

ABB ABILITY™传动产品远程状态监测订阅及许可协议

本 ABB ABILITY™传动产品远程状态监测订阅及许可协议（本“协议”）包含的条款和条件，作为所有 ABB 数字化产品采购/销售合同的附件，构成客户可据以订购服务和/或软件（请见下文定义）的，关于本协议下交易的完整协议（统称“合同”）。合同于以下时间当中的较早者生效，客户同意受本协议约束：（i）客户激活服务；（ii）客户通过点击“接受”或者本协议呈现的类似选择，接受本协议的条款，或者（iii）客户与 ABB 订立援引本协议的 ABB 数字化产品采购/销售合同。

1 提供服务

1.1 根据合同条款和条件，尤其是在客户激活服务的前提下，ABB 应当（i）在一切实质方面，按照合同向客户提供服务；（ii）运用商业上合理的保障措施，包括技术和组织措施，以为客户数据建立适当水平的安全和保护，使客户数据免遭意外或非法的毁坏、丢失、改动和未经授权的披露或访问；并且（iii）向客户授予对 ABB 门户的访问权。

1.2 ABB 可随时对服务进行合理变更，并且/或者变更或移除服务和/或软件的特性或功能，如果该变更或移除（i）是遵守任何应适用的法律或者安全要求所必需的，或者（ii）对服务和/或软件的特征或质量没有实质不利影响的。

1.3 ABB 可提供报告或者数据和报告访问权限，作为服务的一部分。该报告是以传动产品采集的并提供给 ABB 的客户数据为基础。该数据存在测量公差，可能不完全准确反映机器状态。因此，报告可能无法完全准确描述机器状态，实际运行性能可能与报告及数据分析结果存在差异。报告应当作为一种指导手段，基于报告中提供的信息的而做出的任何决定由客户自行承担风险。

1.4 ABB 门户和服务可能包括对第三方网站和第三方提供的其他资料的访问权，包括互联网上的资料；客户可能必须访问该第三方网站、应用程序商店和/或资料，并且/或者从该第三方网站或应用程序商店下载的软件。ABB 不运营或控制任何第三方网站或者第三方提供的其他信息、服务、意见或其他内容，包括互联网上的内容（统称“外部内容”）。ABB 不就外部内容提供保证或陈述，也不对此类外部内容承担任何责任或义务，并且客户同意，不会因合同向 ABB 提出与外部内容相关的任何索赔。

2 软件

2.1 除另有规定外，否则根据合同条款和条件，如果 ABB 向客户提供 ABB 软件作为服务的一部分或者内嵌于传动产品中，ABB 特此授予客户非排他、不可转让的许可，在 ABB 数字化产品采购/销售合同规定的服务期限内，使用 ABB 软件接收 ABB 依合同提供的服务。

2.2 客户无权访问、复制、改动、公开或以其他方式利用或使用 ABB 软件，包括 ABB 软件的源代码。客户无权移除或试图移除内嵌于传动产品的软件，也无权以任何将传动产品或服务与软件分离或使其无关的方式使用该软件。客户同意，除强制性的应适用法律明确允许的行为外，客户不得试图对软件进行反编译、拆解或反向工程，也不得对软件进行合并、修改、并入、改动、复制或以其他方式进行更改。

2.3 无论是否通知客户，ABB 均可以远程安装软件的更新或升级。ABB 可进一步建议客户，对软件以及客户提供的基础设施或软件安装更新或升级。更新或升级应以本协议条款和条件为准，除非该更新或升级附有 ABB 提供的单独许可，在此情况下以该单独许可的条款和条件为准。即使有前述规定，除合同另有具体规定外，否则 ABB 没有义务对该软件进行任何更新或升级。

2.4 客户就其连接或服务一起另行使用的客户或第三方软件单方承担责任，必须遵守第三方条款和条件，包括该第三方软件相关的第三方最终用户许可协议。如果客户按照 ABB 数字化产品采购/销售合同的规定通过 ABB 采购第三方软件，客户必须遵守第三方条款和条件，包括 ABB 数字化产品采购/销售合同所附或援引的与该第三方软件相关的任何第三方最终用户许可协议。

3 ABB 门户

3.1 客户对服务或软件的使用，要求客户在 ABB 门户设立账户。即使客户未这样做也不会免除客户根据合同向 ABB 付款的义务，但意味着客户将无法获得服务或软件。

3.2 为管理账户，客户需要提供业务联系信息（如姓名、业务电话、地址、电子邮箱和用户名）及合同中可能描述的其他信息。客户应对该业务联系信息的准确性、及时性、完整性和相关性以及归属于客户账户名下的用户进行的任何及一切活动负责。

3.3 客户应当按照以下规定使用账户和 ABB 门户：（i）遵照合同、可接受使用政策及一切应适用法律；（ii）不削弱或破坏 ABB Ability 平台、ABB 门户或服务的稳定性或安全性；并且（iii）遵照 ABB 的合理指示。

3.4 客户应当确保用户对账户和凭据（如用户名、口令、证书、密钥）保密。如果客户发现任何试图或实际未经授权使用客户账户或者其他试图或实际破坏安全的情形，客户应当立即通知 ABB。ABB 对于任何未经授权访问客户的账户不承担责任，除非此类未经授权的访问在一定程度上是由 ABB 违反合同所致。

4 第三方用户

4.1 客户可以（i）激活服务；（ii）下载或提供本软件；并且/或者（iii）代表第三方（如客户自己的客户）建立对 ABB 门户的访问权，以将服务纳入它自己对该第三方的服务当中。授予该第三方的权利必须限定为有限、内部、不可转让、非排他的以接受服务、使用软件和访问 ABB 门户，且用途仅为访问传动产品采集的数据，并遵守和符合（a）本协议的许可及条款和条件，特别是第 1、2、3、5、7.2、7.3、7.5 和 7.6 条（款）；以及（b）ABB 数字化产品采购/销售合同及其附件规定的条款和条件。客户应就该第三方的一切行为和不为对 ABB 承担全部责任。

4.2 客户必须确保其从第三方获得所有必要权利和同意，以允许 ABB 共享“客户数据”（如客户数据定义第（ii）项所述），以及与客户订立的 ABB 数字化产品采购/销售合同及其附件可能进一步描述的数据。

4.3 客户必须确保第三方（i）确认并同意可接受使用政策及第 12 条的 ABB 中止权；并且（ii）声明和保证，其不位于任何受美国或其他国家政府禁运的国家，并且未被列入美国或其他国家政府的被禁止或限制方名单。

4.4 客户确认并确保第三方确认，相应协议完全是客户与第三方之间的协议，第三方不是合同的受益人。客户应当确保客户对第三方全权负责，以解决因第三方使用服务、软件和/或 ABB 门户引起或相关的索赔、要求、损失、责任、损害、费用或开支。客户应就基于合同、侵权或其他依据的索赔、要求、损失、责任、损害、费用或开支，为 ABB 辩护，并赔偿 ABB 并使其不受损害。

4.5 尽管有前述规定，客户确认第三方访问或使用服务、软件和/或 ABB 门户时，有义务接受单独的条款和条件（如激活传动产品所要求的最终用户许可协议）。第三方接受该条款和条件，并不免除客户依合同承担的任何义务。

5 客户责任

5.1 客户应当：（i）就服务和/或软件相关的一切事项配合 ABB；（ii）遵守关于被允许用户类型的限制；（iii）向 ABB 提供 ABB 合理要求的信息和资料以提供服务和/或软件，并确保该信息在各方面都准确、及时、完整；（iv）取得和持有与客户提供的客户数据和软件及内容（如有）有关的，一切必要的许可、准许、存档文件和内容（包括客户向 ABB 提供个人数据的情况下，个人的同意），（v）使用外部内容时，遵守与外部内容相关的相应使用条款和条件及许可条款和条件；（vi）及时在客户的计算机系统和/或移动设备（如适用），（按照相应规格和说明）安装 ABB 提供的必要软件并更新或升级；（vii）遵守 ABB 数字化产品采购/销售合同及其附件规定的其他义务；（viii）遵守在个别情况下随时提供的，关于服务和/或软件正确使用的合理指示；（ix）遵守法律，特别是在提供客户数据时；并且（x）保持数据收集设备处于良好状况和工作状态，以确保正确收集数据。

5.2 提供服务要求采集和处理某些客户数据并以此为基础，可能要求在 ABB Ability 平台与某些客户系统之间建立远程连接。客户应当（i）建立和保持该远程连接；（ii）允许 ABB 及其关联实体及/或它们的雇员、代理人、顾问和/或分包商，按照合同约定，在必要情况下远程访问由/或代表客户拥有、控制或运营的某些系统及数据收集设备组件，以便 ABB 提供服务；（iii）对远程连接以及直接或间接连接到服务、ABB 软件、ABB 门户或 ABB Ability 平台的客户系统、设备和硬件，保持充分的安全防护；并且（iv）安装和维护建立及保持远程连接所必需的硬件、软件或其他设备。

5.3 客户同意遵守并确保所有用户遵守可接受使用政策的条款和条件。

5.4 如果客户的行为或不作为，包括客户违反合同或者不履行相关义务（“客户违约”），妨碍或推迟 ABB 履行合同规定的它的任何义务，ABB 有权中止履行服务、客户与 ABB Ability 平台的连接以及/或者客户对 ABB 门户的访问，直至客户补救客户违约，且 ABB 的其他权利或救济不受限制。

6 收费与付款

6.1 作为提供服务和/或软件的对价，客户应当支付 ABB 数字化产品采购/销售合同规定的收费。ABB 应当按照 ABB 数字化产品采购/销售合同规定的付款条件向客户开具发票，客户应当全额支付合同项下的全部到期金额，不得抵消、反索赔、扣除或预扣。

7 专属权利、数据使用及限制

7.1 在双方之间，对于客户数据的一切权利、所有权和权益，包括知识产权在内，属于客户及其许可人。除客户依合同授予 ABB 的权利外，ABB 不获取对客户数据的其他权利。

7.2 ABB 及其关联实体有权为以下目的采集、监测、存储、使用、提取、编译、合成、合并、分析或另行处理客户数据，同时 ABB 有权在必要时为以下目的将客户数据传输至其位于中国境外的关联实体：（i）提供、维持、保护和改进对客户及/或其关联实体、上述第 4 条规定的第三方的服务；（ii）防止、检测和修复与数据采集设备、ABB 门户、ABB Ability 平台、服务和/或 ABB 软件安全和/或运行相关的问题；（iii）改进和

开发已有服务、技术和产品以及开发新的服务、技术和产品，所有该改进和开发（包括产生的全部知识产权）完全归 ABB 所有。此外，ABB 有权将匿名化的客户数据用于推销、测试和基准设定目的。

7.3 服务过程中，客户可向 ABB 提供反馈。ABB 排他地拥有对该反馈的一切权利、所有权和权益，包括一切知识产权。如果对反馈的知识产权由于任何原因被视为不排他地属于 ABB 所有，客户同意向 ABB 转让、转移和让渡并在此向 ABB 转让、转移和让渡对该反馈的一切权利、所有权和权益，包括知识产权，且同意合理配合 ABB 完备该权利，费用由 ABB 承担。尽管 ABB 不希望得到客户先前存在的对该反馈的知识产权，但在客户反馈中的确包括其知识产权的不大可能的情况下，客户授予 ABB 及其关联实体全世界范围、不可撤销、非排他、免版税、已全额付款的权利和许可，无需核算，采取以下任何行动：（i）单独或共同使用、制作、提供、执行、拷贝、合并、复制、制备衍生作品、改进和其他更改、许可、转许可、推销、分发（在内部和外部）、展示和履行反馈的全部或任何部分；以及（ii）授权他人采取前述任何行动。

7.4 合同期限内，客户（和/或上述第 4 条规定的第三方）可以通过与 ABB 数字化产品采购/销售合同及其附件和/或服务描述所述的服务或 ABB 软件相关的 ABB 门户，访问和输出存储在 ABB Ability 平台的某些客户数据。

7.5 在双方之间，一切权利、所有权和权益，包括一切知识产权，服务、ABB 软件、ABB Ability 平台、ABB 门户及 ABB 设备数据（包括 ABB 或其关联实体作为服务的一部分提供的或与服务相关的一切工具、软件、硬件、资料、数据、内容、应用程序接口）或其他 ABB 知识产权（且就第 7.5 和 7.6 款而言，统一称作“**ABB 内容**”），排他地属于 ABB 或其许可人所有。除依合同明确授予的权利外，客户对 ABB 内容不享有任何权利。

7.6 客户不得（i）（除上述第 4 条允许外，）将 ABB 内容提供给第三方使用，包括许可、转许可、出售、转售、出租、转移、转让、分发、披露或另行商业利用或以任何方式向第三方提供任何部分；（ii）改动、篡改、修理或基于 ABB 内容制作的衍生作品；（iii）拷贝、复制、发表、反向工程、尝试导出源代码、改动、拆解、反编译或基于 ABB 内容制作的衍生作品（但是如果适用法律禁止反向工程限制，则仅在该法允许的限度内进行）；（iv）拷贝 ABB 内容的创意、特征、功能或图像；（v）为避免发生费用或超出使用限制或配额的方式，或者规避 ABB 内容包含的使用限制或使其无效的方式，访问或使用 ABB 内容；并且/或者（vi）移除、掩盖、改动或移动 ABB 及其许可人的专属通告。除合同具体允许外，明确禁止使用 ABB 内容。

8 客户赔偿

8.1 客户声明并保证，ABB 使用客户提供的客户数据或其他数据，或者客户依合同授予合同项下的任何许可或权利，不侵犯任何人的知识产权或其他权利。

8.2 客户应当赔偿 ABB，并使其免遭受任何法律下关于第三方知识产权或者因客户数据或 ABB 依合同对其使用产生的其他权利的指控或任何所谓的实际侵权，引起或相关的一切费用、索赔、要求、责任、开支、损害或损失。

9 ABB 赔偿

9.1 如果客户根据合同条款使用 ABB 软件或服务侵犯第三方的著作权、专利或商标（“**索赔**”），任何第三方向客户提出索赔，ABB 将就赔偿为客户抗辩，并支付法院最终判定客户应付或者 ABB 批准的和解协议中包括的金额，但客户应当：（i）及时就索赔书面通知 ABB，合理详细地说明索赔的性质；（ii）不经

ABB 事先书面同意，就索赔承担责任、达成协议或让步；并且 (iii) 允许 ABB 控制并合理配合 ABB 进行索赔抗辩与和解。

9.2 对于以下各项引起或相关的索赔，ABB 不负知识产权侵权索赔相关的责任或义务：(i) 使用客户提供的客户数据或其他数据提供服务或合同相关的其他事项；(ii) 由客户或第三方进行或在其指示下进行的更改；(iii) 未按合同条款使用服务或 ABB 软件；(iv) 将服务或 ABB 软件与其他硬件、软件或其他资料一起使用，而且如不一起使用，受影响的服务或 ABB 软件将不会成为索赔对象；(v) 使用 ABB 已提供更新或升级的 ABB 软件版本，且客户未更新或升级 ABB 软件；或者 (vi) 第三方软件。

9.3 如果提起索赔或者 ABB 认为可能提起索赔，ABB 可在客户不负担费用的情况下：(i) 要求客户立即停止使用侵权的 ABB 软件或服务，并为客户取得根据合同继续使用受索赔影响的侵权的 ABB 软件或者继续从服务中获益的权利；或者 (ii) 改动或更换侵权的 ABB 软件或者重新履行相应的服务，以使其变得不侵权（但改动或替换后的 ABB 软件或者重新履行的服务应当提供基本相同的性能和功能，不对使用服务或 ABB 软件造成不利影响）；或者 (iii) 如果第 9.4 (i) 和 9.4 (ii) 项规定的救济不具有商业可行性，经 ABB 单方自由决定，全部或部分地终止相应的 ABB 数字化产品采购/销售合同，并就客户为涉及侵权的 ABB 软件或服务支付的费用，按比例向客户退款。

9.4 本第 9 条规定了就侵犯或盗用第三方知识产权的索赔或指控而言，ABB 对客户的全部、排他的责任和客户的全部救济。

10 免责

10.1 ABB“原样”向客户提供“可提供”的服务和软件，没有保证，也没有维护或支持服务，仅用于合同规定的用途。除合同明确规定外，ABB 不就服务和软件提供任何声明或保证，且 ABB 明确否认一切明示、默认、法定或其他的保证和声明，包括但不限于以下保证：服务或软件安全，可不间断提供，没有错误或者没有有害组件，或者提供的报告准确，或者适销、适合特定用途、令人满意的质量、不侵权、享受权的默认担保，以及源于交易过程或贸易惯例的保证。

11 责任限制

11.1 即使 ABB 已被告知损害的可能性，ABB 不需要就合同引起或相关的以下各项承担基于合同、侵权（包括过失）、违反法定义务或其他依据的责任：(i) 利润、销售或业务、协议或合同、预期节省、收入损失，或者商誉损害；(ii) 业务中断或者数据丢失或损坏；(iii) 替代商品或服务的费用；或者 (iv) 间接的、继发的、附带的、特殊的、惩罚性的损害赔偿金或惩罚性损失。

11.2 根据第 11.1 和 11.3 款的规定，合同引起或相关的 ABB 责任总额，不论基于合同、侵权（包括过失）、违反法定义务或其他依据，以第一项诉因出现之前的 12（十二）个月内依合同支付的收费为限。

11.3 第 11.1 和 11.2 款规定的 ABB 的责任限制不适用于：(i) 其过失或其雇员、代理人或分包商的过失导致的死亡或人身伤害；(ii) 故意不当行为、欺诈或欺诈性误述；或者 (iii) 根据应适用法律不限制或排除的其他责任。

12 中止

12.1 如果 ABB 断定客户使用服务和/或连接 ABB Ability 平台和/或访问 ABB 门户存在以下情形，ABB 可全部或部分地中止服务和/或客户与 ABB Ability 平台的连接和/或对 ABB 门户的访问：（i）对服务、ABB Ability 平台和/或 ABB 门户和/或第三方构成风险；（ii）可对服务、软件、ABB Ability 平台和/或 ABB 门户的性能造成不利影响；（iii）违反法律，或者构成 ABB 违反法律的风险；或者（iv）使 ABB 或第三方承担责任。此外，ABB 可在可接受使用政策第 6.4 款规定的情况下，以及如果客户在付款到期日未支付合同项下的到期金额，中止服务和/或客户与 ABB Ability 平台的连接和/或对 ABB 门户的访问。

12.2 ABB 仅在合理必要限度内，中止服务和/或客户与 ABB Ability 平台的连接和/或对 ABB 门户的访问。除非 ABB 认为需要立即中止，ABB 将采取商业上合理的努力，在中止服务和/或与 ABB Ability 平台的连接和/或对 ABB 门户的访问之前，提供合理的通知。

13 期限与终止

13.1 合同按上文前言所述生效，在 ABB 数字化产品采购/销售合同规定的期间有效，或者根据以下第 13.2 或 13.3 款规定提前终止。

13.2 如果一方实质违反合同，并且如果违约本身可以补救，未在未违约方做出违约通知后 30（三十）日内补救违约情形，对方可经书面通知对方终止合同并立即生效，且其他权利或救济不受限制。

13.3 ABB 可在以下情况下经书面通知客户（全部或部分）终止合同并立即生效，它的其他权利或救济不受限制：（i）客户在付款到期日未支付合同项下的到期金额，且在得到进行该支付的通知后不少于 14（十四）日仍旧拖欠；（ii）适用于服务的一个或多个国家的法律发生变更，导致继续履行服务非法、不现实或者对提供服务有其他实质影响（包括成本影响），或者（iii）客户违反可接受使用政策或许可条款。

13.4 合同由于任何原因终止或期限届满后：（i）客户应当从其计算机系统卸载一切软件，停止使用软件，并且如果 ABB 要求，向 ABB 提供已如此行事的证据；（ii）终止或期限届满生效日或之后，ABB 可断开客户对服务、软件和/或 ABB 门户及 ABB Ability 平台的连接；并且（iii）双方在终止或期限届满时产生的权利、救济、义务和责任不受影响，包括终止或期限届满日之前存在的就违反合同主张损害赔偿的权利。

13.5 如果客户要求协助找回客户数据，ABB 可同意向客户提供额外服务，并按提供协助时执行的 ABB 标准费率或者双方约定的其他费率，根据时间和材料，就此服务向客户收取费用。

13.6 以下规定在合同终止后继续有效：关于责任限制的规定（第 11 款），客户赔偿（第 8 款），ABB 赔偿（第 9 款），双方的保密义务（第 15 款），软件许可中的客户使用限制（第 2.2、7.6 款），关于客户知识产权的规定（第 7.1 款），以及关于 ABB 知识产权的规定（特别是第 7.2、7.3、7.5 款）。

14 保密

14.1 对于一方（“披露方”）或其代理人向另一方（“接收方”）披露的，在向接收方披露时被指定为机密或者具有机密属性的非公开技术或商业专有知识、规格、发明、流程、源代码、产品计划、营销计划或举措或其他信息或数据，以及接收方取得的涉及披露方的业务或其产品的其他机密信息，除第 15.3 款允许外，各方同意不在任何时候向任何人披露。

14.2 机密信息不包括接收方可合理证明的以下特定信息：（i）接收方在从披露方收到之前持有或正当知悉，且不负有保密义务的；（ii）非因接收方或其代理人的披露而公开的；或者（iii）接收方未使用或参照披露方的机密信息而独立开发的。

14.3 接收方可按以下规定对披露方的机密信息予以披露：（i）向因合同而需要知悉该信息的它的及它的关联实体的雇员、代理人、专业顾问或分包商披露，但接收方应当采取合理措施确保该雇员、代理人或分包商遵守本第 15 款；以及（ii）按照法律要求，向有管辖权的法院或者政府或监管当局披露，但接收方应当尽最大努力限制该披露，取得保密待遇或保护令，并（在法律允许的情况下）合理提前通知披露方使其能够参与该努力。

14.4 初次披露后 3（三）年期间，接收方同意按照合理的行业惯例，或者按照它保护自己的机密和专属信息的相同方式和程度，以二者当中的较高标准，采取合理保障措施避免披露方的机密信息遭到未经授权的披露。

15 一般规定

15.2 转让及其他处置。ABB 可随时以任何方式转让、转移、抵押、质押或另行处置它在合同项下的全部或任何权利。不经 ABB 事先书面同意，客户不得转让、转移、抵押、质押、分包、宣告信托或另行处置它在合同项下的任何或者全部权利或义务。

15.3 业务联系信息。在遵守 ABB 数据隐私政策和适用于 ABB 的隐私法律的前提下，ABB 及其关联实体和它们的外包商（包括代表它们处理数据者）不论在何地开展业务，均可为与它们进行商业交易的目的，存储和另行处理客户及其用户的业务联系信息（例如姓名、业务电话、地址、电子邮件和用户名）。

15.4 数据保护。双方同意，客户为数据控制人并确保遵守应适用的数据保护法律，特别是处理个人数据的合法性。ABB 应当按照 ABB 数据隐私政策代表客户处理个人数据，仅确保遵守具体指向处理人的应适用的数据保护法律规定的义务，并按客户的合法指示行事。参与处理个人数据的 ABB 人员应被告知个人数据的机密属性，得到关于他们责任的适当培训，并签署书面的保密协议。如果 ABB 合理认为，为了遵守应适用的数据保护法律与法规/或有管辖权的监管当局的指导规范及其随时对 ABB 提供的服务的适用，需要变更本数据保护条款以及/或者附加的数据处理或数据保护协议，则客户同意不拒绝或者推迟同意该变更。

15.5 分包。受制于强制性的应适用法律，应当允许 ABB 以任何方式，将其在合同项下的任何或全部义务，分包或委托给任何关联实体、承包商或者其他第三方服务提供商履行，无需征得客户事先书面同意。ABB 就其分包商的行为或不作为承担责任，视同它们是供应商的行为或不作为。

15.6 全部约定。合同构成双方之间关于其标的的全部约定，取代由或代表双方就该标的达成的，任何性质的口头或书面的一切先前协议、协议草案、安排、附带担保、附带合同、声明、保证、表示和承诺。双方同意，客户的标准条款和条件或采购条款和条件不予适用。

15.7 变更。除非采用书面形式并由双方（或授权的代表）签字，对合同的更改无效。尽管有前述规定，ABB 可随时更改本协议。任何该更改应当通知客户，并按通知的说明生效。客户通过在更改生效后继续使用服务、软件和/或 ABB 门户，同意受更改后的本协议条款约束。

15.8 弃权。放弃任何权利或救济，仅在书面做出后生效，不被视为就后来的违约或拖欠放弃权利。推迟或不行使或者单次或部分行使任何权利或救济，不放弃该或其他权利或救济，也不妨碍或限制进一步行使该或其他权利或救济。

15.9 分割。如果本协议的任何规定或部分规定属于或成为无效、非法或不可执行，应当视为已对其进行最小限度的必要更改以使其有效、合法和可以执行。如果该更改不可行，应当视为已删除相关规定或部分规定。依本条更改或删除规定或部分规定，不影响本协议其余部分的有效性。

15.10 行为准则和反贿赂法律。ABB 奉行关于 ABB 员工及其分包商的商业行为的一套行为准则和指导规范，包括反贿赂、反腐败和利益冲突。ABB 也要求其供应商遵守可在 <http://new.abb.com/about/integrity/standards/abb-code-of-conduct> 访问的该行为准则，或者对它们的公司、员工和分包商执行同等的行为准则。客户应在其商业行为中遵守同等的标准。

15.11 通知。依照或因本协议给出的通知应当采用书面形式，并且 (i) 通过专人、快递或预付款的挂号一级邮件或专门交付，交到其登记办公地（如果是公司）或其主营业地（其他情况）；或者 (ii) 通过所用系统中可用的电子邮件或其他电子通知形式（或其他电子通知形式）以及必须向其发送通知的电子邮箱地址发送。

15.12 第三方受益人。除非合同具体指明，合同当事人以外的任何人不是合同的受益人，无权执行其条款。

16 定义及解释

16.1 定义

“**ABB**”指与客户订立合同的北京 ABB 电气传动系统有限公司；

“**ABB Ability**”是 ABB Asea Brown Boveri Ltd 的商标，该商标与 ABB 及其关联实体统一、跨行业、数字能力和解决方案相关；

“**ABB Ability 平台**”指 ABB 及其关联实体的工业互联网平台，包括根据或通过 ABB Ability 解决方案（包括本协议下的全部或部分服务）运行的边缘端和云端的基础设施；

“**ABB 门户**”指可在 ABB 于服务开始时通知客户的网址（或者 ABB 随时通知客户的其他网址）供客户访问的线上门户；

“**ABB 数据隐私政策**”指 ABB 的数据隐私政策，可在 <http://new.abb.com/privacy-policy> 获取，ABB 可随时更新；

“**ABB 设备数据**”指数据收集设备（如云连接助手型控制盘、NETA-21 等）或 ABB 软件因本协议下的服务而（自动或非自动）生成或收集的，与运行和工作相关的信息或数据，如设备诊断数据；

“**ABB 软件**”指 ABB 根据合同，作为服务的一部分或因为服务而提供（或允许访问）的一切计算机程序（可包括移动应用程序或云软件），包括改动、更新、升级、新版本和衍生作品及相关文件，但不包括第三方软件；

“**可接受使用政策**”指 ABB Ability 可接受使用政策，可在单独提供的 ABB 资料库文件 nr. [9AKK107046A2911](#) 下获取，ABB 可随时更新；

“**关联实体**”指一方通过控制 50%或以上的表决权或资本，或者通过控制董事会的组成及董事会议投票，直接或间接地控制、被控制或处于共同控制权之下的法人或非法人实体；

“**收费**”指客户根据第 6 款应就服务或软件的提供支付的费用；

“**合同**”指本协议和 ABB 数字化产品采购/销售合同及其附件包含或援引的条款和条件，或者得到援引的客户可据以订购传动产品相关服务和/或软件的其他条款和条件；

“**客户**”指与 ABB 订立合同的法律实体；

“**客户数据**”指 (i) 通过或因为使用服务或软件而向 ABB 或其关联实体提供的，由客户拥有或控制的数据，包括由传动产品通过数据收集设备收集的数据，以及由或代表客户人工输入服务或软件的数据；以及 (ii) 第 (i) 项所述但由或代表第三方用户提供的数据；不包括 ABB 设备数据；

“**客户违约**”具有第 5.4 款规定的含义；

“**传动产品**”也称可变速度（VSD）或频率（VFD）变频器，是通过改变电机的输入频率和电压控制电气设备运动的电气设备。

“**ABB 数字化产品采购/销售合同**”指 ABB 与客户缔结的包含有 ABB 数字化产品的硬件、软件和服务的采购/销售合同，其中约定 ABB 向客户的某些特定传动产品和提供的详细服务说明及服务条款和条件。

“披露方”具有第 15.1 款规定的含义；

“反馈”指客户数据或客户商标外，客户就服务、软件或传动产品制备或向 ABB 提供的，关于事件、行动或过程及其他内容或项目的一切观察、评估或校正信息、陈述、评论或监测；

“知识产权”指（a）发明、专利、实用新型、著作权、精神权利、掩膜作品权、数据权，以及对商标、商号、设计、专有知识和发明披露的权利（不论是否注册）；（b）对这些权利的注册申请以及申请注册的权利；以及（c）全世界范围内存在的一切其他知识产权和同等权利或类似形式的保护；

“法律”指经修订或重订的应适用的立法、法规、惯例规则、指导意见以及相关政府、政府或监管机构、当局或其他相关机构的其他要求；

“个人数据”指已确定或可确定身份的自然人的数据或信息；

“接收方”具有第 15.1 款规定的含义；

“服务描述”指 ABB 数字化产品采购/销售合同中援引或者 <https://new.abb.com/drives/services/advanced-services/condition-monitoring> 和 <https://new.abb.com/drives/services/repairs/ABB-Ability-remote-assistance> 写明的，随时修订的描述和具体说明服务的文件；网站的新版本优先于合同援引的旧版本；

“服务”指 ABB 应向客户提供的，ABB 数字化产品采购/销售合同和服务描述中描述或援引的其他传动服务；

“软件”指 ABB 软件和第三方软件；

“第三方软件”指包括专属、免费软件和开源软件在内的以下计算机程序（可包括移动应用程序）：（i）第三方作为 ABB 数字化产品采购/销售合同指明的第三方软件向 ABB 许可的，以及根据单独的条款和条件，作为服务的一部分转许可客户使用的，或者（ii）第三方向客户许可的；

“用户”指（i）在客户组织内部或者在独立的法律实体或第三方为客户工作的个人；或者（ii）经合法授权取得服务、使用软件和/或访问 ABB 门户的第三方组织内部的个人。

16.2 解释

以“例如”、“包括”、“特别是”、“如”或类似表述开头的短语，应当解释为说明性举例，不构成详尽性列举或者限制这些条款前面的词语的含义。

16.3 优先次序

如存在冲突，除非 ABB 数字化产品采购/销售合同另有规定，组成合同的文件间的优先次序如下（排在列表前面的优先级高）：（i）ABB 数字化产品采购/销售合同；（ii）本协议；（iii）可接受使用政策；以及（iv）ABB 数字化产品采购/销售合同其他附件。

ABB ABILITY™ SMART SENSOR END USER LICENSE AGREEMENT

Please read the terms and conditions of this End User License Agreement carefully before accessing or using the Services and Software:

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

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

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

1. Provision of Services

1.1 Subject to the terms and conditions of this Agreement, the Proof of Entitlement and the Service Description and in particular subject to Your activation of the Services, ABB shall (i) provide the Services or make the Services available to You in accordance with this Agreement, the Proof of Entitlement and the Service Description in all material respects; (ii) apply commercially reasonable safeguards, including technical and organizational measures, in order to establish an appropriate level of security and protection of Customer Data against accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Customer Data; and (iii) grant You access to the ABB Portal.

1.2 ABB may make any changes to the Services it deems appropriate in its sole discretion and/or change or remove features or functionality of the Services and/or the Software from time to time. Such changes may include for example changes that (i) are necessary to comply with any applicable Laws or safety or security requirement.

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 Your own risk. To the extent agreed in a separate agreement or otherwise authorized by You, ABB may provide reports and/or Customer Data to third parties, for example when such third party provides the Services as part of its own services to You.

1.4 Your use of the Services and access to reports and data may require You 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 You 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 You may have to access such third party websites, app stores and/or material and/or download Software from such third party websites or app stores. ABB does not operate or control any third party 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 YOU AGREE THAT YOU SHALL MAKE NO CLAIM WHATSOEVER IN CONNECTION WITH THIS AGREEMENT AGAINST ABB RELATING TO EXTERNAL CONTENT.

2. Software

2.1 Except if provided otherwise, where ABB provides Software to You as part of the Services or embedded in the Smart Sensor, ABB hereby grants to You a non-exclusive, non-transferable license to use the Software for the Service period set out in the Proof of Entitlement for the purposes of receiving the Services.

2.2 You shall have no right to access, copy, alter, make publically available or in any other way exploit or use Software, including the source code of the Software. You shall have no right to remove or attempt to remove any Software that is embedded in the Smart Sensor or to use such Software in any way separate from or unrelated to the Smart Sensor or the Services. You agree that You shall not, except to the extent that such actions are explicitly permitted by mandatory applicable laws, attempt to reverse compile, decompile, disassemble or reverse engineer the Software, nor shall You amalgamate, amend, incorporate, modify, reproduce or otherwise alter the same into or with any other software.

2.3 You shall not attempt to make any part of the Software available to any third party or otherwise allow access to the same to any third party if not strictly necessary for the deployment of the Software and in any case under its direct liability and responsibility.

2.4 ABB may remotely install updates or upgrades to the Software with or without notice. ABB may further recommend to You to install updates or upgrades to the Software as well as to Your provided infrastructure or software. Updates or upgrades shall be governed by the terms and conditions of this Agreement unless such updates or upgrades are accompanied by a separate license provided by ABB in which case the terms and conditions of such separate license will govern. Notwithstanding the foregoing, except to the extent specifically set out otherwise in this Agreement, ABB is not obliged to provide any updates or upgrades.

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

3. ABB Portal

3.1 Your use of the Services or Software will require You to establish an account on the ABB Portal. Failing to do so will mean that You are unable to receive the Services.

3.2 For purposes of administrating the account, You will be required to provide business contact information (for example name, business telephone, address, email and user IDs) and other information as may be requested. You are responsible for the accuracy, timeliness, completeness and relevance of this business contact information and for any and all activities of a User under an account that is attributable to You.

3.3 You shall use the account and the ABB Portal (i) in accordance with the Agreement, the Acceptable Use Policy and all applicable Laws; (ii) in such a way so as not to impair or compromise the stability or security of the ABB Ability Platform, the ABB Portal or the Services; and (iii) in accordance with any reasonable instructions from ABB.

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

4. Your responsibilities

4.1 You shall: (i) co-operate with ABB in all matters relating to the Services and/or the Software; (ii) comply with any restrictions on permitted User types; (iii) provide ABB with such information and materials as ABB may reasonably require in order to provide the Services and/or the Software, and ensure that such information is accurate, timely and complete in all material respects; (iv) obtain and maintain all necessary licenses, permissions, filings and consents (which shall include consent of individuals where You provide Personal Data to ABB) which may be required regarding the Customer Data and software and content, if any, provided by You; (v) when using External Content, comply with the respective terms and conditions of use and the license terms and conditions in connection with External Content; (vi) promptly install the necessary software and any updates or upgrades provided by ABB (in accordance with the respective specification and instructions) on Your computer systems and/or mobile devices (as applicable); (vii) comply with any additional obligations as set out in the Service Description; (viii) comply with ABB's reasonable instructions regarding the proper use of the Services and/or Software as may be given in individual cases from time to time; (ix) comply with the Laws, in particular when providing Customer Data; (x) maintain the Smart Sensors in good condition and working order so as to ensure the proper gathering of data from such Smart Sensors; and (xi) not disclose to any unauthorized person non-public information, specifications or data which are designated at the time of disclosure as confidential or are recognizable as being of a confidential nature.

4.2 The provision of the Services 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 systems (including mobile devices) and the Smart Sensor on the other side. You shall (i) establish and maintain such remote connection; (ii) permit ABB, its employees, agents, consultants and/or subcontractors to remotely access certain systems (including mobile devices) owned, controlled or operated by or on Your behalf 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 Your systems, devices and hardware that directly or indirectly connect to the Services, the 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.

4.3 You agree to comply and shall ensure that all Users comply with the terms and conditions of the Acceptable Use Policy.

4.4 If ABB's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by You, including breach of the Agreement, or failure by You to perform any relevant obligation ("Customer Default") ABB shall without limiting its other rights or remedies have the right to suspend performance of the Services, Your connection to the ABB Ability Platform and/or Your access to the ABB Portal until You remedy the Customer Default.

5. Proprietary rights, use of data and restrictions

5.1 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to Customer Data are and remain with You and Your licensors. ABB acquires no rights in Customer Data, other than the rights You grant to ABB under this Agreement.

5.2 ABB and its Affiliates have the right to collect, monitor, store, use, extract, compile, synthesize, aggregate, analyze or otherwise process Customer Data for (i) providing, maintaining, protecting and improving the Services and/or Software to You, Your Affiliates and/or (to the extent agreed in a separate agreement or otherwise authorized by You) third parties; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the Services, the Software, the Smart Sensor, ABB Portal and/or the ABB Ability Platform; and (iii) improving and developing existing services, technologies and products and developing new services, technologies and products, where all such improvements and developments (including all resulting Intellectual Property Rights) being exclusively owned by ABB. In addition, ABB has the right to use for marketing, testing and benchmarking purposes anonymized Customer Data.

5.3 During the course of the Services, You may provide Feedback to ABB. ABB shall exclusively own all rights, title and interest, including all Intellectual Property Rights, in this Feedback. In the event that any Intellectual Property Rights in Feedback is deemed for any reason not to be exclusively owned by ABB, You agree to assign, transfer and convey to ABB, and hereby assign, transfer and convey to ABB, all right, title and interest, including Intellectual Property Rights, in such Feedback, and agree to provide reasonable cooperation to ABB, at ABB's expense, to perfect such rights. While ABB does not wish to receive Your preexisting Intellectual Property Rights in such Feedback, in the unlikely event that You do include your Intellectual Property Rights in Feedback, You grant ABB and its Affiliates a worldwide, irrevocable, non-exclusive, royalty free, fully-paid-up right and license, without accounting, to take or have taken any of the following actions: (i) to use, make, have made, make available, execute, copy, merge, reproduce, prepare derivative works, improvements and other modifications, license, sublicense, market, distribute (internally and externally), display and perform all, or any portion of the Feedback, alone or in any combination; and (ii) to authorize others to do any of the foregoing.

5.4 During the term of the agreement as set out in the Proof of Entitlement, You may have the ability to access and export certain Customer Data stored on the ABB Ability Platform via the ABB Portal in relation to the Services or Software as described in the Service Description.

5.5 As between the parties, all right, title and interest, including all Intellectual Property Rights, in and to the Services, the Software, the Smart Sensor technology, 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 5.5 and 5.6 referred to as "**ABB Content**") are and remain exclusively with ABB or its licensors. You shall have no rights in and to the ABB Content, other than those expressly granted pursuant to this Agreement.

5.6 You will not (i) use the ABB Content for any third-party use including license, sublicense, sell, 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 this Agreement, is expressly prohibited.

6. Customer Warranty and Indemnification

6.1 You represent and warrant that the use by ABB of any Customer Data or other data provided by You or Your grant of any license or right under the Agreement, will not infringe the Intellectual Property Rights or other rights of any person.

6.2 You shall indemnify and hold ABB harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with (i) any alleged or actual infringement under any Laws, of any third party's Intellectual Property Rights or other rights arising out of any Customer Data or its use by ABB in accordance with this Agreement, (ii) any breach by You of the Applicable Use Policy, or (iii) any other breach by You of this Agreement.

7. Disclaimer

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES AND SOFTWARE IS AT YOUR SOLE RISK. DESPITE SECTION 1.1, ABB PROVIDES YOU THE SERVICES AND SOFTWARE "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND DEFECTS, WITHOUT WARRANTY AND WITHOUT MAINTENANCE OR ANY SUPPORT SERVICES AND SOLELY FOR THE PURPOSE CONTEMPLATED IN THIS AGREEMENT. ABB MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND ABB DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND SOFTWARE INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES OR SOFTWARE WILL BE SECURE, UNINTERRUPTED AVAILABLE, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE REPORTS PROVIDED ARE ACCURATE, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

8. Limitation of liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABB SHALL IN NO EVENT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FOR BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH A CONTRACT, AND EVEN IF ABB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR (I) LOSS OF PROFITS, SALES OR BUSINESS, AGREEMENTS OR CONTRACTS, ANTICIPATED SAVINGS, REVENUE, OR DAMAGE TO GOODWILL; (II) BUSINESS INTERRUPTION OR LOSS OR CORRUPTION OF DATA; (III) COSTS OF SUBSTITUTE GOODS OR SERVICES; (IV) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE DAMAGES OR EXEMPLARY LOSS; AND/OR (V) OTHER LOSS OR DAMAGES INCLUDING DIRECT DAMAGES.

9. Suspension

ABB may suspend the Services and/or Your connection to the ABB Ability Platform and/or access to the ABB Portal in whole or in part if ABB determines that Your 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, the 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 Your connection to the ABB Ability

Platform and/or access to the ABB Portal under the circumstances specified in the Acceptable Use Policy, in Section 4.4 and if you fail to pay any amount due under an order on the due date for payment.

10. Termination

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

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

10.3 Upon termination or expiration of this Agreement for any reason: (i) You shall uninstall all Software from Your computer systems, and cease use of the Software and, if requested by ABB, provide ABB with evidence that You have done so; (ii) ABB may disconnect Your access to the Services, Software and/or the ABB Portal 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 un-affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiration.

10.4 You are responsible to export Customer Data prior to the effective date of termination or expiration in accordance with the methods and to the extent described by ABB in an order or the Service Description. After expiration of such period ABB may delete the Customer Data.

10.4 Where You require assistance to retrieve the Customer Data, ABB may agree to provide You with additional assistance which shall be charged to You on a time and materials basis at ABB's standard rates as in force at the time the assistance is to be provided or on such other rates as agreed between the parties.

10.5 The provisions on the limitation of liability (Section 8), Customer warranty and indemnification (Section 7), the limitations on Customer use in the Software license (Sections 2.2, 5.6), the provisions on Customer's Intellectual Property Rights (Section 5.1) and the provisions on ABB's Intellectual Property Rights (in particular Sections 5.2, 5.3, 5.5) shall survive the termination of the Agreement.

11. Export control

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

12. Governing Law and Jurisdiction

12.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the substantive laws of Switzerland excluding both its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

12.2 Any dispute, controversy or claim arising out of, or in relation to, the Agreement, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be one. The seat of the arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.

13. General Provisions

13.1 Force majeure. ABB shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, cyber-attacks, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any Laws or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent; collapse of buildings, fire or explosion; and (vi) any labor or trade dispute, strikes, industrial action or lockouts;

13.2 Assignment and other dealings. ABB may at any time assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights under the Agreement. You shall not, without the prior written consent of ABB, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

13.3 Business Contact Information. Subject to them complying with the ABB Data Privacy Policy and privacy laws applicable to ABB, ABB and its Affiliates, and their subcontractors (including those who process data on their behalf), may, wherever they do business, store and otherwise process business contact information (for example name, business telephone, address, email and user IDs) of You, Your personnel and Users for the purpose of business dealings with them.

13.4 Data Protection. The parties agree that You shall be the data controller, who shall ensure compliance with the applicable data protection laws, in particular the lawfulness of the processing of personal data. ABB shall be processing personal data on Your behalf in accordance with the ABB Data Privacy Policy and shall ensure compliance only with regard to those obligations under applicable data protection laws that are specifically directed to processors and shall act according to Your lawful instructions. ABB's personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. ABB may, and You agree that You will not withhold or delay Your consent if needed, to any changes to this data protection clause and/or to any additional data processing or data protection agreements which in the reasonable opinion of ABB are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines from any competent supervisory authority, and their application to the services provided by ABB from time to time.

13.5 Subcontracting. Subject to mandatory applicable Laws, ABB shall be permitted to subcontract or delegate in any manner any or all of the performance of its obligations under the Agreement to any Affiliate, contractor or any other third party service provider without requiring Your prior written consent.

13.6 ABB reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement. Such updates, revisions, supplements and other modifications will be effective immediately upon the earlier of (i) notification to You or (ii) publication on www.abb.com/smartsensor. Your continued use of Services and/or Software will be deemed to constitute Your acceptance of such updates, revisions, supplements and other modifications. If you do not agree to any such updates, revisions, supplements and other modifications, please discontinue using the Services and uninstall the Software.

13.7 Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section shall not affect the validity and enforceability of the rest of this Agreement.

13.8 The Software and any accompanying documentation has been developed at private expense and are deemed to be a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication, and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government users license the Software with only those rights set forth herein, including, without limitation, the following: Software may be transferred to the U.S. government only with the prior written consent of an officer of ABB and solely as restricted computer software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defense-related agency).

13.9 Notices. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be (i) delivered by hand or courier or by pre-paid registered first-class post or special delivery at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email or other electronic notification forms available in the used systems (or other electronic notification forms) as well as the email address to which the notices must be delivered to.

13.10 Third parties beneficiaries. No one other than a party to the Agreement shall be a beneficiary of the Agreement or shall have any right to enforce any of its terms, unless specified in the Agreement.

14. Definitions and interpretation

Definitions

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

"**ABB Ability**" 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 You, at the web address notified to the You by ABB (or such other web address as may be notified to You 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;

"**Acceptable Use Policy**" means the ABB Ability acceptable use policy, available at www.abb.com/smartsensor 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;

"Customer Data" means (i) data owned or controlled by You 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 Your behalf; excluding ABB Device Data;

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

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

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

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

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

"Services" means the Smart Sensor services to be supplied or to be made available by ABB to You as described in the Service Description and the Proof of Entitlement;

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

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

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

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

Interpretation

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