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## **ABB Ability™ Backup Management for electrical systems – Data Care: TERMS OF USE**

**Please read the terms and conditions of this Terms of Use carefully before accessing or using the Services and/or Software:**

This Terms of Use Agreement (“Agreement”) is an agreement between You and ABB Oy registered at Strömbergintie 1 B, 00380 Helsinki, Finland, Business id 0763403-0 (“ABB”) for using the Services and/or the Software and not with any other party including any party from whom you download the Software. The terms and conditions contained in this Agreement apply to Your use of the Services and/or the Software, unless such use is subject to a separate agreement agreed between ABB and You in which case the separate agreement will govern such use of the Services and/or Software by You.

By (i) downloading, installing, accessing, activating, or otherwise using the Services and/or the Software; or (ii) accepting this Agreement, e.g. by clicking on an “accept” button, You are agreeing to the terms and conditions of this Agreement. If You are performing any of the foregoing on behalf of a company or other entity, “You” means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the licensee is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement.

**If You do not agree to these terms**, do not (i) download, install, access, activate or otherwise use the Services and/or the Software or (ii) accept this Agreement; and promptly return the unused media, documentation, and proof of entitlement to the party from which it was obtained. If the Software was downloaded or otherwise installed, please destroy all copies of the Software.

### **1. Provision of Services**

- 1.1 Subject to the terms and conditions of this Agreement, the Proof of Entitlement and the Service Description and in particular subject to Your activation of the Services, ABB shall (i) provide the Services or make the Services available to You in accordance with this Agreement, the Proof of Entitlement and the Service Description in all material respects; (ii) apply commercially reasonable safeguards, including technical and organizational measures, in order to establish an appropriate level of security and protection of Customer Data against accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Customer Data; and (iii) grant You access to the ABB Portal.
- 1.2 ABB may make any reasonable changes to the Services and/or change or remove features or functionality of the Services and/or the Software from time to time that (i) are necessary to comply with any applicable Laws or safety or security requirement; or (ii) do not materially adversely affect the nature or quality of the Services and/or the Software.

- 1.3 ABB may provide reports or access to data and reports as part of the Services. Reports are based on the Customer Data stored in Data Care. Such data is subject to availability while generating the report and may not fully accurately reflect the status of the complete data stored as on the date and time of the report generation. Accordingly, the reports may not fully accurately describe the status of the stored data and the actual operational data may differ from reports and the outcome of data analysis. The reports shall be used as a means of guidance and any decision based on the information provided in a report is taken at Customer's own risk.
- 1.4 The ABB Portal and the Services may include access to third party websites, app stores and other material provided by third parties, including on the internet and You may have to access such third party websites, app stores and/or material and/or download Software from such third party websites or app stores. ABB does not operate or control any third party web-sites or any other information, services, opinions or other content provided by third parties, including on the internet (collectively, "Content"). ABB MAKES NO WARRANTIES OR REPRESENTATIONS AND HAS NO RESPONSIBILITY OR LIABILITY FOR SUCH EXTERNAL CONTENT AND YOU AGREE THAT YOU SHALL MAKE NO CLAIM WHATSOEVER IN CONNECTION WITH THIS AGREEMENT AGAINST ABB RELATING TO EXTERNAL CONTENT.

## **2. Software**

- 2.1 Except if provided otherwise, where ABB provides Software to You as part of the Services or embedded in ABB hardware, ABB hereby grants to You a non-exclusive, non-transferable license to use the Software for the Service period set out in the Proof of Entitlement for the purposes of receiving the Services.
- 2.2 You shall have no right to access, copy, alter, make publically available or in any other way exploit or use Software, including the source code of the Software. You shall have no right to remove or attempt to remove any Software that is embedded in ABB hardware or to use such Software in any way separate from or unrelated to the ABB hardware or the Services. You agree that You shall not, except to the extent that such actions are explicitly permitted by mandatory applicable laws, attempt to reverse compile, decompile, disassemble or reverse engineer the Software, nor shall You amalgamate, amend, incorporate, modify, reproduce or otherwise alter the same into or with any other software.
- 2.3 You shall not attempt to make any part of the Software available to any third party or otherwise allow access to the same to any third party if not strictly necessary for the deployment of the Software and in any case under its direct liability and responsibility.
- 2.4 ABB may remotely install updates or upgrades to the Software with or without notice. ABB may further recommend to You to install updates or upgrades to the Software as well as to Your provided infrastructure or software. Updates or upgrades shall be governed by the terms and conditions of this Agreement unless such updates or upgrades are accompanied by a separate license provided by ABB in which case the terms and conditions of such separate license will govern. Notwithstanding the foregoing, except to the extent specifically set out otherwise in this Agreement, ABB is not obliged to provide any updates or upgrades.

- 2.5 You are solely responsible and liable for Your or Third Party Software that You connect to or otherwise use with the Software and You must comply with any third party terms and conditions, including any third party end-user license agreement relating to such Third Party Software. If You procure Third Party Software through ABB as specified in an order, You must comply with any third party terms and conditions, including any third party end-user license agreement attached to or referred to in the order relating to such Third Party Software. ABB has no responsibility and liability with regard to Third Party Software.

### **3. ABB Portal**

- 3.1 Your use of the Services or Software will require You to establish an account on the ABB Portal. Failing to do so will not relieve You of its obligation to make any payments to ABB in accordance with the Contract but will mean that You are unable to receive the Services.
- 3.2 For purposes of administrating the account, You will be required to provide business contact information (for example name, business telephone, address, email and user IDs) and other information as may be requested. You are responsible for the accuracy, timeliness, completeness and relevance of this business contact information and for any and all activities of a User under an account that is attributable to You.
- 3.3 You shall use the account and the ABB Portal (i) in accordance with the Agreement, the Acceptable Use Policy and all applicable Laws; (ii) in such a way so as not to impair or compromise the stability or security of the ABB Portal or the Services; and (iii) in accordance with any reasonable instructions from ABB.
- 3.4 You shall ensure that You and any Users keep accounts and credentials (e.g. username, passwords, certificates, keys) confidential. You will notify ABB immediately on You discovering any attempted or actual unauthorized use of Your account or any other attempted or actual breach of security. ABB is not responsible or liable for any unauthorized access to Your accounts except if and to the extent such unauthorized access was caused by ABB's breach of the Agreement.

### **4. Your responsibilities**

- 4.1 You shall: (i) co-operate with ABB in all matters relating to the Services and/or the Software; (ii) comply with any restrictions on permitted User types; (iii) provide ABB with such information and materials as ABB may reasonably require in order to provide the Services and/or the Software, and ensure that such information is accurate, timely and complete in all material respects; (iv) obtain and maintain all necessary licenses, permissions, filings and consents (which shall include consent of individuals where You provide Personal Data to ABB) which may be required regarding the Customer Data and software and content, if any, provided by You; (v) when using External Content, comply with the respective terms and conditions of use and the license terms and conditions in connection with External Content; (vi) promptly install the necessary software and any updates or upgrades provided by ABB (in accordance with the respective specification and instructions) on Your computer systems and/or mobile devices (as applicable); (vii) comply with any additional obligations as set out in the Service Description; (viii) comply with ABB's reasonable instructions regarding the proper use of the Services and/or Software as may be given in individual cases from time to time; (ix) comply with the Laws, in particular when providing Cus-

tomers Data; and (x) not disclose to any unauthorized person non-public information, specifications or data which are designated at the time of disclosure as confidential or are recognizable as being of a confidential nature.

- 4.2 The provision of the Services may require the establishment of a remote connection between the ABB Portal on one side and certain systems on the other side. You shall (i) establish and maintain such remote connection; (ii) maintain adequate security protection on the remote connection as well as Your systems, devices and hardware that directly or indirectly connect to the Services, the Software or the ABB Portal; and (iii) install and maintain any hardware, software, or other equipment necessary to establish and maintain the remote connection.
- 4.3 You agree to comply and shall ensure that all Users comply with the terms and conditions of the Acceptable Use Policy.
- 4.4 If ABB's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by You, including breach of the Agreement, or failure by You to perform any relevant obligation ("Customer Default") ABB shall without limiting its other rights or remedies have the right to suspend performance of the Services, and/or Your access to the ABB Portal until You remedy the Customer Default.

## **5. Proprietary rights, use of data and restrictions**

- 5.1 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to Customer Data are and remain with You and Your licensors. ABB acquires no rights in Customer Data, other than the rights You grant to ABB under this Agreement.
- 5.2 ABB and its Affiliates 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 and/or Software to You, Your Affiliates and/or (to the extent agreed in a separate agreement or otherwise authorized by You) third parties; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the Services, the Software, and/or the ABB Portal; 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. In addition, ABB has the right to use for marketing, testing and benchmarking purposes anonymized Customer Data.
- 5.3 During the course of the Services, You may provide Feedback to ABB. ABB shall exclusively own all rights, title and interest, including all Intellectual Property Rights, in this Feedback. In the event that any Intellectual Property Rights in Feedback is deemed for any reason not to be exclusively owned by ABB, You agree to assign, transfer and convey to ABB, and hereby assign, transfer and convey to ABB, all right, title and interest, including Intellectual Property Rights, in such Feedback, and agree to provide reasonable cooperation to ABB, at ABB's expense, to perfect such rights. While ABB does not wish to receive Your preexisting Intellectual Property Rights in such Feedback, in the unlikely event that You do include your Intellectual Property Rights in Feedback, You grant ABB and its Affiliates a worldwide, irrevocable, non-exclusive, royalty free, fully-paid-up right and license, without accounting, to take or have taken any of the following actions: (i) to use, make,

have made, make available, execute, copy, merge, reproduce, prepare derivative works, improvements and other modifications, license, sublicense, market, distribute (internally and externally), display and perform all, or any portion of the Feedback, alone or in any combination; and (ii) to authorize others to do any of the foregoing.

- 5.4 During the term of the agreement as set out in the Proof of Entitlement, You may have the ability to access and export certain Customer Data stored on the ABB Portal in relation to the Services or Software as described in the Service Description.
- 5.5 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the Services, the Software, the ABB Portal (including all tools, software, hardware, materials, data, content, application program interfaces provided by ABB or its Affiliates as part of or in relation to the Services) or other ABB intellectual property (collectively and for the purposes of Sections 5.5 and 5.6 referred to as “**ABB Content**”) are and remain exclusively with ABB or its licensors. You shall have no rights in and to the ABB Content, other than those expressly granted pursuant to this Agreement.
- 5.6 You will not (i) use the ABB Content for any third-party use including license, sublicense, sell, re-sell, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit or make it, or any portion thereof, available to any third party in any manner; (ii) modify, tamper with, repair or make derivative works based upon the ABB Content; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, disassemble, decompile or create derivative works of the ABB Content (except to the extent that applicable Laws prohibits reverse engineering restrictions, and then only as permitted by such Laws); (iv) copy any ideas, features, functions or graphics of the ABB Content; (v) access or use the ABB Content in a way to avoid incurring fees or exceeding usage limits or quotas or to circumvent or render inoperative any usage restriction features contained in ABB Content; and/or (vi) remove, obscure, alter, or move ABB’s and its licensors’ proprietary notices. Use of the ABB Content other than specifically permitted in this Agreement, is expressly prohibited.

## **6. Customer Warranty and Indemnification**

- 6.1 You represent and warrant that the use by ABB of any Customer Data or other data provided by You or Your grant of any license or right under the Agreement, will not infringe the Intellectual Property Rights or other rights of any person.
- 6.2 You 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 (i) any alleged or actual infringement under any Laws, of any third party's Intellectual Property Rights or other rights arising out of any Customer Data or its use by ABB in accordance with this Agreement, (ii) any breach by You of the Applicable Use Policy, or (iii) any other breach by You of this Agreement.

## **7. Disclaimer**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES AND SOFTWARE IS AT YOUR SOLE RISK. DESPITE SECTION 1.1, ABB PROVIDES YOU THE SERVICES AND SOFTWARE “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND DEFECTS, WITHOUT WARRANTY AND WITHOUT MAINTENANCE OR ANY SUPPORT SERVICES AND SOLELY FOR THE PURPOSE CONTEMPLATED IN THIS AGREEMENT. ABB

MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND ABB DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND SOFTWARE INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES OR SOFTWARE WILL BE SECURE, UNINTERRUPTED AVAILABLE, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE REPORTS PROVIDED ARE ACCURATE, 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.

## **8. Limitation of liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABB SHALL IN NO EVENT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FOR BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH A CONTRACT, 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 OR LOSS OR CORRUPTION OF DATA; (III) COSTS OF SUBSTITUTE GOODS OR SERVICES; (IV) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE DAMAGES OR EXEMPLARY LOSS; AND/OR (V) OTHER LOSS OR DAMAGES INCLUDING DIRECT DAMAGES.

## **9. Suspension**

ABB may suspend the Services and/or access to the ABB Portal in whole or in part if ABB determines that Your use of the Services and/or access to the ABB Portal (i) poses a security risk to the Services and/or the ABB Portal and/or any third party; (ii) may adversely impact the performance of the Services, the Software and/or the ABB Portal; (iii) is in violation of the Laws or poses a risk that ABB is or will be in violation of the Laws; or (iv) may subject ABB or any third party to liability. In addition, ABB may suspend the Services and/or access to the ABB Portal under the circumstances specified in the Acceptable Use Policy, in Section 4.4 and if you fail to pay any amount due under an order on the due date for payment.

## **10. Termination**

10.1 This Agreement will enter into effect as described in the introduction above and will remain in effect for a period as set out in the Proof of Entitlement or as terminated earlier in accordance with Section 10.2 below.

10.2 Without limiting its other rights or remedies, ABB may terminate this Agreement (in whole or in part) with immediate effect by giving written notice to You if (i) You are in breach of this Agreement; (ii) You fail to pay any amount due under an Order on the due date for payment; or (iii) there is a change in the Laws in one or more countries applicable to the performance of the Service that would render the continued performance of the Service illegal, impractical or would otherwise have a material impact (including a cost impact) on the provision of the Services.

10.3 Upon termination or expiration of this Agreement for any reason: (i) You shall, for as far as possible, uninstall all Software from Your computer systems, and cease use of the Software and, if requested by ABB, provide ABB with evidence that You have done so; (ii) ABB may disconnect Your

access to the Services, Software and/or the ABB Portal on or after the effective date of termination or expiration; and (iii) the accrued rights, remedies, obligations and liabilities of the parties as at termination or expiration shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiration.

- 10.4 You are responsible to export Customer Data prior to the effective date of termination or expiration in accordance with the methods and to the extent described by ABB in an order or the Service Description. After expiration of such period ABB may delete the Customer Data.
- 10.5 Where You require assistance to retrieve the Customer Data, ABB may agree to provide You with additional assistance which shall be charged to You on a time and materials basis at ABB's standard rates as in force at the time the assistance is to be provided or on such other rates as agreed between the parties.
- 10.6 The provisions on the limitation of liability (Section 8), Customer warranty and indemnification (Section 7), the limitations on Customer use in the Software license (Sections 2.2, 5.6), the provisions on Customer's Intellectual Property Rights (Section 5.1) and the provisions on ABB's Intellectual Property Rights (in particular Sections 5.2, 5.3, 5.5) shall survive the termination of the Agreement.

## **11. Export control**

You shall not export, directly or indirectly, any technical data acquired from ABB under the Agreement (or any products, including software, incorporating any such data) in breach of any applicable export control laws, including United States export laws, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval. In particular, the Services and/or Software may not be exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Services and/or Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Services and/or Software for any purposes prohibited by any Laws, including, without limitation, the development, design, manufacture or production of nuclear missiles, or chemical or biological weapons.

## **12. Governing Law and Jurisdiction**

- 12.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the substantive laws of Switzerland excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).
- 12.2 Any dispute, controversy or claim arising out of, or in relation to, the Agreement, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of arbitration is submitted in accordance with these rules.

The number of arbitrators shall be one. The seat of the arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.

### **13. General Provisions**

- 13.1 Force majeure. ABB shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, cyber-attacks, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any Laws or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent; collapse of buildings, fire or explosion; and (vi) any labor or trade dispute, strikes, industrial action or lockouts;
- 13.2 Assignment and other dealings. ABB may at any time assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights under the Agreement. You shall not, without the prior written consent of ABB, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 13.3 Business Contact Information. Subject to them complying with the ABB Ability™ 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 You, Your personnel and Users for the purpose of business dealings with them.
- 13.4 Data Protection. The parties agree that You shall be the data controller, who shall ensure compliance with the applicable data protection laws, in particular the lawfulness of the processing of personal data. ABB shall be processing personal data on Your behalf in accordance with the ABB Ability™ Data Privacy Policy and shall ensure compliance only with regard to those obligations under applicable data protection laws that are specifically directed to processors and shall act according to Your lawful instructions. ABB's personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. ABB may, and You agree that You will not withhold or delay Your consent if needed, to any changes to this data protection clause and/or to any additional data processing or data protection agreements which in the reasonable opinion of ABB are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines from any competent supervisory authority, and their application to the services provided by ABB from time to time.
- 13.5 Subcontracting. Subject to mandatory applicable Laws, ABB shall be permitted to subcontract or delegate in any manner any or all of the performance of its obligations under the Agreement to any Affiliate, contractor or any other third party service provider without requiring Your prior written consent.
- 13.6 ABB reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement. Such updates, revisions, supplements and other modifications

will be effective immediately upon the earlier of (i) notification to You or (ii) publication on the portal. Your continued use of Services and/or Software will be deemed to constitute Your acceptance of such updates, revisions, supplements and other modifications. If you do not agree to any such updates, revisions, supplements and other modifications, please discontinue using the Services and uninstall the Software.

- 13.7 Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section shall not affect the validity and enforceability of the rest of this Agreement.
- 13.8 The Software 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. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication, and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government users license the Software with only those rights set forth herein, including, without limitation, the following: Software may be transferred to the U.S. government only with the prior written consent of an officer of ABB and solely as restricted computer software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defense-related agency).
- 13.9 Notices. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be (i) delivered by hand or courier or by pre-paid registered first-class post or special delivery at its registered office (if a company) or its principal place of business (in any other case); 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.
- 13.10 Third parties beneficiaries. No one other than a party to the Agreement shall be a beneficiary of the Agreement or shall have any right to enforce any of its terms, unless specified in the Agreement.

## 14. Definitions and interpretation

### Definitions

**"ABB"** means ABB Oy registered at Strömbergintie 1 B, 00380 Helsinki, Finland, Business id 0763403-0.

**"ABB Ability™ Data Privacy Policy"** means ABB's data privacy policy, available at <https://protection.datacare.abb.com>, as may be updated by ABB from time to time;

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

**"ABB Device Data"** means any information or data generated or gathered (whether automatically or not) by Data Care or ABB Software in connection with the Services hereunder and which relates to the operation and working of such devices, for example protection relays configuration settings;

**"ABB Acceptable Use Policy"** means the ABB acceptable use policy, available at <https://protection.datacare.abb.com>, as may be updated by ABB from time to time;

**"Affiliate"** means any entity, whether incorporated or not, which presently or in the future, directly or indirectly controls, is controlled by, or is under common control with a party, by virtue of a controlling interest of 50% or more of the voting rights or the capital, or by means of controlling the constitution of the board and the voting at board meetings;

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

**"Customer Default"** has the meaning set out in Section 4.4;

**"Data Care"** means the ABB Ability Backup Management for electrical systems- Data Care subscription purchased by or provided to the Customer by ABB, its Affiliates or a third party pursuant to one or more separate arrangements, which generates or gathers data through embedded features or otherwise, where such data is accessed, stored or processed by the Services hereunder;

**"Feedback"** means, except for Customer Data or Your trademarks, all observing, evaluative or corrective information, statement, comment or observation about an incident, action, event, or process and other content or items prepared or otherwise provided by You to ABB in relation to the Services and / or, Software;

**"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;

**"Personal Data"** means any data or information of an identified or identifiable natural person;

**"Proof of Entitlement"** means the document that entitles You to use the Services and that includes the subscription type and subscription duration;

**"Service Description"** means the documents describing and specifying the Services as set forth at <https://new.abb.com/medium-voltage/distribution-automation/protection-relay-services/advanced-services/data-care> and as amended from time to time; newer versions on the website shall prevail over older versions;

**"Services"** means the Data Care Services to be supplied or to be made available by ABB to You as described in the Service Description and the Proof of Entitlement;

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

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

**"User"** means (i) an individual within Your organization or working in a separate legal entity or third party for You; or (ii) an individual within a third party's organization who is legitimately authorized to receive and use the Services, use the Software and/or access the ABB Portal;

**“You” and “Your”** means the individual or legal entity being a party to this Agreement.

### **Interpretation**

Any phrase introduced by the terms "e.g.", "including", "include", "in particular", "such as" or any similar expression, shall be construed as illustrative and shall not introduce an exhaustive list of phrases nor limit the sense of the words preceding those terms.