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## ABB ABILITY™ RESELLER GENERAL TERMS AND CONDITIONS

### 1 Scope and Contract Formation

- 1.1 Parties and scope. The terms and conditions in these ABB Ability™ Reseller General Terms and Conditions ("Ability Reseller GTC") together with any Annex, Special Terms and Conditions (STC), Order, a reseller framework agreement (where applicable), any or other terms and conditions referred to in these Reseller GTC (together, the "Reseller Contract") are agreed between the ABB entity ("ABB") and the contracting entity ("Reseller") indicated in the Order. The Reseller Contract governs ABB's provision and Reseller's resale, marketing, and distribution of the ABB Digital Offering to third party customers ("Customer").
- 1.2 Covered resale scenarios. These Ability Reseller GTC apply to ABB's sale of the ABB Digital Offering to (i) Resellers who resell the ABB Digital Offering to Customers "as is" without providing further services and (ii) Resellers who are integrating the ABB Digital Offering into their products and/or (iii) Resellers who sell the ABB Digital Offering by providing additional services, including the operation, maintenance, support, and/or consulting related to the integrated Services ("Managed Services") to Customers. Any ABB Service Partners, for the purpose of these Ability Reseller GTC, that accept these ABB Ability GTC are considered "Resellers" and are subject to the terms of these Ability Reseller GTC.
- 1.3 Contract formation. The Reseller Contract comes into effect when Reseller and ABB have entered into an Order under these Ability Reseller GTC or ABB and the Reseller agree to apply these Ability Reseller GTC as a framework agreement for all future orders for the ABB Digital Offerings until further notice.
- 1.4 Relationship between the parties. Except where explicitly specified otherwise in the Order or in other terms and conditions, the parties agree that the relationship between the parties is solely that of a "seller" and "reseller". Reseller is not, and shall not be, an agent, representative or joint venture of ABB. Reseller has no authority to assume or create any obligation for or on behalf of ABB, whether express or implied, with respect to the ABB Digital Offerings.
- 1.5 Applicability. These Ability Reseller GTC apply for ABB Digital Offerings marketed as ABB Ability and do not apply for other ABB software, hardware, products or services.
- 1.6 Order of Precedence. To the extent of a conflict, the order of precedence between the documents comprising the Reseller Contract, unless differently specified in the Order, is the following (those higher in the list prevailing): (i) the Order; (ii) the STC; (iii) Annex(es) (iv) the Data Privacy Policy; (v) the Acceptable Use Policy; (vi) the Ability Reseller GTC.

### 2 Appointment of Reseller

- 2.1 Appointment. ABB Service Partners can apply to be an ABB Ability Reseller. During the Reseller onboarding process ABB will assess the applicant's qualification, and ABB may, at its sole discretion, (i) set up a catalog of ABB Digital Offerings available for the Reseller, (ii) specify forecasting requirements and reporting obligations, (iii) propose recommended wholesale prices for example in relation to the launch of new products; However, ABB will not, directly or indirectly, formally or practically, interfere in any way, including for example by systematically recommending resale prices, imposing minimum margins and/or prohibiting

the granting of rebates, or adopt any other mechanism or incentive affecting Reseller's full and unaffected autonomy in setting the resale prices of the ABB Digital Offerings. Distributor has full discretion on whether to consider or not such recommended prices in setting its own resale prices for such ABB Digital Offerings and (iv) decide whether the applicant will be activated as a Reseller subject to the terms of these Ability Reseller GTC. After the appointment by ABB and acceptance of the Ability Reseller GTC the Reseller is entitled to resell the ABB Digital Offerings for the term and subject to the terms and conditions of the Reseller Contract and the provisions specified during the Reseller onboarding process.

- 2.2 Non-exclusive appointment. Subject to the terms and conditions of the Reseller Contract, ABB grants Reseller a non-exclusive, non-transferable, limited and revocable right to resell, market, distribute and sub-license the ABB Digital Offering (a) to a Customer for Customer's own internal business purposes, excluding any further redistribution by such Customer or (b) authorize other business partners to do so. Except where explicitly specified otherwise in the Order or in other separate terms and conditions, the appointment of Reseller is non-exclusive. ABB reserves the right to sell, market and distribute any ABB Digital Offerings directly to Customers or authorize other resellers, sales agents or business partners to do so.
- 2.3 Territory. Reseller is only authorized to resell, distribute or market the ABB Digital Offerings within the designated Territory as specified in the Order or reseller framework agreement. Reseller may not collect orders or receive payments for ABB Digital Offerings from any Customer located outside the Territory. Reseller may not, directly or indirectly, by itself or through third parties, establish branches or other representations outside the Territory for the sale of the ABB Digital Offerings, to maintain same or to participate for such purpose in enterprises of third parties outside the Territory, without the prior written approval of ABB. Reseller shall proceed immediately and effectively, where necessary through court action, against any of its own intermediaries or assistants who are in breach of this Section 2.3.
- 2.4 Restrictions. Reseller may not (i) make any warranties or guarantees concerning the ABB Digital Offering; (ii) make any representations about ABB or the ABB Digital Offering, unless expressly authorized by ABB in writing; and (iv) represent itself as an agent of ABB for any purpose, or make any representation, warranty, condition or obligation on ABB's behalf, or commit ABB to any agreement; (v) settle any claims for refund, damage, compensation, or payment raised by the Customer against ABB.

### 3 Customer Contracts

- 3.1 Customer Contracts. In order to resell or otherwise distribute the Services, Reseller agrees that it will directly enter into an agreement with each Customer, or other ABB Service Partners, incorporating the ABB Ability Terms of Use attached to these Ability Reseller GTC as [Annex 1](#) ("ToU"), any Special Terms and Conditions ("STC") or other terms and conditions applicable to the relevant Services ("Customer Contract"). Reseller shall ensure that the Customer may only use the ABB Digital Offerings in accordance with the ToU, any STC or other terms and conditions applicable to the ABB Digital Offerings. ABB will make available to Reseller the STC or other terms and conditions applicable to the ABB Digital Offering subject to the Reseller Contract.
- 3.2 End user license agreement. ABB may establish ABB Digital Offering specific end user license terms that need to be accepted during activation, subscription, installation, log in and/or use of the ABB Digital Offering. If such end user license agreements ("EULA") are applicable to the relevant Services, Reseller shall, prior to entering into a Customer Contract, make available to Customer the EULA, and shall expressly state to Customer that the EULA applies to

Customer's use of the Services and must be accepted by Customer during the activation, subscription, installation, log in and/or use of the ABB Digital Offering.

## 4 Orders and resale by Reseller

- 4.1 Orders by Reseller. Reseller shall order all ABB Digital Offerings by using an Order. Upon receipt of a purchase order for the ABB Digital Offerings from a Customer, Reseller will submit to ABB (i) an Order completed by Reseller; and (ii) copies of the related Customer Contract (which include the ToU and the STC or other terms and conditions applicable to the ABB Digital Offering) entered into by Reseller and Customer and related documents. Reseller represents and warrants that all information provided to ABB will be complete, true and correct, and agrees to certify the same in writing, upon ABB's request.
- 4.2 Acceptance of Order. A contract on the purchase of ABB Digital Offerings between ABB and Reseller comes into effect by ABB's written acceptance of the Order submitted by Reseller in accordance with Section 4.1, but not later than upon delivery and/or provision of the Digital Offering through ABB covered by the Order. Reseller acknowledges and agrees that Orders are non-cancelable after acceptance by ABB. ABB reserves the right not to accept any Order from Reseller for any reason in ABB's sole discretion.
- 4.3 Changes to Digital Offerings. ABB reserves the right to modify, change, amend, suspend or discontinue all or part of the ABB Digital Offering at any time at its own discretion. To the extent reasonable for ABB, ABB may notify Reseller of any such modification, change, amendment, suspension or discontinuation of the ABB Digital Offering in writing with 3 (three) months prior notice. ABB will endeavor that Orders that ABB has already accepted in accordance with Section 4.2 will remain unaffected by any material modification, change, amendment, suspension or discontinuation of the ABB Digital Offering for the duration of the term agreed in the Order. Reseller is solely responsible to notify Customer of any such change to the ABB Digital Offering.
- 4.4 ABB Software. ABB reserves the right to 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 Reseller Contract 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 take precedence over other documents forming the Reseller Contract with regards to any conflicting terms. Notwithstanding the foregoing, except to the extent specifically set out otherwise in the Order or STC, ABB is not obliged to provide any updates or upgrades to the ABB Software.
- 4.5 ABB's Relationship to Customer. In the event that Reseller ceases conducting business with Customer, ABB is under no obligation to provide the ABB Digital Offerings purchased by Customer from Reseller directly to Customer, to refund Customer any fees paid by Customer to Reseller, or to continue Reseller's contractual relationship with Customer.
- 4.6 Resale. Reseller shall, at any time, observe and adhere to the Reseller Contract when reselling the Digital Offering to a Customer, or other ABB Service Partners.

## 5 Prices and Invoicing

- 5.1 Prices in Customer Contract. Prices that Reseller charges a Customer under the Customer Contract will be determined solely between Reseller and Customer, and not by ABB. ABB may, in its sole discretion, provide Reseller with a list of recommended prices, or some similar price descriptions, which include the prices that ABB suggests are appropriate for the Services. Reseller is not obliged to charge the prices suggested by ABB to Customer.

- 5.2 Changes in Pricing. ABB may change the pricing it charges Reseller for ABB Digital Offerings at any time in its sole discretion, effective upon 30 (thirty) days written notice to Reseller. Notwithstanding the foregoing, any pricing increase will not apply to any pricing previously agreed to in an Order or in a pricing proposal for ABB Digital Offerings submitted by Reseller to a Customer before ABB notified Reseller of the pricing increase for a period of 90 (ninety) days, provided that Reseller provides ABB with a copy of such pricing proposal.
- 5.3 Invoicing of Customer. The payment terms set forth in the Reseller Contract apply regardless of Reseller's payment arrangements with any Customer. Reseller is solely responsible for collecting all charges due from Customers for the ABB Digital Offerings and shall invoice Customers directly for such charges. Reseller bears full risk of Customer nonpayment and shall not be relieved of its obligation to pay charges owed to ABB in the event of any such nonpayment.

## 6 Charges and Payment

- 6.1 Charges. Reseller will pay the charges for the ABB Digital Offerings as set out in the Order. Reseller will pay all invoiced amounts due under the Reseller 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 month or, if such rate is not permitted, the highest rate permitted under applicable Laws will be charged in case of late or incomplete payment.
- 6.2 Taxes and customs. ABB's charges are net, i.e. without taxes or other transaction levies. Reseller is 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 Reseller is exempt from the payment of any taxes, Reseller must provide ABB with a valid tax exemption certificate or proof of Reseller's direct payment of taxes to the applicable tax authority; otherwise Reseller must pay to ABB all such taxes. Subject to the foregoing, ABB will be solely responsible for all taxes based on ABB's income.

## 7 Provision of ABB Digital Offerings

- 7.1 Provision of ABB Digital Offerings by ABB. ABB will provide the ABB Digital Offerings based on the order information provided by Reseller as set forth in Section 4.1 of these Ability Reseller GTC. Upon receipt and acceptance of a valid Order for ABB Digital Offerings, ABB will provide the ABB Digital Offerings for the benefit of the relevant Customer. Where Reseller provides Managed Services to the Customer, ABB will provide the ABB Digital Offerings for the benefit of the Reseller, subject to the additionally applicable special terms for Managed Services under Section 8 of these Ability Reseller GTC.
- 7.2 Provision of ABB Digital Offerings to Customer by Reseller. Where the ABB Digital Offerings are provided by the Reseller to the Customer, the Reseller shall provide such ABB Digital Offerings to the Customer without modification and with all the documentation, and labeling as supplied by ABB, as well as notices relating to intellectual property rights and serial numbers, and any other materials or documentation intended for the Users of the Customer, including any EULA. Where Reseller provides Managed Services to the Customer, Reseller will comply with the additionally applicable special terms for Managed Services under Section 8 of these Ability Reseller GTC.
- 7.3 Pilot Services. Where ABB provides Pilot Services, these are subject to additional limitations as set out in this Section 7.3 which shall prevail over other provisions of these Ability Reseller GTC. Reseller understands and acknowledges that Pilot Services may not have been fully tested or verified, may become unavailable, that their performance may be negatively affected, and/or that the Pilot Services may not meet industry practice security standards and might therefore negatively affect the Customer's internal procedures and business

operations or impair the functionalities of their systems or devices. The foregoing applies accordingly to the Reseller if the Reseller uses Pilot Services on its own systems or devices when providing Managed Services to a Customer. ABB provides the Pilot Services "as is" without any warranties and excluding all liability to the fullest extent permitted under applicable Laws.

## 8 Specific terms for Managed Services.

- 8.1 Reseller's use of ABB Digital Offerings for Managed Services. ABB grants Reseller a non-exclusive, non-transferable, limited and revocable right to use the ABB Digital Offerings for the purpose of providing Managed Services to Customer, provided that the Reseller complies with the ToU, any STC or other terms and conditions including the EULA as applicable, when using the ABB Software. Where Reseller uses the ABB Digital Offerings for the purpose of providing Managed Services to Customer, Reseller, with respect to such use, shall be deemed the "Customer" in the ToU, any STC or other terms and conditions including the EULA applicable to the ABB Digital Offerings.
- 8.2 Audits for quality control. Upon reasonable notice and during Reseller's regular business hours, ABB (or its representatives) shall have the right to conduct audits, including on-site audits at Reseller's premises to inspect and verify that the ABB Digital Offerings have been integrated in accordance with the ToU, STC and any EULA applicable to the ABB Digital Offerings, as well as in accordance with the Reseller Contract.
- 8.3 Fees for Managed Services. Notwithstanding the provisions in Section 5 of these Ability Reseller GTC, Reseller may, on its sole discretion, determine the fees charged to Customer for the operation, maintenance, support, and/or consulting services performed as part of the Managed Services.

## 9 Sales and Marketing

- 9.1 Sales activities of Reseller. Reseller shall, at its sole expense, use best efforts to resell, market and distribute the ABB Digital Offerings in the Territory to potential and existing customers.
- 9.2 Sales forecasts. At any time during the term of the Reseller Contract, ABB may request that Reseller provides to ABB a sales forecast in connection with Reseller's sales activities under this Reseller Contract so that ABB can effectively plan its capacities and costs with respect to future orders of the Reseller. Unless requested otherwise by ABB, Reseller agrees to periodically provide such sales forecast to ABB, as specified in the ABB Reseller onboarding process (Section 2.1), in the form requested by ABB. ABB will reasonably plan its capacities so as to meet the sales forecasts by Reseller.
- 9.3 Sales targets. If agreed between the parties in the ABB Reseller onboarding process (Section 2.1) or an Order, the Reseller shall on an annual basis develop and implement a business plan. This business plan must be coordinated with ABB and shall include the quarterly and annual sales targets for the ABB Digital Offerings agreed between ABB and Reseller. The Reseller shall provide ABB with a complete draft of such business plan for the following contract year no later than two months before the end of the current contract year. Prior to the end of the current contract year, the parties will agree on any necessary changes to the business plan for the following year. The Reseller shall meet the quarterly and annual targets stipulated in the business plan. ABB is not bound by the Reseller's business plan, unless explicitly stated therein and agreed between the parties.
- 9.4 Branding. Reseller shall market the Services and ABB Software under the ABB brands, or such other brand as may be specified by ABB from time to time, and in accordance with Section 10.1 and ABB's branding and marketing guidelines available at <https://brand.abb> in their

most recent version ("Branding Guidelines"). Reseller shall not alter any branding elements in the ABB Digital Offerings or any marketing materials and shall not co-brand the Digital Offerings without ABB's prior written approval. Reseller may indicate that it is an authorized Reseller of ABB Digital Offerings in accordance with the Branding Guidelines.

- 9.5 Marketing Support. ABB may provide marketing support to Reseller as mutually agreed. ABB may make marketing materials available to Reseller for Reseller's use in accordance with the Reseller Contract at Reseller's cost. All of Reseller's marketing programs, content and collateral which relates to the ABB Digital Offerings are subject to written pre-approval by ABB. Reseller is responsible for all marketing costs incurred in reselling, marketing and distributing the ABB Digital Offerings except as otherwise agreed in writing. Use of ABB personnel for sales and marketing purposes (such as a trade show appearance or on-site customer demonstration) will be charged at a pre-quoted per diem rate, plus all travel related imbursements.
- 9.6 Customer Relations. Reseller shall be responsible for maintaining good relations with the Customer. Reseller shall notify ABB of any material inquiries and/or any complaints by Customers.
- 9.7 Compliance with Laws. Reseller will comply with all Laws applicable to the sale, marketing and distribution of the ABB Digital Offerings. In particular, Reseller shall comply with the Integrity provisions as set forth in Section 17 below.
- 9.8 Protection of reputation. The Reseller is obliged to protect the interests of ABB and not to do anything which could endanger or damage the reputation, the market position, credit-worthiness or good will of ABB. Reseller undertakes to observe the sales instructions of ABB.
- 9.9 Relationship management. The parties will each appoint a resource to meet as agreed in the onboarding process (or at mutually agreeable intervals as required) to review, among other things, customer feedback or complaints regarding the ABB Digital Offerings, and overall business relationship issues. The parties will mutually determine the place or communication channel and date of the meetings.

## 10 Trademark cross-license

- 10.1 License grant for co-branding purposes. Each party hereby grants to the other party a non-exclusive, limited, revocable, and non-transferable license during the term of the Reseller Contract to use the other party's Trademarks solely for co-branding purposes related to the performance of the Reseller Contract. Reseller shall use ABB's Trademarks for co-branding purposes only within the Territory in accordance with Section 2.3 of these Ability Reseller GTC.
- 10.2 Branding guidelines. Reseller shall use ABB's Trademarks for co-branding purposes in accordance with ABB's Branding Guidelines. Except as provided herein, each party will obtain the other party's prior written approval of all uses of such other party's Trademarks, which approval may be granted or withheld in the other party's discretion. A party may withdraw any approval to the co-branding of any use of its Trademarks at any time in its discretion. Such withdrawal does not affect any previously published or distributed written materials.
- 10.3 Restrictions. In no event shall either party use a Trademark of the other party (i) in connection with any disparaging, unlawful or derogatory material, or (ii) in a manner that may diminish or otherwise damage the other party's goodwill in that Trademark. Nothing contained in the Reseller Contract shall be deemed to grant any party any right, goodwill, title or interest in the Trademarks of the other party beyond the license granted. Neither party shall register any Trademark (or any trademarks confusingly similar to any Trademark) of the other party and shall not challenge, directly or indirectly, the same.

10.4 Assistance. Each party shall provide any necessary assistance to improve or enforce intellectual property protection for the Trademarks of the other party (e.g., reporting of observed infringements of the other party's Trademarks). Any expenses associated with such a request shall be paid by the party receiving assistance.

## 11 Recordkeeping and Audits

11.1 Recordkeeping. Reseller shall maintain complete and accurate books and records in connection with Reseller's activities under the Reseller Contract. Such records shall include, without limitation, charges, payment and other financial records associated with each transaction under the Reseller Contract which Reseller may be required to summarize and confirm in a monthly report.

11.2 Sales audits. ABB (or its representatives) may upon reasonable prior notice audit Reseller's relevant books, records and information systems to ensure compliance with the terms and conditions of the Reseller Contract. Any such audit shall be conducted during regular business hours at Reseller's premises and shall not unreasonably interfere with Reseller's business activities. If an audit reveals that Reseller has underpaid fees to ABB, Reseller shall be charged for such underpaid fees based upon the fees in effect at the time the underpaid fees were incurred. If the underpaid fees exceed (five) 5% of the fees paid by Reseller to ABB during the preceding 12 (twelve)-month period, Reseller shall pay ABB's reasonable costs of conducting the audit. Audits shall be performed no more than twice during any 12 (twelve)-months term. ABB may terminate the Reseller Contract after the second instance whereby an audit reveals underpayment by Reseller.

## 12 Proprietary rights

12.1 Ownership and reservation of rights. As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the ABB Digital Offering are and remain exclusively with ABB, its Affiliates or licensors. Reseller has no rights in and to the ABB Digital Offering, other than those expressly granted pursuant to the Reseller Contract.

12.2 Reseller Feedback. Reseller may provide feedback or suggestions related to the ABB Digital Offering. ABB and its Affiliates are entitled to use such feedback and suggestions, even if they are marked confidential (see Section 18.1), without any restrictions and any compensation to Reseller.

12.3 Customer Feedback. Reseller shall ensure that ABB and its Affiliates are entitled to use Customer's feedback or suggestions related to the ABB Digital Offering without any restrictions and any compensation to Customer.

12.4 Prohibited uses. Reseller may not (i) create derivative works of the software, program, code or user interfaces comprising the ABB Digital Offering including translation or localization; (ii) copy the ABB Digital Offering or any part, feature, function or user interface thereof, (iii) reverse engineer the ABB Digital Offering (to the extent such restriction is permitted by law); (iv) interfere with or disrupt the integrity or performance of the ABB Digital Offering; (v) systematically access the ABB Digital Offering using "bots", "crawlers" or similar technologies, or attempt to gain unauthorized access to the ABB Digital Offering or their related systems or networks; (vi) use the ABB Digital Offering in order to build or promote a competitive commercial product or service or to build or promote a product or service using the same or similar ideas, features or functions as the ABB Digital Offering ; or (vii) use or distribute the ABB Digital Offering in any manner that violates any applicable Laws.

## 13 Intellectual property infringement

- 13.1 Defense and indemnity. If any third party makes a claim against Reseller that the Services or the ABB Software infringe a third party's copyrights, patents or trademarks (a "Claim"), ABB will defend Reseller against such Claim and pay the amounts finally awarded by a court against Reseller or included in a settlement approved by ABB, provided that Reseller will (i) give written notice of the Claim to ABB without undue delay, specifying the nature of the Claim in reasonable detail; (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of ABB; and (iii) allows ABB to control and reasonably cooperate in the defense and settlement of the Claim.
- 13.2 Effect of Claim. If a Claim is made or, in ABB's reasonable belief, is likely to be asserted, ABB may, at no cost to Reseller: (i) procure for Reseller 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 and conditions of the Reseller 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 Section 13.2(i) and 13.2(ii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the applicable Order, in whole or in part, and pay Reseller a pro rata refund of the fees paid by ABB for the infringing Service or ABB Software.
- 13.3 Exceptions. ABB has 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 Customer Content in the provision of the ABB Digital Offering or otherwise in connection with the Reseller Contract; (ii) a modification of the ABB Digital Offering created by or at the direction of Reseller or a third party; (iii) use of the Services or ABB Software other than in accordance with the terms of the Reseller 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 ABB or Reseller have provided updates or upgrades and Customer has not or not without undue delay, completely and accurately updated or upgraded the ABB Software; or (vi) any Third-Party Software.
- 13.4 Sole and exclusive remedy. This Section 13 states the sole, exclusive and entire liability of ABB to Reseller and Reseller's sole and exclusive remedy with respect to any claim or allegation of infringement or misappropriation of any third-party Intellectual Property Right.

## 14 Warranties, indemnity and disclaimers

- 14.1 Reseller warranty. Reseller represents and warrants that it will take all reasonable measures to ensure that the Customer uses the ABB Digital Offering in accordance with the ToU, EULA any STC or other terms and conditions applicable to the ABB Digital Offering that Reseller is obliged to incorporate into the Customer Contract.
- 14.2 Indemnification by Reseller. Reseller will indemnify and hold ABB and its Affiliates harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with (i) any violation by a Customer of the ToU, the STC or other terms and conditions applicable to the ABB Digital Offering incorporated into the Customer Contract; (ii) allegations that any Customer Content uploaded to the ABB Digital Offering by the Customer or Reseller infringes or misappropriates a third party's intellectual property rights; (iii) Reseller's or Customer's use of the ABB Digital Offering in breach of this Reseller Contract, the ToU, EULA, STC, Order Form, or applicable law; Reseller's breach of Section 2.4



("Restrictions") and Section 9.7 ("Compliance with Law"); and (iv) any representation by Reseller concerning the ABB Digital Offerings that is inconsistent with written material provided by ABB for the purposes of the Reseller Contract.

## 15 Limitation of liability

- 15.1 Limitation of Liability. As between the parties and subject to Sections 15.2 and 15.3, ABB's 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 by Reseller to ABB for the specific Service 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 Reseller Contract.
- 15.2 Exclusions. ABB shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Reseller 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, 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.
- 15.3 Scope of limitations and exclusions. The limitations and exclusions of liability also apply to the benefit of ABB's Affiliates, suppliers, licensors, subcontractors as well as ABB's and their directors, officers, employees and representatives. Reseller may not assert any claim for breach or non-performance under a Reseller Contract against ABB, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, unless Reseller has given ABB written notice of the claim within 1 (one) year after Reseller first knew or reasonably should have known of the facts giving rise to such claim. The limitations and exclusions of ABB's liability do not apply to the extent liability cannot be limited or excluded by applicable Laws. For Pilot Services, the limitations in Section 7.3 apply.

## 16 Term and Termination

- 16.1 Term. The Reseller Contract will enter into effect as described in Section 1.3 above and will remain in effect for the term of one year or as terminated earlier in accordance with the Order or Sections 16.2, 16.3 or 16.4 below, and will automatically renew at the end of each term for a further term of one year, unless either party gives the other written notice of termination at least 90 days prior to the end of the relevant term.
- 16.2 Termination for convenience. Either party may terminate the Reseller Contract for convenience if and as set out in the Order.
- 16.3 Termination for cause by each party. Without limiting its other rights or remedies, either party may terminate the Reseller Contract with immediate effect by giving written notice to the other party (i) if the other party is in material breach of the Reseller 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; (ii) if the other party suffers any insolvency proceeding, either voluntary or involuntary, or is adjudicated bankrupt or makes any assignment for the benefit of creditors (such termination shall not relieve the party in proceedings from liability for the performance of its obligations arising prior to such termination); (iii) if the other party is subject to a Change in Control in favor of a direct competitor of the terminating party; (iv) if the other party is in breach with their obligations under Section 10.1 to 10.3 ("Trademark cross-license"); or (v) if the other party acquires a direct competitor of the terminating party.

- 16.4 Termination for cause by ABB. Without limiting ABB's other rights or remedies, ABB may also terminate the Reseller Contract (in whole or in part) with immediate effect by giving written notice to Reseller if (i) Reseller fails to pay any amount due under the Reseller 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) Reseller is in breach of its obligations under Section 2.5 ("Restrictions"), Section 9.7 ("Compliance with Law"), Section 12.4 ("Prohibited uses"), or Section 17 ("Export Control or sanctions"); or (iii) Reseller fails to meet its sales target by at least 10% within a contractual year (iv) there is a change in the Laws in one or more countries that would render the ABB or the Reseller's activities under the Reseller Contract illegal, impractical or would otherwise have a material impact (including a cost impact) on either party's activities, (v) in case the contract with the third party provider of the platform is being terminated.
- 16.5 Effect of termination or expiration. Upon termination or expiration of the Reseller Contract for any reason: (i) Reseller will immediately cease to market, resell and distribute the ABB Digital Offerings as well as cease all representations that it is an authorized Reseller of the ABB Digital Offerings; (ii) ABB will submit an invoice which will be payable by Reseller in accordance with Section 5 with respect of the ABB Digital Offerings supplied but for which no invoice has been submitted; 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 Reseller Contract which existed at or before the date of termination or expiration.

## 17 Integrity

- 17.1 Both Parties' obligations. Both Parties hereby represent, warrant, and agree that they are knowledgeable as to, and will comply with, all Applicable Integrity Laws in connection with the Reseller Contract. Both Parties shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the Reseller Contract shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Clause 17 in connection with the Reseller Contract. Both Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any Applicable Integrity Laws in connection with the Reseller Contract. It is the intent of the Parties that no payments or transfers of value shall be made that have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. Further, for the avoidance of doubt, no provision of this Clause 17 or the Reseller Contract shall be interpreted or applied in a way that would require any party to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable Trade Control Laws.
- 17.2 Reseller obligations. Reseller hereby represents, warrants, and agrees that:
- Notwithstanding anything in the Reseller Contract to the contrary, no amounts otherwise payable to Reseller under the reseller Contract shall be due and payable if and to the extent such are prohibited, restricted, or limited by Applicable Integrity Laws.
  - Reseller has reviewed and understands ABB's Code of Conduct (available online at online at [ABB Code of Conduct — ABB Group \(global.abb\)](#)) and other relevant Integrity-related ABB procedures that may be made available by ABB to Reseller from time to time.
  - Reseller acknowledges that it will be subject to ABB's ongoing due diligence and compliance monitoring processes. Reseller shall inform ABB in a timely manner of any material changes to information previously provided in connection with ABB's due diligence processes and shall provide ABB with any additional information on or certifications of compliance required upon request.

- Reseller shall, upon ABB's reasonable request, make available its employees, officers, directors, affiliates or third parties for ABB approved integrity-related training.
- If, as a result of Trade Control Laws, the performance by ABB of any of its obligations hereunder becomes illegal or impracticable, ABB shall, as soon as reasonably practicable, give written notice to the Reseller of its inability to perform or fulfil such obligations. Once such notice has been received by the Reseller, ABB shall, subject to mandatory provisions of Applicable Law, be entitled to either immediately suspend the performance of the affected obligation under the Reseller Contract until such time as ABB may lawfully discharge such obligation or shall have the right to immediately terminate this Agreement by notice in writing from the date specified in the said written notice. ABB will not be liable to the Reseller for any costs, expenses or damages associated with such suspension or termination of the Reseller Contract.
- To the extent applicable, Reseller shall, at its own cost, be responsible for compliance with all applicable export laws and obtaining any necessary customs import clearance. Whenever Reseller is the exporter (including with respect to exports of goods, services, technology, and deemed exports of technology), unless otherwise agreed, Reseller shall, at its own cost, obtain all export licenses and any other clearances or authorizations required under applicable Trade Control Laws and provide ABB with written notice of such license(s), clearance(s) or authorization(s) and all applicable conditions.
- Reseller shall not solicit business from, nor seek to directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any goods, materials, parts, equipment, services, technology, technical data or software provided under this Agreement to, or for the benefit of, any Restricted Person or jurisdiction/region subject to comprehensive sanctions (including Cuba, Iran, North Korea, Syria and Crimea, as may be amended by a relevant Sanctions Agency from time to time). Reseller shall immediately notify ABB if it or any of its employees, officers, directors, affiliates, third parties engaged in connection with the Reseller Contract and/or any of its customers or end-users becomes a Restricted Person.
- Reseller represents and warrants that the Products and/or Services shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of ABB.
- Reseller is hereby informed, and will inform its employees, officers, directors, and any affiliates or third parties engaged in relation to the Reseller Contract, that ABB has established the following reporting channels where any suspected or observed violations of Applicable Integrity Laws, ABB Code of Conduct, or similar rules may be anonymously reported:
  - Telephone: +41 43 317 3367
  - Web portal: [www.abb.com/integrity](http://www.abb.com/integrity)
  - E-mail: [ethics.contact@ch.abb.com](mailto:ethics.contact@ch.abb.com)
  - Mail: ABB Ltd, Legal & Integrity, Affolternstrasse 44, 8050 Zürich, Switzerland
- Reseller shall immediately notify ABB in writing of any potential breach of obligations set forth under Applicable Integrity Laws, the ABB Code of Conduct, or this Integrity Appendix by either the Reseller, its affiliated parties or any third parties engaged by Reseller

in relation to the Reseller Contract. In the event of such notification or in the event that ABB otherwise has reason to believe that a potential or possible breach has occurred, Reseller shall make available its Records, employees, officers, directors, and any affiliates or third parties engaged in relation to the Reseller Contract for any audit, inquiries, or investigation which ABB deems necessary and in line with clause 13.1 of the Reseller Contract. During such audit, inquiries or investigation, ABB may withhold payments until such time as ABB has received confirmation to its satisfaction that no breach has occurred or will occur. ABB shall not be liable to Reseller for any claim, losses or damages whatsoever related to its decision to suspend or withhold payments under this provision.

- Notwithstanding the foregoing or any other provision in the Reseller Contract, in the event of any actual or imminent violation of Applicable Integrity Laws or material breach of obligations set forth under the ABB Code of Conduct or this Integrity Appendix, ABB shall, subject to mandatory provisions of Applicable Law, have the right to unilaterally terminate the Reseller Contract with immediate effect. Any claims for payment by the Reseller, including claims for services previously rendered, shall be automatically terminated, and cancelled and all payments previously made shall be forthwith refunded to ABB to the extent permitted under Applicable Integrity Laws. Such termination would be without prejudice to all rights of recourse which could be exercised by ABB, and ABB shall not be liable to Reseller for any claim, losses or damages whatsoever related to its decision to terminate payments under this provision. Further, Reseller shall indemnify ABB for all liabilities, damages, costs, or expenses incurred as a result of any such violation, breach and/or termination of the Reseller Contract.

## 18 Confidentiality

- 18.1 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 Ability Marketplace Reseller GTC.
- 18.2 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.
- 18.3 Permitted disclosure. The Recipient may use the Discloser's confidential information for the purpose of performing the Marketplace Reseller Contract or as otherwise permitted by the Marketplace Reseller 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 Marketplace Reseller Contract and provided the Recipient takes reasonable measures to ensure that such employees, agents or subcontractors comply with this Section 18; 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.

## 19 Governing Law and Jurisdiction

- 19.1 Governing law. The Reseller 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).
- 19.2 Jurisdiction. Any dispute, controversy or claim arising out of, or in relation to, the Reseller 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.

## 20 General Provisions

- 20.1 Force majeure. Neither party shall be in breach of the Reseller Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Reseller 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.
- 20.2 Assignment. ABB may assign or otherwise transfer the Reseller Contract or any of ABB's rights and obligations under the Reseller Contract to an Affiliate or successor-in-interest. Reseller shall not, without ABB's prior written consent, assign or otherwise transfer any or all of Reseller's rights or obligations under the Reseller Contract.
- 20.3 Subcontracting. ABB is permitted to appoint and use Affiliates and other third parties to perform ABB's obligations or any portion thereof without prior notification to or consent of the Customer.
- 20.4 Entire agreement. The Reseller 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 Reseller's standard or purchase terms and conditions shall not apply.
- 20.5 Variation. No variation of the Reseller Contract shall be effective unless it is in writing and signed by the parties.
- 20.6 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 Reseller 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.
- 20.7 Severance. If any provision or part-provision of the Reseller 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 Reseller Contract.

- 20.8 Notices. Any notice given to a party under or in connection with the Reseller 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. ABB may in addition provide notices by email or other electronic notification forms available in the used systems to the address then associated to Reseller's account on the Portal, if any.
- 20.9 Third party beneficiaries. No one other than a party to the Reseller Contract shall be a beneficiary of the Reseller Contract or shall have any right to enforce any of its terms, unless specified in the Reseller Contract.

## 21 Definitions and Interpretation

### 21.1 Definitions.

"ABB" has the meaning set out in the Background section;

"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 ABB Digital Offerings;

"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 Digital Offering" digital Services and Software offered by ABB;

"ABB Services Partner" includes distributors, reseller, system integrators, panel builders, original equipment manufacturer or OEM and other service partners.

"ABB Software" means all computer programs (which may include mobile applications) provided (or given access to) by ABB under the Customer Contract as part of or in connection with the ABB Digital Offerings, 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://ability.abb.com/terms> or as provided separately and 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;

"Applicable Integrity Laws" means (i) *Anti-bribery and anti-corruption laws*: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively "Anti-Bribery & Corruption Laws"); (ii) *Sanctions and trade control laws and regulations*: any applicable laws, regulations, or administrative or regulatory decisions or guidelines that sanction, prohibit or restrict certain activities including, but not limited to, (i) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (ii) financing of, investment in, or direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, including any future amendments to these provisions; or (iii) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of this Agreement (collectively,

"Trade Control Laws"); and (iii) *Human rights and anti-modern slavery laws*: including The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Core Conventions on Labor Standards, the UK Modern Slavery Act and other similar human rights, anti-human trafficking and anti-modern slavery laws and regulations (collectively, "Human Rights Laws").

"Change in Control" means a merger, acquisition or other corporate transaction in which the owners of all of the subject entity's voting interests immediately prior to the transaction own less than 50% of the voting interests of the successor entity resulting from the transaction;

"Customer" has the meaning set out in Section 1.1;

"Customer Content" means any information, data and material that ABB measures or that is provided by or on behalf of Customer through or in connection with ABB's provision or Customer's use of the ABB Digital Offerings, including, for the avoidance of doubt, third party information, data and material that is provided by or on behalf of Customer; Customer Content excludes ABB Device Data.

"Customer Contract" has the meaning set out in Section 3.1;

"Data Privacy Policy" means **ABB's Data Privacy Policy**, as may be updated by ABB from time to time;

"Discloser" has the meaning set out in Section 18.1;

"EULA" has the meaning set out in Section 3.2;

"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;

"Managed Services" has the meaning set out in Section 1.2;

"Order" means a document in electronic or physical form, an online form or other online instrument provided by ABB for ordering or procuring ABB Digital Offerings, which refers to these Ability Reseller GTC;

"Personal Data" means any data or information of an identified or identifiable natural person and, where required by mandatory applicable Laws, 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;

"Portal" means an online portal, accessible for Reseller and/or Customer, at the web address notified to Reseller and/or Customer by ABB (or such other web address as may be notified to Reseller and/or Customer by ABB from time to time);

"Recipient" has the meaning set out in Section 18.1;

"Reseller" has the meaning set out in Section 1.1;

"Reseller Contract" has the meaning set out in Section 1.1;

"Restricted Person" means any entity or person included on a list (including U.S. and EU lists) of targeted parties, blocked parties, or persons subject to asset-freezing or other

restrictions introduced under any applicable Trade Control Laws (and includes any entity that is directly or indirectly owned fifty (50) percent or more, in the aggregate or individually, or otherwise controlled by any Restricted Person).

"Sanctions Agency" means any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws and has jurisdiction over the Agreement including, but not limited to, the aforementioned governmental and regulatory bodies of (i) the United Nations, (ii) the United States of America (including the U.S. Department of Treasury Office of Foreign Assets Control, U.S. Department of State and U.S. Department of Commerce), (iii) the European Union or (iv) Switzerland.

"Services" means the services to be provided or to be made available by Reseller and/or ABB to Customer 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 ABB Digital Offerings which are referenced in the Order;

"Terms of Use" or "ToU" mean the Terms of Use attached to these Ability Reseller GTC as Annex 1;

"Territory" means (i) the territory specified in the Order or a framework agreement with the Reseller, or, if such separate agreement does not exist, either (ii) the country the Reseller is located in and enabled for resale or (iii) if Reseller is located in EU/EFTA, the countries located in EU/EFTA.

"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 for use as part of the ABB Digital Offerings under separate terms and conditions, or (ii) by Customer from third parties;

"Trademarks" means the name, logo, brands, trademarks and service marks of a party;

"User" means an individual who is legitimately authorized to access or receive the ABB Digital Offerings, use the Software and/or access the Portal through Customer's account.

## 21.2 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.



## ANNEX 1:

### ABB ABILITY™ TERMS OF USE

These ABB Ability™ Terms of Use ("ToU") together with any Special Terms and Conditions ("STC") or other terms and conditions referred in the ToU or STC govern the use of the Services by end customers ("Customer"). These ToU and any STC and are deemed incorporated by reference into an agreement between the Customer and Reseller ("Customer Contract") pursuant to which the Reseller is reselling the Services to the Customer and apply separately of any end user license agreement between ABB and Customer ("EULA").

#### 1 Customer's use of Services

- 1.1 Services and access to the Portal. Subject to the terms of the Customer Contract, ABB grants Customer 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 Customer's internal business purposes. Where expressly set out in an Order or STC, Customer may permit third parties under contract with Customer to use the Services and access the Portal for (i) supporting Customer's internal business purposes; or (ii) purposes of such third parties receiving a service from Customer. Customer is responsible for any activities of such third parties.
- 1.2 Customers account on the Portal. Customer's use of the Services or Software may require Customer to establish an account on the Portal. For purposes of administrating the account, Customer may be required to provide contact information (for example name, business telephone number, address, email and user IDs) and other information as described in the Customer Contract and/or the registration form provided on the Portal. Customer is responsible for the accuracy and completeness of this information and for any and all activities that occur under an account that is attributable to Customer (including, for the avoidance of doubt, activities by third party Users). Customer 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. Customer notifies ABB immediately on discovering any attempted or actual unauthorized use of an account that is attributable to Customer and immediately follows ABB's instructions when ABB is asking Customer to change a User's access credentials. ABB has the right to change a User's access credentials if ABB is of the opinion that such change is necessary for security reasons.
- 1.3 Pilot Services. Pilot Services are subject to additional limitations as set out in this Section 1.3 which shall prevail over other provisions of these ToU. Customer understands and acknowledges that Pilot Services may not have been fully tested or verified, may become unavailable, that their performance may be negatively affected, and/or that the Pilot Services may not meet industry practice security standards and might therefore negatively affect Customer's internal procedures and business operations or impair the functionalities of Customer's systems or devices. Customer may use the Pilot Services only for its internal use for the purpose of reviewing, evaluating and testing the Pilot Services. Use of the Pilot Services is at the Customer's sole risk. Customer acknowledges that Reseller and/or ABB may, at its sole discretion, (i) modify the Pilot Services or features of the Pilot Services; (ii) provide upgrades, patches or maintenance; or (iii) terminate, limit, suspend or discontinue the Pilot

Services or access to the Pilot Services. Pilot Services are provided "as is" without any warranties and excluding all liability to the fullest extent permitted under applicable Laws.

- 1.4 External Content. Customer may be able to access or is 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, Software or Hardware Devices. Neither ABB nor Reseller operate or control any third-party websites, app stores or any other material, information, software, services, opinions or other content provided by third parties, including on the internet (collectively, "External Content"). Use of External Content is subject to Customer's acceptance of the applicable third-party terms of use and Customer acknowledges and agrees that any contractual relationship related to External Content is solely between Customer and the provider of such External Content. ABB makes no warranties or representations and has no obligation, responsibility or liability for External Content and Customer's use of External Content to the extent permitted by Laws. Customer waives any right or claim of right against ABB relating to External Content.
- 1.5 ABB Software. Where Customer uses ABB Software as part of the Services, ABB 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 Customer Contract 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 take precedence over other documents forming the Customer Contract with regards to any conflicting terms. Notwithstanding the foregoing, except to the extent specifically set out otherwise in the Order or STC, ABB is not obliged to provide any updates or upgrades to the ABB Software.
- 1.6 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 Customer acknowledges and agrees that (i) any contractual relationship related to Customer's use of such Third Party Software is solely between the Customer and the provider of such Third Party Software; (ii) it is Customer's own responsibility to assess the accuracy of using such Third Party Software; and (iii) Reseller and ABB will have no responsibility or liability related to Customer's use of such Third Party Software, to the extent permitted by applicable Laws.

## 2 Data protection and security

- 2.1 Data protection. Customer shall comply with all applicable Laws related to the protection of Personal Data. ABB will store and otherwise process the Customer's and Customer's representatives', employees' and Users' business Personal Data (for example name, business telephone, address, email and user IDs) for the purpose of providing the Services as described in [ABB's Data Privacy Policy](#).
- 2.2 License verification. Devices on which ABB Software is installed may automatically provide information to ABB 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, Customer consents to the transmission of such information and ABB's use of such information.
- 2.3 Security. ABB has established and maintain a formal information and cybersecurity program which includes commercially reasonable technical and organizational measures, in order to protect Customer Content against security breaches, accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Customer Content. Except to the extent explicitly specified otherwise in the STC, it is Customer's responsibility to (i)

provide and continuously ensure a secure remote connection; and (ii) establish and maintain the security of its 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, Customer will without undue delay, completely and accurately implement any software updates or upgrades provided by the respective vendors and/or by ABB, as applicable.

### 3 Customer responsibilities

- 3.1 General obligations. Customer will: (i) obtain and maintain all necessary licenses, permissions, filings and consents (which shall include consent of individuals where Customer provides Personal Data to Reseller or ABB, to the extent legally required) which may be required regarding Customer Content, software and other content, if any, provided by Customer; (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 ABB (in accordance with the respective specification and instructions) on Customer's computer systems and/or mobile devices (as applicable); (iv) comply with any restrictions on permitted User types; (v) 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; (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 Customer Content. Customer will not use the Services or Software (i) for any part of any nuclear facility or any other plant, machine, system or product that is subject to a sanction list applicable to the Customer; 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.
- 3.2 Cooperation and information obligations. Customer will (i) co-operate with ABB and/or Reseller in all matters relating to the Services, the Software and/or the Hardware Devices (ii) provide ABB and/or Reseller with such accurate, timely and complete information and materials as ABB and/or Reseller may reasonably require in order to (a) provide the Services, Software and/or the Hardware Devices, (b) to perform maintenance or bug fixing, as well as (c) in order to verify Customer's compliance with the Customer Contract and the ToU (iii) promptly install the necessary Software and any updates or upgrades provided by ABB (in accordance with the respective specification and instructions) on Customers computer systems; (iv) comply with any additional obligations as set out in the Customer Contract or Order; and (v) comply with the Laws and regulations. Customer will inform ABB and/or Reseller without undue delay upon becoming aware of any circumstances that may or do affect the security of the Services and/or the Platform.
- 3.3 Monitoring of usage and remote connection. The provision of Services and/or the Software may require ABB and/or Reseller to monitor Customer's 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, Customer will (i) establish and maintain such remote connection with appropriate connectivity; (ii) permit ABB, ABB's employees, Affiliates, Reseller, agents, consultants and/or subcontractors, to remotely access and monitor Customer 's usage of certain systems owned, controlled or operated by or on behalf of Customer, as necessary for ABB and/or Reseller 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.

## 4 Proprietary rights

- 4.1 Customer Content. ABB and Reseller will not acquire any right, title and interest in Customer Content other than the rights Customer grants to ABB and Reseller under the Customer Contract. During the term of the Reseller Contract, Customer will have the ability and the right to access and extract some or all of Customer Content if and to the extent specified in the STC or the Order.
- 4.2 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 ABB, ABB's Affiliates or licensors. Customer has no rights in and to the ABB Content, if not expressly granted by ABB.
- 4.3 ABB's use of Customer Content. ABB and ABB's Affiliates and subcontractors have the right to collect, store, aggregate, analyze or otherwise use Customer Content for (i) providing and maintaining the Services and/or the ABB Software to Customer and Customer's 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 ABB. In addition, ABB has the right to use Customer Content for benchmarking purposes if and to the extent it is anonymized or non-confidential.
- 4.4 Feedback. During the term of a Contract, Customer may provide feedback or suggestions related to the Services, the Software, the Portal or the Platform to ABB. ABB and ABB's Affiliates are entitled to use such feedback and suggestions, even if they should be marked confidential, without any restrictions and any compensation to Customer.
- 4.5 Restrictions. Customer 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, without limitation, for any third-party use including, without limitation, 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 including translation or localization; (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 ABB licensors' proprietary notices. Use of the ABB Content other than specifically permitted in the Customer Contract, is expressly prohibited.

## 5 Suspension

ABB and/or Reseller may suspend the Services in whole or in part if Customer's 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 ABB and/or Reseller are or will be in violation of the Laws; (iv) may subject ABB and/or Reseller or any third party to liability; or (v) any violation of a material right or obligations under these ToU. In addition, ABB and/or Reseller may suspend the Services under the circumstances specified in the

Acceptable Use Policy and if Customer fails to pay any amount due under the Customer Contract on the due date for payment. ABB and/or Reseller will suspend the Services only to the extent reasonably necessary. Unless ABB and/or Reseller believe an immediate suspension is required and appropriate, ABB and/or Reseller will use commercially reasonable efforts to provide reasonable notice before suspending a Service.

## 6 Warranty

As between ABB and Customer, ABB makes no warranty of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including an implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable Laws.

## 7 Liability

In no event shall ABB have any liability to Customer or any User for any damages relates to Customer's purchase or use of the Service or Software pursuant to these ToU, including but not limited to direct, indirect, special, incidental, punitive, or consequential damages, or damages based on lost profits, however caused and whether in contract, to or under any theory of liability, whether or not Customer has been advised of the possibility of such damages. ABB disclaims all liability and indemnification obligations for any harm or damages caused by any third party to the extent permitted by applicable Laws.

## 8 Integrity

- 8.1 Both Parties will comply with all Applicable Integrity Laws in connection with these ToU. Both Parties shall also ensure that their respective employees, officers, directors, Affiliates or third parties engaged in any manner in relation to the ToU or a Customer Contract shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Section in connection with these ToU. Both Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any Applicable Integrity Laws in connection with these ToU.
- 8.2 Each Party represents and warrants that, to the best of its knowledge, at the date of entering into an Order neither it, nor any of their respective directors or officers are a Restricted Party. Each Party agrees that it shall promptly notify the other Party if it becomes a Restricted Party.
- 8.3 If, as a result of (i) Trade Control Laws issued or amended after the effective date of a Customer Contract, (ii) Customer becoming a Restricted Party, or (iii) any necessary export license or authorization from a Sanctions Agency is not granted, the performance by ABB or by any Affiliate or third parties engaged in any manner in relation to a Customer Contract becomes illegal or impracticable, ABB shall, as soon as reasonably practicable, give written notice to either Reseller and/or Customer of its inability to perform or fulfil such obligations. Once such notice has been received by Customer, ABB shall be entitled to either immediately suspend the performance of the affected obligation under a Customer Contract until such time as ABB may lawfully discharge such obligation or unilaterally terminate the contract with Reseller in whole or in part from the date specified in the said written notice or from any subsequent date thereafter. ABB will not be liable to Customer for any costs, expenses or damages associated with such suspension or termination of the Contract.
- 8.4 Suspension or termination as set out in Section 8.3 above, shall not affect any payment obligation and may incur liability for additional costs necessarily incurred by ABB in regard to such suspension or termination including, but not limited to, all reasonable costs associated

with suspending or terminating any subcontract placed or committed for goods or services in connection with the provision of the Services.

- 8.5 Customer represents that it is the ultimate end recipient of any items provided under this Customer Contract, that the items are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any items received from ABB to any third party or country in violation of Trade Control Laws.
- 8.6 Customer further represents and warrants that the Services provided under a Customer Contract shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of ABB.
- 8.7 For the avoidance of doubt, no provision in these ToU shall be interpreted or applied in a way that would require any party to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable Trade Control Laws.

## 9 General Provisions

- 9.1 Notices. Any notice that ABB is required to provide to Customers under or in connection with the ToU shall be provided by ABB or the Reseller based on the circumstances and designated contact information for notices available to ABB in the Services.
- 9.2 Waiver. No failure or delay by ABB in exercising any right under these ToU will constitute a waiver of that right.
- 9.3 Severance. If any provision or part-provision of the ToU 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 ToU.
- 9.4 Third Party Beneficiary. These ToU are between Customer and Reseller; ABB is not a party to these ToU. However, ABB is a third-party beneficiary to the Customer Contract solely as it relates to these ToU.
- 9.5 Order of Precedence. With respect to the subject matter discussed herein, in the event of any conflict or inconsistency between these ToU and any other terms or conditions in Customer's agreement or order form with Reseller, these ToU shall prevail. In the event of any conflict or inconsistency between these ToU and any EULA applicable to the Services in question that has been accepted by the Customer, the EULA shall prevail.

## 10 Definitions

"ABB" means **ABB Switzerland Ltd., Brown Boveri Strasse 6, CH-5400 Baden, Switzerland;**

"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 ABB or ABB 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 ABB under the Customer 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://ability.abb.com/terms> or as provided separately and 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;

"Applicable Integrity Laws" means (i) *Anti-bribery and anti-corruption laws*: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively "Anti-Bribery & Corruption Laws"); (ii) *Sanctions and trade control laws and regulations*: any applicable laws, regulations, or administrative or regulatory decisions or guidelines that sanction, prohibit or restrict certain activities including, but not limited to, (i) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (ii) financing of, investment in, or direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, including any future amendments to these provisions; or (iii) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of this Agreement (collectively, "Trade Control Laws"); and (iii) *Human rights and anti-modern slavery laws*: including The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Core Conventions on Labor Standards, the UK Modern Slavery Act and other similar human rights, anti-human trafficking and anti-modern slavery laws and regulations (collectively, "Human Rights Laws").

"Change in Control" means a merger, acquisition or other corporate transaction in which the owners of all of the subject entity's voting interests immediately prior to the transaction own less than 50% of the voting interests of the successor entity resulting from the transaction;

"Customer Content" means any information, data and material that ABB measures or that is provided by or on behalf of Customer through or in connection with ABB's provision or Customer's use of the Services or Software, including, for the avoidance of doubt, third party information, data and material that is provided by or on behalf of Customer; Customer Content excludes ABB Device Data.

"Data Privacy Policy" means **ABB's Data Privacy Policy**, as may be updated by ABB from time to time;

"EULA" means the end user license agreement between ABB and Customer;

"External Content" has the meaning set out in Section 1.4;

"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 Reseller for ordering or procuring Services and/or Software;

"Personal Data" means any data or information of an identified or identifiable natural person and, where required by mandatory applicable Laws, 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 ABB's and ABB 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 Customer, at the web address notified to Customer by ABB and/or Reseller at the beginning of the Services (or such other web address as may be notified to Customer by ABB and/or Reseller from time to time);

"Reseller" is the entity entered into the Customer Contract with Customer;

"Restricted Person" means any entity or person included on a list (including U.S. and EU lists) of targeted parties, blocked parties, or persons subject to asset-freezing or other restrictions introduced under any applicable Trade Control Laws (and includes any entity that is directly or indirectly owned fifty (50) percent or more, in the aggregate or individually, or otherwise controlled by any Restricted Person).

"Sanctions Agency" means any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws and has jurisdiction over the Agreement including, but not limited to, the aforementioned governmental and regulatory bodies of (i) the United Nations, (ii) the United States of America (including the U.S. Department of Treasury Office of Foreign Assets Control, U.S. Department of State and U.S. Department of Commerce), (iii) the European Union or (iv) Switzerland.

"Services" means the services to be provided or to be made available by Reseller and/or ABB to Customer 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 ABB 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 Customer 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 Customer's account.