

# ABB CLOUD SERVICES AGREEMENT

## 1. GENERAL

1.1 This Cloud Services Agreement and its applicable Special Terms and Conditions (“**STC**”), Services Service level agreement (“**SLA**”) and Order Form are the complete agreement (“**Agreement**”) regarding each transaction under this Agreement under which Customer may order eligible Cloud Services from ABB STC, SLA and Order Form shall together be referred to as (“**Attachments**”).

1.2 Attachments provide the specifics of transactions, such as description of and information about the Cloud Services. Examples include statements of work, service descriptions, license information, licensed program specifications, supplements, or invoices.

1.3 These terms and conditions for the Cloud Services, shall be binding if declared applicable in the Attachments or in the Order Form Any conditions stipulated by the Customer which are in contradiction to this Agreement shall only be valid if expressly acknowledged by ABB in writing.

1.4 All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. However, the contracting parties acknowledge electronic signature (e.g., Adobe Sign, DocuSign or similar which ensure identification of the issuer and the integrity of the document) applied by authorized persons, to be sufficient and binding for entering into the contract, for any documents related to the contract, including, without limitation, documents for which the contract required written form, or which require to be signed by the contracting parties.

1.5 To the extent of a conflict, the order of precedence between the documents comprising the Agreement, unless differently specified in the Order Form, is the following (those higher in the list prevailing): (i) the Order Form; (ii) the Attachments (iii) the Cloud Services Agreement.

## 2. DEFINITIONS

“**ABB**” means the ABB party named in the Order Form.

“**ABB Programs**” refers to the software products owned or licensed by ABB to which ABB grants access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term “ABB Programs” does not include Separately Licensed Third-Party Technology.

“**Acceptable Use Policy**” means the ABB Ability acceptable use policy, available at [ABB Acceptable Use Policy March 2018.pdf](#), or as provided separately and as may be updated by ABB from time to time;

“**Affiliate**” means any entity that directly, or indirectly, is controlled by, is under common control with, or controls, a party. “Control” means the ownership of or exercise of voting control or direction over shares, securities or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights, or ownership or exercise of other rights or powers entitling the holder thereof to direct, cause the direction of, or to manage the business of such entity.

“**Auto Renew**” or “**Auto Renewal**” is the process by which the Services Period of certain Cloud Services under an Order Form is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the Order Form or this Agreement.

“**Cloud Services**” means, collectively, the ABB cloud services (e.g., ABB Program as a service offerings and related ABB Programs) listed in the Attachments and defined in the Service Specifications. The term “Cloud Services” does not include Professional Services

“**Confidential Information**” means non-public information including, without limitation, the terms, conditions and pricing under the Agreement Confidential Information includes information that is confidential to one another. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the Customer without an obligation to maintain its confidentiality prior to receipt;(b) is or becomes generally known to the public without violation of these terms and conditions or the Attachments; (c) is obtained by the Customer from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the Customer without reliance in any way on the Confidential Information.

“**Customer**” means the customer party named in the Order Form.

“**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 Cloud Services.

“**Data**” means any information or data that is transmitted, created, collected, stored, processed or otherwise made available by or to ABB via the Services or Equipment, including any data or information that is transmitted, created, collected, stored, processed or otherwise made available by or to ABB through Customer’s or any of its Users’ use of the Services or Equipment, as well as any outputs, results, analyses related to such information or data.

“**Documentation**” means ” program user manuals for the ABB Programs referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for such ABB Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the ABB Programs.

“**Employee**” means an employee of each party, including contractors engaged to augment staff and/or perform duties traditionally performed by employees under such party’s direct supervision.

“**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.

“**Order Form**” means the document executed by both parties by which Customer orders Cloud Services and associated maintenance.

“**Professional Services**” means, collectively, the consulting and other professional Services which has been ordered by the Customer. The term “Professional Services” does not include Cloud Services.

“**Program Documentation**” refers to the program user manuals for the ABB Programs referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for such ABB Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the ABB Programs.

“**Separately Licensed Third Party Technology**” refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

“**Services**” means, collectively, both the Cloud Services and Professional Services that has been ordered by the Customer.

“**Services Environment**” refers to the combination of hardware and software components owned, licensed or managed by ABB to which ABB grants Customer and Users access as part of the Cloud Services which has been ordered.

“**Services Period**” or “**Term**” refers to the period of time for which the Customer has ordered Cloud Services as specified in the Order Form.

“**Service Specifications**” means the descriptions of Services as specified by ABB in the relevant attachment, that are applicable to the Services, including any Program Documentation, (e.g., support and security policies), and other descriptions referenced or incorporated in such attachment.

“**Third Party Content**” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of ABB and made available to the Customer through, within, or in conjunction with Customer’s use of the Cloud Services. Third Party Content does not include Separately Licensed Third Party Technology.

“**User**” means (i) an individual within the Customer’s organization or working in a separate legal entity or third party for the Customer; or (ii) an individual within a third party’s organization who is legitimately authorized to use the Services.

“**Work Product**” means any expression of ABB’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, Object Code, and other technical information.

### 3. RIGHTS GRANTED

3.1 Subject to the terms, conditions and restrictions set forth in the Agreement and the applicable Attachments, ABB grants to Customer a non-exclusive, non-transferable, royalty free, limited right to use the Services for the Term set out in the Attachments for Customer’s own internal business operations. Customer does not acquire under this Agreement any right or license to use the Services, including the ABB Programs and Services Environment, in excess of the scope and/or duration of the Services stated in the Attachments. Upon the end of the Services ordered, Customer’s right to access and use the Services will terminate.

3.2 Restrictions. Except as otherwise expressly set forth in an applicable Attachments, Customer shall not, or permit any third party to, directly or indirectly: (a) reverse engineer, disassemble, or decompile the ABB Program or any portion thereof; (b) sublicense, rent, lease or otherwise transfer the ABB Program, Cloud Services, or any portion thereof; (c) use the Cloud Services for any third-party use including, but not limited to, training, facilities management, time-sharing, service bureau use, or data processing; (d) publish any results of benchmark tests run on the Cloud Services; (e) attempt to circumvent or render inoperative any usage restriction features contained in the Cloud Services; (f) remove, obscure, alter, or move ABB’s and its licensors’ proprietary notices on the Cloud Services or Documentation; or (g) use any Separately Licensed Third-Party Technology except solely in conjunction with the ABB Program and except in accordance with any applicable licensor terms and conditions, which terms and conditions are incorporated herein by reference and/or set forth in the applicable Attachments. Any interface information necessary to achieve interoperability of the ABB Program with independently created computer programs will be provided by ABB at ABB’s then-current fees upon execution of an applicable Attachments and upon Customer’s written request.

3.3 Third Party Technology. The Services may contain or require the use of Separately Licensed Third Party Technology. Customer is responsible for complying with separate terms specified by ABB that govern the Customer’s use of Separately Licensed Third Party Technology. ABB may provide certain notices to the Customer in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology is n.

3.4 Trial Cloud Services. ABB may make available certain Cloud Services for trial, non-production purposes. Cloud Services for trial purposes must be ordered under a separate Agreement. Cloud Services acquired for trial purposes are provided on an “as is” and “as available” basis and may not be used with production data that has not been masked, anonymized or otherwise rendered unreadable. ABB does not provide technical or other support or offer any warranties for such Services. ABB may make available “production pilots” for certain Cloud Services under this Agreement. Production pilots ordered by the Customer are described in the Service Specifications applicable to the Attachments and are provided solely for the Customer to evaluate and test Cloud Services for their internal business purposes. Customer may be required to order certain Professional Services as a prerequisite to an order for a production pilot.

### 4. SERVICE SPECIFICATIONS

4.1 The Services are subject to and governed by the Service Specifications applicable to the Attachments or relevant exhibit. Service Specifications may define provisioning and management processes applicable to the Services, types and quantities of system resources, functional and technical aspects of the ABB Programs, as well as any Services deliverables. Customer acknowledges that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit the Customer to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then it is Customer’s responsible to promptly purchase additional quantity to account for Customer’s excess usage. For any month if the Customer does not promptly purchase such additional quantity, ABB may require the Customer to pay, in addition to the fees for the additional quantity, an excess usage fee for those Services equivalent to 10% of the total fees for the month in which such excess usage occurred.

4.2 ABB may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, API etc.) during the Services Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at ABB's discretion. Modifications may affect Customer's services and may require Customer to make changes to Customer's services at its own cost to continue to be compatible with or interface with the API. ABB will use its best efforts to give Customer reasonable notice before making any modifications except if it is reasonably necessary to do so without notice for the purpose of protecting the stability of the API system.

4.3 Initial Setup and configuration of Services shall be as stated in the Service Specification. ABB shall manage, maintain and support the Services in accordance with the policies as specified in the Service Specification. For Services where no specification are defined, ABB will use commercially reasonable efforts to provide such Services.

## 5. CUSTOMER OBLIGATIONS

5.1 The Customer shall: (i) have the sole responsibility for the use of Services, including operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines, and other procedures necessary for Customer's intended use of the Services; (ii) co-operate with ABB in all matters relating to the Services; (iii) comply with any restrictions on permitted User types; (iv) provide ABB with such information and materials as ABB may reasonably require in order to provide the Services, and ensure that such information is accurate, timely and complete in all material respects; (v) obtain and maintain all necessary licenses, permissions, filings and consents (which shall include consent of individuals where Customer provides personal data to ABB) which may be required regarding the Customer Data and software and content, if any, provided by the Customer; (vi) Comply with the terms of Acceptable Use Policy (vii) comply with any additional obligations as set out in the Attachments; (viii) comply with ABB's reasonable instructions regarding the proper use of the Services as may be given in individual cases from time to time; (ix) comply with the Laws, in particular when providing Customer Data; (x) comply with obligations related to Customer's use, transfer or provision of Data, which shall include Customer's obligation to obtain any permissions or consents of a third-party, including a User, to the extent necessary and related to the Data) without any further ratification or approval.

5.2 Condition for Services. Customer agrees that ABB's ability to perform the Services is conditioned upon Customer's timely performance of the Customer Obligations and any assumptions described in the applicable Attachments or relevant exhibit. In the event Customer does not perform Customer Obligations in a timely manner, ABB may: (a) suspend the Services; (b) take any action as set forth in the applicable Attachments; and/or (c) terminate the applicable Attachments in accordance with these terms and conditions.

5.3 Change to Attachments. Any change to an Attachments will need to be agreed in writing and signed by both parties. Customer may discuss with ABB changes to ABB Program which, if accepted by ABB, shall be included in written change order, with the relevant adjustment in price or time, if necessary.

## 6. CYBERSECURITY

The Customer shall maintain appropriate measures (including, but not limited to the installation of firewalls, application of authentication measures, encryption of data, and installation of antivirus programs) to protect these products, the network, its system and interfaces, against security breaches, unauthorized access, interference, intrusion, leakage and theft of data or information. In addition, the Customer shall ensure that any product updates or other major system updates (including but not limited to code changes, configuration file changes, third-party software updates or patches, and hardware change out) are compatible with the security measures implemented. The Customer must verify that the system and associated products function as expected in the environment in which they are deployed.

## 7 DATA PROTECTION

7.1 Each party shall comply with all applicable Laws related to the protection of Personal Data and agrees not to unreasonably withhold or delay its consent to any changes to applicable contract provisions in order to comply with such applicable Laws and orders from any competent authority. ABB will further comply with its Data Privacy Policy available at <https://new.abb.com/privacy> when using such Personal Data, as updated from time to time. The parties acknowledge that the processing of Personal Data may require the conclusion of additional data processing/protection agreements. A party shall, upon request of the other party, promptly enter into any such agreement(s) as required by mandatory law or a competent authority.

7.2 License verification. Devices from which Cloud Services is accessed may automatically provide information to ABB to enable verification that it is properly licensed. Such information includes information about the Cloud Services, the user account, product ID information, a machine ID, and the internet protocol address of the device. By using the Cloud Services, Customer consents to the transmission of such information and ABB's use of such information in accordance with the Agreement.

## 8 PAYMENT

8.1 Fees. Customer's right to use the Services is contingent on Customer paying applicable charges as specified in the relevant Order Form under which Customer acquired the entitlement to the Services. Any dispute on invoices by the Customer must be supported by relevant information substantiating the dispute within fifteen days from the date of invoice, at which time all invoices shall be deemed accepted by the Customer.

8.2 Taxes. ABB's fees are net, i.e., without taxes or other transaction levies. Customer is liable for any and all sales, use, excise, value added, VAT (value added tax), customs fees, or other similar taxes to be paid by either party in connection with these terms and conditions, including withholding taxes arising from international transactions ABB must pay. If Customer is exempt from the payment of any such taxes, Customer must provide ABB with a valid tax exemption certificate; otherwise, absent proof of Customer's direct payment of such taxes to the applicable taxing authority, ABB will invoice Customer for, and Customer will pay to ABB all such taxes. Subject to the foregoing, ABB shall be solely responsible for all taxes based on its income.

## 9 PROPRIETARY RIGHTS.

9.1 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to ABB Program, (including all tools, software, hardware, materials, data, content, application program interfaces provided by ABB as part of or in relation to the Services) or other ABB Intellectual Property Rights are and remain exclusively with ABB or its licensors.

9.2 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to Customer Data are and remain with Customer and its licensors. ABB acquires no rights in Customer Data, other than the rights Customer grants to ABB under the Agreement.

9.3 ABB and its Affiliates shall have the right to collect, monitor, store, use, extract, compile, synthesize, aggregate, analyze or otherwise process Customer 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 Services; 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 and its Affiliates. In addition, ABB and its Affiliates shall have the right to use for marketing, testing and benchmarking purposes anonymized Customer Data.

9.4 To the extent Customer acquires any rights in any Work Product, Customer hereby assigns all such rights to ABB. Customer shall give ABB all reasonable assistance and execute all documents necessary to assist or enable ABB to perfect, preserve, register and/or record such assignment and ABB's right, title, and interest in and to any Work Product.

## 10 Protection of Confidential Information.

10.1 Each party may furnish the other party with Confidential Information. Neither party shall (a) directly or indirectly disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party; or (b) utilize Confidential Information for any purpose, except as expressly contemplated by the Agreement, or otherwise authorized in writing by the other party. Each party will limit the disclosure of the other party's Confidential Information, to Affiliates and Employees with a need-to-know and who have been advised of the confidential nature thereof, or third party consultants with a need-to-know and who have been contractually obligated to maintain such confidentiality through signature of a written nondisclosure agreement acknowledging the non-disclosure obligations of these terms and conditions; provided, however, that Customer will obtain ABB's prior written consent before disclosing any ABB Confidential Information to any third party. Each party shall provide the other party with copies of any such nondisclosure agreements upon written request. Each party shall be liable for any breach by any employee or third-party consultant of the confidentiality obligations contained herein.

10.2 In the event a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) give at least ten (10) days prior written notice of such disclosure to the other party; (b) limit such disclosure to the extent possible; and (c) make such disclosure only to the extent so required.



## 11 CUSTOMER WARRANTIES; ABB DISCLAIMER OF WARRANTIES

11.1 **Customer Warranty.** Customer represents and warrants that (i) it has full power and authority to execute this Agreement and to perform its obligations under this Agreement (including those obligations related to Customer's use, transfer or provision of Data, which shall include Customer's obligation to obtain any permissions or consents of a third-party, including a User, to the extent necessary and related to the Data) without any further ratification or approval; and (ii) its performance under this Agreement, including its use of the Services and any equipment, will comply with all federal, state, local and, if applicable, foreign laws, rules and regulations. As necessary, Customer agrees to execute and deliver to ABB all agreements and other information required by any source described in this Section, as well as any updates to the same.

11.2 **DISCLAIMER.** THE SERVICES and DATA ARE PROVIDED BY ABB "AS IS." EXCEPT TO THE EXTENT WHERE SUCH DISCLAIMER IS PROHIBITED BY APPLICABLE LAW, ABB DISCLAIMS ALL WARRANTIES EXCEPT THOSE EXPRESSLY SET OUT IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE, OR INTELLECTUAL PROPERTY INFRINGEMENT AND ABB, EXCEPT TO THE EXTENT WHERE SUCH IS PROHIBITED BY APPLICABLE LAW, HEREBY EXPRESSLY DISCLAIMS ANY OF THE FOREGOING. ABB, EXCEPT TO THE EXTENT WHERE SUCH IS PROHIBITED BY APPLICABLE LAW, DOES NOT REPRESENT OR WARRANT THAT (I) THE SERVICES WILL OPERATE ERROR FREE, (II) CUSTOMER'S USE OF SERVICES WILL BE UNINTERRUPTED OR (III) ALL DEFECTS WILL BE IDENTIFIED, REPRODUCIBLE OR RESOLVED. SUCH WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR OTHERWISE AFFECTED BY THE RENDERING OF ANY ADVICE OR SERVICE BY ABB IN CONNECTION WITH THE SERVICES OR BY ANY IMPLIED WARRANTY ARISING OUT OF ANY COURSE OF DEALING, BY STATUTE, OR BY PERFORMANCE, CUSTOM OR USAGE OF TRADE, EXCEPT TO THE EXTENT WHERE SUCH IS PROHIBITED BY APPLICABLE LAW. ALL SEPARATELY LICENSED THIRD-PARTY TECHNOLOGY, THIRD-PARTY CONTENT, AND ANY INFORMATION CONTAINED OR OBTAINED BY YOU VIA ANY THIRD-PARTY WEBSITE OR OTHER THIRD-PARTY INFORMATION THAT YOU MAY ACCESS THROUGH THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OR INDEMNITY FROM ABB AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING THE SAME IS STRICTLY BETWEEN CUSTOMER AND THE OWNER, LICENSOR OR DISTRIBUTOR OF SUCH THIRD-PARTY TECHNOLOGY, THIRD-PARTY CONTENT, OR THIRD-PARTY WEBSITE, EXCEPT TO THE EXTENT WHERE SUCH IS PROHIBITED BY APPLICABLE LAW.

11.3 **DATA SERVICES DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT FOR SERVICES COMPRISED OF DATA, INFORMATION, ANALYSES, OR MODELS, ABB OBTAINS ITS DATA FROM THIRD PARTY SOURCES, WHICH MAY OR MAY NOT BE COMPLETELY THOROUGH AND ACCURATE, AND THAT CUSTOMER SHALL NOT RELY ON ABB FOR THE ACCURACY OR COMPLETENESS OF INFORMATION SUPPLIED THROUGH SUCH SERVICES. CUSTOMER ACCEPTS ALL SUCH INFORMATION ON AN "AS IS" "AS AVAILABLE" BASIS.

11.4 **Inherent Uncertainty of Weather Forecasting.** CUSTOMER ACKNOWLEDGES THE INHERENT UNCERTAINTY IN WEATHER FORECASTING AND ACCEPTS THAT ABB MAKES NO GUARANTEE OR WARRANTY AS TO THE ACCURACY OF ANY WEATHER FORECAST AND/OR HINDCAST (OR ANY DATA BASED ON OR DEPENDENT UPON SUCH WEATHER FORECASTS AND/OR HINDCASTS) PROVIDED BY ABB. ANY LIABILITY ON THE PART OF ABB ARISING FROM ANY INACCURACY IN ANY WEATHER FORECAST AND/OR HINDCAST PROVIDED BY ABB (INCLUDING, WITHOUT LIMITATION, ANY LIABILITY WITH RESPECT TO CUSTOMER'S ACTIONS IN RELATION TO WEATHER SITUATIONS) IS HEREBY EXCLUDED (WHETHER SUCH LIABILITY ARISES DUE TO BREACH OF CONTRACT, TORT, UNDER ANY INDEMNITY IN THIS AGREEMENT OR FOR ANY OTHER REASON).

11.5 **Assessment of Suitability.** CUSTOMER ACKNOWLEDGES THAT IT HAS OR WILL MAKE ITS OWN ASSESSMENT AS TO THE SUITABILITY OF THE SERVICES FOR ANY USE IT MAKES OF IT (AND IT IS QUALIFIED TO MAKE SUCH ASSESSMENT OR HAVE RECEIVED SUITABLE INDEPENDENT ADVICE) AND NOTHING IN THE SERVICES CONSTITUTES A RECOMMENDATION OR ADVICE TO TAKE, OR REFRAIN FROM TAKING, ANY SPECIFIC COURSE OF ACTION.

## 12 INDEMNIFICATION.

12.1 **Customer indemnification.** The Customer represents and warrants that the use by ABB of any Customer Data, information, design, specification, instruction, software, service, data, hardware, or material ("Material") 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. 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 Material or its use by ABB in accordance with the Contract.

**12.2 IP Infringement Indemnification.** If any third party makes a claim against Customer that ABB Program infringe a third party's copyright, patent or trademark (a "**Claim**"), ABB will defend Customer against such Claim and pay the amounts finally awarded by a court against Customer or included in an ABB approved settlement, provided that Customer will (i) give written notice of the Claim to ABB without undue delay, specifying the nature of the Claim in reasonable detail; (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of ABB; and (iii) allow ABB to control and reasonably cooperate in the defense and settlement of the Claim.

**12.3 Indemnification Limitations.** ABB shall will not indemnify the Customer if the Customer (a) alters the ABB Program or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the ABB Program which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the ABB Program which was made available to the Customer, or (c) continues to use the applicable ABB Program after the end of the license to use that ABB Program. ABB will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by ABB. ABB will not indemnify the Customer for any portion of an infringement claim that is based upon the combination of any ABB Program with any products or Services not provided by ABB. ABB will not indemnify Customer to the extent that an infringement claim is based on Third Party Content or any material from a third party portal or other external source that is accessible to the Customer within or from the Services. ABB will not indemnify for infringement caused by Customer's actions against any third party if the Services as delivered and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. ABB will not indemnify for any intellectual property infringement claim(s) known to the Customer at the time Services rights are obtained.

**12.4 Effect of Infringement Claim.** If an Infringement Claim is or, in ABB's reasonable belief, is likely to be asserted, (a) ABB may require Customer to discontinue use of the applicable ABB Program immediately; and (b) ABB will, at its sole option, either (i) procure for Customer the right to use and exercise its rights with respect to the ABB Program; (ii) replace the affected ABB Program with other non-infringing ABB Program or modify the affected ABB Program to make it not infringing while retaining substantially similar functionality; or (c) if the remedies set forth in clauses (b)(i) and (b)(ii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the affected Attachments, in whole or in part, and any Services granted therein, and pay to Customer a pro rata refund of the fees paid by Customer for the applicable Services, depreciated on a five-year straight line basis (including a pro rata refund of unused Service fees paid by Customer if the affected ABB Program forms a part of the Services).

**12.5 Exclusive Remedy.** THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF ABB TO CUSTOMER, AND ARE CUSTOMER'S SOLE REMEDY WITH RESPECT TO, ANY CLAIM OR ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

## 13 LIMITATIONS OF LIABILITY

13.1 ABB shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement, and even if ABB has been advised of the possibility of such damages, for (i) loss of profits, sales or business, agreements or contracts, anticipated savings, revenue, or damage to goodwill; (ii) business interruption, loss of production, loss of use or loss or corruption of data; (iii) costs of substitute goods, materials or services; or (iv) any indirect, consequential, incidental, special, punitive damages or exemplary loss.

13.2 ABB's entire liability for all claims related to this Agreement will not exceed the total amount of payments made by the Customer to ABB annually, regardless of the basis of the claim. These limitations apply collectively to ABB, its affiliates, contractors, and suppliers. The following amounts are not subject to the above cap: I) third party payments related to infringement claim under clause 12 and ii) damages that cannot be limited under applicable law. In no event regardless of the cause, shall ABB be liable to the Customer or any third party for any penalties.

## 14 TERM AND TERMINATION

14.1 **Term.** The Order Form shall become effective as of the date of signing of the Order Form ("Effective Date") and shall continue in effect, except as otherwise set forth in an Order Form or unless terminated under Section 14.2 below.

#### 14.2 Term and Renewal.

- a) Services provided under this Agreement shall be provided for the Services Period defined in the Order Form, unless earlier suspended or terminated in accordance with this Agreement or the order. If stated in the Service Specifications, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) the Customer provides ABB with written notice no later than ninety (90) days prior to the end of the applicable Services Period of Customer's intention not to renew such Cloud Services, or (ii) ABB provides the Customer with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.
- b) ABB may temporarily suspend Customer's password, account, and access to or use of the Services if the Customer or Customer's Users violate any provisions of this Agreement or any component thereof are about to suffer a significant threat to security or functionality. ABB will provide advance notice to the Customer of any such suspension in ABB's reasonable discretion based on the nature of the circumstances giving rise to the suspension. ABB will use reasonable efforts to re-establish the affected Services promptly after ABB determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, ABB will make available to the Customer their Content on the date of suspension. ABB may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after ABB's initial notice thereof.

#### 14.3 Termination. The Order Form may be terminated as follows:

- a) by either party thirty (30) calendar days after providing the other party with written notice of material breach of the Agreement, unless during such thirty (30) day period the breaching party has (i) cured such breach; or (ii) if cure within thirty (30) days is infeasible, provided the non-breaching party with a written plan reasonably acceptable to the non-breaching party to cure such breach and made substantial progress to cure within the thirty (30) day period; or
- b) by ABB ten (10) calendar days after ABB provides Customer with notice of Customer's failure to remit timely payment to ABB; or
- c) by either Party immediately in case of ABB is offering Trial Cloud Services without any charges to the Customer.
- d) immediately by either party if the other party becomes insolvent, makes an assignment for the benefit of creditors, appoints (or has appointed on its behalf) a trustee, receiver or similar officer, or commences a proceeding seeking reorganization, liquidation or similar relief under any bankruptcy, insolvency or similar debtor-relief statute.

#### 14.4 Effect of Termination.

- a) Upon termination of the Order Form by ABB for any reason set forth in Section 14.3, above: (i) all amounts due and owing by Customer to ABB under the Order Form will be immediately payable, and ABB shall be entitled to retain any and all fees paid by Customer; (ii) use of the Services will immediately cease; and (iii) all of ABB's maintenance and services obligations will cease. Within thirty (30) days of termination of the Order Form pursuant to this subsection, Customer shall destroy or return to ABB all copies of applicable ABB Confidential Information and will certify to ABB that all copies have been destroyed or returned.
- b) Upon any termination or expiration of an Order Form, Customer's right to access and use the Services covered by that Order Form will terminate. Notwithstanding the foregoing, ABB will generally endeavor to make Customer Data available to Customer for electronic retrieval, at Customer's election and expense, for a period of thirty (30) days following any termination or expiration of the applicable Order, provided, however, that Customer acknowledges and agrees that ABB has no obligation to retain Customer Data and that ABB will have the right to irretrievably delete and destroy Customer Data following the termination or expiration of the applicable Order.

14.5 Survival. The terms of these terms and conditions or any Attachments that, by their nature should survive termination, shall survive termination, including, without limitation, the provisions concerning protection of Confidential Information, proprietary rights, disclaimers, and limitations of liability.



## 15 GENERAL PROVISIONS.

15.1 Assignment. Neither these terms and conditions, nor any Attachments, nor any rights, duties or obligations set forth therein, may be assigned, sublicensed, or otherwise transferred by Customer, in whole or in part, whether directly or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of ABB, and any attempt to do so without the express prior written consent of ABB shall be deemed void. ABB's consent may be conditioned upon payment by Customer of a transfer, assignment or other fee, and such condition shall not be deemed unreasonable.

15.2 Right to Injunctive Relief. Customer acknowledges that Customer's breach of its obligations with respect to ABB's proprietary rights will cause irreparable injury to ABB and will entitle ABB to seek injunctive or other equitable relief.

15.3 Dispute Resolution Process. Except for claims arising out of the confidentiality obligations hereunder or ABB's intellectual property rights, neither party will invoke formal dispute resolution procedures other than in accordance with this Section. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten (10) calendar days after delivery of such notice, executives of the parties who have authority to resolve the dispute will meet to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days after the disputing party's notice, or if the executives fail to meet within the ten (10) day period, either party may then proceed as set forth in Section 15.4 herein. All negotiations pursuant to this Section will be deemed Confidential Information and treated as compromise and settlement negotiations.

15.4 Arbitration. The parties agree that any dispute, claim or controversy relating in any way to these terms and conditions shall be fully and finally settled by binding arbitration in accordance with the then current rules and procedures of the International Chamber of Commerce in Zurich, Switzerland. The arbitration panel shall include only persons with experience in information technology or computer software licensing or implementation matters. Each party shall choose one arbitrator, and the two arbitrators so selected shall choose the third arbitrator. Determinations of the arbitrators will be final and binding upon the parties, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The existence, subject, evidence, proceedings, and ruling resulting from the arbitration proceedings shall be deemed Confidential Information, and shall not be disclosed by any party, their representatives, or the arbitrators except as ordered by any court of competent jurisdiction or as required to comply with any applicable governmental statute or regulation. All arbitration proceedings and submissions shall be in the English language. The arbitrators shall apply the governing law of these terms and conditions and the Attachments (without giving effect to its conflict of law principles) to all aspects of the dispute, including but not limited to the interpretation and validity of these terms and conditions and the Attachments, the rights and obligations of the parties, the mode of performance, and the remedies and consequences of the alleged breach. Any arbitral award shall be final and binding upon the Parties.

15.5 Third Party Beneficiaries. Third Party Software licensors shall be third party beneficiaries to these terms and conditions for purposes of enforcing their rights with respect to the applicable Third-Party Software.

15.6 Independent Contractors. Nothing in these terms and conditions or, in the course of dealing between ABB and Customer shall be deemed to create between ABB and Customer a partnership, joint venture, association, employment relationship co-ownership or any other relationship other than an independent contractor relationship. Nothing in these terms and conditions or, in the course of dealing between ABB and Customer shall be deemed to empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as entitled to do the same.

15.7 Severability. If any provision of these terms and conditions is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated, as the case may be, and the remainder shall be enforced and construed as if the provision had been included as modified or as if it had not been included, as the case may be.

15.8 Waiver; Amendment. All waivers must be in writing. Any waiver or failure to enforce any provision of the terms and conditions on one occasion will not be deemed a waiver on any other occasion or of any other provision.

15.9 Counterparts. These terms and conditions and Attachments may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one instrument.

15.10 Publicity. ABB shall have the right to identify Customer as a customer of ABB as part of ABB's marketing efforts, including customer lists and press releases.

15.11 Governing Law. Unless otherwise set out in the Attachments, these terms and conditions shall be governed and construed in accordance with the laws of the Switzerland without giving effect to its choice of law principles. With the exception of the Arbitration provision set forth above, the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Zurich, Switzerland. The parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

15.12 Rights in Data. ABB Programs and any accompanying documentation has been developed at private expense and are deemed to be a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. or FAR 27.405-3. The ABB Programs or any accompanying documentation may not be transferred to or otherwise disclosed to U.S. Government Users without the prior consent of an ABB officer. When such prior consent is granted, U.S. Government Users may not use, duplicate, or disclose the ABB Programs or any accompanying documentation, except as specifically set forth in the pertinent license agreement and, as applicable, FAR 52.227-19(c) or DFARS 227.7202

15.13 Export Control Notice. Customer acknowledges that it will comply with all applicable laws and regulations including import and export controls, trade sanctions, and antiboycott laws, regulations and any other administrative requirements, applicable to any export, import and domestic use of the Confidential Information or any other goods, software, technology, and/or services (collectively “Items”). Customer shall not, in connection with this Agreement, engage in activities associated with nuclear, chemical, or biological weapons or missiles for delivering such weapons, or involve any persons or entities identified on any denied or restricted party list maintained by any government with competent jurisdiction over such party. Customer agrees not to disclose, use, transfer, export or re-export, directly or indirectly, any ABB Deliverable (including goods, software, or technology and any services related thereto), any information provided by ABB, (including source code or technology), or the “direct product” thereof (as defined in 15 CFR 736.2(b)(3)), except in compliance with such regulations. Customer shall defend, indemnify, and hold ABB and its licensors harmless from and against any and all claims, judgments, awards, and costs (including reasonable legal, including attorneys’ fees) arising out of Customer’s noncompliance with applicable export laws.

15.14 Audit Rights. Customer will maintain books and records applicable to performance under the Agreement. ABB shall have the right during the term of the Agreement and for up to one (1) year after the termination of the Agreement, upon reasonable written notice and during normal business hours, to audit and inspect such books and records of the Customer in order to verify compliance with the terms of the Agreement. Customer agrees to pay within 30 days of written notification any fees applicable to Customer’s use of the Services in excess of their rights. If Customer does not pay, ABB can terminate Customer’s Services and/or the Customer Agreement. Customer agrees that ABB shall not be responsible for any of Customer’s costs incurred in cooperating with the audit..

15.15 Code of conduct and anti-bribery law. ABB maintains a set of codes of conduct and guidelines related to ABB’s, its employees’ and its subcontractors’ business conduct, including anti-bribery, anti-corruption and conflict of interest. ABB also requires its suppliers to comply with such codes of conduct or have equivalent codes of conduct for their companies, employees and subcontractors, accessible at <http://new.abb.com/about/integrity/standards/abb-code-of-conduct>. Customer shall comply in its business conduct with standards that are equivalent including provisions of the Integrity Exhibit annexed to the Agreement.

15.16 Business Contact Information. Subject to them complying with the ABB Data Privacy Policy and privacy laws applicable to ABB, ABB and its Affiliates, and their subcontractors (including those who process data on their behalf), may, wherever they do business, store and otherwise process business contact information (for example name, business telephone, address, email and user IDs) of Customer and its personnel and Users for the purpose of business dealings with them.

15.17 Notices. All notices or other communications must be in writing and will be deemed to have been duly given (a) when delivered by hand (with written confirmation of receipt); or (b) two (2) calendar days after being deposited for delivery with a nationally recognized overnight delivery service and addressed to the appropriate address set forth on the Attachments (or to such other address as a party may designate by written notice to the other party) or or (ii) sent by email or other electronic notification forms available in the used systems (or other electronic notification forms) as well as the email address to which the notices must be delivered to.

15.18 Force Majeure. Other than for payments due, neither party will be liable to the other for any failure or delay in performance due to circumstances beyond its reasonable control including, without limitation, acts of God, labor disruption, war, terrorist threat or government action; provided that if either party is



unable to perform its obligations for one of the foregoing reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

15.19 No Set-Off. Each Order Form represents separate and independent contractual obligations. Customer will not withhold or set-off payments that are due and payable under an Order Form because of the status of another Order Form or these terms and conditions, or any other agreement with ABB or an ABB Affiliate.

15.20 Choice of Language. The original of these terms and conditions is in English. If the Agreement is translated into any other language the English version shall prevail at all times.

15.21 Entire Agreement. These terms and conditions , together with the applicable Attachments, shall be the complete agreement and understanding between the parties and replace any prior oral or written communications between the parties related thereto, including but not limited to, any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Customer to ABB regardless of any statement to the contrary contained in any such purchase order or document. In the event of any conflict or discrepancy between an Attachments and these terms and conditions, the Attachments, as applicable, shall control.

### Signatures

#### Customer

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### ABB

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Integrity Exhibit

1. **Applicable Integrity Laws** means:
  - i. Anti-bribery and anti-corruption laws: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively “Anti-Bribery & Corruption Laws”); and
  - ii. Sanctions and trade control laws and regulations: any applicable laws, regulations, or administrative or regulatory decisions or guidelines that sanction, prohibit or restrict certain activities including, but not limited to, (i) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (ii) financing of, investment in, or direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, including any future amendments to these provisions; or (iii) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of this Agreement (collectively, “Trade Control Laws”); and
  - iii. Human rights and anti-modern slavery laws: including The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Core Conventions on Labor Standards, the UK Modern Slavery Act and other similar human rights, anti-human trafficking and anti-modern slavery laws and regulations (collectively, “Human Rights Laws”); and
  - iv. Sanctions Agency means any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws including, but not limited to, the aforementioned governmental and regulatory bodies of (i) the United Nations, (ii) the United States of America (including the U.S. Department of Treasury Office of Foreign Assets Control, U.S. Department of State and U.S. Department of Commerce), (iii) the European Union or (iv) Switzerland.
  
2. **Restricted Person** means any entity or person included on a list (including U.S. and EU lists) of targeted parties, blocked parties, or persons subject to asset-freezing or other restrictions introduced under any applicable Trade Control Laws (and includes any entity that is directly or indirectly owned fifty (50) percent or more, in the aggregate or individually, or otherwise controlled by any Restricted Person).
  
3. Both Parties will comply with all Applicable Integrity Laws in connection with this Agreement. Both Parties shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the Agreement shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Clause in connection with this Agreement. Both Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any Applicable Integrity Laws in connection with this Agreement.
  
4. Each Party represents and warrants that, to the best of its knowledge, at the date of this Agreement neither it, nor any of their respective directors or officers are a Restricted Party. Each Party agrees that it shall promptly notify the other Party if it becomes a Restricted Party.
  
5. If, as a result of Trade Control Laws issued or amended after the date of this Agreement, (i) the Company becomes a Restricted Party, or (ii) any necessary export license or authorization from a Sanctions Agency is not granted, the performance by ABB or by any affiliates or third parties engaged in any manner in relation to the Agreement becomes illegal or impracticable, ABB shall, as soon as reasonably practicable, give written notice to the Company of its inability to perform or fulfil such obligations. Once such notice has been received by the Company, ABB shall be entitled to either immediately suspend the performance of the affected obligation under the Agreement until such time as ABB may lawfully discharge such obligation or unilaterally terminate the Agreement in whole or in part from the date specified in the said written notice or from any subsequent date thereafter. ABB will not be liable to the Company for any costs, expenses or damages associated with such suspension or termination of the Agreement.
  
6. In the event of suspension or termination as set out in Clause above, ABB shall be entitled to payment as set out in this Agreement and any reasonable associated costs necessarily incurred by ABB in regard to such suspension or termination including, but not limited to, all reasonable costs associated with suspending or terminating any subcontract placed or committed for goods or services in connection with this Agreement.

7. ABB goods, services, and/or technology may be subject to foreign trade restrictions, including dual-use trade controls. The Parties undertake to obtain all the necessary licenses and/or permits from the competent authorities for the import or export of ABB Products and/or Services. Products, services, and/or technology that originate in the United States are subject to the U.S. Export Administration Regulations ("EAR") and must not be exported, re-exported, or transferred (in-country) without obtaining the necessary valid licenses/authorizations of the competent US authorities.
8. The Company represents that it is the ultimate end recipient of any items provided under this Agreement, that the items are for civil use only. The Company further represents that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any items received from ABB to any Restricted Parties, or parties that operate, or whose end use will be, in a jurisdiction/region prohibited by ABB including Belarus, Crimea, Cuba, Iran, North Korea, Russia, Syria, as well as the Donetsk, Luhansk, Kherson, and Zaporizhzhia regions of Ukraine (such list may be amended by ABB at any time). The Company further represents and warrants that the Products and/or Services provided under this Agreement shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of ABB.
9. For the avoidance of doubt, no provision in this Agreement shall be interpreted or applied in a way that would require any party to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable Trade Control Laws.
10. Company shall immediately notify ABB in writing of any potential or actual breach of obligations set forth under Applicable Integrity Laws, the ABB Code of Conduct, or this Integrity Appendix by either the Company, its affiliated parties or any third parties engaged by Company in relation to the Agreement. In the event of such notification or if ABB otherwise has reason to believe that a potential or actual breach has occurred, Company agrees to cooperate in good faith with any audit, inquiries, or investigation which ABB deems necessary. During such audit, inquiries or investigation, ABB may suspend performance of its obligations until such time as ABB has received confirmation to its satisfaction that no breach has occurred or will occur. ABB shall not be liable to Company for any claim, losses or damages whatsoever related to its decision to suspend or terminate performance of its obligations under this provision.
11. Notwithstanding the foregoing or any other provision in the Agreement, in the event of any actual or imminent violation of Applicable Integrity Laws or material breach of obligations set forth under the ABB Code of Conduct or this Integrity Appendix, ABB shall, subject to mandatory provisions of Applicable Law, have the right to unilaterally terminate the Agreement with immediate effect. Such termination would be without prejudice to all rights of recourse which could be exercised by ABB, and ABB shall not be liable to Company for any claim, losses or damages whatsoever related to its decision to terminate performance of its obligations under this provision. Further, Company shall indemnify ABB for all liabilities, damages, costs, or expenses incurred as a result of any such violation, breach and/or termination of the Agreement. ABB may report such violations to relevant authorities as required by Applicable Integrity Laws.