

# ABB GENERAL TERMS AND CONDITIONS

## ESCROW SERVICES (2018-9)

### 1. BACKGROUND

- (A) ABB has been granted a licence to use the Product which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the Product is the confidential information and intellectual property of Licensor or a third party.
- (C) Licensor acknowledges that in certain circumstances, such information and/or documentation would be required by ABB in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed in escrow with Supplier, so that such information and/or documentation can be released to ABB should certain circumstances arise.

### 2. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply:

#### 2.1 Definitions

**"Affiliate"**: means any entity which directly or indirectly controls, is controlled by, or is under common control with a party, by virtue of a controlling interest of fifty per cent (50 %) or more of the voting rights or the capital, or by means of controlling the constitution of the board and the voting at board meetings;

**"Annex"**: means an annex to the Order, which sets out the Products and other terms as agreed between the parties;

**"Charges"**: means the charges payable for the Services, as set out in Clause 9 and an Order;

**"Conditions"**: means these terms and conditions as amended from time to time in accordance with Clause 17.3;

**"Continuity Purposes"**: means the use of the Material for and on behalf of ABB strictly and solely for the purposes of maintaining, amending and correcting the Product, such use to conform with the terms of the License Agreement and/ or the maintenance agreement.

**"Contract"**: comprises the Order and these Conditions;

**"ABB"**: means the ABB entity which enters into the Order;

**"ABB Group"**: means (i) ABB; (ii) ABB's Affiliates; and (iii) any other ABB entities listed in the Order;

**"Intellectual Property Rights" and "IPR"**: means (a) Patents, copyrights, 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;

**"Know-how"**: means all technical, scientific and other information, inventions, discoveries, trade secrets, knowledge, technology, means, methods, processes, practices, formulae, instructions, skills, techniques, procedures, expressed ideas, technical assistance, designs, drawings, assembly procedures, computer programs, apparatuses, specifications, data, results, safety, manufacturing and quality control data and information (including process designs and protocols), registration dossiers and assay and methodology, in each case, solely to the extent confidential and proprietary and in written, electronic or any other form now known or hereafter developed;

**"License Agreement"**: means the agreement under which ABB was granted a licence to use the Product, irrespective whether it is an on-premise solution or the Software is delivered as "software as a service".

**"Material"** means the Source Code of the Product and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 5 of this Agreement.

**"Maintenance Obligations"**: means the conditions set out under a respective agreement pursuant to which Licensor has agreed to maintain the product.

**"Order"**: means an order for Services entered into between the parties in accordance with Clause 7;

**"Product"** means the software product licensed to ABB under the Licence Agreement in the version as installed at Licensee as indicated in Annex 1 to the Order.

**"Patents"**: means (a) issued patents and utility models, patent and utility model applications, and future patents and utility models issued from any such patent and utility model applications; (b) future patents and utility models issued from a patent and utility model application filed in any country worldwide which claims priority from a patent and utility model or patent and utility model application of (a); and (c) re-issues, confirmations, renewals, extensions, counterparts, divisions, continuations, continuations-in-part, supplemental protection certificates on any patent and utility model or patent and utility model application of (a) or (b);

**"Personal Data"**: means information of an identified or identifiable individual or (where applicable) legal entity or any other data which is subject to applicable data protection laws and regulations;

**"Scheduled Update Date"**: means the dates agreed in an Order at which Licensor, in the event changes to the Product have been made, shall deposit an update to the Material.

**"Services"**: means the escrow services provided by Supplier under the Contract, as set out in an Order;

**"Source Code"** means the computer programming code of the Product in human readable form.

**"Supplier"**: means the supplier of the Services as indicated in the Order;

**"Third Party Provider"**: means any contractor, agent or third party who provides hardware, software or services to any member of the ABB Group;

**"Third Party Material"** means Source Code which is not the confidential information and intellectual property of ABB or the Licensor.

**"VAT"**: means Value Added Tax.

#### 2.2 Interpretation

2.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2.2.2 Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.2.3 In the event of a conflict between these Conditions and any other document incorporated into the Contract, these Conditions shall take precedence except that those terms of the Order that specifically and

explicitly amend specific Clauses of these Conditions, shall take precedence over these Conditions.

### 3. SUPPLIERS DUTIES

#### 3.1 Supplier shall

3.1.1 provide the Services, in accordance with these Conditions and the applicable Order, and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

3.1.2 co-operate with ABB in all matters relating to the Services; and

3.1.3 use reasonable skill and care in the performance of the Services

3.1.4 before the date on which the Services are to start, obtain, and at all times maintain during the term of the Contract, all necessary licences and consents and comply with all relevant Legislation in relation to the Services and the performance of its obligations under the Contract.

3.1.5 Supplier shall comply with any additional responsibilities and/or obligations as set out in the Order.

3.1.6 at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;

3.1.7 inform ABB and Licensor in writing of the receipt of any deposit of the Material; and

3.1.8 notify ABB and Licensor in writing if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

3.2 In the event of failure by Licensor to deposit any Material with Supplier, Supplier shall not be responsible for procuring such deposit but in the case of deposits made pursuant to clauses 5.1.1 and 5.1.5, shall remind Licensor of such deposit and, notify ABB of Licensor's failure to deposit any Material.

3.3 Supplier has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

### 4. ABB'S DUTIES

ABB shall notify Supplier of any change to the Product that necessitates a replacement deposit of the Material.

4.1 In the event that the Material is released under clause 12, ABB shall:

4.1.1 keep the Material confidential at all times;

4.1.2 use the Material only for the Continuity Purposes;

4.1.3 not disclose the Material to any person save such of ABB's employees or contractors who need to know the same for the Continuity Purposes.

4.1.4 In the event that Material is disclosed to its employees or contractors, ABB shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 4;

4.1.5 hold all media containing the Material in a safe and secure environment when not in use; and

4.1.6 forthwith destroy the Material should ABB cease to be entitled to use the Product under the terms of the Licence Agreement.

4.2 In the event that the Material is released under clause 12, it shall be the responsibility of ABB to obtain the necessary licences to utilise the object code of any third party material deposited by Licensor pursuant to clause 5.1.7.

### 5. LICENSOR'S DUTIES

5.1 Licensor shall:

5.1.1 deliver a copy of the Material to Supplier within 30 days of the date of this Agreement;

5.1.2 deliver a further copy of the Material to Supplier at the next Scheduled Update Date after a change to the Product;

5.1.3 ensure that each copy of the Material deposited with Supplier comprises the Source Code of the latest version of the Product;

5.1.4 deliver a replacement copy of the Material to Supplier within 30 days of a notice given to it by Supplier under the provisions of clause 3.1.8;

5.1.5 deliver with each deposit of the Material the following information:

- details of the deposit including the full name of the Product (i.e. the original name together with any new names given to the Product by Licensor), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
- password/encryption details required to access the Material;

5.1.6 deliver with each deposit of the Material the following technical information (where applicable):

- documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
- software design information (e.g. module names and functionality); and

5.1.7 if agreed in a Order, deposit a backup copy of the object code of any third party software Product required to access, install, build or compile or otherwise use the Material.

5.2 Licensor shall at the time of each deposit of the Material:

5.2.1 own the Intellectual Property Rights in the Material other than any third party object code referred to in clause 5.1.7 or any Third Party Material;

5.2.2 evidence by a signed letter of authorisation provided by third party, that in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that ABB has the express authority of such third party ABB(s) to deposit the Third Party Material under this Agreement as evidenced;

5.2.3 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);

5.2.4 the Material deposited under clause 5.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 5.1.7) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Product; and

5.2.5 in respect of any third party object code that Licensor, at its option, or, at the request of ABB, deposits with Supplier in conjunction with the Material pursuant to clause 5.1.7, it has the full right and authority to do so.

### 6. TERM

6.1 Supplier shall provide the Services from the date specified in the relevant Order.

6.2 The Contract shall continue for a period as specified in the relevant Order, unless it is terminated in accordance with Clause 15.

### 7. ORDER PROCESS

7.1 The Order shall reference and incorporate these Conditions and be deemed to be accepted once Supplier, Licensor and ABB having issued written acceptance of the Order (including any electronic signature or acceptance of the Order); at which point and on which date the Contract shall come into existence.

7.2 These Conditions apply to the Contract to the exclusion of any other terms that Supplier or Licensor seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 8. WARRANTIES

8.1 Supplier warrants to each member of the ABB Group and Licensor that:

8.1.1 Supplier will perform the Services with reasonable care and skill and in accordance with best commercial practices and standards in the industry for similar services;

8.1.2 the Services will conform with all descriptions as set out herein and in the Order; and

8.1.3 the Services will be provided in accordance with all applicable legislation, and Supplier will inform ABB as soon as it becomes aware of any changes in that legislation where it effects Supplier's ability to perform the Services.

8.2 Without prejudice to any other right or remedy ABB may have, in the event that Supplier commits any breach of a warranty set out in Clause 8.1 it shall within a reasonable time specified by ABB, on receiving notice from ABB, re-perform the deficient Service. If Supplier fails or is unable to do so, ABB shall be entitled to terminate the relevant Service and/or the Contract as a whole for material breach and claim damages in accordance with Clause 14.

8.3 The provisions of this Clause 8 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by Supplier.

## 9. BILLING AND PAYMENT

9.1 In consideration for the provision of the Services, Licensor shall pay to Supplier the Charges in accordance with this Clause 9.

9.2 Supplier shall invoice Licensor for the Charges in accordance with the relevant Order. Invoices shall comply with applicable laws, generally accepted accounting principles and any specific requirements (as notified to Supplier from time to time), and contain the following minimum information: Supplier name, address and reference person including contact details; invoice date; invoice number; Order number and Supplier number; address of invoiced party; quantity; specification of the Services; charges (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms as agreed.

9.3 Invoices must be sent to the billing address specified in the Order.

9.4 Expenses will only be reimbursed at cost and to the extent agreed in writing.

9.5 Payment of undisputed invoices shall be made within ninety (90) days from receipt of the invoice.

9.6 If Licensor fails to make any undisputed payment by the due date for payment, then, without limiting the other party's remedies under Clause 14, if the undisputed payment remains outstanding thirty (30) days from Licensor's receipt of a written reminder by the invoicing party (such reminder not to be sent before the due date for payment) Licensor shall pay interest on the overdue undisputed amount at the rate of four per cent (4 %) per annum.

9.7 In relation to payments disputed in good faith, interest under Clause 9.6 is payable only after the dispute is resolved, on sums found or agreed to be due.

## 10. IPR OWNERSHIP

10.1 The parties acknowledge and agree that at all times Materials shall be the property of Licensor. Nothing in the Contract shall transfer any right or title in the Materials to Supplier or ABB.

## 11. CONFIDENTIALITY and DATA SECURITY

11.1 Each party agrees that it shall not at any time disclose to any person technical or commercial knowhow, specifications, inventions, processes or initiatives or any other information or data which are of a confidential nature and have been disclosed to such party ("**Recipient**") by the other party ("**Discloser**") or its agent and any other confidential information concerning Discloser's business or its products which Recipient may obtain, except as permitted by Clause 12.3. The parties agree that, where Customer is Discloser, all Customer Materials and all information concerning any member of the Customer Group's business or products shall be confidential information.

11.2 Confidential information does not include any particular information that Recipient can reasonably demonstrate:

11.2.1 was in the possession of, or was rightfully known by, Recipient without an obligation to maintain its confidentiality prior to receipt from Discloser;

11.2.2 was or has become generally available to the public other than as a result of disclosure by Recipient or its agents; or

11.2.3 was independently developed by the Recipient without use of or reference to any confidential information of the Discloser.

11.3 The Recipient may disclose the Discloser's confidential information:

11.3.1 to such of its employees, agents or sub-contractors as need to know the same for the purpose of exercising its rights or carrying out its obligations in connection with the Contract. Recipient shall ensure that such employees, agents or sub-contractors comply with this Clause 11; and

11.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that Recipient takes best efforts to limit such disclosure and to obtain confidential treatment or a protective order, notifies Discloser (where legally permissible to do so) reasonably in advance to enable it to participate in such effort.

11.4 Recipient shall not use Discloser's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.5 Recipient agrees to apply reasonable safeguards against the unauthorized disclosure of Discloser's confidential information in accordance with good industry practice, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher.

11.6 Upon Customer's or Licensor's reasonable request, Supplier shall procure that Supplier and/or individual's of Supplier's Team execute and provide to Customer or Licensor any additional documents or agreements related to the handling of confidential information.

11.7 Supplier shall

11.7.1 take all necessary steps to ensure that the Material, data and information which comes into its possession or control in the course of providing the Services is protected and in particular Supplier shall not: (i) use the Material, data or information for any other purposes than to exercise its rights and perform its obligations under or in connection with the Contract; (ii) reproduce the Material, data or information in whole or in part in any form except as may be required by the Contract, or (iii) disclose the Material, data or information to any third party or persons not authorized by Customer to receive it, except with the prior written consent of Customer;

11.7.2 comply with, and ensure that Supplier's Team comply with, any security procedure, policy and/or standard provided to Supplier by any member of the Customer Group from time to time or as otherwise set out in the Order; and

11.7.3 notify Customer promptly of any security incidents or threats relating to the Services and/or Customer Material, data or information.

## 12 DATA PROTECTION

12.1. If Customer or Licensor discloses Personal Data to Supplier, Supplier shall comply with all applicable data protection laws and regulations.

12.2 Supplier shall apply appropriate physical, technical and organizational measures to ensure a level of security of Personal Data appropriate to the respective risk and the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.

12.3 Supplier agrees that it will not withhold or delay its consent to any changes to this Clause 12 which in Customer's or its Affiliates reasonable opinion are required to be made in order to comply with applicable

data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority and agrees to implement any such changes at no additional cost to Customer.

12.4 Supplier acknowledges that the processing of Personal Data in accordance with this Contract may require the conclusion of additional data processing or data protection agreements with Customer or its Affiliates. To the extent such additional agreements are not initially concluded as part of the Contract, the Supplier its relevant Affiliates or subcontractors shall, upon Customer's request promptly enter into any such agreement(s) as designated by Customer and as required by mandatory law or a competent data protection or other competent authority.

### 13. RELEASE EVENTS

13.1 Subject to: (i) the remaining provisions of this clause 12, Supplier will release the Material to a duly authorised officer of ABB if any of the following events occur:

13.1.1 if an order is made for the winding up of Licensor, Licensor passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of Licensor is appointed; or

13.1.2 Licensor is wound up or dissolved; or

13.1.3 any similar or analogous proceedings or event to those in clauses 1231.1 to 13.1.2 above occurs in respect of Licensor within any jurisdiction outside Switzerland; or

13.1.4 Licensor ceases to carry on its business or the part of its business which relates to the Product;

13.1.5 Licensor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to providing the Software as a Service or the maintenance of the Product under the Licence Agreement or any maintenance agreement entered into in connection with the Product and has failed to remedy such default notified by ABB to Licensor within a reasonable period.

13.1.6 Licensor is unable for at least 120 days to perform its obligations under the License Agreement or this Agreement as the result of a situation of *force majeure*;

13.2 ABB must notify Supplier of the Continuity Event specified in clause 6.1 by delivering to Supplier a statutory or notarised declaration ("**Declaration**") made by an officer of ABB declaring that such Continuity Event has occurred, setting out the facts and circumstances of the Continuity Event, that the Licence Agreement and any maintenance agreement, if relevant, for the Product was still valid and effective up to the occurrence of such Continuity Event and exhibiting such documentary evidence in support of the Declaration as Supplier shall reasonably require.

13.3 Upon receipt of a Declaration from ABB claiming that a Continuity Event has occurred:

13.3.1 Supplier shall submit a copy of the Declaration to Licensor by courier or other form of guaranteed delivery; and

13.3.2 unless within 30 (thirty) days after the date of despatch of the Declaration by Supplier, Supplier receives a counter-notice signed by a duly authorised officer of Licensor stating that in their view no such Continuity Event has occurred or, if appropriate, that the event or circumstance giving rise to the Continuity Event has been rectified as shown by documentation in support thereof,

Supplier will release the Material to ABB for its use for the Continuity Purposes.

13.4 Upon receipt of the counter-notice from Licensor under clause 13.3.2, Supplier shall send a copy of the counter-notice and any supporting evidence to ABB by courier or other form of guaranteed delivery.

13.5 Upon receipt by ABB of the counter-notice from Supplier or, in any event, within 90 days of despatch of the counter-notice by Supplier, ABB may give notice to Supplier that they wish to invoke the dispute resolution procedure under clause 17.12.

13.6 If, within 90 days of despatch of the counter-notice by Supplier to ABB, Supplier has not been informed by ABB that they wish the dispute resolution procedure under clause 17.12 to apply, the Declaration submitted by ABB will be deemed to be no longer valid and ABB shall

be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.

13.7 For the avoidance of doubt, where a Continuity Event has occurred under clauses 13.1.1 to 13.1.5, a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice ABB's right to release of the Material and its use for the Continuity Purposes.

13.8 The release of the Material to ABB will not act as an assignment of any Intellectual Property Rights that the Licensor or any third party possesses in the Material.

### 14. INSURANCE

14.1 Supplier shall maintain in force, with a reputable and financially sound insurance company, a public general liability insurance policy in the amount of not less than five million US dollar (5,000,000USD) per event and ten million US dollar (10,000,000 USD) per year and a professional indemnity insurance policy in the amount of not less than five million US dollar (5,000,000USD) per occurrence and fifteen million US dollar (15,000,000USD) per year, covering the liability arising out of the Contract and the related Services including Intellectual Property Rights infringement, computer virus, confidentiality and data protection. Such insurance policies shall remain in effect throughout the term of the Contract and for a period of two (2) years after termination or expiration.

14.2 Supplier shall, on ABB's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premium.

14.3 Nothing contained in this Clause 13 shall relieve Supplier from its liability. The insured amount cannot be considered nor construed as limitation of liability.

### 15. LIABILITY

15.1 Subject to Clause 15.2 and excluding any liability under Clause 14.3, the total liability of each party in respect of any losses incurred by the another party or any of its Affiliates under or in relation to the Contract, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, will not exceed five hundred thousand US dollar (500,000 USD).

15.2 Nothing in the Contract shall operate so as to exclude or limit the liability of either party to the other for:

15.2.1 death or personal injury arising out of negligence;

15.2.2 breach of Clauses 11 (Confidentiality and Data Protection);

15.2.3 gross negligence, wilful misconduct or fraudulent misrepresentation;

15.2.4 an indemnification obligation pursuant to Clause 16 (Compliance with Laws, Integrity); or

15.2.5 for any other liability which cannot be excluded or limited by law.

15.3 Subject to Clause 14.2, under no circumstances shall a party be liable to another party for any of the following types of loss or damages arising under or in relation to the Contract (whether arising for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise):

15.3.1 any indirect or consequential loss or damage; or

15.3.2 any loss of profits, business, contracts, goodwill, or revenue, even if that party was aware of the possibility that such loss or damage might be incurred by the other.

15.4 Nothing in the Contract shall operate as to exclude any conditions implied by applicable law.

### 16. TERMINATION

16.1 Except as otherwise provided in the Order, ABB may terminate the Contract for convenience in whole or in part by giving Supplier thirty (30) days written notice. No further compensation will be due to Supplier.

16.2 Licensor and ABB may terminate the Contract for cause and with no liability to Supplier party with immediate effect by giving written notice to the other parties if:

16.2.1 the Supplier commits a material breach of the respective Contract which (in the case of a breach capable of remedy) it does not remedy within thirty (30) calendar days of receiving written notice of the breach; or

16.2.2 the Supplier takes any step or action in connection with its entering administration, liquidation or any arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

16.3 In addition, ABB shall have the right to terminate the Contract for cause and with no liability to the other parties with immediate effect if Supplier or its parent company(ies) undergoes a Change of Control to a competitor of any member of ABB Group.

16.4 The termination of the Contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination.

16.5 Upon termination of the Contract Supplier shall immediately safely return to ABB all property and information of ABB then in Supplier's possession or under its control.

16.6 Upon termination of the Contract Supplier shall immediately transfer to a replacement supplier or to Licensor as indicated by ABB all Materials of Licensor then in Supplier's possession or under its control.

16.6 Following termination of the Contract the Clauses which expressly or by implication survive termination shall continue in full force and effect.

## 17. COMPLIANCE WITH LAWS, INTEGRITY

17.1 Supplier shall provide the Services as applicable, in compliance with all relevant laws, regulations and applicable codes of practice.

17.2 Supplier represents, warrants and undertakes that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including satisfying 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 subject matter of the Contract. If any of the Services, are or will be subject to export restrictions, it is Supplier's responsibility to promptly inform ABB in writing of the particulars of such restrictions. ABB will comply with the restrictions to the extent it has been informed by Supplier.

17.3 Each party warrants that it will not, directly or indirectly, and that it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to government officials or to agents, directors and employees of each party, or any other party in a manner contrary to applicable laws (including the U. S. Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010 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 Contract will render either party liable to reimburse the other for any such consideration given or promised.

17.4 Supplier herewith acknowledges and confirms that Supplier 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). Supplier agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct.

17.5 ABB has established reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct through the web portal [www.abb.com/Integrity](http://www.abb.com/Integrity) – Reporting Channels; the contact details are specified on this Web portal.

17.6 Any violation of an obligation contained in this Clause 16 is a material breach of the Contract and entitles the non-breaching party to terminate the Contract with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Contract, Supplier shall, without any limitations, indemnify and hold harmless ABB for all liabilities, damages, cost or expenses incurred as a result of any such violation or termination of the Contract, or arising from export restrictions concealed by Supplier.

## 18. MISCELLANEOUS

18.1 Assignment and other dealings. Supplier shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. ABB may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

18.2 Subcontracting. Supplier shall not be permitted to sub-contract the performance of its obligations under the Contract.

18.3 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives) or unless it is executed in the same form as the Contract.

18.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 Rights and remedies. The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law or otherwise available to the parties, except as expressly provided otherwise herein.

18.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the Contract will be given effect as if such provision or part-provision had been replaced by a term with a similar economic effect. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Contract.

18.7 Entire agreement. The Contract constitutes the entire agreement between the parties and replaces any prior agreement between them in relation to its subject matter.

18.8 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.9 Third party rights.

18.9.1 Supplier and Licensor agree that the Services, may be used and received by each member of ABB Group subject to the terms of the Contract. The parties specifically acknowledge and agree that it is their intention that each member of ABB Group shall be entitled: (i) to the benefits of the Contract as if it were party to it; and (ii) to use any of the Services; provided that any ABB obligations set out in the Contract are obligations of ABB, not of any other member of ABB Group.

18.9.2 The parties acknowledge and agree that: (i) except as specifically provided in the Contract, no one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms; and (ii) any liabilities, losses, damages, costs and expenses incurred by any other members of ABB Group under or in connection with the Contract shall be deemed to have been suffered by ABB (and shall be recoverable by ABB from Supplier in accordance with the terms of the Contract as if they had been suffered by ABB).

18.10 Notices. Any notice must be given duly signed and delivered by hand, registered mail, courier, or (provided that the parties have agreed that notices may be sent by fax or by email) by fax or by e-mail to the address of the relevant party as stated in the Contract or to such other address as such party may have notified in writing. E-mail and fax require written confirmation of the receiving party. Supplier's reply, correspondence, information or documentation related to the Contract must be provided in the language used in the Contract. This Clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.11 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the country (and/or the state, as applicable) where Customer is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

18.12 Jurisdiction. If Customer and Supplier are registered in the same country, any dispute arising in connection with the Contract which cannot be settled amicably shall be submitted for resolution to the jurisdiction of the competent courts at Customer's place of registration. If Customer and Supplier are registered in different countries, any dispute arising in connection with the Contract which cannot be settled amicably shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance therewith. Place of arbitration shall be Customer's place of registration. The language of the proceedings and of the award shall be English