

## HITACHI ABB POWER GRIDS - ENTERPRISE SOFTWARE SOLUTIONS – SOFTWARE AS A SERVICE ONLINE GTCs

These general terms and conditions ("**GTCs**") apply to any agreement entered into by any member of the Power Grids group of companies (formed by Hitachi ABB Power Grids AG, Switzerland and its subsidiaries from time to time ("**the Power Grids Group**")) where the Order or SOW incorporates these GTCs in full or by reference (including a reference to the url at which these GTCs reside) ("**an Agreement**"). In these GTCs "**Power Grids**" refers to the member of the Power Grids Group that enters into the Agreement to provide any Hitachi ABB Power Grids Enterprise Software Solutions product as a service and "**Customer**" refers to the other party to that Agreement. These GTCs apply to any access to or use of any Hitachi ABB Power Grids Enterprise Software Solutions product as a service by Customer pursuant to the Agreement. In these GTCs, references to Sections are to the numbered sections in these GTCs.

### 1. DEFINITIONS.

"**Access Credentials**" means any user name, identification number, password, security key, security token, PIN or other security code, method, technology or device used, to verify authorization to access and use the Services.

"**Access Term**" means the term stated on an Order during which Customer is permitted to access the Services.

"**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.

"**Authorized User**" means each of the Customer's Employees who are authorized to use the Services.

"**Beta Service**" means Service that may be made available at no additional charge which is designated as beta, pilot, limited release, developer preview, non-production, evaluation.

"**Confidential Information**" means non-public information including, without limitation, the terms, conditions and pricing under the Agreement. Confidential Information of Power Grids includes, without limitation, the Power Grids Software, all software provided or made available with the Services or the Professional Services, the source code of the Power Grids Software and any software provided or made available with it, and all algorithms, methods, techniques and processes revealed by the source code, and all Work Product. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient without an obligation to maintain its confidentiality prior to receipt; (b) is or becomes known to the public without violation of the Agreement; (c) is obtained by the recipient from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the recipient without reliance on the Confidential Information.

"**Content**" means information obtained by Power Grids from publicly available sources or third party content providers and made available by Power Grids to Customer in the as-a-service environment with the Power Grids Software as part of the Services.

"**Customer Data**" means all data provided by Customer or generated by the Services on Customer's behalf.

"**Employee**" means an employee of each party, including contractors engaged to augment staff.

"**Order**" means the document executed by both parties by which Customer orders Services.

"**Personal Data**" means any information from which a specific individual may be identified, contacted or located as defined in the applicable data protection law.

"**Power Grids Software**" means the object code versions of the software and any related databases or documentation developed by or for Power Grids, and all subsequent corrections, revisions, versions, or releases provided by Power Grids under the Agreement.

"**Power Grids Systems**" means the information technology infrastructure used by or on behalf of Power Grids in performing the Services.

"**Processed**" means any action or performance of any operation or set of operations that the Services are capable of taking or performing on any Content or Customer Data.

"**Professional Services**" means the implementation, training, customization, or other consulting services provided by Power Grids to Customer pursuant to a SOW under the Agreement.

"**Services**" means (a) the Power Grids Software; (b) Content; and any Third Party Content that Power Grids provides remote access to as stated in an Order, and the provision of (i) revisions, versions, or releases as available; and/or (ii) corrections, workarounds, or avoidance procedures. Services may change at any time without notice.

"**Third-Party Content**" means software, data or services licensed by Power Grids from third parties and made available to Customer in the as-a-service environment with the Power Grids Software as part of the Services.

"**Work Product**" means any expression of Power Grids' findings, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, software, and other technical information that directly relates to the Services or are provided to Customer as part of Professional Services.

## 2. SERVICES.

2.1 Services. Power Grids or its Affiliates or subcontractors will provide to Customer's Authorized Users a limited, non-exclusive, non-transferable right to use the Services for Customer's own internal business operations during the Access Term as stated in the applicable Order ("**Permitted Use**"). Customer acknowledges that the Services may contain usage protection procedures that limit access to, and usage of, the Services for the Permitted Use under the Agreement. Customer may not make use of any Services for which Customer has not expressly obtained a right under the Agreement. Customer is responsible for any person or company who accesses the Services using Customer's Access Credentials. Any rights not expressly granted in the GTCs, are expressly reserved.

2.2 Subscription. Unless otherwise provided in the Agreement or agreed otherwise in writing between the parties, (a) Services are purchased as subscriptions; (b) subscriptions may be added during a subscription term subject to the parties agreeing to do so in writing, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. At the end of the subscription term if the subscription is not renewed, Customer's right to access and use the Services terminates. Fees for Services are based on subscriptions purchased and not actual usage. Quantities purchased cannot be decreased during the relevant subscription term. Payment obligations for Services are non-cancellable and fees paid for Services are non-refundable. If Customer does not pay fees for Services when due, Power Grids may, upon prior written notice, suspend the applicable Services.

2.3 Access Term Renewal. Except as otherwise set forth on an applicable Order, the Access Term automatically renews for successive annual periods unless either party provides notice to the other no less than ninety (90) days prior to the expiration of the then-current Access Term of its decision not to renew. For each annual Access Term after the initial Access Term, the Services fee automatically increases by the annual escalation stated on the Order or, if none is stated, by 3% ("**Annual Escalation**"). If the Annual Escalation for the relevant twelve-month period is negative then it shall be deemed to be zero for the purpose of the Agreement. Third Party Content and third party software fee increases may exceed the Annual Escalation. Unless otherwise stated on an applicable Order, Services fees after the initial Access Term are due on the first day of the last month of the prior Access Term.

2.4 Usage Limits. Services are subject to usage limits specified in the Agreement. Unless otherwise stated in an Order, the Service may not be accessed by more than the number of Authorized Users or other usage limit stated in the Agreement, an Authorized User's password may not be shared with any other individual, and (if Authorized User numbers are limited) an Authorized User identification may only be reassigned to a new individual replacing one who will no longer use the Service. If Customer exceeds the Authorized User or other applicable usage limit, Customer will execute an Order for the additional Authorized Users or other usage beyond the agreed usage limit, and pay any invoice for the additional Authorized Users or other usage beyond the agreed usage limit.

2.5 Restrictions. Except as otherwise expressly set forth in an Order, Customer must not, or permit any third party to, directly or indirectly: (a) access or use the Services; (b) reverse engineer,

disassemble, or decompile the Services; (b) sell, resell, sublicense, rent, lease, distribute, make available or otherwise transfer the Services; (c) use the 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 based on the Services; (e) attempt to circumvent or render inoperative any usage restriction features; (f) remove, obscure, alter, or move Power Grids', any Power Grids' Affiliates' or its licensors' proprietary notices; or (g) use any third party software or Third Party Content except solely with the Services and except in accordance with any third party terms and conditions that are incorporated by reference and/or set forth in the Agreement; (h) interfere with or disrupt the integrity or performance of any Services, (i) attempt to gain unauthorized access to any Service or Power Grids' Systems, or Power Grids' Affiliates' systems or networks, (j) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, or use any of the Services to access or use any of intellectual property except as permitted herein; (k) copy Services except as permitted herein; (l) frame or mirror any part of any Service, other than framing for Customer's own internal business purposes; (m) access any Service in order to build a competitive product or service; or (n) violate Power Grids' Acceptable Use Policy ("**AUP**") located at: <https://search.abb.com/library/Download.aspx?DocumentID=9A-KK107046A2911&LanguageCode=en&DocumentPartId=&Action=Launch>. Any interface information necessary to achieve interoperability of the Services with independently created computer programs can be provided by Power Grids at Power Grids' then-current fees subject to execution by the parties of an appropriate order document.

## 3. SERVICE LEVELS.

Power Grids will use commercially reasonable efforts to make the Services available as stated in the service levels, if any, referenced in the Agreement, except for: (i) planned downtime pursuant to advance electronic notice, and (ii) any unavailability caused by circumstances beyond Power Grids' reasonable control, including, but not limited to, Force Majeure, internet service provider's failure or delay, Third Party Content, third party software, or denial of service attack. Service levels may change at any time upon prior written notice.

## 4. CUSTOMER LICENSE.

Customer grants Power Grids, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data for the purpose of providing the Services.

## 5. CUSTOMER OBLIGATIONS.

Customer is responsible for the following obligations (collectively referred to as "**Customer Obligations**"): (a) ensuring the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data; (b) notifying Power Grids promptly of any unauthorized access or use; (c) using Services only in accordance with applicable laws and government regulations; (d) performing its obligations stated in an agreed SOW between the parties relating to the Services; (e) designating a project manager who must coordinate the Customer Obligations under a SOW; and (f) where reasonably required in relation to the Services, (i) providing sufficient, qualified, knowledgeable personnel capable of performing Customer Obligations, making

timely decisions and participating in the project and cooperating with Power Grids; (ii) providing Power Grids with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by Power Grids, including remote access if needed; and (iii) providing Power Grids with reasonable working space, equipment and office support; and (g) performing such other duties and tasks as stated in a SOW to facilitate performance of the Professional Services.

## **6. PROFESSIONAL SERVICES.**

6.1 Professional Services. Power Grids (directly, through one or more of Power Grids' Affiliates or through subcontractors or consultants) will provide to Customer the Professional Services stated in a SOW.

6.2 Condition for Services. Customer agrees that Power Grids' ability to perform the Services is conditioned upon Customer's timely performance of the Customer Obligations and any assumptions stated in the SOW. If Customer does not perform Customer Obligations in a timely manner, Power Grids may: (a) suspend the Services; (b) take any action stated in the SOW; and/or (c) terminate the SOW.

## **7. PAYMENT.**

7.1 Fees. Customer must pay to Power Grids the fees stated in each Order or SOW. Unless otherwise provided in an Order or SOW: (a) all fees under an Order or SOW are due upon the effective date of the respective Order or SOW, and are payable to Power Grids within thirty (30) days of the date stated on each invoice without set-off, deduction or other withholding; (b) fees for Services are based on subscriptions purchased and not actual usage; (c) quantities purchased cannot be decreased during the relevant subscription term; and (d) payment obligations are non-cancellable and fees paid are non-refundable. Any fees not paid when due accrue interest at a rate equal to the lesser of (a) 1.5% per month; or (b) the maximum amount allowed by law. Customer agrees to pay to Power Grids all reasonable costs and expenses of collection, including reasonable attorneys' fees and court costs, incurred by Power Grids to collect payments due. If Customer does not pay fees when due, Power Grids may, upon prior written notice, suspend the applicable Services or Professional Services.

7.2 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 the Agreement, including withholding taxes arising from international transactions. If Customer is exempt from the payment of any taxes, Customer must provide Power Grids with a valid tax exemption certificate or proof of Customer's direct payment of taxes to the applicable taxing authority, otherwise Customer must pay to Power Grids all such taxes. Subject to the foregoing, Power Grids is solely responsible for any taxes based on its income.

## **8. PROPRIETARY RIGHTS.**

8.1 Ownership. Customer owns all right, title and interest in all of Customer's Confidential Information. Power Grids owns or its Affiliates own all right, title, and interest in all Power Grids Confidential Information, the Services including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights. Power Grids' licensors own all right, title, and interest in all Third Party Content, third party software and related documentation including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights. All Work Product, and all patent, trademark, copyright,

trade secret, and other intellectual property rights, is the property of Power Grids or its Affiliates on creation and is licensed nonexclusively to Customer for the term of the Services subscription on the terms and conditions set out in Section 2 above, as if it were part of the Services.

8.2 Assignment of Rights; Cooperation. If Customer acquires any rights in any Work Product, Customer hereby assigns all such rights to Power Grids. Customer must give Power Grids all reasonable assistance and must execute all documents necessary to assist or enable Power Grids to perfect, preserve, register and/or record such assignment and Power Grids' right, title, and interest in any Work Product.

8.3 Protection of Confidential Information. Each party may provide Confidential Information to the other party. Neither party will (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) use Confidential Information for any purpose, except as expressly contemplated by the Agreement, or otherwise authorized in writing by the other party. Each party must 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 agreement acknowledging the non-disclosure obligations of these GTCs; provided, however, that Customer must obtain Power Grids' prior written consent before disclosing any Power Grids Confidential Information to any third party. Each party must provide the other party with copies of any such agreements upon written request. Each party is liable for any breach by any of its Employees or third party consultants of the confidentiality obligations under these GTCs.

8.4 Required Disclosures. If a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party must 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 required.

8.5 Protection of Customer Data. Power Grids will safeguard Customer Data as described in the 'Digital Channels Privacy and Cookie Notice' at <https://www.hitachiabb-powergrids.com/privacy-policy> and any applicable 'Data Processing and Security Terms' published by Power Grids from time to time.

## **9. PROFESSIONAL SERVICES LIMITED WARRANTY.**

9.1 Professional Services Limited Warranty. Power Grids warrants that the Services will be performed in a workmanlike manner consistent with generally accepted industry standards. Written notice of any claim under the Professional Services Warranty must be made within thirty (30) calendar days of completion of the Professional Services which Customer alleges were not performed consistent with the Professional Services Warranty.

9.2 Warranty Obligations of Power Grids.

9.2.1 Power Grids' sole obligation under the Professional Services Warranty is to re-perform the Services not as warranted.

9.2.2 TO THE EXTENT PERMITTED BY LAW, THIS SECTION SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE POWER GRIDS PROFESSIONAL SERVICES WARRANTY.

9.3 Limitations. The Power Grids Professional Services Warranty does not apply: (a) to any customizations or modifications; (a) if the Professional Services are not used as stated in the Agreement; (b) to any error or defect caused by Customer, any third party, or any third-party software, or Force Majeure; or (c) to any error or defect arising because of drawings, designs or specifications provided by Customer.

9.4 DISCLAIMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, POWER GRIDS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR PROFESSIONAL SERVICES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, THE CONTENT OF INFORMATION TRANSMITTED BY YOU THROUGH THE SERVICES OR ANY LOSS, DELAY, INTERRUPTION, OR INACCURACY OF SUCH COMMUNICATIONS, LOSS OR INTERRUPTION OF DATA, RECORDINGS, COMPUTER TIME OR VOICE TRANSMISSIONS; ALTERATION OR ERRONEOUS TRANSMISSION OF DATA; ACCURACY OF DATA; INABILITY TO USE THE SERVICES TO CONTACT EMERGENCY SERVICES; UNAUTHORIZED ACCESS TO OR USE OF VOICE OR DATA PROCESSED OR TRANSMITTED BY, TO OR THROUGH THE SERVICE; OR PROGRAM ERRORS, AND POWER GRIDS EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES. POWER GRIDS DOES NOT WARRANT THAT: (a) THE SERVICES WILL OPERATE UNINTERRUPTED; (b) ALL ERRORS CAN BE CORRECTED; (c) THE SERVICES ARE DESIGNED TO MEET ANY OF CUSTOMER'S BUSINESS REQUIREMENTS; OR (d) THE INFORMATION OR DATA PROVIDED IS ACCURATE OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE SERVICES FOR ITS REQUIREMENTS.

9.5 CONTENT AND BETA SERVICES DISCLAIMER. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. CUSTOMER ACKNOWLEDGES AND AGREES THAT FOR SERVICES COMPRISED OF DATA, INFORMATION, ANALYSES, MODELS OR PROGNOSSES, POWER GRIDS OBTAINS ITS DATA FROM THIRD PARTY SOURCES OR FROM THE CUSTOMER, AND THE DATA MAY NOT BE COMPLETELY THOROUGH AND ACCURATE, AND CUSTOMER SHALL NOT RELY ON POWER GRIDS FOR THE ACCURACY OR COMPLETENESS OF INFORMATION SUPPLIED THROUGH SUCH SERVICES. NOR DOES POWER GRIDS ASSUME ANY LIABILITY FOR THE CORRECTNESS, ACCURACY AND/OR RELIABILITY OF THE PROGNOSSES THEMSELVES. IN PARTICULAR, POWER GRIDS IS NOT LIABLE FOR CONCLUSIONS DRAWN BY CUSTOMER OUT OF THE DELIVERABLES (INCLUDING PROGNOSSES), AS WELL AS FOR CUSTOMER'S RESULTING ACTIONS AND

THEIR CONSEQUENCES. CUSTOMER ACCEPTS ALL SUCH INFORMATION ON AN "AS IS" "AS AVAILABLE" BASIS.

## 10. INDEMNIFICATION.

10.1 General Indemnification. Except for claims covered by Section 10.3 below, each party ("**Indemnifying Party**") must indemnify and defend the other party ("**Indemnified Party**") against any third party claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named because of negligent conduct or willful misconduct by the Indemnifying Party or its Employees, while performing its obligations directly relating to the Services pursuant to the Agreement, which result in death, personal injury or property damage; provided that (a) the Indemnified Party gives the Indemnifying Party prompt notification in writing and reasonable assistance, at the Indemnifying Party's expense, in the defense of such claim; and (b) the Indemnifying Party has the sole authority to defend or settle such claim as long as such settlement must not include a financial obligation on the Indemnified Party.

10.2 Customer Indemnification. Customer agrees to indemnify and hold Power Grids and Power Grids' Affiliates harmless against any third party claim arising out of or relating to: (a) Customer's violation of the Power Grids AUP; or (b) Customer Data.

10.3 Infringement Indemnification. Power Grids will indemnify and defend Customer against any claim brought against Customer by third parties alleging the use of any of the Services or Work Product (collectively, the "**Power Grids Deliverables**"): (a) infringes a patent, copyright or trademark; or (b) misappropriates any third party trade secret (collectively, an "**Infringement Claim**"); provided that (i) Customer gives Power Grids prompt notification in writing of any such Infringement Claim and reasonable assistance, at Power Grids' expense, in the defense of such Infringement Claim; and (ii) Power Grids has the sole authority to defend or settle such Infringement Claim and such settlement must not include a financial obligation on Customer.

10.4 Infringement Indemnification Limitations. Power Grids has no obligation for any Infringement Claim arising out of or relating to: (a) a modification created by or at the direction of Customer or a third party; (b) use of a Power Grids Deliverable other than in accordance with these GTCs; (c) use of the Power Grids Deliverables in combination with other materials, where absent such combination, the affected Power Grids Deliverable would not be the subject of the Infringement Claim; or (d) any Third-Party Content.

10.5 Effect of Infringement Claim. If an Infringement Claim is or, in Power Grids' reasonable belief, is likely to be asserted, (a) Power Grids may require Customer to discontinue use of the Power Grids Deliverable immediately; and (b) Power Grids will, at its sole option, either (i) procure for Customer the right to use the Power Grids Deliverable; (ii) replace the Power Grids Deliverable with non-infringing Power Grids Deliverables or modify the Power Grids Deliverable to make it not infringing while retaining substantially similar functionality; or (c) if the remedies set forth in (b)(i) and (b)(ii) are not commercially feasible, as determined by Power Grids in its sole discretion, terminate the applicable Agreement, insofar as it relates to the Services, and pay Customer a pro rata refund of the fees paid by Customer for the Power Grids Deliverable.

10.6 Exclusive Remedy. THIS SECTION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF POWER GRIDS TO CUSTOMER, AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OR ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

## 11. LIMITATIONS OF LIABILITY.

11.1 EXCEPT FOR CLAIMS ARISING OUT OF (a) BREACH OF CONFIDENTIALITY; (b) BREACH OF POWER GRIDS INTELLECTUAL PROPERTY RIGHTS; OR (c) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 EXCEPT FOR CLAIMS ARISING OUT OF (a) BREACH OF CONFIDENTIALITY; OR (b) BREACH OF POWER GRIDS INTELLECTUAL PROPERTY RIGHTS; OR (c) THE PARTIES' INDEMNIFICATION OBLIGATIONS IN SECTION 10.1, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID OR PAYABLE BY CUSTOMER TO POWER GRIDS FOR THE SERVICES TO WHICH THE CLAIM RELATES IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

11.3 EACH PARTY ACKNOWLEDGES THAT THE FEES OR CHARGES PAYABLE UNDER THE AGREEMENT REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT POWER GRIDS WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY IN RELATION TO THE SERVICES. NOTWITHSTANDING THE FOREGOING, SECTIONS 11.1 AND 11.2 SHALL NOT APPLY TO LIABILITIES THAT CANNOT BE LIMITED BY LAW.

## 12. TERM AND TERMINATION.

12.1 Term. These GTCs apply in relation to the Services and Professional Services as of the effective date of the respective Order and SOW (as may be specified therein) and continue in effect for the term set out in the relevant Order or SOW or, if none is set out, in the case of Professional Services, until the Professional Services have been completed and, in the case of an Order for software as a service Services, indefinitely, unless terminated under Section 12.2 below, except as otherwise set forth in an Order or SOW.

### 12.2 Termination.

12.2.1. The Agreement may be terminated as follows:

(a) by either party thirty (30) calendar days after providing the other party with written notice of the other party's 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;

(b) 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;

(c) by Power Grids ten (10) calendar days after Power Grids provides Customer with notice of Customer's failure to remit timely payment to Power Grids of fees relating to the Services or Professional Services;

(d) if the relevant Order sets out the applicable Service term, in accordance with section 2.3 above, or, if the relevant Order does not set out the applicable Service term, by either party providing at least ninety (90) calendar days written notice of its desire to terminate the Agreement; or

(e) by either party immediately upon written notice to the other if Force Majeure prevents either party from performing its obligations under these GTCs or under the Agreement in relation to the Services (other than any Customer obligation to make payment in respect of fees due for the Services), and the Force Majeure persists for more than thirty (30) calendar days following written notice under Section 11.9 of these GTCs.

### 12.3 Effect of Termination.

12.3.1 Upon termination of the Agreement: (a) all amounts due and owing by Customer under the Agreement are immediately payable, and Power Grids is entitled to retain any and all fees paid by Customer; (b) Customer must immediately cease using the Services; and (c) all of Power Grids' obligations in relation to the Services cease. Within thirty (30) days of termination of the Agreement Customer must destroy or return to Power Grids all copies of Power Grids Confidential Information and must certify to Power Grids that all copies have been destroyed or returned. Power Grids will return Customer Data upon Customer request within 30 days after termination or expiration of the Agreement. Power Grids will have no obligation to maintain or return Customer Data after such 30-day period, and Power Grids will thereafter delete or destroy all copies of Customer Data in its control, unless legally prohibited.

12.4 Survival. The terms of these GTCs and the terms of the Agreement that relate to the Services that, by their nature should survive termination, survive termination, including, without limitation, the provisions concerning protection of Confidential Information, proprietary rights, license restrictions, disclaimers, indemnification and limitations of liability.

## 13. GENERAL PROVISIONS.

13.1 Assignment. Neither these GTCs, nor the Agreement insofar as it relates to the Services, 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, reorganization or consolidation (whether Customer is the surviving entity or not), without the prior written consent of Power Grids, and any attempt to do so without the express prior written consent of Power Grids is deemed void. Power Grids' consent may be granted or withheld in its sole discretion and may be conditioned upon payment by Customer of a transfer, assignment or other fee, and such condition is not deemed unreasonable.

13.2 Right to Injunctive Relief. Customer acknowledges that Customer's breach of its obligations with respect to Power Grids' proprietary rights will cause irreparable injury to Power Grids or

its Affiliates and will entitle Power Grids or any Affiliate of Power Grids to seek injunctive or other equitable relief.

13.3 Arbitration. Except with respect to equitable remedies and disputes related to the ownership and protection of Power Grids Software, SaaS or Work Product, the parties agree that, unless they agree otherwise in writing, any dispute, claim or controversy relating in any way to the Agreement shall be fully and finally settled by binding arbitration in accordance with the latest rules for arbitration of the preeminent peak arbitration body of the Jurisdiction. If it is not clear which body is the preeminent peak arbitration body of the Jurisdiction, Power Grids will nominate one of the reputable peak arbitration bodies in that country, in its sole discretion, and that shall be the relevant body. The seat of arbitration shall be in the city closest to Power Grids that has an arbitration facility run by that peak body. The arbitration panel shall include only persons with experience in information technology or computer software licensing or implementation matters. Unless the parties agree otherwise in writing, 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 or to enforce the ruling. All arbitration proceedings and submissions shall be in the English language. The arbitrators shall apply the governing law of the Agreement (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 the Agreement, the rights and obligations of the parties, the mode of performance, and the remedies and consequences of the alleged breach.

13.4 Third Party Beneficiaries. In respect of any applicable third party contracts laws or regulations, Third Party Content licensors are beneficiaries of the Agreement for the purposes of enforcing their rights in relation to Third Party Content. With the exception of Third Party Content licensors and Affiliates of Power Grids, the provisions of the Agreement shall not be enforceable by any person other than the parties to the Agreement and their respective successors and permitted assignees.

13.5 Modifications. Power Grids may make commercially reasonable updates to the Services, any applicable 'Data Processing and Security Terms' and the AUP from time to time.

13.6 Governing Law. These GTCs and the Agreement as it relates to the Services or the Professional Services, and any claims related to them, will be governed by the laws of the jurisdiction in which the Power Grids entity is incorporated ("the Jurisdiction"), as such laws apply to contracts between residents of that jurisdiction performed entirely within such jurisdiction, without giving effect to its choice of law principles. The parties hereby irrevocably submit to the exclusive jurisdiction of the Jurisdiction. The parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

13.7 Export Control Notice. Customer acknowledges that the Services are in part of U.S. origin and are subject to U.S. and other

countries' applicable export restrictions. Customer agrees not to disclose, use, export or re-export, directly or indirectly, any Services, any information provided by Power Grids in relation to the Services or Professional Services, or the direct product thereof, except in compliance with such regulations. Customer acknowledges its obligation to comply with all applicable export control laws in its use, export or re-export of Services. Power Grids may use personnel who are located in or are residents of various countries across the world to remotely support the delivery of the Services, and Customer represents that no Customer Data made available to Power Grids requires an export license (or will notify in advance prior to transmission where this is not the case, including the applicable country controls and associated restrictions) or is restricted from export to any such personnel. Customer must defend, indemnify, and hold Power Grids and its licensors harmless 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.

13.8 Audit Rights. Power Grids (or any of its Affiliates on Power Grids' behalf) has the right, upon reasonable written notice and during normal business hours, to audit the Customer in order to verify compliance with the Agreement only once in any twelve (12) month period. If an audit reveals that Customer has underpaid for Services based on Customer's actual usage of the Services, then Customer must pay Power Grids: (a) applicable fees at Power Grids' then-current list rates for the relevant Service(s); (b) any applicable late charges; and (c) if an audit reveals that Customer has underpaid by five percent (5%) or more, Power Grids' reasonable costs of conducting the audit. If an audit reveals Customer is using the Services in a manner not permitted by the Agreement, Customer agrees to take, at Customer's expense, all reasonable corrective action required by Power Grids.

13.9 Notices. All notices to Power Grids relating to the Services must, in addition to any requirements under the Agreement, also be addressed to the attention of Hitachi ABB Power Grids' Enterprise Software Solutions Chief Financial Officer and Enterprise Software Solutions General Counsel.

13.10 Force Majeure. Other than for payments due in respect of fees for the Services or Professional Services, 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, public health emergency, epidemic, virulent or contagious outbreak or government embargo, order, border restriction or border closure or other government action ("Force Majeure") provided that if either party cannot perform its obligations for one of the foregoing reasons it must give prompt written notice to the other party and any time for performance must be extended for a period equal to the duration of the conditions preventing performance.

13.11 Choice of Language. The original of these GTCs is in English. If these GTCs are translated into any other language the English version controls.

13.12 Entire Agreement. These GTCs Agreement, with the Order or SOW, represent the complete agreement and understanding between the parties in relation to the Services or Professional Services (as applicable) and replaces 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 Power Grids regardless of any statement to the contrary.

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