ABB Ability Marketplace General Terms and Conditions

Background

A. ABB Switzerland Ltd., Brown Boveri Strasse 6, CH-5400 Baden, Switzerland (ABB) has developed and is improving and maintaining an online platform for the ordering and receipt of digital products and services, such platform being operated under the brand of Ability Marketplace® (the ABB Ability Marketplace).

B. The ABB Ability Marketplace may be accessed by customers registered on ABB.com to order and receive by download and/or online connection digital products and services offered by ABB (each an ABB Digital Offering).

C. The purpose of these present terms and conditions (the Ability Marketplace GTC) is to govern the contractual relationship between customers and ABB under which ABB Digital Offerings are purchased and/or received.

D. The ABB Digital Offerings offered on the Marketplace are made available by ABB and not the platform provider and, as such, the Customer agrees that the platform provider is not responsible for such ABB Digital Offerings.

1. Definitions

Capitalised terms shall have the meaning as defined in bold letters when first used herein. Defined terms shall have similar meaning when used in the singular or plural.

2. Subject Matter, Parties and Contract Execution

Customers will purchase or, as the case may be, subscribe to ABB Digital Offerings through making use of the online purchase order process offered on the ABB Ability Marketplace (the POP).

Each purchase of or subscription to ABB Digital Offerings shall result in an individual purchase or subscription contract (each a Contract) between ABB and the registered customer completing the POP (the Customer; ABB and Customer each a Party and together the Parties).

These Ability Marketplace GTC shall, together with the Special Terms and Conditions (STC) which provide the details of the related ABB Digital Offerings on the ABB Ability Marketplace, and the order details govern each Contract.

By completing the POP, Customer acknowledges and accepts the STC and the Ability Marketplace GTC to govern the Contract. Customer further acknowledges and accepts the ABB Acceptable Use Policy (the AUP) and the ABB Privacy Policy, each as accessible on the ABB Ability Marketplace.
3. Registration, POP and Contract Execution

3.1 Identification and Registration on ABB Ability Marketplace

The purchase and/or subscription to ABB Digital Offerings require the identification and due registration of Customer. Registration is completed upon provision of accurate and complete identification details as required in the registration dialogue on the ABB Ability Marketplace.

Customer shall be responsible (i) to keep updated and, to the extent applicable, confidential (see Section 7) identification details and to make corrections if needed or desired and (ii) for any and all activities that occur under an account that is attributable to Customer (including, for the avoidance of doubt, activities by third party Users).

3.2 Completing a POP

To complete a POP, Customer selects from the ABB Digital Offerings those it wishes to purchase or subscribe to. By selecting the ABB Digital Offering(s) and clicking “Confirm Order”, an order (the Order) has been placed and the POP is completed.

3.3 Execution of Contract

Subject to ABB’s right to reject an Order by electronic communication to Customer within 48 hours of completion of the POP, the Contract on the purchase of and/or subscription to the selected ABB Digital Offering(s) in accordance with the Order is executed, and the Parties shall be obliged to perform their contract duties.

3.4 External Content.

Customer may be able to access or be required to access third party websites, app stores and/or material and/or download third party software from such websites or app stores in order to use the ABB Digital Offering(s). ABB does not operate or control any third party websites, app stores or any other material, information, software, services, opinions or other content provided by third parties, including on the internet (collectively, "External Content"). Use of External Content is subject to Customer’s acceptance of the applicable third party terms of use and Customer acknowledges and agrees that any contractual relationship related to External Content is solely between Customer and the provider of such External Content. It is Customer’s responsibility to assess the accuracy of using such Third Party Software and ABB makes no warranties or representations and ABB has no obligation, responsibility or liability for External Content and Customer’s use of External Content to the extent permitted by law. Customer waives any right or claim of right against ABB relating to External Content.

4. Deliverables

4.1 In General

ABB shall make available the ordered ABB Digital Offerings.
In case the ordered ABB Digital Offering consists of the one-time purchase of digital content, such ABB Digital Offering shall be delivered by making it available for download on the ABB Ability Marketplace.

In case the ordered ABB Digital Offering consists of a service such as supporting or enhancing the use of ABB or, if applicable, third party products, components, systems, robots and other installations at Customer’s sites (each a Customer Unit), such ABB Digital Offering shall be made available through online connection and communication between Customer Unit and ABB during the term of subscription.

It shall be Customer’s responsibility to complete the download process and to receive and duly take note of electronic communications to make use of and benefit from the ABB Digital Offering(s).

4.2 Software
4.2.1 In General

All software developed by ABB or any other ABB group company for the authorized use of ABB Digital Offerings (ABB Software) will be made available in executable program code by ABB on the ABB Ability Marketplace for download and installation by Customer on its IT environment.

Where ABB Digital Offerings comprise services made available on a platform of or under the control of ABB, ABB Software will include the client software necessary to connect to and make use of such ABB Digital Offering.

4.2.2 Update and Upgrade Versions of ABB Software

ABB may make available on the ABB Ability Marketplace, from time to time where applicable and as and when available, update and upgrade versions of ABB Software (such update and upgrade versions to be included in the term ABB Software for the purposes of these Ability Marketplace GTC).

Where such update and/or upgrade versions are made available, Customer will be informed accordingly in the STC.

4.2.3 ABB Support

ABB Digital Offerings may include the telephone and remote interconnection support by ABB to facilitate the installation and/or making use of ABB Digital Offerings. Any Support will be described in the STC.

5. Software Licensing Terms
5.1 In General

Customer obtains the license necessary for authorized use of ABB Software.

Subject to the STC and the Order, such license (License) includes the remunerable, non-exclusive, non-transferable, right to use, install, parametrize (where applicable), have accessed
and/or operated by or for the benefit of an indefinite or defined number of systems or users employed by or acting under the direct control of Customer, and interoperate ABB Software with other software products, including also the right to authorize others such as IT or business process outsourcing providers to do some or all of the foregoing on Customer’s behalf, all such actions and uses being for the purposes of using ABB Software for Customer’s business as conducted during the term of the License.

The Order and the License does not include, however, the assignment or transfer of any of the intellectual property rights, including without limitation copyrights and rights under granted patents, in ABB Software, such intellectual property rights remaining the sole ownership of ABB or any of its licensors.

Further, the License does not include and Customer will procure and guarantee at any time that the ABB Software will not be decompiled, disassembled, decoded, reverse engineered, or modified, nor disclosed, sublicensed, distributed or otherwise made available to third parties (including, for the avoidance of doubt, affiliates of Customer).

5.2 License for Subscription Services

In case the ABB Digital Offering making use of ABB Software is subscribed to for a limited or terminable term, the License shall be limited and end automatically upon termination of the related subscription.

Subject to the STC, upon termination of the License, Customer will cease all use of ABB Software and procure and guarantee that any copy of ABB Software downloaded, or copied will be de-installed and destroyed, and Customer will confirm in writing upon request that it has not retained any copies and has ceased any use of ABB Software.

5.3 Unlimited and Irrevocable License

In case the ABB Digital Offering consists of or includes the one-time purchase or perpetual License of ABB Software, the License shall be for an unlimited term and irrevocable, subject to the right of ABB to terminate the License in case of breach by Customer of any terms or obligations under the related Contract.

5.4 Pilot Services

Where ABB provide Services, that are at a pilot, trial, evaluation or beta stage or that are free of charge (“Pilot Services”), these are subject to additional limitations as set out in this Section 5.4 which shall prevail over other provisions of these Ability Marketplace GTC. Customer understands and acknowledges that Pilot Services may not have been fully tested or verified, may become unavailable, that their performance may be negatively affected, and/or that the Pilot Services may not meet industry practice security standards and might therefore negatively affect Customer’s internal procedures and business operations or impair the functionalities of Customer systems or devices. Customer may use the Pilot Services only for Customer’s internal use for the purpose of reviewing, evaluating and testing the Pilot Services. Use of the Pilot Services is at Customers sole risk. ABB may, at its sole discretion, (i) modify
the Pilot Services or features of the Pilot Services; (ii) provide upgrades, patches or maintenance; or (iii) terminate, limit, suspend or discontinue the Pilot Services or access to the Pilot Services. ABB’s liability for all claims, damages, loss and indemnities arising out of or in connection with the Pilot Services is limited to direct damages and, in aggregate, to the amount of USD 100 (one hundred). Other than the limited liability, set out in the preceding sentence, ABB provide the Pilot Services “as is” without any warranties and excluding all liability to the fullest extent permitted under applicable Laws.

5.5 Third party software

Except to the extent explicitly specified otherwise in the STC or the Order, for all third-party software, the terms and conditions of use of the third-party licensor apply exclusively. Customer acknowledges and agrees that (i) any contractual relationship related to Customer’s use of such Third Party Software is solely between Customer and the provider of such Third Party Software; (ii) it is Customer’s own responsibility to assess the accuracy of using such Third Party Software; and (iii) we will have no responsibility or liability related to Customer’s use of such Third Party Software, to the extent permitted by applicable law.

6. Fees

6.1 In General

Each ABB Digital Offering is priced, and the fees to be paid (one-time fee or recurring subscription fee) are indicated in the STC and/or the Order. All amounts so specified are exclusive of VAT and other transaction levies as applicable.

6.2 Fees and Payment

6.2.1 One-time fees are payable upon execution of the Contract (Section 3.3) in accordance with the Order and STC. Recurring fees are payable in advance for one year or, if applicable, for the ordered term in accordance with the Order and STC.

ABB or, as the case may be, the entrusted accounts receivables agent will send invoices electronically to Customer at the registered mail account. Invoiced amounts are paid by wire transfer into the specified recipient account within thirty (30) days of the invoice date without deduction.

5% p.a. interest will be charged in case of late payment.

In case a credit card payment is authorized, but later fails to be settled, or an invoice is not paid within 60 days ABB has the right to revoke the license to the Digital Offering.

6.2.2 Taxes. Customer is liable for any and all sales, use, excise, value added (“VAT”), GST (goods and services tax), customs fees, or other similar taxes to be paid by either party under this Agreement, including withholding taxes arising from international transactions. If Customer is exempt from the payment of any taxes, Customer must provide ABB with a valid tax exempt-
tion certificate or proof of Customer’s direct payment of taxes to the applicable taxing authority, otherwise Customer must pay to ABB all such taxes. Subject to the foregoing, ABB is solely responsible for any taxes based on its income.

7. Covenants

7.1 Service Levels

For ABB Digital Offerings consisting of services, ABB shall use commercially reasonable efforts to meet any service levels set forth in the STC.

Notwithstanding the foregoing, Customer acknowledges and agrees that online services to be provided by ABB may be interrupted during reasonable periods of downtime for maintenance and restoring purposes.

7.2 Use of ABB Ability Marketplace and ABB Digital Offerings

Customer shall at all times access to and use the ABB Ability Marketplace and make use of any ABB Digital Offering in a way such as

(a) to comply with the standards of security and protection of connectivity set forth in the AUP;
(b) to comply with all laws, regulations and governmental orders and instructions applicable to Customer and any third party which connects to or otherwise makes use of the ABB Digital Offerings under the control of Customer, including without limitation sanctions and export control;
(c) obtain and maintain all necessary licenses, permissions, filings and consents (which shall include consent of individuals where you provide Personal Data to us) which may be required regarding Customer Content, software and other content, if any, provided by Customer;
(d) when using External Content, comply with the respective terms and conditions of use and the license terms and conditions in connection with External Content;
(e) promptly install the necessary Software and any updates or upgrades provided by ABB (in accordance with the respective specification and instructions) on Customer’s computer systems and/or mobile devices (as applicable);
(f) comply with any restrictions on permitted user types;
(g) comply with our reasonable instructions regarding the proper use of the Digital Offerings as may be given in individual cases from time to time;
(h) ensure that all users comply with the terms and conditions of the Acceptable Use Policy; and
(i) comply with the Laws, in particular when providing Customer content. Customer will not use the Digital Offering in any application or situation where failure of the Digital Offering could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
(j) to comply with its obligations and use restrictions set forth in these Ability Marketplace GTC; and
(k) not to impair or compromise the stability or security of the ABB Ability Marketplace or any of the ABB Digital Offerings.
7.3 Monitoring, Cyber and IT Security

ABB Digital Offerings may include to monitor Customer’s usage of the ABB Digital Offerings and/or to connect IT systems of ABB (or its sub-contractors or third-party providers) and Customer (or its service providers) and to communicate information and data via network interfaces. Each Party will provide a secured external interface to its respective network, and will establish and maintain appropriate measures (e.g. the installation of firewalls, application of authentication measures, encryption of data, installation of anti-virus programs, etc.) to protect its connected IT systems including networks and external interfaces against any kind of security breaches, unauthorized access, interference, intrusion, leakage and/or theft or losses of data or information.

Customer will (i) establish and maintain such remote connection with appropriate connectivity and security; (ii) permit ABB, ABB employees, agents, consultants and/or subcontractors, to remotely access and monitor certain systems (including mobile devices) owned, controlled or operated by or on behalf of Customer, as necessary for ABB to provide the Services. Customer is responsible for the security of Customer’s system, hardware and software, and, except as explicitly specified otherwise in an Order, Customer will promptly implement any software updates or upgrades provided by the respective vendors and/or by ABB, as applicable.

Customer shall ensure that each user of ABB Digital Offerings to which Customer has subscribed keeps accounts and credentials (e.g. username, passwords, certificates, keys) confidential. Customer shall notify ABB immediately of any attempted or actual unauthorized use of a Customer account or any other attempted or actual breach of security that Customer discovers. ABB is not responsible for any unauthorized access to Customer's accounts except if and to the extent such unauthorized access was caused solely by ABB's breach of the Contract.

7.4 Indemnities

Customer shall indemnify, defend, and hold ABB harmless from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs, and expenses (including reasonable attorneys’ fees) arising out of a breach of the covenants set forth in this Section 7, provided that Customer shall not be required to indemnify ABB to the extent that ABB’s negligence or misconduct has contributed to the damage.

8. Representations and Warranties

8.1 Warranties against Defects of Deliverables

8.1.1 Scope of Warranties

ABB warrants to the benefit of Customer that

(a) Any specific deliverable to be delivered under the Contract (each a Deliverable), including without limitation ABB Software and other digital content, shall be free of any material defects (it being acknowledged and agreed that software cannot be expected to be entirely error-free) and in conformance with the description in the STC and with other specifications that can be reasonably expected; and

(b) ABB will use industry standard software to scan all Deliverables against harmful surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, or web bugs, or other malware (all together referred to as Malware); and
8.1.2 Warranty Period and Remedy of Defects

Any warranty against defects is limited for a period of three (3) months from the download or receipt of the Deliverable by Customer (the Warranty Period).

Provided that Customer notifies, during the Warranty Period, ABB of the nature of a claimed defect and ABB is able, by application of reasonable efforts, to reproduce and verify the defect, ABB shall apply commercially reasonable efforts to eliminate or work around the defect, failing which ABB will refund the fees paid by Customer for the defective ABB Digital Offering for the term during that its authorized use is affected. TO THE EXTENT PERMITTED BY LAW, THESE ARE YOUR EXCLUSIVE WARRANTIES AND THE REMEDIES SET OUT IN THIS SECTION 8 ARE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH TO THE WARRANTIES.

8.1.3 The warranties set out in this Section 8 shall not apply: (i) if the Deliverable is not used in the contemplated environment, or in accordance with its specification or the Contract; (ii) if the Deliverable has been installed, implemented, customized, modified, enhanced or altered by Customer or any third party; (iii) if Customer is not using the most recent version of the Deliverable and the defect has been remedied in the newer version; (iv) to any error or defect caused by Customer, any third party, or any Third Party Software, or Force Majeure; or (v) to any error or defect arising as a result of drawings, designs or specifications provided by Customer.

8.1.4 DISCLAIMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, ABB PROVIDE THE DELIVERABLES WITHOUT WARRANTY AND WITHOUT MAINTENANCE OR ANY SUPPORT SERVICES AND SOLELY FOR THE PURPOSE CONTEMPLATED IN THE CONTRACT. EXCEPT AS EXPRESSLY SPECIFIED IN THE CONTRACT, NEITHER ABB NOR THE PLATFORM PROVIDER MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE DIGITAL OFFERINGS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE DIGITAL OFFERINGS WILL BE SECURE, UNINTERRUPTED AVAILABLE, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT PERMITTED BY LAW, THESE ARE YOUR EXCLUSIVE WARRANTIES AND THE REMEDIES SET OUT IN SECTION 8.1.2 ARE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH TO THE LIMITED WARRANTIES.

9. IP Infringement

9.1 ABB will defend at its own expense any third-party claim, suit or proceeding brought against Customer insofar as it is based on a claim that the use of an ABB Digital Offering constitutes an infringement of a valid third-party patent or copyright. ABB will pay all damages, costs and expenses finally awarded to third parties in a final judgment against Customer or settlement of such claim negotiated by or with the agreement ABB, but shall not be responsible for any settlement made without its consent. To qualify for such defense and payment, Customer must (i) give ABB prompt written notice of any such claim, and (ii) allow ABB to control, and fully cooperate with ABB in, the defense and all related settlement negotiations.
9.2 Upon notice of an alleged infringement, ABB shall have the right, at its option, (i) to obtain for the benefit of Customer the right to continue the use of the affected ABB Digital Offering, (ii) substitute the ABB Digital Offerings with similar performance, or (iii) modify the ABB Digital Offering so that it is no longer infringing or subject to the third party claim. In the event that none of the above options is commercially practicable in ABB’s reasonable discretion, Customer may terminate the related Contract. In the event of such termination, Customer may, as its sole and exclusive remedy, obtain a refund from ABB of the fees paid for the ABB Digital Offering.

9.3 ABB will not be responsible for any claim of infringement that arises from (i) use of Customer data in the provision of the services or otherwise in connection with the Contract; (ii) unauthorized modifications to Deliverables, (iii) use of ABB Digital Offerings in combination with third party software, firmware or hardware where absent such combination, the affected Service or ABB Software would not be the subject of a Claim; (iv) use of other than the latest available version of ABB Software made available to Customer; (vi) any Third-Party Software; or (vii) any use of Deliverables not in accordance with the Contract or any applicable documentation or specification.

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

10. No Other Claims; Limitation of Liability

10.1 THE PARTIES MAKE NO WARRANTIES NOR ARE THEY GRANTING ANY INDEMNITY OTHER THAN THOSE SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED, AND ABB AND THE PLATFORM PROVIDER EXPRESSLY EXCLUDE ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF ABB DIGITAL OFFERINGS.

10.2 TO THE EXTENT PERMITTED BY LAW, NEITHER ABB NOR THE PLATFORM PROVIDER SHALL BE LIABLE TO CUSTOMER FOR (I) LOSS OF PROFITS, SALES OR BUSINESS, AGREEMENTS OR CONTRACTS, ANTICIPATED SAVINGS, REVENUE, OR DAMAGE TO GOODWILL; (II) BUSINESS INTERRUPTION OR LOSS OR CORRUPTION OF DATA; (III) DAMAGE TO BUSINESS REPUTATION (IV) COSTS OF SUBSTITUTE GOODS OR SERVICES; OR (V) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE DAMAGES OR EXEMPLARY LOSS.

ABB’S LIABILITY FOR PILOT SERVICES IS AS SET FORTH IN SECTION 5.4 ABOVE. ABB’S TOTAL LIABILITY FOR DAMAGES, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT (INCLUDING BREACH OF WARRANTIES, INDEMNITIES AND ANY PENALTIES) OR TORT TO CUSTOMER OR ANY OF ITS OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIMITED, IN THE AGGREGATE PER CALENDAR YEAR, TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR TO BE PAID TO ABB PURSUANT TO THE CONTRACT DURING THE 12 MONTHS PRIOR TO THE MONTH IN WHICH THE MOST RECENT EVENT GIVING RISE TO LIABILITY OCCURRED (IF PERFORMANCE WAS FOR LESS THAN 12 MONTHS, THE FEES PAYABLE FOR THE TIME SHALL BE MULTIPLIED TO REFLECT A 12 MONTH PERIOD)

10.3 Scope of limitations and exclusions. The limitation and exclusions to our liability in Sections 10.1 and 10.2 do not apply for: (i) death or personal injury caused by our negligence; (ii) willful
misconduct, fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be limited or excluded by applicable Laws. The limitations and exclusions of liability also apply to the benefit of our affiliates, suppliers, licensors, subcontractors as well as our and their directors, officers, employees and representatives.

10.4. NEITHER PARTY MAY ASSERT AGAINST THE OTHER PARTY ANY CLAIM FOR BREACH OR NON-PERFORMANCE UNDER THE CONTRACT UNLESS THE ASSERTING PARTY HAS GIVEN THE OTHER PARTY WRITTEN NOTICE OF THE CLAIM WITHIN ONE YEAR AFTER THE ASSERTING PARTY FIRST KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO SUCH CLAIM.

11. Proprietary rights; Data Privacy; Feedback

11.1 ABB will not acquire any right, title and interest in any information, data and material that ABB measures or that is provided by or on behalf of Customer through or in connection with ABB’s provision or Customer’s use of the ABB Ability Marketplace, the ABB Digital Offerings or ABB Software, including, for the avoidance of doubt, third party information, data and material that is provided by or on behalf of Customer, but excluding any information or data generated or gathered (whether automatically or not) by an ABB device or ABB Software and which relates to the operation and working of such ABB device or ABB Software, for example device diagnostics and device health data (the Customer Content), other than the rights Customer grants to ABB under the Contract. During the term of the Contract, Customer will have the ability and the right to access and extract some or all of the Customer Content if and to the extent specified in the STC or the Order.

As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the ABB Ability Marketplace, ABB Digital Offerings, ABB Software and Deliverables as well as all derivatives and modifications of and improvements to all the foregoing, or other ABB intellectual property are and remain exclusively with ABB, its Affiliates or its licensors. Customer has no rights therein and thereto, other than those expressly granted pursuant to the Contract and use thereof other than specifically permitted in the Contract is expressly prohibited.

ABB, its Affiliates and its subcontractors have the right to collect, store, aggregate, analyze or otherwise use Customer Content for (i) providing and maintaining the ABB Digital Offerings and/or the ABB Software to Customer and its Affiliates; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the ABB Ability Marketplace, the ABB Digital Offerings and/or the ABB Software; (iii) improving and developing existing services, technologies, products and/or software and developing new services, technologies, products and/or software, and all improvements and developments (including all resulting Intellectual Property Rights) are exclusively owned by ABB. In addition, ABB has the right to use Customer Content for benchmarking purposes if and to the extent it is anonymized or non-confidential.

11.2 Notwithstanding the foregoing, ABB and Customer will comply, at all times, with the data privacy standards of any applicable data protection laws and ABB will comply, at all times, with the ABB Data Privacy Policy as published from time to time on the ABB Ability Marketplace.
11.3 During the term of the Contract, Customer may provide feedback or suggestions related to the ABB Ability Marketplace, the ABB Digital Offerings or the ABB Software to ABB. ABB and our affiliates are entitled to use such feedback and suggestions, even if it should be marked confidential, without any restrictions and any compensation to Customer.

12 Final Provisions
12.1 Coming into Effect and Term of Contract
12.1.1 Coming into Effect

The Contract will become effective and binding upon the Parties once Customer has completed the POP and ABB has not objected in accordance with Section 3.

12.1.2 Term of Contract

Any Contract the subject of which is the subscription to an ABB Digital Offering over time shall have a fixed, minimum or indefinite term as set forth in the STC or the Order.

In case of a fixed term, the Contract shall automatically terminate at the end of such term.

In case of an indefinite or minimum term, each Party may terminate the Contract by notice of termination to the other with a notice period of three (3) months as per the end of a calendar month, for the first time as per the end of the minimum term if any.

12.2 Suspension

ABB may suspend the Services in whole or in part if ABB determines that Customer’s use of the Services (i) poses a security risk to the Services, the ABB Ability Marketplace and/or any third party; (ii) may adversely impact the performance of the Services, the Software, ABB Ability Marketplace; (iii) is in violation of the Laws or poses a risk that ABB are or will be in violation of the Laws; (iv) may subject us or any third party to liability. In addition, ABB may suspend the Services under the circumstances specified in the Acceptable Use Policy and if Customer fails to pay any amount due under the Contract on the due date for payment. ABB will suspend the Services only to the extent reasonably necessary. Unless ABB believes an immediate suspension is required, ABB will use commercially reasonable efforts to provide reasonable notice before suspending a Service.

12.3 Effect on Third Parties

No person other than the Parties shall have any rights or benefits under the Contract, and nothing in the Contract is intended to confer on any person other than the Parties any rights, benefits or remedies.

12.4 Entire Agreement

Each Contract constitutes the entire agreement and understanding among the Parties with respect to the purchase of or subscription to the duly ordered ABB Digital Offering.
12.5 Plurality of Contracts

If a Customer orders ABB Digital Offerings at different times by way of different POP, each completed and non-rejected POP will result in a separate Contract, so that different Contracts may exist between the Parties.

12.6 Amendments

The Contract may only be modified or amended by a document signed by both Parties.

No failure to exercise nor any delay in exercising any right or remedy under the Contract shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

12.7 No Assignment

The Parties shall not assign the Contract or any rights or obligations thereunder, including, but not limited to, by way of a business transfer or demerger, to any third party unless the other Party has agreed in writing to such assignment.

12.8 ABB's Right of Substitution

ABB shall have the right to sub-contract other ABB group companies and/or third-party providers to support the performance of ABB's obligations hereunder. In case of sub-contracting, however, ABB will be responsible towards Customer as if it were performing the related obligations on its own.

12.9 Severability; Good Faith

Should any part or provision of the Contract be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of the Contract shall nonetheless remain valid. The Parties shall negotiate in good faith a substitute provision of the invalid or unenforceable part or provision that best reflects the economic intentions of the Parties without being invalid or unenforceable, and shall execute all agreements and documents required to such end.

12.10 Third party beneficiaries.

No one other than a party to the Contract and the Platform Provider shall be a beneficiary of the Contract or shall have any right to enforce any of its terms, unless specified in the Contract.

13 Governing Law and Place of Jurisdiction

13.1 Governing Law

The Contract (each Contract) has been construed in accordance with, and will be governed by, the substantive laws of Switzerland under the exclusion of the UN Convention on International Sales of Goods (Vienna Convention).
13.2 Place of Jurisdiction

Any dispute arising out of or in conjunction with the Contract shall be submitted by the Parties to the exclusive jurisdiction of the ordinary courts in Zurich 1, Switzerland.