
ABB ABILITY™ SMART SENSOR SUBSCRIPTION AND LICENSE AGREEMENT

The terms and conditions contained in this ABB Ability™ Smart Sensor Subscription and License Agreement (this “Agreement”) together with any Order, Service Description or other terms and conditions referred to are the complete agreement regarding transactions under this Agreement (together, the “Contract”) under which Customer may order Services and/or Software (each as defined below). The Contract shall come into effect, and the Customer agrees to be bound by this Agreement, from the earlier of (i) the Customer activating the Services; (ii) the Customer accepting the terms of this Agreement by clicking an “accept” or similar option presented with this Agreement or (iii) the Customer and ABB entering into an Order referring to this Agreement.

1 Provision of services

- 1.1 Subject to the terms and conditions of the Contract and in particular subject to Customer’s activation of the Services, ABB shall (i) provide the Services or make the Services available to the Customer in accordance with the Contract in all material respects; (ii) apply commercially reasonable safeguards, including technical and organizational measures, in order to establish an appropriate level of security and protection of Customer Data against accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Customer Data; and (iii) grant the Customer access to the ABB Portal.
- 1.2 ABB may make any reasonable changes to the Services and/or change or remove features or functionality of the Services and/or the Software from time to time that (i) are necessary to comply with any applicable Laws or safety or security requirement; or (ii) do not materially adversely affect the nature or quality of the Services and/or the Software.
- 1.3 ABB may provide reports or access to data and reports as part of the Services. Reports are based on the Customer Data collected by the Smart Sensor and provided to ABB. Such data is subject to measurement tolerance and may not fully accurately reflect the status of the machine to which the Smart Sensor is attached. Accordingly, the reports may not fully accurately describe the status of the machine(s) and the actual operational performance may differ from reports and the outcome of data analysis. The reports shall be used as a means of guidance and any decision based on the information provided in a report is taken at Customer’s own risk.
- 1.4 Customer use of the Services and access to reports and data may require Customer to download an app from app stores, such as Apple’s App Store or Google Play. Both the app and the app stores have their own terms of use. These terms must be accepted by the Customer when downloading and opening the app for the first time.
- 1.5 The ABB Portal and the Services may include access to third party websites, app stores and other material provided by third parties, including on the internet and Customer may have to access such third party websites, app stores and/or material and/or download Software from such third party websites or app stores. ABB does not operate or control any third party websites or any other information, services, opinions or other content provided by third parties, including on the internet (collectively, “External Content”). **ABB MAKES NO WARRANTIES OR REPRESENTATIONS AND HAS NO RESPONSIBILITY OR LIABILITY FOR SUCH EXTERNAL CONTENT AND THE CUSTOMER AGREES THAT IT SHALL MAKE NO CLAIM WHATSOEVER IN CONNECTION WITH THE CONTRACT AGAINST ABB RELATING TO EXTERNAL CONTENT.**

2 Software

- 2.1 Except if provided otherwise subject to the terms and conditions of the Contract, where ABB provides ABB Software to the Customer as part of the Services or embedded in the Smart Sensor, ABB hereby grants to the Customer a non-exclusive, non-transferable license to use the ABB Software for the Service period set out in the Order for the purposes of receiving the Services provided by ABB under the Contract.
- 2.2 The Customer shall have no right to access, copy, alter, make publicly available or in any other way exploit or use the ABB Software, including the source code of the ABB Software. The Customer shall have no right to remove or attempt to remove any Software that is embedded in the Smart Sensor or to use such Software in any way separate from or unrelated to the Smart Sensor or the Services. The Customer agrees that it shall not, except to the extent that such actions are explicitly permitted by mandatory applicable Laws, attempt to reverse compile, decompile, disassemble or reverse engineer the Software, nor shall it amalgamate, amend, incorporate, modify, reproduce or otherwise alter the same into or with any other software.
- 2.3 ABB may remotely install updates or upgrades to the Software with or without notice to Customer. ABB may further recommend to Customer to install updates or upgrades to the Software as well as to Customer provided infrastructure or software. Updates or upgrades shall be governed by the terms and conditions of this Agreement unless such updates or upgrades are accompanied by a separate license provided by ABB in which case the terms and conditions of such separate license will govern. Notwithstanding the foregoing, except to the extent specifically set out otherwise in the Contract, ABB is not obliged to provide any updates or upgrades to the Software.
- 2.4 Customer is solely responsible and liable for any Customer or Third Party Software that it connects to or otherwise uses with the Services and must comply with any third party terms and conditions, including any third party end-user license agreement relating to such Third Party Software. If Customer procures Third Party Software through ABB as specified in an Order, Customer must comply with any third party terms and conditions, including any third party end-user license agreement attached to or referred to in the Order relating to such Third Party Software.

3 ABB Portal

- 3.1 The Customer's use of the Services or Software will require the Customer to establish an account on the ABB Portal. Failing to do so will not relieve the Customer of its obligation to make any payments to ABB in accordance with the Contract but will mean that the Customer is unable to receive the Services or Software.
- 3.2 For purposes of administrating the account, Customer will be required to provide business contact information (for example name, business telephone, address, email and user IDs) and other information as may be described in the Contract. Customer is responsible for the accuracy, timeliness, completeness and relevance of this business contact information and for any and all activities of a User under an account that is attributable to Customer.
- 3.3 The Customer shall use the account and the ABB Portal (i) in accordance with the Contract, the Acceptable Use Policy and all applicable Laws; (ii) in such a way so as not to impair or compromise the stability or security of the ABB Ability Platform, the ABB Portal or the Services; and (iii) in accordance with any reasonable instructions from ABB.

- 3.4 The Customer shall ensure that the Users keep accounts and credentials (e.g. username, passwords, certificates, keys) confidential. Customer shall notify ABB immediately on Customer discovering any attempted or actual unauthorized use of a Customer account or any other attempted or actual breach of security. ABB is not responsible or liable for any unauthorized access to Customer's accounts except if and to the extent such unauthorized access was caused by ABB's breach of the Contract.

4 Third party users

- 4.1 The Customer may (i) activate the Services; (ii) download or make the Software available; and/or (iii) establish access to the ABB Portal, on behalf of a third party (for example Customer's own customers) for purposes of including the Services into its own services to such third party. The right granted to such third party must be limited to a limited, internal, non-transferable, non-exclusive right to receive the Services, use the Software and access the ABB Portal solely for purposes of using the Smart Sensor and subject to and in accordance with (a) the license and use terms and conditions of this Agreement, in particular Sections 1, 2, 3, 5, 7.2, 7.3, 7.5 and 7.6; and (b) the terms and conditions specified in the Order and/or the Service Description. The Customer shall be fully responsible and liable to ABB for all acts and omissions of such third party.
- 4.2 The Customer must ensure that it obtains all necessary rights and consents from the third party to permit ABB to share data as described in (ii) of the definition of "Customer Data" and as may be further described in the Order and/or the Service Description with the Customer.
- 4.3 The Customer must ensure that the third party (i) acknowledges and agrees to the Acceptable Use Policy and ABB's suspension rights in Section 12; and (ii) represents and warrants that it is not located in a country that is subject to a U.S. or other country government embargo, and that it is not listed on any U.S. or other country government list of prohibited or restricted parties.
- 4.4 The Customer acknowledges, and must ensure the third party acknowledges, that the respective agreement is solely between the Customer and the third party and that the third party is not a beneficiary of the Contract. The Customer shall ensure that the Customer is solely responsible towards the third party for addressing any claims, demands, losses, liabilities, damages, costs or expenses arising out of or in connection with the third party's use of the Services, the Software and/or the ABB Portal. The Customer shall defend ABB and indemnify and hold ABB harmless against any such claims, demands, losses, liabilities, damages, costs or expenses regardless whether based on contract, tort or otherwise.
- 4.5 Notwithstanding the foregoing, the Customer acknowledges that the third party will be obliged to accept separate terms and conditions (e.g., an end user license agreement required to activate the Smart Sensor) when accessing or using the Services, Software and/or ABB Portal. The third party's acceptance of such terms and conditions shall not relieve Customer from any of its obligations under the Contract.

5 Customer responsibilities

- 5.1 The Customer shall: (i) co-operate with ABB in all matters relating to the Services and/ or the Software; (ii) comply with any restrictions on permitted User types; (iii) provide ABB with such information and materials as ABB may reasonably require in order to provide the Services and/or the Software, and ensure that such information is accurate, timely and complete in all material respects; (iv) obtain and maintain all necessary licenses, permissions,

filings and consents (which shall include consent of individuals where Customer provides Personal Data to ABB) which may be required regarding the Customer Data and software and content, if any, provided by the Customer; (v) when using External Content, comply with the respective terms and conditions of use and the license terms and conditions in connection with External Content; (vi) promptly install the necessary Software and any updates or upgrades provided by ABB (in accordance with the respective specification and instructions) on the Customer's computer systems and/or mobile devices (as applicable); (vii) comply with any additional obligations as set out in the Order and the Service Description; (viii) comply with ABB's reasonable instructions regarding the proper use of the Services and/or Software as may be given in individual cases from time to time; (ix) comply with the Laws, in particular when providing Customer Data; and (x) maintain the Smart Sensors in good condition and working order so as to ensure the proper gathering of data from such Smart Sensors.

- 5.2 The provision of Services requires and is based on the collection and processing of certain Customer Data and may require the establishment of a remote connection between the ABB Ability Platform on one side and certain Customer systems (including mobile devices) and the Smart Sensor on the other side. The Customer shall (i) establish and maintain such remote connection; (ii) permit ABB, its employees, agents, consultants and/or subcontractors, as agreed in the Contract, to remotely access certain systems (including mobile devices) owned, controlled or operated by or on behalf of the Customer as well as the Smart Sensor, as necessary for ABB to provide the Services; (iii) maintain adequate security protection on the remote connection as well as the Customer's systems, devices and hardware that directly or indirectly connect to the Services, the ABB Software, the ABB Portal or the ABB Ability Platform; and (iv) install and maintain any hardware, software, or other equipment necessary to establish and maintain the remote connection.
- 5.3 The Customer agrees to comply and shall ensure that all Users comply with the terms and conditions of the Acceptable Use Policy.
- 5.4 If ABB's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer, including breach of the Contract, or failure by the Customer to perform any relevant obligation ("Customer Default") ABB shall without limiting its other rights or remedies have the right to suspend performance of the Services, the Customer's connection to the ABB Ability Platform and/or the Customer's access to the ABB Portal until the Customer remedies the Customer Default.

6 Charges and payment

- 6.1 In consideration for the provision of the Services and/or the Software, the Customer shall pay the Charges as set out in the Order. ABB shall invoice the Customer in accordance with the payment terms specified in the Order and the Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding.
- 6.2 Except if provided otherwise in the Order, the Customer shall pay each invoice submitted by ABB in advance and ABB will not be obliged to provide any Services prior to receiving the Charges.
- 6.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax or sales tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by ABB to the Customer, the Customer shall, on receipt of a valid VAT invoice from ABB, pay to ABB such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7 Proprietary rights, use of data and restrictions

- 7.1 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to Customer Data are and remain with Customer and its licensors. ABB acquires no rights in Customer Data, other than the rights Customer grants to ABB under the Contract.
- 7.2 ABB and its Affiliates have the right to collect, monitor, store, use, extract, compile, synthesize, aggregate, analyze or otherwise process Customer Data for (i) providing, maintaining, protecting and improving the Services to Customer, its Affiliates and/or third parties pursuant to Section 4 above; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the Smart Sensor, ABB Portal, the ABB Ability Platform, the Services and/or the ABB Software; and (iii) improving and developing existing services, technologies and products and developing new services, technologies and products, where all such improvements and developments (including all resulting Intellectual Property Rights) being exclusively owned by ABB. In addition, ABB has the right to use for marketing, testing and benchmarking purposes anonymized Customer Data.
- 7.3 During the course of the Services, Customer may provide Feedback to ABB. ABB shall exclusively own all rights, title and interest, including all Intellectual Property Rights, in this Feedback. In the event that any Intellectual Property Rights in Feedback is deemed for any reason not to be exclusively owned by ABB, Customer agrees to assign, transfer and convey to ABB, and hereby assigns, transfers and conveys to ABB, all right, title and interest, including Intellectual Property Rights, in such Feedback, and agrees to provide reasonable cooperation to ABB, at ABB's expense, to perfect such rights. While ABB does not wish to receive Customer's preexisting Intellectual Property Rights in such Feedback, in the unlikely event that Customer does include its Intellectual Property Rights in Feedback, the Customer grants ABB and its Affiliates a worldwide, irrevocable, non-exclusive, royalty free, fully-paid-up right and license, without accounting, to take or have taken any of the following actions: (i) to use, make, have made, make available, execute, copy, merge, reproduce, prepare derivative works, improvements and other modifications, license, sublicense, market, distribute (internally and externally), display and perform all, or any portion of the Feedback, alone or in any combination; and (ii) to authorize others to do any of the foregoing.
- 7.4 During the term of the Contract, Customer (and/or a third party pursuant to Section 4 above) will have the ability to access and export certain Customer Data stored on the ABB Ability Platform via the ABB Portal in relation to a Service or ABB Software as described in the Order and/or Service Description.
- 7.5 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the Smart Sensor technology, Services, ABB Software, the ABB Ability Platform, the ABB Portal as well as ABB Device Data (including all tools, software, hardware, materials, data, content, application program interfaces provided by ABB or its Affiliates as part of or in relation to the Services) or other ABB intellectual property (collectively and for the purposes of Sections 7.5 and 7.6 referred to as "**ABB Content**") are and remain exclusively with ABB or its licensors. Customer shall have no rights in and to the ABB Content, other than those expressly granted pursuant to the Contract.
- 7.6 The Customer will not (i) (except as permitted in Section 4 above) use the ABB Content for any third-party use including license, sublicense, sell, resell, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit or make it, or any portion thereof, available to any third party in any manner; (ii) modify, tamper with, repair or make derivative works based upon the ABB Content; (iii) copy, reproduce, publish, reverse engineer, attempt to derive the source code of, modify, disassemble, decompile or create derivative works of the ABB Content (except to the extent that applicable Laws prohibits reverse engineering restrictions,

and then only as permitted by such laws); (iv) copy any ideas, features, functions or graphics of the ABB Content; (v) access or use the ABB Content in a way to avoid incurring fees or exceeding usage limits or quotas or to circumvent or render inoperative any usage restriction features contained in ABB Content; and/or (vi) remove, obscure, alter, or move ABB's and its licensors' proprietary notices. Use of the ABB Content other than specifically permitted in the Contract, is expressly prohibited.

8 Customer indemnification

- 8.1 The Customer represents and warrants that the use by ABB of any Customer Data or other data provided by Customer or Customer's grant of any license or right under the Contract, will not infringe the Intellectual Property Rights or other rights of any person.
- 8.2 The Customer shall indemnify and hold ABB harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any alleged or actual infringement under any Laws, of any third party's Intellectual Property Rights or other rights arising out of any Customer Data or its use by ABB in accordance with the Contract.

9 ABB indemnification

- 9.1 If any third party makes a claim against the Customer that Customer's use of the ABB Software or the Services in accordance with the terms of the Contract infringes a third party's copyrights, patents or trademarks (a "**Claim**"), ABB will defend the Customer against such Claim and pay the amounts finally awarded by a court against the Customer or included in a settlement approved by ABB, provided that the Customer shall (i) promptly give written notice of the Claim to ABB, 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) allow ABB to control and reasonably cooperate with ABB in the defense and settlement of the Claim.
- 9.2 ABB shall not have any liability or obligation related to any claim of infringement of Intellectual Property Rights if and to the extent the claim arises out of or relating to (i) the use of Customer Data or other data provided by Customer in the provision of the Services or otherwise in connection with the Contract; (ii) a modification created by or at the direction of Customer 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 ABB has provided updates or upgrades and Customer has not updated or upgraded the ABB Software; or (vi) any Third-Party Software.
- 9.3 If a Claim is made or, in ABB's reasonable belief, is likely to be asserted, ABB may, at no cost to the Customer: (i) require Customer to discontinue use of the infringing ABB Software or Service immediately and procure for the Customer the right to continue to use the infringing 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 9.4(i) and 9.4(ii) are not commercially feasible, as determined by ABB in its sole discretion, terminate the applicable

Order, in whole or in part, and pay Customer a pro rata refund of the fees paid by Customer for the infringing ABB Software or Service.

- 9.4 This Section 9 states the sole, exclusive and entire liability of ABB to Customer and Customer's sole remedy with respect to any claim or allegation of infringement or misappropriation of any third party Intellectual Property Right.

10 Disclaimer

- 10.1 ABB PROVIDES THE SERVICES AND SOFTWARE TO CUSTOMER "AS IS" AND "AS AVAILABLE", 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, ABB MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND ABB DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND SOFTWARE INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES OR SOFTWARE WILL BE SECURE, UNINTERRUPTED AVAILABLE, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE REPORTS PROVIDED ARE ACCURATE, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

11 Limitation of liability

- 11.1 ABB shall in no event be liable, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with a Contract, and even if ABB has been advised of the possibility of such damages, for (i) loss of profits, sales or business, agreements or contracts, anticipated savings, revenue, or damage to goodwill; (ii) business interruption or loss or corruption of data; (iii) costs of substitute goods or services; or (iv) any indirect, consequential, incidental, special, punitive damages or exemplary loss.
- 11.2 Subject to Sections 11.1 and 11.3, 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 a sum equal to the charges paid under the Contract in the 12 (twelve) months prior to the occurrence of the first cause of action.
- 11.3 The limitation to ABB's liability in Sections 11.1 and 11.2 does not apply for: (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (ii) willful misconduct, fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be limited or excluded by applicable Laws.

12 Suspension

- 12.1 ABB may suspend the Services and/or Customer's connection to the ABB Ability Platform and/or access to the ABB Portal in whole or in part if ABB determines that Customer's use of the Services and/or connection to the ABB Ability Platform and/or access to the ABB Portal (i) poses a security risk to the Services, the ABB Ability Platform and/or the ABB Portal and/or any third party; (ii) may adversely impact the performance of the Services, the Software, ABB Ability Platform and/or the ABB Portal; (iii) is in violation of the Laws or poses a risk that ABB is or will be in violation of the Laws; or (iv) may subject ABB or any third party to liability. In addition, ABB may suspend the Services and/or Customer's connection to the ABB Ability Platform and/or access to the ABB Portal under the circumstances specified in the Acceptable Use Policy, in Section 6.4 and if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 12.2 ABB will suspend the Services and/or Customer's connection to the ABB Ability Platform and/or access to the ABB Portal only to the extent reasonably necessary. Unless ABB believes an immediate suspension is required, ABB will use commercially reasonable efforts to provide reasonable notice before suspending a Service and/or connection to the ABB Ability Platform and/or access to the ABB Portal.

13 Term and termination

- 13.1 A Contract will enter into effect as described in the introduction above and will remain in effect for a period as set out in the Order or as terminated earlier in accordance with Sections 13.2 or 13.3 below.
- 13.2 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 following notification of the breach by the non-breaching party.
- 13.3 Without limiting its other rights or remedies, ABB may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if (i) the Customer fails to pay any amount due under the Contract on the due date for payment and remains 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, or (iii) Customer is in breach of the Acceptable Use Policy or the license terms.
- 13.4 Upon termination or expiration of the Contract for any reason: (i) the Customer shall uninstall all Software from its computer systems, and cease use of the Software and, if requested by ABB, provide ABB with evidence that it has done so; (ii) ABB may disconnect Customer's access to the Services, Software and/or the ABB Portal as well as connection to the ABB Ability Platform on or after the effective date of termination or expiration; and (iii) the accrued rights, remedies, obligations and liabilities of the parties as at termination or expiration shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiration.
- 13.5 Customer is responsible to export Customer Data prior to the effective date of termination or expiration of the Contract in accordance with the methods and to the extent described by ABB in the Order or the Service Description. After expiration of such period ABB may delete the Customer Data.
- 13.6 Where the Customer requires assistance to retrieve the Customer Data, ABB may agree to provide the Customer with additional assistance which shall be charged to the Customer on a time and materials basis at ABB's standard rates as in force at the time the assistance is to be provided or on such other rates as agreed between the parties.
- 13.7 The provisions on the limitation of liability (Section 11), Customer indemnification (Section 8), ABB indemnification (Section 9), the parties' obligation to confidentiality (Section 15), the limitations on Customer use in the Software license (Sections 2.2, 7.6), the provisions on Customer's Intellectual Property Rights (Section 7.1) and the provisions on ABB's Intellectual Property Rights (in particular Sections 7.2, 7.3, 7.5) shall survive the termination of the Contract.

14 Export control

- 14.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Contract (or any products, including software, incorporating any such data) in breach of any applicable export control laws, including United States export laws, to any

country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

- 14.2 Each party undertakes contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above and, if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any export control Laws.

15 Confidentiality

- 15.1 Each party agrees that it shall not at any time disclose to any person non-public technical or commercial knowhow, specifications, inventions, processes, source 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 of a confidential nature and have been disclosed to such party (the "Recipient") by the other party (the "Discloser") or its agent and any other confidential information concerning Discloser's business or its products which the Recipient may obtain, except as permitted by Section 15.3.
- 15.2 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.
- 15.3 The Recipient may disclose the Discloser's confidential information (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 15; and (ii) as may be required by Laws, a court of competent jurisdiction or any governmental or regulatory authority, provided that the Recipient takes best efforts to limit such disclosure and to obtain confidential treatment or a protective order, notifies the Discloser (where legally permissible to do so) reasonably in advance to enable it to participate in such effort.
- 15.4 For 3 (three) years after the initial disclosure, the Recipient agrees to apply reasonable safeguards against the unauthorized disclosure of the Discloser's 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.

16 Governing Law and Jurisdiction

- 16.1 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).
- 16.2 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.

17 General Provisions

- 17.1 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, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, cyber-attacks, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any Laws or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent; collapse of buildings, fire or explosion; and (vi) any labor or trade dispute, strikes, industrial action or lockouts;
- 17.2 Assignment and other dealings. ABB may at any time assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights under the Contract. The Customer shall not, without the prior written consent of ABB, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 17.3 Business Contact Information. Subject to them complying with the ABB Data Privacy Policy and privacy laws applicable to ABB, ABB and its Affiliates, and their subcontractors (including those who process data on their behalf), may, wherever they do business, store and otherwise process business contact information (for example name, business telephone, address, email and user IDs) of Customer and its personnel and Users for the purpose of business dealings with them.
- 17.4 Data Protection. The parties agree that the Customer shall be the data controller, who shall ensure compliance with the applicable data protection laws, in particular the lawfulness of the processing of personal data. ABB shall be processing personal data on behalf of the Customer in accordance with the ABB Data Privacy Policy and shall ensure compliance only with regard to those obligations under applicable data protection laws that are specifically directed to processors and shall act according to lawful instructions of the Customer. ABB's personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. The Customer agrees that it will not withhold or delay its consent to any changes to this data protection clause and/or to any additional data processing or data protection agreements which in the reasonable opinion of ABB are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines from any competent supervisory authority, and their application to the services provided by ABB from time to time.
- 17.5 Subcontracting. Subject to mandatory applicable Laws, ABB shall be permitted to subcontract or delegate in any manner any or all of the performance of its obligations under the Contract to any Affiliate, contractor or any other third party service provider without requiring the prior written consent of the Customer. ABB will be responsible for any acts and omissions of its subcontractors as if they were the Supplier's acts or omissions.
- 17.6 Entire agreement. The Contract constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, 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 terms and conditions or purchase terms and conditions shall not apply.

- 17.7 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives). Notwithstanding the foregoing, ABB may modify this Agreement from time to time. Any such modification will be subject to notification to the Customer and will be effective as stated in the notification. By continuing to use the Services, the Software and/or the ABB Portal after the effective date of modification, the Customer agrees to be bound by the modified terms of this Agreement.
- 17.8 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. 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.
- 17.9 Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.
- 17.10 Code of conduct and anti-bribery law. ABB maintains a set of codes of conduct and guidelines related to ABB's, its employees' and its subcontractors' business conduct, including anti-bribery, anti-corruption and conflict of interest. ABB also requires its suppliers to comply with such codes of conduct or have equivalent codes of conduct for their companies, employees and subcontractors, accessible at <http://new.abb.com/about/integrity/standards/abb-code-of-conduct>. Customer shall comply in its business conduct with standards that are equivalent.
- 17.11 Notices. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be (i) delivered by hand or courier or by pre-paid registered first-class post or special delivery at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email or other electronic notification forms available in the used systems (or other electronic notification forms) as well as the email address to which the notices must be delivered to.
- 17.12 Third parties 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.

18 Definitions and interpretation

18.1 Definitions

"**ABB**" means the ABB entity which enters into a Contract with Customer;

"**ABB Ability**" is a trademark of ABB Asea Brown Boveri Ltd which is associated with ABB and its Affiliates unified, cross-industry, digital capability and solutions;

"**ABB Ability Platform**" means ABB's and its 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;

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

"**ABB Data Privacy Policy**" means ABB's data privacy policy, available at <http://new.abb.com/privacy-policy>, as may be updated by ABB from time to time;

"ABB Software" means all computer programs (which may include mobile applications or cloud based software) provided (or given access to) by ABB 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 www.abb.com/smartsensor/legal 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;

"Charges" means the charges payable by the Customer for the supply of the Services or Software in accordance with Section 6;

"Contract" means the terms and conditions contained or referred to in this Agreement together with any applicable Order and Service Description or other terms and conditions referred to under which Customer may order Services and/or Software related to the Smart Sensor;

"Customer" means the legal entity that enters into the Contract with ABB;

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

"Customer Default" has the meaning set out in Section 5.4;

"Discloser" has the meaning set out in Section 15.1;

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

"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 an order for Services and/or Software, agreed by ABB and the Customer, referring expressly to this Agreement;

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

"Recipient" has the meaning set out in Section 15.1;

"Service Description" means the documents describing and specifying the Services which are referenced in the Order or as set forth at www.abb.com/smartsensor and as amended from time to time; newer versions on the website shall prevail over older versions referenced in the Order;

"Services" means the Smart Sensor services to be supplied or to be made available by ABB to the Customer as described or referred to in an Order and the Service Description;

"Smart Sensor" means the ABB Ability Smart Sensor purchased by or provided to the Customer by ABB, its Affiliates or a third party pursuant to one or more separate arrangements, which generates or gathers data through embedded sensors or otherwise, where such data is accessed, stored or processed by the Services hereunder;

"Software" means ABB Software and Third Party Software;

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

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

18.2 Interpretation

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

18.3 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) this Agreement; (iii) the Acceptable Use Policy; and (iv) the Service Description.