
Special Terms and Conditions to ABB Ability Marketplace™ General Terms and Conditions (“Marketplace GTC”) and ABB Ability™ General Terms and Conditions (“Ability GTC”)

for

ABB Ability™ Smart Sensor

1. Definitions and interpretations

All capitalized terms used in these STC shall have the meaning described in the GTC except where the context of these STC require otherwise.

1.1 Definitions

"ABB Ability" is a trademark of ABB Asea Brown Boveri Ltd which is associated with ABB and its Affiliates unified, cross-industry, digital capability and solutions;

"ABB Ability Platform" means ABB's and its Affiliates industrial internet platform which includes both edge and cloud infrastructure upon or via which ABB Ability solutions (including all or part of the Services hereunder) operate;

"ABB Portal" means an online portal, accessible for the Customer, at the following web address: <https://smartsensor.abb.com/Login>; or such other web address as may be notified to the Customer by ABB from time to time);

"ABB Device Data" means any information or data generated or gathered (whether automatically or not) by a Smart Sensor or ABB Software in connection with the Services hereunder and which relates to the operation and working of such Smart Sensor, for example Smart Sensor device diagnostics data;

"ABB Software" means all computer programs (which may include mobile applications or cloud based software) provided (or given access to) by ABB under the Contract as part of or in connection with the Services, including any modifications, updates, upgrades, new versions or releases and derivative works as well as any related documentation, but excluding Third Party Software;

"Customer Data" means (i) data owned or controlled by Customer that is provided to ABB or its Affiliates through or in connection with the use of the Services or Software, including any data collected by the Smart Sensor, and any data manually entered into the Services or Software by or on behalf of the Customer; and (ii) data as described in (i) which is, however, provided by or on behalf of a third party user; excluding ABB Device Data;

"Discloser" has the meaning set out in Section 13.

"Intellectual Property Rights" means (a) inventions, patents, utility models, copyrights, moral rights, mask work rights, database rights and rights in trademarks, trade names, designs, know-how, and invention disclosures (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

"Laws" means any applicable legislation, regulations, codes of practice, guidance and other requirements of any relevant government, governmental or regulatory agency, authority, or other relevant body, as amended or re-enacted;

"Recipient" has the meaning set out in Section 13;

"Service Description" means the documents describing and specifying the Services which are referenced in the Order or as set forth at <https://new.abb.com/motors-generators/service/advanced-services/smart-sensor> and as amended from time to time; newer versions on the website shall prevail over older versions referenced in the Order;

"Services" means the Smart Sensor services to be supplied or to be made available by ABB to the Customer as described or referred to in an Order and the Service Description;

"Smart Sensor" means the ABB Ability Smart Sensor purchased by or provided to the Customer by ABB, its Affiliates or a third party pursuant to one or more separate arrangements, which generates or gathers data through embedded sensors or otherwise, where such data is accessed, stored or processed by the Services hereunder;

"Software" means ABB Software and Third Party Software;

"Third Party Software" means any computer program (which may include mobile applications), including proprietary, freeware and open source software, that is either licensed (i) to ABB from a third party, identified in an Order as Third Party Software and sublicensed to the Customer for use as part of the Services under separate terms and conditions, or (ii) by the Customer from third parties.

2. Scope

These Special Terms and Conditions (STC) relate to the ABB Ability™ Smart Sensor products.

3. Product/Service description

The product/Service documentation on the features and functionality can be found at: <https://new.abb.com/motors-generators/service/advanced-services/smart-sensor/>

4. Service Levels

- 4.1 Access to the ABB Portal and the Smart Sensor Platform app on your iOS or Android device, can be activated at: <https://smartsensor.abb.com/Login>.
- 4.2 ABB may make any reasonable changes to the Services and/or change or remove features or functionality of the Services and/or the Software from time to time that (i) are necessary to comply with any applicable Laws or safety or security requirement; or (ii) do not materially adversely affect the nature or quality of the Services and/or the Software.
- 4.3 ABB may provide reports or access to data and reports as part of the Services. Reports are based on the Customer Data collected by the Smart Sensor and provided to ABB. Such data is subject to measurement tolerance and may not fully accurately reflect the status of the machine to which the Smart Sensor is attached. Accordingly, the reports may not fully accurately describe the status of the machine(s) and the actual operational performance may differ from reports and the outcome of data analysis. The reports shall be used as a means of guidance and any decision based on the information provided in a report is taken at Customer's own risk.
- 4.4 Customer use of the Services and access to reports and data may require Customer to download an app from app stores, such as Apple's App Store or Google Play. Both the app and the app stores have their own terms of use. These terms must be accepted by the Customer when downloading and opening the app for the first time.

4.5 The ABB Portal and the Services may include access to third party websites, app stores and other material provided by third parties, including on the internet and Customer may have to access such third party websites, app stores and/or material and/or download Software from such third party websites or app stores. ABB does not operate or control any third party websites or any other information, services, opinions or other content provided by third parties, including on the internet (collectively, "External Content"). ABB MAKES NO WARRANTIES OR REPRESENTATIONS AND HAS NO RESPONSIBILITY OR LIABILITY FOR SUCH EXTERNAL CONTENT AND THE CUSTOMER AGREES THAT IT SHALL MAKE NO CLAIM WHATSOEVER IN CONNECTION WITH THE CONTRACT AGAINST ABB RELATING TO EXTERNAL CONTENT.

5. Licensing Terms

5.1 ABB hereby grants to the Customer a non-exclusive, non-transferable license to use the ABB Software for the Service period set out in the Order for the purposes of receiving the Services provided by ABB under the Contract.

5.2 The Customer shall have no right to access, copy, alter, make publicly available or in any other way exploit or use the ABB Software, including the source code of the ABB Software. The Customer shall have no right to remove or attempt to remove any Software that is embedded in the Smart Sensor or to use such Software in any way separate from or unrelated to the Smart Sensor or the Services. The Customer agrees that it shall not, except to the extent that such actions are explicitly permitted by mandatory applicable Laws, attempt to reverse compile, decompile, disassemble or reverse engineer the Software, nor shall it amalgamate, amend, incorporate, modify, reproduce or otherwise alter the same into or with any other software.

5.3 ABB may remotely install updates or upgrades to the Software with or without notice to Customer. ABB may further recommend to Customer to install updates or upgrades to the Software as well as to Customer provided infrastructure or software. Updates or upgrades shall be governed by the terms and conditions of this Agreement unless such updates or upgrades are accompanied by a separate license provided by ABB in which case the terms and conditions of such separate license will govern. Notwithstanding the foregoing, except to the extent specifically set out otherwise in the Contract, ABB is not obliged to provide any updates or upgrades to the Software.

5.4 Customer is solely responsible and liable for any Customer or Third Party Software that it connects to or otherwise uses with the Services and must comply with any third party terms and conditions, including any third party end-user license agreement relating to such Third Party Software. If Customer procures Third Party Software through ABB as specified in an Order, Customer must comply with any third party terms and conditions, including any third party end-user license agreement attached to or referred to in the Order relating to such Third Party Software.

6. ABB Portal Licensing Terms

The Customer's use of the Services or Software will require the Customer to establish an account on the ABB Portal. Failing to do so will not relieve the Customer of its obligation to make any payments to ABB in accordance with the Contract but will mean that the Customer is unable to receive the Services or Software.

7. Third party users

- 7.1 The Customer may (i) activate the Services; (ii) download or make the Software available; and/or (iii) establish access to the ABB Portal, on behalf of a third party (for example Customer's own customers) for purposes of including the Services into its own services to such third party. The right granted to such third party must be limited to a limited, internal, nontransferable, non-exclusive right to receive the Services, use the Software and access the ABB Portal solely for purposes of using the Smart Sensor and subject to and in accordance with (a) the license and use terms and conditions of this Agreement, in particular Sections 4, 5, 6, 8; and (b) the terms and conditions specified in the Order and/or the Service Description. The Customer shall be fully responsible and liable to ABB for all acts and omissions of such third party.
- 7.2 The Customer must ensure that it obtains all necessary rights and consents from the third party to permit ABB to share data as described in (ii) of the definition of "Customer Data" and as may be further described in the Order and/or the Service Description with the Customer.
- 7.3 The Customer must ensure that the third party (i) acknowledges and agrees to the Acceptable Use Policy and ABB's suspension rights in the GTC; and (ii) represents and warrants that it is not located in a country that is subject to a U.S. or other country government embargo, and that it is not listed on any U.S. or other country government list of prohibited or restricted parties.
- 7.4 The Customer acknowledges, and must ensure the third party acknowledges, that the respective agreement is solely between the Customer and the third party and that the third party is not a beneficiary of the Contract. The Customer shall ensure that the Customer is solely responsible towards the third party for addressing any claims, demands, losses, liabilities, damages, costs or expenses arising out of or in connection with the third party's use of the Services, the Software and/or the ABB Portal. The Customer shall defend ABB and indemnify and hold ABB harmless against any such claims, demands, losses, liabilities, damages, costs or expenses regardless whether based on contract, tort or otherwise.
- 7.5 Notwithstanding the foregoing, the Customer acknowledges that the third party will be obliged to accept separate terms and conditions (e.g. an end user license agreement required to activate the Smart Sensor) when accessing or using the Services, Software and/or ABB Portal. The third party's acceptance of such terms and conditions shall not relieve Customer from any of its obligations under the Contract.

8. Customer responsibilities

- 8.1 The Customer shall: (i) co-operate with ABB in all matters relating to the Services and/ or the Software; (ii) provide ABB with such information and materials as ABB may reasonably require in order to provide the Services and/or the Software, and ensure that such information is accurate, timely and complete in all material respects; and (iii) maintain the Smart Sensors in good condition and working order so as to ensure the proper gathering of data from such Smart Sensors.

8.2 The provision of Services requires and is based on the collection and processing of certain Customer Data and may require the establishment of a remote connection between the ABB Ability Platform on one side and certain Customer systems (including mobile devices) and the Smart Sensor on the other side. The Customer shall (i) establish and maintain such remote connection.

9. Indemnification

9.1 The Customer represents and warrants that the use by ABB of any Customer Data or other data provided by Customer or Customer's grant of any license or right under the Contract, will not infringe the Intellectual Property Rights or other rights of any person.

9.2 The Customer shall indemnify and hold ABB harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any alleged or actual infringement under any Laws, of any third party's Intellectual Property Rights or other rights arising out of any Customer Data or its use by ABB in accordance with the Contract.

9.3 If a Claim is made or, in ABB's reasonable belief, is likely to be asserted, ABB may, at no cost to the Customer: (i) require Customer to discontinue use of the infringing ABB Software or Service immediately and procure for the Customer the right to continue to use the infringing ABB Software, or continue to take the benefit of any Services, that are affected by the Claim in accordance with the terms of the Contract; or (ii) modify or replace the infringing ABB Software or re-perform the applicable Services so that it becomes non-infringing (provided that the modified or replaced ABB Software or the re-performed Services, provide substantially the same performance and functionality and do not adversely affect the use of the Services or ABB Software); or (iii) if the remedies set forth in Sections 9.3(i) and 9.3(ii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the applicable Order, in whole or in part, and pay Customer a pro rata refund of the fees paid by Customer for the infringing ABB Software or Service.

9.4 This Section 9 states the sole, exclusive and entire liability of ABB to Customer and Customer's sole remedy with respect to any claim or allegation of infringement or misappropriation of any third party Intellectual Property Right.

10. Proprietary rights

10.1 **Customer Content.** ABB will not acquire any right, title and interest in Customer Content other than the rights Customer grant ABB under the Contract. ABB, ABB group companies and Subcontractors have the right to use Your Content for the purpose of providing the Services.

10.2 **ABB Content.** As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the ABB Content are and remain exclusively with ABB or its licensors. Customer has no rights in and to the ABB Content, other than those expressly granted pursuant to the Contract.

10.3 **Usage Data.** ABB, ABB group companies and Subcontractors have the right to collect, monitor, store, use, extract, compile, synthesize, aggregate, analyze or otherwise process Usage Data for (i) providing, maintaining, protecting and improving the Services to Customer; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the ABB Ability Marketplace™, the Services and/or the ABB Software; and (iii) improving and developing existing services, technologies and products and developing new services, technologies and products, where all such improvements and developments (including all resulting Intellectual Property Rights) being exclusively owned by ABB.

10.4 **Restrictions.** Customer will not in whole or in part (i) (except as explicitly permitted in these STC use the ABB Content in any manner, including, without limitation, for any third-party use including, without limitation, license, sublicense, sell, resell, lease, transfer, assign, distribute, display, broadcast, disclose, or otherwise commercially exploit or make it, or any portion thereof, available to any third party in any manner; (ii) modify, tamper with, repair or make derivative works based upon the ABB Content; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, disassemble, decompile or create derivative works of the ABB Content (except to the extent that applicable Laws prohibits reverse engineering restrictions, and then only as permitted by such laws); (iv) copy any ideas, features, functions or graphics of the ABB Content; (v) access or use the ABB Content in a way to avoid incurring fees or exceeding usage limits or quotas or to circumvent or render inoperative any usage restriction features contained in ABB Content; and/or (vi) remove, obscure, alter, or move ABB's and its licensors' proprietary notices. Use of the ABB Content other than specifically permitted in the Contract, is expressly prohibited.

11. **Subscription License Renewal**

Except as otherwise set forth on an applicable Order, the license period for a prepaid subscription license terminates once the end date of Customer's prepaid subscription has been reached. For postpaid subscriptions the subscription will automatically renew for successive monthly license periods unless either party provides notice to the other no less than thirty (30) days prior to the expiration of the then-current license period of its decision not to renew. For each annual term after the initial year, the annual license fee automatically increases by CPI.

12. **Data export and retrieval**

12.1 Customer is responsible to export Customer Data prior to the effective date of expiration of the Contract in accordance with the methods and to the extent described by ABB in the Order or the Service Description. After expiration of such period ABB may delete the Customer Data.

12.2 Where the Customer requires assistance to retrieve the Customer Data, ABB may agree to provide the Customer with additional assistance which shall be charged to the Customer on a time and materials basis at ABB's standard rates as in force at the time the assistance is to be provided or on such other rates as agreed between the parties.

13. Confidentiality

- 13.1 Each party agrees that it shall not at any time disclose to any person non-public technical or commercial knowhow, specifications, inventions, processes, source code, product plans, marketing plans or initiatives or any other information or data which are designated at the time of disclosure to the Recipient as confidential or are of a confidential nature and have been disclosed to such party (the "Recipient") by the other party (the "Discloser") or its agent and any other confidential information concerning Discloser's business or its products which the Recipient may obtain, except as permitted by Section 13.3.
- 13.2 Confidential information does not include any particular information that the Recipient can reasonably demonstrate (i) was in the possession of, or was rightfully known by, the Recipient without an obligation to maintain its confidentiality prior to receipt from the Discloser; (ii) was or has become generally available to the public other than as a result of disclosure by the Recipient or its agents; or (iii) was independently developed by the Recipient without use of or reference to any confidential information of the Discloser.
- 13.3 The Recipient may disclose the Discloser's confidential information (i) to such of its and its Affiliates employees, agents, professional advisers or subcontractors as need to know the same in connection with the Contract and provided the Recipient takes reasonable measures to ensure that such employees, agents or subcontractors comply with this Section 13; and (ii) as may be required by Laws, a court of competent jurisdiction or any governmental or regulatory authority, provided that the Recipient takes best efforts to limit such disclosure and to obtain confidential treatment or a protective order, notifies the Discloser (where legally permissible to do so) reasonably in advance to enable it to participate in such effort.
- 13.4 For 3 (three) years after the initial disclosure, the Recipient agrees to apply reasonable safeguards against the unauthorized disclosure of the Discloser's confidential information in accordance with good industry practice, or in the same manner and to the same degree that it protects its own confidential and proprietary information - whichever standard is higher.