

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF ENGINEERING SERVICES

### ABB GTC ENGINEERING SERVICES (2015-1 BRAZIL)

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**DATE:** January 1<sup>st</sup>, 2015

**FOR:** ABB Contractors' purchase of engineering services.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this document, the following terms shall have the following meaning:

**“ABB Contractor”:** the purchasing ABB entity being party to the Subcontract;

**“ABB Contractor Data”:** any data or information acquired by Subcontractor in preparation of or during the fulfilment of the Subcontract, irrespective of whether such data or information relates to ABB Contractor, its Affiliates or their respective customers or suppliers, including but not limited to all technical or commercial know-how, drawings, specifications, inventions, processes or initiatives which are of a confidential nature as well as data or information belonging to ABB Contractor or its Affiliates (i) relating to an identified or identifiable individual or legal entity or any other entity which is subject to applicable data protection or privacy laws and regulations, and/or (ii) being qualified as “personal data”, “personal information”, or “personally identifiable information” within the meaning of the applicable laws;

**“ABB GTC/Engineering Services”:** the present ABB General Terms and Conditions for Purchase of Engineering Services (2015-1 Brazil);

**“Affiliate”:** any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with a Party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital;

**“Client”:** the person, firm or company who has employed or will employ ABB Contractor for the execution of the Project;

**“Effective Date”:** the day when the Subcontract comes into full force and effect as stated in the Subcontract;

**“Intellectual Property (Rights)”:** all proprietary rights in results created intellectually (by thought) and protected by law, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, cop-

rights (regarding software source codes, Subcontractor Documentation, data, reports, tapes and other copyrightable material) and respective applications, renewals, extensions, restorations, or proprietary rights in results created intellectually (by thought) which are protected by confidentiality, including but not limited to know-how and trade secrets;

**“Main Contract”:** the contract entered into between Client and ABB Contractor in respect of the Project;

**“Order”:** ABB Contractor's purchase order (PO) issued to Subcontractor requesting the provision of Services as specified in the Order, which is subject to the ABB GTC/Engineering Services and the Special Terms and Conditions, as the case may be. An Order can be placed either (i) as an electronic Order, or (ii) as a written Order; in both cases the Order shall contain a reference to the ABB GTC/Engineering Services;

**“Party”:** either ABB Contractor or Subcontractor, collectively referred to as “Parties”;

**“Project”:** the project to be executed by ABB Contractor under the Main Contract;

**“Schedule”:** the time for completion of the Services as specified in the Subcontract;

**“Services”:** the engineering services to be provided, including any equipment and Work Products to be delivered, by Subcontractor and all other undertakings, obligations and responsibilities of Subcontractor specified in the Subcontract;

**“Site”:** the location where Subcontractor shall provide the Services;

**“Subcontract”:** a written contract, comprising of:

- Subcontract Execution Document,
- Special Terms and Conditions,
- ABB GTC/Engineering Services,
- Annexes,

and/or the Order, which is accepted by Subcontractor (either expressly by written statement or impliedly by fulfilling the Subcontract in whole or in part);

“**Subcontractor**”: the party of the Subcontract responsible for providing the Services;

“**Subcontract Price**”: the price to be paid by ABB Contractor to Subcontractor as specified in the Subcontract;

“**Variation Order**”: a change to the Subcontract such as to alter the Schedule, and to amend, to omit, to add to, or otherwise to change the Services or any parts thereof;

“**Work Product**”: means all materials, documents, software or other items which are the result of the Services provided by Subcontractor in any form or media, including without limitation to data, diagrams, reports, specifications (including drafts).

1.2 Unless otherwise specified in the present ABB GTC/Engineering Services or the Subcontract:

1.2.1 References to Clauses are to Clauses of the ABB GTC/Engineering Services;

1.2.2 Headings to Clauses are for convenience only and do not affect the interpretation of the ABB GTC/Engineering Services;

1.2.3 The use of the singular includes the plural and vice versa.

1.3 Capitalized terms used in the ABB GTC/Engineering Services and the Subcontract shall have the meaning and shall be interpreted in the way described under Clause 1.1 above or as otherwise expressly defined in the ABB GTC/Engineering Services, or the Subcontract.

## 2. APPLICATION OF TERMS

2.1 The Subcontract, including the ABB GTC/Engineering Services, shall be the exclusive terms and conditions upon which ABB Contractor is willing to deal with Subcontractor, and the terms of the Subcontract, including the ABB GTC/Engineering Services, shall govern the contractual relationship between ABB Contractor and Subcontractor.

2.2 No terms or conditions endorsed upon, delivered with or contained in Subcontractor’s quotations, acknowledgements or acceptances, specifications or similar documents will form part of the Subcontract, and Subcontractor waives any right which it otherwise might have to rely on such other terms or conditions.

2.3 Any amendment to the Subcontract or deviations from the provisions of the Subcontract shall have no effect unless expressly agreed in writing by the Parties.

## 3. SUBCONTRACTOR’S RESPONSIBILITIES

3.1 Subcontractor shall provide the Services (including Work Products):

3.1.1 in accordance with the applicable laws and regulations;

3.1.2 in accordance with the quality standards stated under Clause 11.1 and further specified in the Subcontract;

3.1.3 free from defects and from any rights of third parties;

3.1.4 on the dates specified in the Schedule;

3.1.5 in the quantity specified in the Subcontract; and

3.1.6 in accordance with ABB Contractor’s instructions which may be issued from time to time; and

3.1.7 by skilled, experienced and competent engineers, foremen and labour, hired in numbers necessary for the proper and timely provision of the Services.

3.2 Subcontractor shall not substitute or modify any of the Services without ABB Contractor’s prior written approval.

3.3 Subcontractor shall access the Site only with ABB Contractor’s prior written approval. ABB Contractor shall grant Subcontractor access to the respective portions of the Site (as may be required in accordance with the Schedule) to enable Subcontractor to perform its obligations under the Subcontract.

3.4 Subcontractor shall co-operate with ABB Contractor’s request in scheduling and providing the Services to avoid conflict or interference with work provided by other contractors and third parties at Site.

3.5 Subcontractor shall in a timely manner obtain and pay for all permits, licenses, visas and approvals necessary to allow its personnel to execute the Services in accordance with the Schedule. Personnel shall comply with particular country specific travel safety instructions and/or restrictions as provided by ABB Contractor. Subcontractor shall employ and provide sufficient number of competent and experienced personnel for the execution of the Services. Upon ABB Contractor’s request Subcontractor shall remove forthwith from the Site any person who, in the opinion of ABB Contractor, misconducts or is incompetent or negligent. Any person so removed shall be replaced within fifteen (15) calendar days by a competent substitute. All costs relating to such removal shall be borne by Subcontractor. Subcontractor shall employ only persons free from contagious diseases. Subcontractor shall, if requested by ABB Contractor, perform medical examination of his employees and provide ABB Contractor with the results of such examination, unless such provision would violate applicable laws.

3.6 Subcontractor shall satisfy itself as to the specifics of the Site, and all aspects thereof insofar as they affect the execution of the Services. Subcontractor shall also satisfy itself as to the means of access to the Site, the accommodation which may be required, the extent and nature of work and materials necessary for execution and completion of the Services, and whether Subcontractor has reasonably considered all such aspects in the Subcontract Price.

3.7 Subcontractor shall be responsible for any activities performed by its employees in relation to the Subcontract, and in particular the following shall apply:

3.7.1 Subcontractor assumes full and exclusive responsibility for any accident or occupational disease occurred to its employees in relation to the performance of the Subcontract.

3.7.2 It is expressly agreed that the Subcontract does not imply any employment relationship between ABB Contractor and Subcontractor, or between ABB Contractor and Subcontractor’s employees assigned to the execution of the Subcontract. ABB Contractor shall remain free of any direct or indirect responsibility or liability for labour, social security or taxes with respect to Subcontractor and its employees assigned to the performance of the Subcontract.

3.7.3 Subcontractor shall hire or subcontract in its own name all employees required to perform effectively the Subcontract, who shall under no circumstances act as ABB Contractor’s employees.

3.7.4 Subcontractor shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and – unless caused by ABB Contractor’s gross negligence or intentional act – hold ABB Contractor entirely safe and harmless from such claims and/or lawsuits. Subcontractor undertakes to voluntarily appear in court, recognizing its status as sole and exclusive employer, and to provide ABB Contractor with any and all requested documentation necessary to ensure proper legal defence of ABB Contractor in court.

3.7.5 ABB Contractor is authorized to make any payments due to Subcontractor’s employees performing the Subcontract, in order to avoid lawsuits. Such payments may be made through withholding Subcontractor’s credits, through offsetting or in any other way. Subcontractor shall provide any support requested by ABB Contractor with regard to such payments and indemnify ABB Contractor for any payments made.

## 4. HEALTH, SAFETY AND ENVIRONMENT (HSE)

4.1 Subcontractor shall comply and ensure compliance by any of its employees and subcontractors with all applicable laws relating to HSE throughout the performance of the Subcontract.

4.2 Subcontractor shall comply with (i) ABB Contractor’s HSE instructions for the Site and ABB’s Code of Practice for Safe Working (as referred to in the Special Terms and Conditions), (ii) Client’s instructions concerning HSE at Site and (iii) applicable industry standards and good engineering practice.

4.3 Subcontractor shall ensure that all its personnel, and its subcontractors' personnel, working on Site shall have received relevant training and induction before being allowed to work on Site. Subcontractor shall immediately remove from Site any person who, in ABB Contractor's opinion, fails to comply with the provisions of the relevant legislation, regulations and rules as appropriate or such other HSE legislation, which from time to time may be in force.

4.4 Subcontractor shall be solely responsible for the health and safety of all its employees and subcontractors at Site and shall immediately advise ABB Contractor and the relevant authority, if so required, of the occurrence of any accident, incident or near-miss on or about the Site or otherwise in connection with the provision of the Services. Within twenty four (24) hours after the occurrence of any such accident, incident or near-miss, Subcontractor shall furnish ABB Contractor with a written report, which shall be followed within fourteen (14) calendar days by a final report. Subcontractor shall also provide such a report to the appropriate authority when required. This procedure shall not relieve Subcontractor from the full responsibility to protect persons and property, and from its liability for damages.

## 5. VARIATION ORDERS

ABB Contractor may issue, in the standard form provided in the Annexes, Variation Orders to Subcontractor to alter the Schedule, to amend, omit, add to, or otherwise change the Services or any parts thereof. Subcontractor shall carry out such Variation Orders only upon receipt of written Variation Order and continue to be bound by the provisions of the Subcontract. The value of each Variation Order shall then be added to or deducted from the Subcontract Price, as appropriate; agreed unit prices shall continue to apply. The Variation Order shall, as the case may be, express the amount of time by virtue of which the Schedule shall be shortened or extended. Subcontractor shall not postpone or delay the performance of a Variation Order on the grounds of dispute, or that it is subject to acceptance by Subcontractor, or agreeing to the value amount, and/or time extension to Schedule.

## 6. PROVISION OF THE SERVICES

6.1 Subcontractor shall provide the Services and meet the Schedule both as specified in the Subcontract. Partial performance is not accepted unless confirmed or requested by ABB Contractor in writing.

6.2 Subcontractor shall submit for ABB Contractor's approval a detailed execution plan (including agreed milestones as specified in the Subcontract) for the performance of the Subcontract and shall assist ABB Contractor with regard to the scheduling and planning process, and cooperate with ABB Contractor in all respects of the Subcontract scheduling and planning.

6.3 Unless requested otherwise, Subcontractor shall at least monthly in the form requested by ABB Contractor, report the status of the provision of the Services. Subcontractor shall anticipate that the Services may be interfered with or incidentally delayed from time to time due to concurrent performance of work by others. The report shall be provided to ABB Contractor within five (5) calendar days from the end of the month covered by the report. If the provision of the Services or any part thereof is behind the Schedule, Subcontractor shall submit in writing a recovery plan specifying its activities for reaching compliance with the Schedule. Upon ABB Contractor's request, Subcontractor shall provide ABB Contractor at any time with all information regarding the provision of the Services. ABB Contractor shall have the right to withhold payments under the Subcontract if Subcontractor fails to submit any of the reports.

6.4 Subcontractor must indicate latest at the time of acceptance of the Subcontract the customs tariff numbers of the country of consignment and the countries of origin for all Services. For controlled Services, the relevant national export control numbers must be indicated and, if the Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic In Arms Regulations (ITAR) must be specified. Proofs of preferential origin as well as conformity declarations and marks of

the country of consignment or destination are to be submitted without being requested; certificates of origin upon request.

## 7. TIME FOR PROVIDING THE SERVICES, DELAY

7.1 If Subcontractor does not comply with the Schedule, ABB Contractor reserves the right to instruct Subcontractor in writing to expedite its performance under the Subcontract. Subcontractor shall take such measures (in accordance with ABB Contractor's instructions) as required for acceleration of progress so as to complete the provision of the Services, or the relevant part thereof, on time. Subcontractor shall not be entitled to any additional payment for taking such steps to accelerate the work to meet the Schedule. Subcontractor shall notify ABB Contractor in writing within twenty four (24) hours of the occurrence and cause of any delay and also to make every effort to minimise or mitigate the costs or the consequences of such delay.

7.2 If Subcontractor fails to provide the Services in accordance with the Schedule, Subcontractor shall pay liquidated damages to ABB Contractor for this default. The liquidated damages shall be payable at a rate specified in the Subcontract. Subcontractor shall pay the liquidated damages upon written demand or upon receipt of an invoice from ABB Contractor. The amount of liquidated damages may be deducted by ABB Contractor from any payments due or which may become due to Subcontractor without prejudice to any other recovery method. The payment of such liquidated damages shall not relieve Subcontractor from any of its obligations and liabilities under the Subcontract.

7.3 If the delay in providing the Services is such that ABB Contractor is entitled to maximum liquidated damages and if the Services are still not provided, ABB Contractor may in writing demand provision of the Services within a final reasonable period which shall not be less than one week.

7.4 If Subcontractor does not provide the Services within such final period and this is not due to any circumstance for which ABB Contractor is responsible, then ABB Contractor reserves the right to:

7.4.1 terminate the Subcontract pursuant to Clause 16 (Termination);

7.4.2 refuse any subsequent provision of the Services which Subcontractor attempts to make;

7.4.3 recover from Subcontractor any costs or expenditure incurred by ABB Contractor in obtaining the services in substitution from another Subcontractor;

7.4.4 claim in addition to liquidated damages under Clause 7 for any additional costs, losses or damages incurred whatsoever by ABB Contractor which are reasonably attributable to Subcontractor's failure to comply with the Subcontract.

7.5 ABB Contractor shall also have the right to terminate the Subcontract by notice in writing to the Subcontractor, if it is clear from the circumstances that there will occur a delay in providing the Services which under Clause 7 would entitle ABB Contractor to maximum liquidated damages.

## 8. MONITORING AND ACCEPTANCE OF THE SERVICES

8.1 Subcontractor shall allow ABB Contractor and/or its authorised representatives to monitor the provision of the Services at any time.

8.2 Notwithstanding any monitoring, Subcontractor shall remain fully responsible for the Services' compliance with the Order. This applies whether or not ABB Contractor has exercised its right of monitoring and shall not limit Subcontractor's obligations under the Order. For the avoidance of doubt, monitoring of Services by ABB Contractor Customer and/or its authorised representatives shall in no event exempt Subcontractor from or limit Subcontractor's warranties or liability in any way.

8.3 ABB Contractor shall not be deemed to have accepted any Services until it has had a reasonable time to review them following completion or, in the case of a defective performance, until a reasonable time after such defective performance has become apparent. Such reasonable time period shall be determined by the specifics of the Services, the

defective performance and the circumstances of the provision of the Services.

## 9. SUSPENSION OF THE SUBCONTRACT

9.1 ABB Contractor shall have the right to suspend performance of the Subcontract at any time for convenience for a period of 90 calendar days in the aggregate without any compensation to Subcontractor. In case the suspension extends beyond 90 calendar days, Subcontractor shall be compensated by ABB Contractor for the direct and reasonable incurred costs of such suspension. The agreed time for performance of the Subcontract or the concerned part thereof shall be extended by the time period of the suspension.

9.2 If the suspension of the Subcontract is caused or requested by Client, Subcontractor shall be entitled only to a compensation as specified in the Subcontract and to the extent paid by Client.

9.3 Subcontractor shall suspend the performance of the Subcontract or any part thereof, including postponing the provision of the Services, for such times and in such manner as ABB Contractor considers necessary (i) for proper HSE or execution of the Subcontract, or (ii) due to any default by Subcontractor, in which case Subcontractor shall bear all costs and be liable for the delay arising from such suspension.

9.4 Subcontractor shall have no right to suspend performance of the Subcontract.

## 10. FORCE MAJEURE

10.1 Neither Party shall be liable for any delay in performing or for failure to perform its obligations under the Subcontract if the delay or failure results from an event of "Force Majeure", provided that the affected Party serves notice to the other Party within five (5) calendar days from occurrence of the respective event of Force Majeure.

10.2 "Force Majeure" means the occurrence of any event which is unforeseeable and beyond the control of the Party affected that results in the failure or delay by such Party of some performance under the Subcontract, in full or part. Each Party shall use its reasonable endeavours to minimise the effects of any event of Force Majeure.

## 11. WARRANTY

11.1 Subcontractor warrants that the Services (including Work Products):

11.1.1 comply with the Subcontract, including but not limited to any specification as stipulated in the Subcontract, and according to the highest standards and in the manner and method recognized by good engineering practices;

11.1.2 are fit for the particular purpose of the Project, whether expressly or impliedly made known to Subcontractor in the Subcontract;

11.1.3 are free from defects; and

11.1.4 comply with Clauses 3.1.1 and 17 (Compliance, Integrity).

11.2 The warranty period shall be thirty six (36) months from acceptance of the Services.

11.3 In the event of a breach of warranty, the entire warranty period of Clause 11.2 shall be restarted upon Client's and/or ABB Contractor's written confirmation the Services are no longer defective.

11.4 In case of non-compliance with the warranty provided under this Clause 11, ABB Contractor shall be entitled to enforce one or more of the following remedies at Subcontractor's own expense and risk:

11.4.1 to give Subcontractor the opportunity to carry out any additional work necessary to ensure that the terms and conditions of the Subcontract are fulfilled within twenty (20) calendar days from ABB Contractor's notice;

11.4.2 to carry out (or to instruct a third party to carry out) any additional work necessary to make the Services comply with the Subcontract;

11.4.3 to obtain from Subcontractor prompt replacement of the non-compliant Services by other Services conforming with the Subcontract;

11.4.4 to refuse to accept any further provision of the Services, but without exemption from Subcontractor's liability for the defective Services;

11.4.5 to claim such costs and damages as may have been sustained by ABB Contractor as a result of Subcontractor's breach or failure;

11.4.6 to terminate the Subcontract in accordance with Clause 16.1.

11.5 The rights and remedies available to ABB Contractor and contained in the Subcontract are cumulative and are not exclusive of any rights or remedies available under warranty, at law or in equity.

## 12. PRICES, PAYMENT TERMS, INVOICING

12.1 The Subcontract Price shall be deemed to cover the fulfilment by Subcontractor of all its obligations under the Subcontract and include the costs of the Services specified and the costs for everything, including but not limited to supervision, fees, taxes, duties, transportation, profit, overhead, licences, permits, and travel, whether indicated or described or not, which is necessary for the provision of the Services.

12.2 The prices stipulated in the Subcontract are fixed unless otherwise provided in a Variation Order.

12.3 The payment terms and the applicable procedures shall be specified in the Subcontract.

12.4 Subcontractor shall submit invoices complying with Subcontractor's and ABB Contractor's applicable local mandatory law, generally accepted accounting principles and ABB Contractor requirements set forth in the Subcontract, which shall contain the following minimum information: Subcontractor name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Subcontractor number (same as stated in the Order); address of ABB Contractor; quantity; specification of Services supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable.

12.5 Invoices shall be accompanied by interim release of liens or privileges and shall be issued to ABB Contractor as stated in the Subcontract. Invoices shall be sent to the invoice address specified in the Subcontract. The submission of an invoice shall be deemed to be a confirmation by Subcontractor that it has no additional claims, except as may already have been submitted in writing, for anything that has occurred up to and including the last day of the period covered by such invoice.

12.6 Subcontractor shall make payment in due time for all equipment and labour used in, or in connection with, the performance of the Subcontract in order to avoid the imposition of any lien or privilege against any portion of the Services and/or the Project. In the event of the imposition of any such lien or privilege by any person who has supplied any such equipment or labour, or by any other person claiming by, through or under Subcontractor, Subcontractor shall, at its own expense, promptly take any and all action as may be necessary to cause such lien or privilege to be released or discharged. Subcontractor shall furnish satisfactory evidence, when requested by ABB Contractor, to verify compliance with the above. In the alternative, ABB Contractor may pay to release the lien and withhold such amounts from Subcontractor.

12.7 ABB Contractor shall have the right to withhold the whole or part of any payment to Subcontractor which, in the opinion of ABB Contractor, is necessary for protection of ABB Contractor from loss on account of claims against Subcontractor, or failure by Subcontractor to make due payments to its sub-suppliers or employees, or not having paid taxes, dues and social insurance contributions. ABB Contractor reserves the right to set off such amount owed to Subcontractor, or withhold payment for Services not provided in accordance with the Subcontract. However, Subcontractor shall not be entitled to set off any amounts owed by ABB Contractor to Subcontractor, unless prior approval has been granted by ABB Contractor in writing.

### 13. INTELLECTUAL PROPERTY

13.1 Subcontractor assigns herewith to ABB Contractor full ownership rights in and to any Intellectual Property in the Work Products arising from the Services for the full duration of such rights, wherever in the world enforceable. Subcontractor further agrees to execute, upon ABB Contractor's request and at its cost, all further documents and assignments and do all such further things as may be necessary to perfect ABB Contractor's ownership title to the Intellectual Property or to register ABB Contractor as owner of the Intellectual Property with any registry, including but not limited to governmental registration authorities or private registration organisations.

13.2 The Intellectual Property Rights in any Work Products created by or licensed to Subcontractor prior to the Effective Date or outside of the Subcontract, and any subsequent modifications to the same ("Pre-Existing Works") will remain vested in Subcontractor or the respective third party owner. To the extent that Pre-Existing Works are embedded in any Work Products delivered by Subcontractor, ABB Contractor and its Affiliates shall have a worldwide, irrevocable, perpetual, transferrable, non-exclusive, royalty-free licence with rights to sublicense to use the Pre-Existing Works as part of such Work Products, including the right to further improve, develop, market, distribute, sub-license, exploit or otherwise use the Work Products containing such Pre-Existing Works.

### 14. LIABILITY AND INDEMNITY

14.1 Subcontractor shall indemnify ABB Contractor against all liabilities, losses, damages, injuries, cost, expenses, actions, suits, claims, demands, charges or expenses whatsoever arising in connection with death or injury suffered by persons employed by Subcontractor or any of its sub-suppliers.

14.2 Without prejudice to applicable mandatory law or unless otherwise agreed between the Parties, Subcontractor shall compensate/indemnify ABB Contractor and Client for all liabilities, losses, damages, injuries, cost, actions, suits, claims, demands, charges or expenses whatsoever arising out of or in connection with the performance of the Subcontract and/or the Services (i) for Subcontractor's breaches of the Subcontract, and (ii) for any claim made by a third party (including employees of Subcontractor) against ABB Contractor in connection with the Services and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by or arises from acts or omissions of Subcontractor and/or from the Services.

14.3 In the event of infringements of third party Intellectual Property Rights caused by or related to the Services and/or the Work Products:

14.3.1 Subcontractor shall reimburse ABB Contractor and Client for any liabilities, losses, damages, injuries, costs and expenses (including without limitation to any direct, indirect, or consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of such infringement. This obligation does not limit any further compensation rights of ABB Contractor or Client;

14.3.2 Without prejudice to ABB Contractor's right under the Subcontract, Subcontractor shall, upon notification from ABB Contractor at Subcontractor's cost (i) procure for ABB Contractor the right to continue using the Work Products; (ii) modify the Work Products so that they cease to be infringing; or (iii) replace the Work Products by non-infringing Work Products.

14.4 Subcontractor shall be responsible for the acts, omissions, defaults, negligence or obligations of any of its sub-suppliers, its agents, servants or workmen as fully as if they were the acts, omissions, defaults, negligence or obligations of Subcontractor.

14.5 ABB Contractor reserves the right to set off any indemnity/liability claims under the Subcontract against any amounts owed to Subcontractor.

14.6 For any indemnity obligations, Subcontractor shall defend ABB Contractor at its cost against any third party claims upon ABB Contractor's request.

### 15. INSURANCE

15.1 Subcontractor shall maintain as required in the Special Terms and Conditions and at its expense with reputable and financially sound insurers acceptable to ABB Contractor the following type of insurances: professional liability insurance, public liability insurance, statutory worker's compensation/employer's liability insurance.

15.2 All insurance policies shall be endorsed to include ABB Contractor as additional insured and provide a waiver of insurer's right of subrogation in favour of ABB Contractor. Subcontractor shall no later than Effective Date provide to ABB Contractor certificates of insurance covering such policies as well as confirmation that premiums have been paid. Subcontractor shall also provide upon ABB Contractor's request copies of such insurance policies.

15.3 In case of loss and damage related to the covers in Clause 15, any and all deductibles shall be for Subcontractor's account.

15.4 Subcontractor shall furnish notice to ABB Contractor within thirty (30) calendar days of any cancellation or non-renewal or material change to the terms of any insurance.

15.5 All Subcontractor policies (except worker's compensation/employer's liability) shall be considered primary insurance and any insurance carried by ABB Contractor shall not be called upon by Subcontractor's insurers to contribute or participate on the basis of contributing, concurrent, double insurance or otherwise.

15.6 Should Subcontractor fail to provide insurance certificates and maintain insurance according to Clause 15, ABB Contractor shall have the right to procure such insurance cover at the sole expense of Subcontractor.

15.7 Any compensation received by Subcontractor shall be applied towards the replacement and/or restoration of the Services.

15.8 Nothing contained in this Clause 15 shall relieve Subcontractor of any liability under the Subcontract or any of its obligations to make good any loss or damage. The insured amounts can neither be considered nor construed as a limitation of liability.

### 16. TERMINATION

16.1 Without prejudice to any other rights or remedies to which ABB Contractor may be entitled, ABB Contractor may terminate the Subcontract in the event that:

16.1.1 Subcontractor commits a breach of its obligations under the Subcontract, and fails to remedy that breach within ten (10) calendar days (unless otherwise stated under the Subcontract) of receiving written notice from ABB Contractor requiring its remedy; or

16.1.2 subject to Clause 7.3, the maximum amount of liquidated damages payable by Subcontractor is reached, or, subject to Clause 7.5, it is clear from the circumstances that a delay will occur in providing the Services which would entitle ABB Contractor to maximum liquidated damages; or

16.1.3 Subcontractor fails to provide, in response to demand by ABB Contractor, adequate assurance of Subcontractor's future performance, whereby ABB Contractor shall be the sole judge of the adequacy of said assurance; or

16.1.4 there is any adverse change in the position, financial or otherwise, of Subcontractor, whereby and without limitation:

a) Subcontractor becomes insolvent; or

b) an order is made for the winding up of Subcontractor; or

c) documents are filed with a court of competent jurisdiction for the appointment of an administrator of Subcontractor; or

d) Subcontractor makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

16.1.5 Subcontractor ceases, or threatens to cease, performing a substantial portion of its business, whether voluntarily or involuntarily, that has or will have an adverse effect on Subcontractor's ability to perform its obligations under the Subcontract; or

16.1.6 any representation or warranty made by Subcontractor in the Subcontract is not true, or inaccurate and if such lack of truth or accuracy would reasonably be expected to result in an adverse impact on ABB Contractor, unless cured within ten (10) calendar days after the date of written notice of such lack; or

16.1.7 there is a change of control of Subcontractor.

16.2 Upon termination according to Clause 16.1, ABB Contractor shall be entitled to reclaim all sums which ABB Contractor has paid to Subcontractor under the Subcontract and to claim compensation for any costs, losses or damages incurred whatsoever in connection with such termination.

16.3 Upon termination according to Clause 16.1, ABB Contractor may complete the Subcontract or employ other suppliers to complete the Subcontract. Any such work shall be performed at Subcontractor's risk and expense.

16.4 Upon termination according to Clause 16.1, ABB Contractor shall have the right to enter into, and Subcontractor shall undertake to assign, any agreements with Subcontractor's sub-suppliers. Any costs related to such assignments of agreements with sub-suppliers from Subcontractor to ABB Contractor shall be for the account of Subcontractor.

16.5 ABB Contractor has the right to terminate the Subcontract or parts of the Subcontract without cause at any time with immediate effect at its sole discretion by written notice to Subcontractor. Upon receipt of such notice Subcontractor shall stop all provision of the Services and performance of the Subcontract unless otherwise directed by ABB Contractor. ABB Contractor shall pay Subcontractor for the Services provided. Subcontractor shall have no further claim for compensation due to such termination. Claims for compensation of loss of anticipated profits are excluded.

16.6 In case the Main Contract is terminated for reasons other than Subcontractor's performance and if ABB Contractor, as a result thereof, terminates the Subcontract, compensation to be paid to Subcontractor shall correspond to the compensation paid by Client to ABB Contractor for the respective part of the Subcontract.

16.7 On termination of the Subcontract, Subcontractor shall immediately deliver to ABB Contractor all copies of information or data provided by ABB Contractor to Subcontractor for the purposes of the Subcontract. Subcontractor shall certify to ABB Contractor that Subcontractor has not retained any copies of such information or data.

16.8 On termination of the Subcontract, Subcontractor shall immediately deliver to ABB Contractor all specifications, programs and other information, data, and Subcontractor Documentation regarding the Services which exist in any form whatsoever at the date of such termination, whether or not then complete.

16.9 Termination of the Subcontract, however arising, shall not affect or prejudice the accrued rights of the Parties as at termination, or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## 17. COMPLIANCE, INTEGRITY

17.1 Subcontractor shall provide the Services and/or Work Products in compliance with all relevant legislation, laws, rules, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Subcontractor shall be in compliance with the generally accepted best practice of the relevant industry.

17.2 Subcontractor must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals made available under [www.abb.com](http://www.abb.com) – **Supplying – Material Compliance** or otherwise and shall provide ABB Contractor with respective documents, certificates and statements if requested. Any statement made by Subcontractor to ABB Contractor (whether directly or indirectly, e. g. where applicable via the ABB Sup-

plier Registration and Pre-Qualification System) with regard to materials used for or in connection with the Services and/or Work Products will be deemed to be a representation under the Subcontract.

17.3 Subcontractor represents and warrants that it is knowledgeable with, and is and will remain in full compliance with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, securing all necessary clearance requirements, proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of services, the release or transfer of goods, hardware, software and technology to non U.S. nationals in the U.S., or outside the U.S., the release or transfer of technology and software having U.S. content or derived from U.S. origin software or technology.

17.4 No material or equipment included in or used for the Services and/or Work Products shall originate from any company or country listed in any relevant embargo issued by the authority in the country where the Services and/or Work Products shall be used or an authority otherwise having influence over the equipment and material forming part of the Services and/or Work Products. If any of the Services and/or Work Products are or will be subject to export restrictions, it is Subcontractor's responsibility to promptly inform ABB Contractor in writing of the particulars of such restrictions.

17.5 Both Parties warrant that each will not, directly or indirectly, and that each has no knowledge that the other Party or any third parties will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the Subcontract shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.

17.6 Subcontractor herewith acknowledges and confirms that Subcontractor has received a copy of ABB's Code of Conduct and ABB's Supplier Code of Conduct or has been provided information on how to access both ABB Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Subcontractor is obliged and agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct, including but without limitation to all employment, health, safety and environmental requirements specified therein.

17.7 ABB has established the following reporting channels where Subcontractor and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: [www.abb.com/Integrity](http://www.abb.com/Integrity) – **Reporting Channels**; telephone and mail address: specified on this Web portal.

17.8 Any violation of an obligation contained in this Clause 17 shall be a material breach of the Subcontract. Either Party's material breach shall entitle the other Party to terminate the Subcontract with immediate effect and without prejudice to any further right or remedies under such Subcontract or applicable law.

17.9 Notwithstanding anything to the contrary contained in the Subcontract, Subcontractor shall, without any limitations, indemnify and hold harmless ABB Contractor from and against any liabilities, claim, proceeding, action, fine, loss, cost or damages arising out of or relating to any such violation of the above mentioned obligations and the termination of the Subcontract, or arising from export restrictions concealed by Subcontractor. With respect to export restrictions solely attributable to ABB Contractor's use of the Services and/or Work Products, the now said commitment shall only apply to the extent Subcontractor has knowledge of or reasonably should have been aware of such use.

## 18. ASSIGNMENT AND SUBCONTRACTING

18.1 Subcontractor shall neither novate nor assign, subcontract, transfer, nor encumber the Subcontract nor any parts thereof (including any monetary receivables from ABB Contractor) without prior written approval of ABB Contractor.

18.2 ABB Contractor may at any time assign, novate, encumber, subcontract or deal in any other manner with all or any of its rights or obligations under the Subcontract.

## 19. NOTICES AND COMMUNICATION

Any notice shall (unless otherwise agreed upon) be given in the language of the Subcontract by sending the same by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Subcontract or to such other address as such Party may have notified in writing to the other for such purposes. E-mail and fax notices expressly require written confirmation issued by the receiving Party. Electronic read receipts may not under any circumstances be deemed as confirmation of notice. Electronic signatures shall not be valid, unless expressly agreed in writing by duly authorised representatives of the Parties.

## 20. WAIVERS

Failure to enforce or exercise, at any time or for any period, any term of the applicable ABB GTC/Engineering Services or the Subcontract does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.

## 21. GOVERNING LAW AND DISPUTE SETTLEMENT

21.1 The Subcontract shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) of ABB Contractor's legal registration, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

21.2 For domestic dispute resolution matters, whereby ABB Contractor and Subcontractor are registered in the same country, any dispute or difference arising out of or in connection with the Subcontract, including any question regarding its existence, validity or termination or the legal relationships established by the Subcontract, which cannot be settled amicably or by mediation, shall be submitted to the jurisdiction of the competent courts at the place of ABB Contractor's registration, unless other courts or arbitration are agreed in writing between the Parties.

21.3 For cross border dispute resolution matters, whereby ABB Contractor and Subcontractor are registered in different countries, unless agreed otherwise in writing between the Parties, any dispute or difference arising out of or in connection with the Subcontract, including any question regarding its existence, validity or termination or the legal relationships established by the Subcontract, which cannot be settled amicably or by mediation, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the location where ABB Contractor is registered, unless otherwise agreed in writing. The language of the proceedings and of the award shall be English. The decision of the arbitrators shall be final and binding upon both Parties, and neither Party shall seek recourse to an ordinary state court or any other authority to appeal for revisions of the decision.

## 22. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION

22.1 Subcontractor shall:

22.1.1 Unless otherwise agreed in writing, keep in strict confidence all ABB Contractor Data and any other information concerning ABB Contractor's or its Affiliates' business, its products and/or its technologies which Subcontractor obtains in connection with the Services to be provided (whether before or after acceptance of the Subcontract). Subcontractor shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the provision of the Services to ABB

Contractor. Subcontractor shall ensure that such employees, agents, subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Subcontractor and shall be liable for any unauthorized disclosures;

22.1.2 Apply appropriate safeguards, adequate to the type of ABB Contractor Data to be protected, against the unauthorised access or disclosure of ABB Contractor Data and protect such ABB Contractor Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. Subcontractor may disclose confidential information to "Permitted Additional Recipients" (which means Subcontractor's authorised representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients sign with Subcontractor a confidentiality agreement with terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;

22.1.3 Not (i) use ABB Contractor Data for any other purposes than for providing the Services, or (ii) reproduce the ABB Contractor Data in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose ABB Contractor Data to any third party, except to Permitted Additional Recipients or with the prior written consent of ABB Contractor;

22.1.4 Install and update at its own costs required adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Services;

22.1.5 Inform ABB Contractor without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any ABB Contractor Data.

22.2 Subcontractor agrees that ABB Contractor shall be allowed to provide any information received from Subcontractor to any Affiliate of ABB Contractor. Subcontractor shall obtain in advance all necessary approval or consent for ABB Contractor to provide such information to ABB Contractor's Affiliates if such information is confidential for any reason or subject to applicable data protection or privacy laws and regulations.

22.3 In case the type of ABB Contractor Data affected is particularly sensitive and therefore, according to ABB Contractor's opinion, requires a separate confidentiality and non-disclosure agreement, Subcontractor agrees to enter into such agreement. The same applies with regard to data privacy topics which are not covered by this Clause 22 and which may require a separate data processing agreement according to applicable laws and regulations.

22.4 The obligations under this Clause 22 exist for an indefinite period of time and therefore shall survive the expiration or termination of the Subcontract for any reason.

## 23. SEVERABILITY

The invalidity or unenforceability of any term or of any right arising pursuant to the Subcontract shall not adversely affect the validity or enforceability of the remaining terms and rights. The respective terms or rights arising pursuant to the Subcontract shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced by a provision with a similar economic effect to that of the deleted provision if this can be achieved by another provision.

## 24. SURVIVAL

24.1 Provisions of the ABB GTC/Engineering Services which either are expressed to survive the termination of the Subcontract or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

24.2 The obligations set forth in Clauses 11 (Warranty), 14 (Liability and Indemnity) and 22 (Confidentiality, Data Security, Data Protection) shall survive expiration and termination of the Subcontract.

**25. ENTIRETY**

The Subcontract constitutes the entire agreement and understanding between the Parties and replaces any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

**26. RELATIONSHIP OF PARTIES**

The relationship of the Parties is that of independent parties dealing at arm's length and nothing in this Subcontract shall be construed to constitute any kind of an agency or partnership with ABB Contractor or Client, and Subcontractor is not authorised to represent ABB Contractor or Client.

**27. FURTHER ASSURANCES**

The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the Subcontract.

