. Notwithstanding anything else contained in this EULA, ABB retains (i) all right, title, and interest in and to the PRODUCT, and all related documentation and materials, (ii) all service marks, trademarks, trade names or any other designations, and (iii) all copyrights, patent rights, trade secret rights and other proprietary rights in the PRODUCT (including, but not limited to, ASCII and HTML, and "Applets" incorporated into the PRODUCT).
- d. The Licensee does not have any rights to use the PRODUCT on any operating system other than those explicitly cited in Section 1(b).
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- f. Solely with respect to the TEMPLATE FILES (as identified in the PRODUCT), ABB also grants you the right to use and modify the TEMPLATE FILES and to reproduce and distribute the TEMPLATE FILES, along with any modifications thereof, provided that you agree to:
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- (iii) include a valid copyright notice in your name on your software product;
  - (iv) indemnify, hold harmless, and defend ABB from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of your software application product;
  - (v) not permit further distribution of the TEMPLATE FILES by your end user.
- g. LICENSEE may not sell, give, lend, give access to, or otherwise transfer the PRODUCT, or copies of the PRODUCT to anyone that is not an employee of the LICENSEE, or to anyone that is not bound to all of the terms and conditions of this EULA.

### 3. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY

You may not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code (or the underlying ideas, algorithms, structure or organization) from the PRODUCT, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

### 4. UPGRADES

If the PRODUCT is identified as an upgrade, you must be properly licensed to use a product identified by ABB as being eligible for the upgrade in order to use the PRODUCT. A PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this EULA. If the PRODUCT is an upgrade of a component of a package of software programs that you licensed as a single product, the PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer except as provided by in this EULA.

### 5. COPYRIGHT

All title and copyrights in and to the PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the PRODUCT), the accompanying printed materials, and any copies of the PRODUCT are owned by ABB or its suppliers and licensors. The PRODUCT is protected by copyright laws and international treaty provisions. Therefore, you must treat the PRODUCT like any other copyrighted material except that you may install the PRODUCT as indicated in this EULA provided you keep the original solely for backup or archival purposes. You may not copy the printed materials accompanying the PRODUCT except as explicitly detailed in the PRODUCT.

### 6. TERMINATION

Without prejudice to any other rights, ABB may cancel this EULA if you do not abide by the terms and conditions of this EULA, in which case you must destroy all copies of the PRODUCT and all of its component parts, and/or return them to ABB. All of the terms and conditions of this EULA shall survive termination with the exception of the LICENSE as defined in Sections 1(b) and Sections 2(a). Termination is not an exclusive remedy and all other remedies will be available to Licensor whether or not the LICENSE is terminated.

### 7. CONSENT TO USE OF DATA

ABB may provide you with MAINTENANCE related to the PRODUCT. Use of MAINTENANCE is governed by the ABB policies and programs described in the user manual, in "online" documentation, and/or in other ABB-provided materials. Any supplemental software code provided to you as part of MAINTENANCE shall be considered part of the PRODUCT and subject to the terms and conditions of this EULA. With respect to technical information you provide to ABB as part of the Support Services, ABB may use such information for its business purposes, including for product support and development. ABB will not utilize such technical information in a form that personally identifies you.

### 8. PRODUCT

PRODUCT identified as "Demonstration Version", "Trial Version", or "Beta Version" may not be resold, transferred or used for any purpose other than demonstration, test, or evaluation.

### 9. EXPORT LIMITATIONS

The LICENSEE shall comply with all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority. The LICENSEE agree not to export or re-export, or allow the export or re-export of any product, technology, or information the LICENSEE obtains or learns under this EULA (or any direct product

thereof) from the country in which the LICENSEE has installed and is using the PRODUCT in violation of any such laws, restrictions, or regulations. The PRODUCT is a "commercial item," "commercial computer software," and/or "commercial computer software documentation" as defined under U.S. law in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(1), or otherwise. Consistent with DFAR section 227.7202 and FAR Section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of the PRODUCT by the U.S. government shall be governed solely by the terms of this EULA and shall be prohibited except to the extent expressly permitted in this EULA.

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#### 11. DISCLAIMER OF WARRANTIES

To the maximum extent permitted by applicable law, ABB and its suppliers and licensors provide to you the PRODUCT, and MAINTENANCE (if any) relating to the PRODUCT AS IS AND WITH ALL FAULTS; and ABB and its suppliers and licensors hereby disclaim with respect to the PRODUCT and MAINTENANCE all warranties and conditions, whether express, implied or statutory, including, but not limited to, warranties (if any), duties or conditions of or related to: merchantability, fitness for a particular purpose, lack of viruses, accuracy or completeness of responses, results, workmanlike effort and lack of negligence. Also, there is no warranty, duty or condition of title, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION or non-infringement. The entire risk arising out of use or performance of the PRODUCT AND ANY SUPPORT SERVICES remains with LICENSEE.

#### 12. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES

To the maximum extent permitted by applicable law, in no event shall ABB or its suppliers or licensors be liable for any special, incidental, indirect, punitive or consequential damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the PRODUCT or the MAINTENANCE, or the provision of or failure to provide MAINTENANCE, or otherwise under or in connection with any provision of this EULA, even if ABB or any supplier has been advised of the possibility of such damages.

#### 13. LIMITATION OF LIABILITY AND REMEDIES

Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of ABB and any of its suppliers or licensors under any provision of this EULA and your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by you for the SOFTWARE PRODUCT. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

#### 14. SOLE REMEDIES

ABB's and its suppliers' and licensor's entire liability and LICENSEE's exclusive remedy shall be, at ABB's option, either (a) return of the price paid, if any, or (b) repair or replacement of the PRODUCT that does not meet ABB's LIMITED WARRANTY. This LIMITED WARRANTY is void if failure of the PRODUCT has resulted from accident, abuse, or misapplication. Any replacement PRODUCT will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

#### 15. LIMITED WARRANTY

ABB warrants that (a) the PRODUCT will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt provided that SOLE REMEDIES described in Section 14 above, are met, and the third party components are operating in accordance with their respective specifications, and (b) any MAINTENANCE provided by ABB shall be substantially as described in applicable written materials provided to LICENSEE by ABB, and ABB will make commercially reasonable efforts to solve any problem issues. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you. To the extent allowed by applicable law, implied warranties on the PRODUCT, if any, are limited to ninety (90) days. The foregoing warranties cover only problems reported to ABB during the warranty period. Any liability of ABB with respect to the software or the performance thereof or defects therein under any warranty, negligence, strict liability or other theory will be limited exclusively to product replacement or, if ABB determines, in its sole discretion, that replacement is inadequate as a remedy or impractical, to refund of the license fees paid by the LICENSEE and termination of the EULA.

#### 16. NO OTHER WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABB AND ITS SUPPLIERS OR LICENSORS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE MAINTENANCE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

#### 17. GOVERNING LAW

This EULA shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Missouri and the United States, without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole jurisdiction and venue for any dispute regarding the terms of this EULA or any action relating to the subject matter hereof shall be the Superior Court of Jackson County, Missouri and the U.S. District Court for the District of Missouri. The prevailing party in any action to enforce this EULA shall be entitled to recover reasonable costs and expenses, including, without limitation, reasonable attorneys' fees.

#### 18. ENTIRE AGREEMENT

This EULA (including any addendum or amendment to this EULA which is included with the PRODUCT) are the entire agreement between LICENSEE and ABB relating to the PRODUCT and MAINTENANCE (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the PRODUCT or any other subject matter covered by this EULA. To the extent the terms of any ABB policies or programs for MAINTENANCE conflict with the terms of this EULA, the terms of this EULA shall control.

#### 19. INDEMNIFICATION

LICENSEE agrees to indemnify and hold harmless ABB and its officers, directors, shareholders, agents, suppliers, licensors and employees against any claims, damages, obligations, liabilities, expenses and costs (including attorneys' fees and costs) arising out of or related to LICENSEE's use of the PRODUCT.

## 20. PATENT AND COPYRIGHT INDEMNIFICATION

Subject to the conditions set forth below, ABB will (a) defend any proceeding or lawsuit commenced against Client which is based upon a claim by a third party that Client's use of the Software, as delivered by ABB and used in accordance with its Documentation and the terms and conditions of the Agreement, infringes any patent, copyright or trade secret right of such third party which is valid and enforceable in the jurisdiction in which the proceeding or lawsuit is commenced; and (b) pay all sums required under any financial judgement entered against Client or any settlement in connection with such lawsuit or proceeding.

In the event of any such claim, ABB may, at its option: (i) replace the Software with functionally equivalent, non-infringing programming, (ii) modify the Software to make it non-infringing, or (iii) return a pro rata portion of the license fee based upon a term of five (5) years and terminate this agreement upon written notice to Client. ABB will have no obligation to Client under this

Section 27, Indemnification, to the extent that the alleged infringement is based upon Client's use of third party software in combination with the Software or any modification to or alteration of the Software performed by anyone other than ABB.

ABB's obligations under this Section 27, Indemnification, are Client's sole and exclusive remedy for any claim of infringement by a third party. ABB's obligations are expressly conditioned upon Client's (a) giving ABB prompt notice of any infringement claim, lawsuit or proceeding, (b) allowing ABB to control the response thereto and defense thereof, and (c) cooperating fully with ABB in connection with such defense, subject to reimbursement of reasonable out-of-pocket expenses incurred by Client in connection with such cooperation.

## 21. HIGH RISK USE

The PRODUCT is not fault tolerant and is not designed or intended for use in hazardous environments requiring fail-safe operation, including, but not limited to, aircraft navigation, air traffic control systems, weapon systems, life-support systems, nuclear facilities, or any other application in which the failure of the PRODUCT could lead to death or personal injury, or severe physical or property damage. ABB disclaims any implied warranty of fitness for High Risk Use.

## 22. AUDIT RIGHTS

ABB shall have the right to audit LICENSEE to ensure that LICENSEE's use of the PRODUCT is not violating this Agreement. ABB will give reasonable prior written notice to LICENSEE if an audit is requested. Any audits will occur during the standard business hours of and at the offices of LICENSEE. LICENSEE agrees to reasonably cooperate with any audits and to provide all pertinent records regarding the PRODUCT's use to ABB. The costs of the any audits will be borne by ABB alone.

## 23. SEVERABILITY

If any provision of this Agreement is held illegal or unenforceable, that provision will be limited or eliminated to the maximum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

## 24. HEADINGS

Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

## 25. NO WAIVER OF RIGHTS

No waiver, implied or expressed, by either party or any right or remedy for any breach by the other party of any provision of this Agreement will be deemed or construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

26. FORCE MAJEURE

With the exception of payment of monies, neither party will be liable for any failure to perform or delay in performance of its obligations hereunder caused by circumstances beyond its reasonable control or which make performance commercially impractical, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy or rebellion, insurrection, riot, civil commotion, strikes or other labor disputes, sabotage, epidemic, quarantine or any agency thereof, judicial action and any other such external circumstances. If the force majeure event lasts longer than sixty (60) days ABB may terminate this Agreement by providing to LICENSEE written notice to such effect.

27. EXCLUSION OF THIRD-PARTY COMPONENTS

THIRD-PARTY COMPONENTS provided or required by ABB as a component or requirement of PRODUCT, may be governed by the THIRD-PARTY COMPONENTS' LICENSE. ABB will have no obligation to LICENSEE for any alleged infringement based upon ABB'S, and LICENSEE'S, use of THIRD-PARTY COMPONENTS and software in combination with the PRODUCT, or any modification to, or alteration of the PRODUCT performed by anyone other than ABB.