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## ABB ABILITY™ GENERAL TERMS AND CONDITIONS

### 1 Scope and contract formation

- 1.1 **Parties and scope.** The terms and conditions contained in this ABB Ability™ General Terms and Conditions (“**GTC Ability**”) together with any applicable Annex, Special Terms and Conditions (“**STC**”), Order or other terms and conditions referred to in these GTC Ability (together, the “**Contract**”) are agreed between the ABB entity (“**ABB**”, “**we**”, “**us**” or “**our**”) and the contracting entity (“**Customer**”, “**you**” or “**your**”) indicated in the Order. The Contract governs our provision and your use of the Services, Software and Hardware Devices as well as your access to the Portal (each as defined below).
- 1.2 **Contract formation.** The Contract comes into effect when you and us have signed or otherwise accepted an Order referring to these GTC Ability.
- 1.3 **Order of precedence.** To the extent of a conflict, the order of precedence between the documents comprising the Contract, unless differently specified in the Order, is the following (those higher in the list **prevailing**): (i) the Order; (ii) the STC; (iii) Annex 1 Hardware Terms (iv) the Data Privacy Policy; (v) the Acceptable Use Policy; (vi) the GTC Ability.

### 2. Provision of Services, Software and Hardware Devices

- 2.1 **Services and access to the Portal.** Subject to the terms of the Contract we grant you a non-exclusive, non-transferable, limited and revocable right to use the Services and the deliverables provided as part of the Services, if any, and access the Portal for your internal business purposes. Where expressly set out in an Order or STC, you may permit third parties under contract with you to use the Services and access the Portal for (i) supporting your internal business purposes; or (ii) purposes of such third parties receiving a service from you. You are responsible for any activities of such third parties.
- 2.2 **Your account on the Portal.** Your use of the Services or Software may require you to establish an account on the Portal. For purposes of administrating the account, you may be further required to provide contact information (for example name, business telephone number, address, email and user IDs) and other information as described in the Contract and/or the registration form provided on the Portal. You are responsible for the accuracy and completeness of this information and for any and all activities that occur under an account that is attributable to you (including, for the avoidance of doubt, activities by third party Users). You will ensure that (i) the Users securely store and keep credentials (e.g. username, passwords, certificates, keys) confidential; (ii) the credentials that are allocated to a specified User are only used by such User; and (iii) the account is only used in relation to the Services and in such a way so as not to impair or compromise the stability or security of the Platform, the Portal or the Services. You notify us immediately on discovering any attempted or actual unauthorized use of an account that is attributable to you and immediately follow our instructions when we are asking you to change a User’s access credentials. We reserve the right to change a User’s access credentials if we are of the opinion that such change is necessary for security reasons.

- 2.3 **Pilot Services.** Where we provide Pilot Services, these are subject to additional limitations as set out in this Section 2.3 which shall prevail over other provisions of these GTC Ability. You understand and acknowledge 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 your internal procedures and business operations or impair the functionalities of your systems or devices. You may use the Pilot Services only for your internal use for the purpose of reviewing, evaluating and testing the Pilot Services. Use of the Pilot Services is at your sole risk. We may, at our 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. Our 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, we provide the Pilot Services "as is" without any warranties and excluding all liability to the fullest extent permitted under applicable Laws.
- 2.4 **External Content.** You may be able to access or are 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 Services. We do 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 your acceptance of the applicable third party terms of use and you acknowledge and agree that any contractual relationship related to External Content is solely between you and the provider of such External Content. We make no warranties or representations and we have no obligation, responsibility or liability for External Content and your use of External Content to the extent permitted by Laws. You waive any right or claim of right against us relating to External Content.
- 2.5 **Changes to the Services.** We may make any reasonable changes to the Services and/or Software from time to time that do not materially adversely affect the nature, quality or security of the Services and/or the Software. We may change the Services and/or Software, even if such change does materially adversely affect its nature, quality or security, or discontinue a Service and/or the provision of the Software only if (i) necessary to comply with any applicable Laws or safety or security requirements; or (ii) there are material changes caused by a subcontractor or the termination of a material subcontractor relationship. We will notify you of any change with a material adverse effect or of any discontinuation of a Service and/or provision of a Software. In such case, you may terminate the affected Service within 30 (thirty) days following notification with 30 (thirty) days written notice and we will refund you any prepaid amounts for the respective Service on a pro-rata basis for the remainder of the Service term. Such refund is your sole and exclusive remedy. By continuing to use a changed Service and/or Software despite the notification and beyond the 30 days termination period, you agree to the respective change. It is in our sole discretion whether we maintain providing prior versions of a Service and/or Software for a certain time period and we will notify you if we do maintain providing prior versions of the Service and/or Software.
- 2.6 **ABB Software.** Subject to the terms and conditions of the Contract, where we provide ABB Software to you individually or as part of the Services, we hereby grant you a non-exclusive, non-transferable, limited and revocable license to use the ABB Software for the Service period set out in the Order for your internal business purposes of receiving the Services. We may remotely install updates or upgrades to the ABB Software with or without notice. Updates or upgrades shall be governed by the terms and conditions of the Contract unless such updates or upgrades are accompanied by a separate license provided by us in which case the terms and conditions of such separate license will take precedence over other documents

forming the Contract with regards to any conflicting terms. Notwithstanding the foregoing, except to the extent specifically set out otherwise in the Order or STC, we are not obliged to provide any updates or upgrades to the ABB Software.

- 2.7 **Third Party Software.** Except to 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 and you acknowledge and agree that (i) any contractual relationship related to your use of such Third Party Software is solely between you and the provider of such Third Party Software; (ii) it is your own responsibility to assess the accuracy of using such Third Party Software; and (iii) we will have no responsibility or liability related to your use of such Third Party Software, to the extent permitted by applicable Laws.

### 3 Data protection and security

- 3.1 **Data protection.** Each party shall comply with all applicable Laws related to the protection of Personal Data and agrees not to withhold or delay its consent to any changes to applicable contract provisions in order to comply with such applicable Laws and orders from any competent authority. We will further comply with our Data Privacy Policy when using such Personal Data. The parties acknowledge that the processing of Personal Data may require the conclusion of additional data processing/protection agreements. A party shall, upon request of the other party, promptly enter into any such agreement(s) as required by mandatory law or a competent authority.
- 3.2 **License verification.** Devices on which ABB Software is installed may automatically provide information to us to enable verification that it is properly licensed. Such information includes information about the ABB Software, the user account, product ID information, a machine ID, and the internet protocol address of the device. By using the ABB Software, you consent to the transmission of such information and our use of such information in accordance with the Contract.
- 3.3 **Security.** We have established and maintain a formal information and cybersecurity program which includes commercially reasonable technical and organizational measures, in order to protect Your Content against security breaches, accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Your Content. Except to the extent explicitly specified otherwise in the STC, it is your responsibility to (i) provide and continuously ensure a secure remote connection; and (ii) establish and maintain the security of your systems, hardware and software, in particular those that directly or indirectly connect to the Services, the Software, the Portal or the Platform. In addition and except as explicitly specified otherwise in an Order and/ or STC, you will without undue delay, completely and accurately implement any software updates or upgrades provided by the respective vendors and/or by us, as applicable.

### 4 Your responsibilities

- 4.1 **General obligations.** You will: (i) 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 Your Content, software and other content, if any, provided by you in connection with the Services and your accounts associated with the Portal; (ii) when using External Content, comply with the respective terms and conditions of use and the license terms and conditions in connection with External Content; (iii) without undue delay, completely and accurately install the necessary Software and any updates or upgrades provided by us (in accordance with the respective specification and instructions)

on your computer systems and/or mobile devices (as applicable); (iv) comply with any restrictions on permitted User types; (v) comply with our reasonable instructions regarding the proper use of the Services and/or Software as may be given in individual cases from time to time; (vi) ensure that all Users comply with the terms and conditions of the Acceptable Use Policy; and (vii) comply with the Laws, in particular when providing Your Content. You will not use the Services or Software (i) for any part of any nuclear facility; or (ii) in any application or situation where failure of the Services or Software could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

4.2 **Cooperation and information obligations.** You will co-operate with us in all matters relating to the Services and/ or the Software and provide us with such information and materials as we may reasonably require in order to provide the Services and/or the Software, to perform maintenance or bug fixing, as well as in order to verify your compliance with the Contract. In addition, to your information obligations related to your use of the Portal as set out in Section 2.2, you will inform us without undue delay upon becoming aware of any circumstances that may or do affect the security of the Services and/or the Platform.

4.3 **Monitoring of usage and remote connection.** The provision of Services and/or the Software may require us to monitor your usage of the Services, Portal and Software as well as the establishment of a remote connection between the Portal and certain systems. Except to the extent explicitly specified otherwise in the STC or the Order, you will (i) establish and maintain such remote connection with appropriate connectivity; (ii) permit us, our employees, our Affiliates, agents, consultants and/or subcontractors, to remotely access and monitor your usage of certain systems owned, controlled or operated by or on behalf of you, as necessary for us to provide the Services; and (iii) install and maintain any hardware, software, or other equipment necessary to establish and maintain the monitoring and/or remote connection.

## 5 Charges and payment

5.1 **Payment terms.** Unless otherwise agreed in the Contract, all prices shall be deemed to be net, ex works, excluding packaging, in freely available Swiss francs without any deductions. In consideration for the provision of the Services and/or the Software, you will pay the charges as set out in the Order. You will pay all invoiced amounts due under the Contract within 30 (thirty) days from the date of the invoice in full without any set-off, deduction or withholding. Late payment interest of 1.5% per months or, if such rate is not permitted, the highest rate permitted under applicable Law will be charged in case of late or incomplete payment.

Payment will be deemed to be fulfilled when Swiss francs (or any other currency otherwise agreed in the Contract) have been made freely available to us at our domicile.

5.2 **Taxes and customs.** Our charges are net, i.e. without taxes or other transaction levies. You are responsible for the payment of (i) any value added tax, sales tax, customs fee or other transaction levies as applicable; and (ii) any withholding taxes that either party must pay arising from international transactions. If you are exempt from the payment of any taxes, you must provide us with a valid tax exemption certificate or proof of your direct payment of taxes to the applicable tax authority; otherwise you must pay to us all such taxes. Subject to the foregoing, we will be solely responsible for all taxes based on our income.

## 6 Proprietary rights

6.1 **Your Content.** We will not acquire any right, title and interest in Your Content other than the rights you grant to us under the Contract. During the term of the Contract, you will have the

ability and the right to access and extract some or all of Your Content if and to the extent specified in the STC or the Order.

- 6.2 **ABB Content.** As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the ABB Content are and remain exclusively with us, our Affiliates or our licensors. You have no rights in and to the ABB Content, other than those expressly granted pursuant to the Contract.
- 6.3 **Our use of Your Content.** We, our Affiliates and our subcontractors have the right to collect, store, aggregate, analyze or otherwise use Your Content for (i) providing and maintaining the Services and/or the ABB Software to you and your Affiliates; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the Portal, the Platform, the Services 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 us. In addition, we have the right to use Your Content for benchmarking purposes if and to the extent it is anonymized or non-confidential.
- 6.4 **Feedback.** During the term of a Contract, you may provide feedback or suggestions related to the Services, the Software, the Portal or the Platform to us. We and our Affiliates are entitled to use such feedback and suggestions, even if they should be marked confidential (see Section 14.1), without restrictions and any compensation to you.
- 6.5 **Restrictions.** You will not in whole or in part (i) (except as explicitly permitted in these GTC Ability and STC) use the ABB Content in any manner, including for any third-party use including license, sublicense, sell, resell, lease, transfer, assign, distribute, display, broadcast, disclose, or otherwise commercially exploit or make it, or any portion thereof, available to any third party in any manner; (ii) modify, tamper with, repair or make derivative works based upon the ABB Content; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, disassemble, decompile or create derivative works of the ABB Content (except to the extent that applicable Laws prohibits reverse engineering restrictions, and then only as permitted by such laws); (iv) copy any ideas, features, functions or graphics of the ABB Content; (v) access or use the ABB Content in a way to avoid incurring fees or exceeding usage limits or quotas or to circumvent or render inoperative any usage restriction features contained in ABB Content; and/or (vi) remove, obscure, alter, or move our and our licensors' proprietary notices. Use of the ABB Content other than specifically permitted in the Contract, is expressly prohibited.

## 7 Intellectual property infringement

- 7.1 **Defense and indemnity.** If any third party makes a claim against you that the Services or the ABB Software infringe a third party's copyrights, patents or trademarks (a "**Claim**"), we will defend you against such Claim and pay the amounts finally awarded by a court against you or included in a settlement approved by us, provided that you will (i) give written notice of the Claim to us without undue delay, specifying the nature of the Claim in reasonable detail; (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of us; and (iii) allow us to control and reasonably cooperate with us in the defense and settlement of the Claim.
- 7.2 **Effect of Claim.** If a Claim is made or, in our reasonable belief, is likely to be asserted, we may, at no cost to you: (i) procure for you the right to continue to use the ABB Software, or continue to take the benefit of any Services, that are affected by the Claim in accordance

with the terms of the Contract; or (ii) modify or replace the infringing ABB Software or re-perform the applicable Services so that it becomes non-infringing (provided that the modified or replaced ABB Software or the re-performed Services, provide substantially the same performance and functionality and do not adversely affect the use of the Services or ABB Software); or (iii) if the remedies set forth in Sections 7.2(i) and 7.2(ii) are not commercially feasible, as determined by us in our sole discretion, terminate the applicable Order, in whole or in part, and pay you a pro rata refund of the fees paid by you for the infringing Service or ABB Software.

- 7.3 **Exceptions.** We have no liability or obligation related to any Claim if and to the extent the Claim arises out of or relating to (i) the use of Your Content in the provision of the Services or otherwise in connection with the Contract; (ii) a modification of the Services and/or Software created by or at the direction of you or a third party; (iii) use of the Services or ABB Software other than in accordance with the terms of the Contract; (iv) use of the Services or ABB Software in combination with any other hardware, software or other materials, where absent such combination, the affected Service or ABB Software would not be the subject of a Claim; (v) use of a version of the ABB Software for which we have provided updates or upgrades and you have not or not without undue delay, completely and accurately updated or upgraded the ABB Software; or (vi) any Third-Party Software.
- 7.4 **Sole and exclusive remedy.** This Section 7 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.

## 8 Warranty and indemnity by you

- 8.1 **Warranty.** You represent and warrant that the use by us of Your Content or your grant of any license or right under the Contract, will not infringe the Intellectual Property Rights or other rights of any person.
- 8.2 **Indemnity.** You will indemnify and hold us harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any alleged or actual (i) infringement of any third party's Intellectual Property Rights by you; (ii) violation of any third party's rights related to Your Content or its use by us, our Affiliates and/or our subcontractors in accordance with the Contract; (iii) violation of any other rights of a third party related to your breach of the Contract; and (iv) breach of Laws by your use of the Software and/or Services.

## 9 Warranties

- 9.1 **Services warranty.** We warrant that we (i) provide the Services or make the Services available to you using commercially reasonable care and skill and in accordance with the description set out in the Order and the STC in all material respects; and (ii) will apply commercially reasonable measures to maintain availability of the Services; however, subject to unavailability or temporary disruption of the Services due to operational measures (such as scheduled or emergency maintenance), security measures, connectivity or data transmission failure, unlawful acts of third parties, or other reasons that are beyond our control. If you allege that a Service is not performed consistent with this services warranty, you must notify us without undue delay, after becoming aware of the defect or having the possibility to gain knowledge of the defect but in no event later than 14 days thereafter, in writing about the defect in reasonable detail and, if we are able, by application of commercially reasonable effort, to reproduce and verify the defect, we will use commercially reasonable efforts to rectify the defect

or, if the defect is of the nature of unavailability of Services, restore the Services which were not performed as warranted.

- 9.2 **Software warranty.** We warrant that the ABB Software will perform in accordance with the description set out in the Order and/or the STC in all material respects for a period of three (3) months following delivery of the ABB Software to you. If you allege that the ABB Software does not perform consistent with this ABB Software warranty, you must without undue delay, and in any event prior to the end of the ABB Software warranty period specified above in this Section 9.2, notify us in writing about the defect in reasonable detail and, if we are able, by application of commercially reasonable effort, to reproduce and verify the defect, we will use commercially reasonable efforts to provide corrections of, or avoidance procedures for documented deviations from this ABB Software warranty. Warranties related to any Third Party Software, if any, are specified in the agreement between you and the provider of such Third Party Software. We do not provide any warranty related to Third Party Software.
- 9.3 **Limitations.** The warranties set out in this Section 9 shall not apply: (i) if the ABB Software is not used in the contemplated environment, or in accordance with its specification or the Contract; (ii) if the Services or the ABB Software has been installed, implemented, customized, modified, enhanced or altered by you or any third party; (iii) if you are not using the most recent version of the ABB Software and the defect has been remedied in the newer version; (iv) to any error or defect caused by you, any third party, or any Third Party Software, or Force Majeure according to Section 16.1; or (v) to any error or defect arising as a result of drawings, designs or specifications provided by you. Product descriptions shall not be deemed warranties unless separately agreed in writing.
- 9.4 **DISCLAIMER.** EXCEPT AS OTHERWISE PROVIDED HEREIN, WE PROVIDE THE SERVICES AND SOFTWARE TO YOU 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, WE 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 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 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 SECTIONS 9.1 AND 9.2 ARE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH TO THE LIMITED WARRANTIES.

## 10 Limitation of liability

- 10.1 **Limited liability.** Subject to Sections 10.2 and 10.3, our total aggregate liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with a Contract shall be limited to the lower of (i) a sum equal to the charges paid for the specific Service or Software giving rise to the claim in the 12 (twelve) months prior to the date on which the claim arose; and (ii) the value of the specific Contract.
- 10.2 **Exclusions.** We shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with a Contract, and even if we have been advised of the possibility of such damages, for (i) loss of profits, sales or business, agreements or contracts, anticipated savings, revenue, or damage to goodwill; (ii) business

interruption, loss of production, loss of use or loss or corruption of data; (iii) costs of substitute goods, materials or services; or (iv) any indirect, consequential, incidental, special, punitive damages or exemplary loss.

### 10.3 **Scope of limitations and exclusions.**

The limitation and exclusions to our liability in Sections 10.1 and 10.2 do not apply (i) to damage caused by willful intent or gross negligence of ABB's representative or vicarious agents; (ii) in the event of bodily injury caused by negligence; (iii) liability according to mandatory product liability regulation or (iv) for any liability which cannot be limited or excluded by applicable Laws.

- 10.4 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. You may not assert any claim for breach or non-performance under a Contract against us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, unless you have given us written notice of the claim within 1 (one) year after you first knew or reasonably should have known of the facts giving rise to such claim. For the provision of Pilot Services Section 2.3 applies.

## 11 **Suspension**

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

## 12 **Term and termination**

- 12.1 **Term.** A Contract will enter into effect as described in Section 1.2 above and will remain in effect for a period as set out in STC or the Order or as terminated earlier in accordance with the Order, the STC or Sections 12.2, 12.3 or 12.4 below.
- 12.2 **Termination for convenience.** Either party may terminate a Contract for convenience if and as set out in the STC or the Order.
- 12.3 **Termination for cause by each party.** Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party is in material breach of the Contract and, where the breach is by its nature curable, a breach is not cured within 30 (thirty) days, or such other period which is reasonably required considering the circumstances, following notification of the breach by the non-breaching party.
- 12.4 **Termination for cause by us.** Without limiting our other rights or remedies, we may also terminate the Contract (in whole or in part) with immediate effect by giving written notice to you if (i) you fail to pay any amount due under the Contract on the due date for payment and remain in default not less than 14 (fourteen) days after being notified to make such payment; (ii) 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; (iii) a suspension of the Services as per Section 11.1 exceeds a period of 14 (fourteen) days; or (iv) you are in breach of the Acceptable Use Policy or the license terms.

- 12.5 **Effect of termination or expiration.** Upon termination or expiration of the Contract for any reason: (i) you will immediately cease using the Services and, where a Software license terminates or expires, uninstall all affected Software from your devices and computer systems, and cease use of such Software; (ii) we may disconnect your access to the Services and the ABB Portal as well as your connection to the Platform and may delete Your Content on or after the effective date of termination or expiration; (iii) with respect of the Services supplied but for which no invoice has been submitted, we will submit an invoice which will be payable by you in accordance with Section 5; and (iv) 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 Contract which existed at or before the date of termination or expiration. The Order or the STC may set forth your responsibilities, applicable means and timeframes for retrieving Your Content upon or after termination or expiration of the Contract.

### 13 Export control or sanctions

- 13.1 **Export control and sanctions.** You will not export, directly or indirectly, any product, software or technical data acquired from us under the Contract in breach of any applicable export control or sanctions laws, including, if applicable, those of the United States, and you will obtain any export licenses or other government approvals required for such exports. In addition, if requested by us, you will provide us with any reasonable assistance that is necessary for us to perform any activity required by government authorities, or otherwise to comply with export control or sanctions laws.
- 13.2 **Third parties.** You will contractually oblige any third party to whom you might disclose, transfer or export products, software or data that you procure pursuant to a Contract to comply with export control and sanctions requirements equivalent to those in Section 13.1.

### 14 Confidentiality

- 14.1 **Confidentiality.** For 5 (five) years after the initial disclosure the party receiving confidential information (the “**Recipient**”) agrees to apply reasonable safeguards against the unauthorized disclosure of the other party`s (the “**Discloser**”) confidential information in accordance with good industry practice, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher to avoid disclosure to any third party on any technical or commercial knowhow, specifications, inventions, processes, code, product plans, marketing plans or initiatives or any other information or data which are designated at the time of disclosure to the Recipient as confidential or are recognizable as being of a confidential nature and have been disclosed to Recipient by the Discloser or its agent, except as permitted under these GTC Ability.
- 14.2 **Exceptions.** Confidential information does not include any particular information that the Recipient can reasonably demonstrate (i) was in the possession of, or was rightfully known by, the Recipient without an obligation to maintain its confidentiality prior to receipt from the Discloser; (ii) was or has become generally available to the public other than as a result of disclosure by the Recipient or its agents; or (iii) was independently developed by the Recipient without use of or reference to any confidential information of the Discloser.
- 14.3 **Permitted disclosure.** The Recipient may use the Discloser's confidential information for the purpose of performing the Contract or as otherwise permitted by the Contract and disclose it (i) to such of its and its Affiliates employees, agents, professional advisers or subcontractors as need to know the same in connection with the Contract and provided the Recipient takes reasonable measures to ensure that such employees, agents or subcontractors comply

with this Section 14; and (ii) as may be required by Laws, a court of competent jurisdiction or any governmental or regulatory authority, provided that the Recipient takes reasonable efforts to notify the Discloser (where legally permissible to do so) reasonably in advance to enable the Discloser a reasonable opportunity to obtain a protective order.

## 15 Governing Law and Jurisdiction

- 15.1 **Governing law.** The Contract, 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).
- 15.2 **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, 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 three. The seat of the arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.

## 16 General provisions

- 16.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including: (i) acts of God, flood, fire, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, cyber-attacks, riots, war, threat of or preparation for war, armed conflict, sanctions or embargos; (iv) Laws or action taken by a government or public authority; (v) systemic electrical, telecommunications or other utility failures; and (vi) any labor or trade dispute, strikes, industrial action or lockouts;
- 16.2 **Assignment.** We may assign or otherwise transfer the Contract or any of our rights and obligations under the Contract to an Affiliate or successor-in-interest. You shall not, without our prior written consent, assign or otherwise transfer any or all of your rights or obligations under the Contract.
- 16.3 **Subcontracting.** We are permitted to appoint and use Affiliates and other third parties to perform our obligations or any portion thereof without prior notification to or consent of the Customer.
- 16.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties in relation to its subject matter. It replaces and supersedes all prior agreements, draft agreements, statements, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to that subject matter. The parties agree that the Customer's standard or purchase terms and conditions shall not apply.
- 16.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties. Notwithstanding the foregoing, we may modify these GTC Ability, STC, the Data Privacy Policy, code of conduct and/or the Acceptable Use Policy from time to time. Any such modification will be subject to notification to you and will be effective as stated in the notification. Should a modification by us become effective during the term of a Contract and have a material adverse effect on your rights or obligations under the Contract, you may terminate the affected Contract within 30 (thirty) days following notification with 30 (thirty) days written notice and we will refund you any prepaid amounts for the respective Service on a pro-rata basis for the remainder of the Service term. Such refund is your sole and exclusive

remedy. By continuing to use the Services and/or the Software after the effective date of modification, you agree to be bound by the modified terms.

- 16.6 **No waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. Except as otherwise expressly stated in the Contract, a delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy; or prevent or restrict the further exercise of that or any other right or remedy.
- 16.7 **Severance.** If any provision or part-provision of the Contract 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 but not affect the validity and enforceability of the rest of the Contract.
- 16.8 **Code of conduct and anti-bribery law.** We maintain a set of codes of conduct and guidelines related to our, our employees' and our contractors' business conduct, including anti-bribery, anti-corruption and conflict of interest, and we require our suppliers to comply with such codes of conduct or have equivalent codes of conduct, accessible at <https://new.abb.com/about/integrity/standards/abb-code-of-conduct>. You shall comply in your business conduct with standards that are equivalent.
- 16.9 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be (i) delivered by hand or courier or by pre-paid registered first-class post or special delivery to the address specified in the Order; or (ii) sent by email to the email address specified in the Order. We may in addition provide notices by email or other electronic notification forms available in the used systems to the address then associated to your account on the Portal.
- 16.10 **Third party beneficiaries.** No one other than a party to the Contract shall be a beneficiary of the Contract or shall have any right to enforce any of its terms, unless specified in the Contract.
- 16.11 **Independent contractors.** Each party is an independent contractor, nothing contained in these GTC Ability or the Contract shall form a joint-venture, partnership or agency, and neither party has the authority to bind the other party.

## 17 Definitions and interpretation

### 17.1 Definitions.

**"ABB Content"** means the Services, deliverables provided as part of the Services, ABB Software, the Platform, the Portal as well as ABB Device Data (including all tools, software, hardware, materials, data, content, application program interfaces provided by us or our Affiliates as part of or in relation to the Services) as well as all derivatives and modifications of and improvements to all the foregoing, or other ABB intellectual property;

**"ABB Device"** means a physical or virtual device provided or otherwise made available or branded by ABB which generates or gathers data through embedded sensors or otherwise, where such data is accessed, stored or processed by the Services;

**"ABB Device Data"** means 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;

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

**"Acceptable Use Policy"** means the ABB Ability acceptable use policy, available at <https://new.abb.com/abb-ability/terms>, or as provided separately and as may be updated by us 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;

**"Annex"** means an Annex to these GTC Ability which applies only to certain services and/or software and hardware products provided by ABB, as identified in an Order and/or the Annex itself

**"Claim"** has the meaning set out in Section 7.1;

**"Data Privacy Policy"** means the data privacy policy, available at <https://new.abb.com/abb-ability/terms>, as may be updated by us from time to time;

**"Discloser"** has the meaning set out in Section 14.1;

**"External Content"** has the meaning set out in Section 2.4;

**"Hardware Device" has the meaning given in the applicable Annex**

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

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

**"Order"** means a document in electronic or physical form, an online form or other online instrument provided by us for ordering or procuring Services, Software and/or Hardware Devices, which refers to these GTC Ability;

**"Personal Data"** means any data or information relating to an identified or identifiable natural person and, where required by mandatory applicable Law, any data or information of an identified or identifiable legal entity;

**"Pilot Services"** means Services that are at a pilot, trial, evaluation or beta stage or that are free of charge;

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

**"Portal"** means an online portal, accessible for you, at the web address notified to you by us at the beginning of the Services (or such other web address as may be notified to you by us from time to time);

**"Recipient"** has the meaning set out in Section 14.1;

**"Services"** means the services to be provided or to be made available by us to you as described or referred to in an Order and the STC;

**"Software"** means ABB Software and Third Party Software;

**"Special Terms and Conditions" or "STC"** means the documents describing and/or further governing the Services and/or Software which are referenced in the Order;

**"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 us from a third party, identified in an Order as Third Party Software for use as part of the Services under separate terms and conditions, or (ii) by you from third parties;

**"User"** means an individual who is legitimately authorized to access or receive the Services, use the Software and/or access the Portal through your account.

**"Your Content"** means any information, data and material that we measure or that is provided by or on behalf of you through or in connection with our provision or your use of the Services or Software, including, for the avoidance of doubt, third party information, data and material that is provided by or on behalf of you; Your Content excludes ABB Device Data.

## 17.2 Interpretation

Any phrase introduced by the terms "e.g.", "including", "include", "in particular", "such as", "for example" 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.

## 18 Country unique terms

The following country unique terms apply in deviation of the terms in Sections 1 – 17 above, in each case as specified below.

### 18.1 Australia. The following terms apply if you are located in Australia.

Notwithstanding sections 2.3 (Pilot Services), 9.4 (Disclaimer), 10.1 (Limited Liability), 10.2 (Exclusions) and 15 (Governing law and jurisdiction) nor anything else to the contrary stated in the Contract, to the extent a supply by us under the Contract is a supply of goods or services to a consumer within the meaning of Schedule 2 to the Competition and Consumer Act 2010 (legislation of the Commonwealth of Australia) ("**ACL**"):

(i) nothing contained in the Contract affects any provision of or right, remedy or liability under the ACL, provided that, to the extent that the ACL permits us to limit our liability, our total aggregate liability, for failure to comply with a guarantee under the ACL in respect of the supply of goods or services under the Contract is limited to: (1) in the case of services, either of the remedies described at sub-section 64A(2)(a) or (b) of the ACL, at our election; and (2) in the case of goods, one or more of the remedies described at sub-section 64A(1)(a) to (d) of the ACL, at our election;

(ii) our goods and services come with guarantees that cannot be excluded under the ACL. For major failures with the service, you are entitled: to cancel your service contract with us; and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service; and

(iii) except to the extent a warranty might be excluded in the Order or the STC, the Contract contains warranties against defects (see section 9 (Warranties)), and as such is required to state who will bear the expense of claiming under the warranty. You must bear the expense (if any) of actually making a claim under the warranty. The benefits to you given by any of the warranties are in addition to other rights and remedies of a consumer under the ACL.

### 18.2 Brazil. The following terms apply if both parties are located in Brazil.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract, 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 Brazil**, excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the rules of the **Arbitration Tribunal of the Commercial Chamber Brazil-Canada** (“Tribunal Arbitral da Câmara de Comércio Brasil-Canada”) in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The seat of the arbitration shall be **São Paulo/SP**. The arbitral proceedings shall be conducted in Portuguese.

**18.3 Canada.** The following terms apply if both parties are located in Canada.

A new Section 16.12 will be added as follows: **Language. We and you have required that the Contract and all deeds, documents and notices relating to the Contract be drawn up in the English language. Nous et vous ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.**

**18.4 China.** The following terms apply if both parties are located in the People’s Republic of China.

Section 1.1 shall be replaced by the following: Parties and scope. The terms and conditions contained in this ABB Ability™ General Terms and Conditions (“GTC Ability”) including any applicable Annex together with any Special Terms and Conditions (“STC”), Order or other terms and conditions referred to in these GTC Ability (together, the “Contract”) are agreed between ABB (China) Limited and its affiliates (“ABB”, “we”, “us” or “our”) and the contracting entity (“Customer”, “you” or “your”) incorporated and conducting business operation in the People’s Republic of China and indicated in the Order, governs your use of certain Services and Software as well as your access to the Portal. The ABB Digital Offerings provided to you under this Contract will be provided to you by ABB (China) Limited and its affiliates from the data centres located within PRC. This Contract does not authorize you to receive or use any ABB Digital Offerings from ABB entities located in any other countries or regions.

Section 4 add the following: 4.4 In addition to the Acceptable Use Policy (AUP) available at <https://new.abb.com/abb-ability/terms>, You further acknowledge that under PRC regulations, you may not use, or encourage, promote, facilitate or instruct others to use the ABB Ability™ Portal, and ABB Digital Offerings and/or any Services for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive activities or content which include:

- (i) is against the basic principles determined by the PRC Constitution;
- (ii) impairs national security, divulges State secrets, subverts State sovereignty or jeopardizes national unity;
- (iii) damages the reputation and interests of the State;
- (iv) incites ethnic hostility and ethnic discrimination or jeopardizes unity among ethnic groups;
- (v) damages State religious policies or that advocates sects or feudal superstitions
- (vi) disseminates rumors, disrupts the social order or damages social stability;
- (vii) disseminates obscenity, pornography, gambling, violence, homicide and terror, or that incites crime;
- (viii) insults or slanders others or that infringes their lawful rights and interests;
- (ix) is otherwise prohibited by laws or administrative regulations.

We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information and/ or content. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this AUP.

Section 6.3 Add at the end of this Section: For these purposes described in the preceding paragraph, You acknowledge and agree that ABB may export Your Content outside the People's Republic of China based on your consent and may require you to promptly enter into any data transfer agreement(s) or consent forms as required by mandatory law or other competent authority.

Section 15.1 shall be replaced by the following: **Governing law.** 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 the People's Republic of China.

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, including the validity, invalidity, breach, or termination thereof, shall be re-solved by arbitration by the **China International Economic and Trade Arbitration Commission in Beijing ("CIETAC")** in accordance with the CIETAC's arbitration rules in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The seat of the arbitration shall be **Beijing**. The arbitral proceedings shall be conducted in Chinese.

**18.5 France.** The following terms apply if both parties are located in France.

Section 5.1, the last sentence shall be replaced by the following: Late payment interest of 12% per annum will be charged in case of late or incomplete payment, as well as lump compensation of 40 (forty) euros for recovery costs.

Section 11 shall be replaced by the following: **Suspension.** We may suspend the Services in whole or in part if it is apparent that your use of the Services (i) poses a security risk to the Services, the Platform and/or the Portal and/or any third party; (ii) may adversely impact the performance of the Services, the Software, Platform and/or the Portal; (iii) is in violation of the Laws or poses a risk that we are or will be in violation of the Laws; (iv) may subject us or any third party to liability. In addition, we may suspend the Services under the circumstances specified in the Acceptable Use Policy and if you fail to pay any amount due under the Contract on the due date for payment. We will suspend the Services only to the extent reasonably necessary. Unless it is apparent that an immediate suspension is required and appropriate, we will use commercially reasonable efforts to provide reasonable notice before suspending a Service.

**18.6 India.** The following terms apply if you are located in India.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract, 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 India**.

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the **Arbitration and Conciliation Act, 1996** and its amendments in force on the date on which the notice of arbitration is submitted in accordance with this law. The number of arbitrators shall be three. The seat and venue of the arbitration shall be **Bengaluru, India**. The arbitral proceedings shall be conducted in English.

**18.7 Poland.** The following terms apply if both parties are located in Poland:

In addition to Section 1.3 it shall be deemed that Article 68<sup>1</sup> and Article 68<sup>2</sup> of Polish Civil Code are excluded and shall not apply to the Contract.

In addition to Section 9.5 it shall be deemed that Articles 556 - 576 of Polish Civil Code are excluded and shall not apply to the Contract, unless the buyer is a consumer.

In addition to Section 12.4 it shall be deemed that ABB may exercise its contractual right to terminate the Contract within 6 months from the date of occurrence of the event giving entitlement to the Contract termination.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract, 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 Poland excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be submitted to the jurisdiction of the a common court having jurisdiction over the registered office of the seller, unless the buyer is a consumer then the general rules apply.

**18.8 Russian Federation.** The following terms apply if both parties are located in Russia.

The charges set out under Section 5.1 inter alia includes remuneration for any applicable Intellectual Property Rights assignment and/or licensing under the applicable Order.

**18.8 Saudi Arabia.** The following terms apply if both parties are located in Saudi Arabia.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract shall be governed by and construed and interpreted in accordance with the **laws of the Kingdom of Saudi Arabia.**

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be submitted to the jurisdiction of the **Board of Grievances (Commercial Divisions) sitting in Riyadh** and established pursuant to Royal Decree No. M/51 dated 17/7/1402 H. (10 May 1982).

**18.9 Taiwan.** The following terms apply if both parties are located in Taiwan.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract, 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 Taiwan** excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the **Rules of Chinese Arbitration Association** in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The seat of the arbitration shall be **Taipei, Taiwan.** The arbitral proceedings shall be conducted in English.

**18.10 United States of America.** The following terms apply if you are located in the United States of America.

A new Section 2.8 will be added as follows: **Government Agency.** The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the United States Government or any contractor therefor, you receive only those rights with respect to Software as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the United States Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other United States Government licensees and their contractors.



Section 15.1 shall be replaced by the following: **Governing law.** All aspects of the Contract and any disputes arising under it shall be governed by and construed and interpreted in accordance with **Delaware law.**

Section 15.2 shall be replaced by the following: **Jurisdiction.** The parties consent to the exclusive jurisdiction of the **federal courts in the state of Delaware** as the sole and exclusive forum for the resolution of all disputes arising under or related to the Contract. Should the federal courts not have subject matter jurisdiction over any such dispute, the parties consent to the exclusive jurisdiction of the state courts in the state of Delaware as the sole and exclusive forum for the resolution of all disputes arising under or related to the Contract.

**18.11 Vietnam.** The following terms apply if you are located in Vietnam.

Section 15.1 shall be replaced by the following: **Governing law.** The Contract, 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 Vietnam** excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

Section 15.2 shall be replaced by the following: **Jurisdiction.** Any dispute, controversy or claim arising out of, or in relation to, the Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by the **Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC)** in accordance with its Rules of Arbitration in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The seat of the arbitration shall be **Vietnam.** The arbitral proceedings shall be conducted in English.