



## **ABB E-MOBILITY NORTH AMERICA: GENERAL TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES**

These General Terms and Conditions ("Terms") govern the sale of goods and services listed on an order placed by Purchaser ("Purchase Order" or "Order"). Unless the context otherwise requires, the term "Equipment" as used herein means Seller manufactured goods set forth on a Specification. Equipment excludes any third party provided optional materials, add-ons or equipment. "Software" means the object code version of the embedded software in the Equipment licensed by Seller to Purchaser hereunder, but excludes cloud-based or software-as-a-service products that may be offered by Seller in connection with the Equipment. "Services" means any or all of labor, supervisory, technical and engineering, installation, commissioning, repair, consulting or other services provided by Seller directly to the Equipment pursuant to a Purchase Order. Seller hereby agrees, from time to time, to sell to Purchaser and Purchaser hereby agrees to purchase from Seller the Equipment and Services and the parties further agree as follows. For sales in the United States, Seller is ABB E-mobility Inc. For sales in Canada, Seller is ABB E-mobility Inc. (Canada). These terms, submitted to Purchaser with a Proposal, policies, addendum(s), if any, shall control over any conflicting terms, and all of which constitute the entire agreement (the "Agreement") between the parties. As used herein, the term "Purchaser" shall also include the initial end user of the Equipment and/or services.

### **ARTICLE 1: ORDER PLACEMENT AND CANCELLATION**

#### **1.1 Proposals for Purchase of Equipment and Services**

Purchaser may, from time to time, request to purchase Equipment and Services from Seller. Seller will provide a quotation to Purchaser with business terms related to such purchase and licenses ("Proposal"). Proposals expire thirty (30) days from the date of the Proposal and may be modified or withdrawn by Seller before Seller's receipt of Purchaser's acceptance. All prices quoted in a Proposal are subject to revision at any time by Seller in the event of any increase in raw material, energy costs or governmental actions such as tariffs. Purchaser will order Equipment and Services under this Agreement by submitting Orders to Seller. Each Order is an independent transaction and is subject to acceptance by Seller before any such Order will become binding on Seller. With each Order, the parties confirm and renew their confirmations and commitments under this Agreement. Neither party is obligated to place or accept such Orders.

#### **1.2 Orders Related to Services**

Pricing for Services is based on normal business hours (8 a.m. to 5 p.m. Monday through Friday local time where Services are performed). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. Associated travel and living costs will be billed to Purchaser. If a Services rate sheet is attached hereto, the applicable Services rates will be those set forth in the rate sheet. Rates are subject to change without notice.

#### **1.3 Terms and Conditions of Purchase Order**

Any Purchase Order placed by Seller will reflect these Terms. Purchaser acknowledges and agrees that any terms and conditions set forth on any document issued by Purchaser, including but not limited to a Purchase Order, are hereby explicitly rejected and disregarded by Seller, and any such document is wholly inapplicable to any sale made by Seller, is not binding in any way on Seller and is wholesale rejected by Purchaser and Seller.

#### **1.4 Termination or Cancellation by Purchaser Related to Equipment**

Equipment may not be returned or cancelled without prior written approval of Seller and Purchaser's payment of Seller's Cancellation Charges, which will protect Seller against costs and losses of such cancellation. In the event that Purchaser terminates or cancels a Purchase Order, credit will be allowed for only the actual quantity Seller receives in saleable condition. In the event of cancellation or termination by Purchaser, Purchaser will pay to Seller the "Cancellation Charges" as follows:

**1.4.1** Twenty percent (20%) of the Purchase Order Fee of the cancelled Equipment prior to commencement of manufacture of such Equipment (if such Equipment is not already manufactured);

**1.4.2** Fifty percent (50%) of the Purchase Order Fee of the cancelled Equipment if cancellation occurs after the commencement of manufacture of the Equipment and before Seller ships the Equipment to the Delivery Location; and

**1.4.3** One hundred percent (100%) of the Purchase Order Fee of the cancelled Equipment if cancellation occurs after Seller has shipped the Equipment to the Delivery Location.

#### **1.5 Termination or Cancellation by Purchaser Related to Services**

Services may be cancelled or a Purchase Order for Services terminated by Purchaser only upon:

**1.5.1** prior written notice of no less than 90 days to Seller;

**1.5.2** payment to Seller of the work performed prior to the effective date of the notice of termination;

**1.5.3** payment to Seller of the costs identified in the Purchase Order incurred by Seller for work not completed;

**1.5.4** payment to Seller of all expenses incurred by Seller attributable to such termination including but not limited to expenses for equipment or materials to complete Services; and

**1.5.5** a fixed sum of twenty percent (20%) of the final Price of the cancelled Purchase Order to compensate Seller for disruption in scheduling.

#### **1.6 Suspension, Cancellation or Termination of a Purchase Order by Seller**

Seller may suspend, cancel or terminate a Purchase Order or the Agreement with immediate effect upon written notice to Purchaser under the following circumstances:

**1.6.1** Purchaser fails to pay any amount when due under the Agreement and the failure continues for ten (10) days after the date of Seller's notice of nonpayment;

**1.6.2** Purchaser refuses to take Delivery of the Equipment;

**1.6.3** Purchaser breaches its obligations under Article 22; or

**1.6.4** Purchaser becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

#### **1.7 Consequences of Suspension, Cancellation or Termination by Seller**

Upon suspension of a Purchase Order pursuant to Section 1.6 of these Terms, Seller will suspend its performance under such Purchase Order until such time as the full balance is paid. Any cancellation or termination by Seller of a Purchase Order or the Agreement for the reasons set forth in Section 1.6 of these Terms will result in all amounts owed by Purchaser to Seller under a Purchase Order being immediately due and Purchaser will be liable to Seller for all costs for work performed to date, costs associated with suspension, cancellation or termination of the work and all other costs recoverable at Law. It is understood that Seller will not be liable to Purchaser for damages in any form (including but not limited to direct, indirect, special, consequential and incidental) by reason of such cancellation or termination. Seller has no obligation to store Equipment for the benefit of Purchaser.

### **ARTICLE 2: PLACE AND DATE OF DELIVERY**

#### **2.1 Place of Delivery**

Seller will deliver the Equipment to Purchaser as follows or to such other place as may be agreed in writing between the parties (in each instance, the "Delivery Location"):

**2.1.1** For all sales in the United States, unless otherwise stated in a Proposal (a) all Equipment manufactured, assembled or warehoused in the continental United States is delivered FCA Seller point of shipment, Incoterms 2020; (b) Equipment shipped from outside the continental United States is delivered FCA United States port of export Incoterms 2020; and (c) spare parts, hardware and replacement parts are delivered FCA Seller's local distribution center. If Purchaser requests drop shipment, Equipment will be delivered CPT Shipping Port Incoterms 2020 and Seller will remain liable for import clearance and duties.

**2.1.2** For all sales in Canada, unless otherwise specified in a Proposal, (a) all Equipment is delivered FCA ABB E-mobility Inc (Canada) port of import, Incoterms 2020; and (b) spare parts, hardware and replacement parts are delivered FCA Seller's office in Montreal, Quebec, Incoterms 2020. If Purchaser requests drop shipment, Equipment will be delivered CPT Shipping Port Incoterms 2020 and Seller will remain liable for import clearance and duties.

#### **2.2 Scheduled Delivery Date**

Delivery (defined below) of the Equipment is scheduled to occur on or about the date set forth in a Purchase Order accepted by Seller for the Equipment. Seller will notify Purchaser from time to time and in a timely manner of the exact date on which Seller expects Delivery will take place (the "Scheduled Delivery Date"). Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for Seller's performance hereunder. Failure by Seller to deliver by the Scheduled Delivery Date will not be a material breach by Seller.

### **ARTICLE 3: FEES AND PAYMENTS**

#### **3.1 Fee**

Purchaser will pay Seller the amounts set forth on a Purchase Order which correspond to a Proposal and have been agreed by Seller ("Fee"). The Fee includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of the Proposal. Any change after that date in such duties, fees, or rates, shall increase the Fee by Seller's additional cost.

#### **3.2 Payment Terms**

All payments will be paid net cash, without offset, in the currency of the country of purchase, no later than thirty (30) days following the date of an invoice from Seller to Purchaser to the account specified by Seller. Seller is not required to commence or continue its obligations hereunder unless and until invoiced payments have been received in a timely fashion. For each day of delay in receiving required payments, Seller will be entitled to a matching extension of the schedule and Scheduled Delivery Date.

#### **3.3 Default Interest**

If Seller does not receive the Fee or any other amount on or before the specific date when due, Seller will suffer loss and damage the exact nature and amount of which are difficult or impossible to ascertain. Purchaser will pay Seller as supplemental fee (by way of agreed compensation and not as a penalty) interest on any due and unpaid amounts payable by Purchaser under an Order plus Seller's attorneys' fees and court costs incurred in connection with collection. Interest will be calculated at a per annum rate (based on a 360 day year) which is equal to five percent (5%) plus the rate of interest from time to time announced by JPMorgan Chase Bank in New York as its prime commercial lending rate Prime Rate in effect on the date on which the amount was originally due for the period from the date the amount originally was due through the date the amount actually is received at Seller's bank ("Default Interest"). Default Interest will accrue on a day-to-day basis and be compounded monthly. Failure to make any payment as herein provided, will result in the whole Fee becoming due and payable.

#### **3.4 No Deductions or Withholdings**

All payments by Purchaser under a Purchase Order will be made in full without any deduction or withholding whether in respect of set-off, counterclaim, duties, or Taxes (defined below) imposed in the country of purchase or any jurisdiction from which such payments are made unless Purchaser is prohibited by any (a) statute,

decree, constitution, regulation, order or any directive of any Government Entity, (b) treaty, pact, compact or other agreement to which any Government Entity is a signatory or party, (c) judicial or administrative interpretation or application of any of the foregoing or (d) any binding judicial precedent having the force of law ("collectively, **Law**") from doing so, in which event Purchaser will gross up the payment amount such that the net payment received by Seller after any deduction or withholding equals the amounts called for under such Purchase Order. Purchaser will also do all of the following:

**3.4.1** Ensure that the deduction or withholding does not exceed the minimum amount legally required;

**3.4.2** Pay to the relevant Government Entities within the period for payment permitted by applicable Law the full amount of the deduction or withholding (including the full amount of any deduction or withholding from any additional amount paid pursuant hereto); and

**3.4.3** Furnish to Seller within thirty (30) days after each payment an official receipt of the relevant Government Entities involved for all amounts so deducted or withheld.

### **3.5 Consideration for Fee**

The amount of the Fee is in consideration of Purchaser's waiver of warranties and acceptance of the disclaimers and Purchaser's provision of indemnities and the other provisions of these Terms.

### **3.6 Financial Information of Purchaser**

From time to time, Purchaser agrees to furnish to Seller reasonable information as Seller may reasonably request concerning the purchase of Equipment or the financial condition of Purchaser.

### **3.7 Security for Payment**

If in the judgment of Seller, the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, Seller may (a) require payment in advance, (b) suspend its obligations under the Agreement until the advance payment or payment security is received or (c) terminate the corresponding Purchase Order, whereupon Seller will be entitled to receive the full amount owed under such Purchase Order.

### **3.8 Security Interest in Equipment**

As collateral security for the full payment of the Fee of the Equipment, Purchaser hereby grants to Seller a lien on and Security Interest in and to all of the right, title and interest of Purchaser in, to and under the Equipment, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The Security Interest granted under this provision constitutes a purchase money Security Interest under (i) if the sale occurs in the United States, the Uniform Commercial Code or (ii) if the sale occurs in Canada, the Personal Property Security Act (Canada). Seller will have the right to file any and all documents and take any action it deems necessary to fully establish protection of its Security Interest in the Equipment; however, the failure of Seller to file any such document will not in any way act as a waiver of Seller's right to such Security Interest.

### **3.9 Failure of Purchaser to Pay**

If payment in full has not been made with respect to a unit of Equipment after the date of Seller's notice to Purchaser regarding outstanding payments,

**3.9.1** Seller may: (a) suspend performance under an Order or terminate the Agreement by giving written notice to Purchaser in which case the provisions set forth in Sections 1.6 and 1.7 will apply; and (b) immediately enter the premises where the Equipment is located and take possession of and remove the Equipment as its personal property and may retain any or all partial payments already received as a rental charge for the use of the Equipment without affecting any further or other claims which Seller may have against Purchaser. Seller will be entitled to the full benefit of its bargain with Purchaser.

**3.9.2** Purchaser will pay Seller within two (2) Business Days after Seller's written demand all costs associated with Seller's exercise of its remedies hereunder, including repossession costs, legal fees, Equipment storage costs, and Equipment re-sale costs.

### **3.10 Reservation of Rights**

Seller reserves all other rights granted to a seller under the Uniform Commercial Code (or equivalent Law in the applicable jurisdiction) for Purchaser's failure to pay for the Equipment, Services or any other breach by Purchaser of these Terms. So long as sums remain owing by Purchaser to Seller hereunder, Purchaser will exercise proper care in the possession and use of the Equipment and will keep same at all times in good repair and free of all liens, options, taxes, charges, pledges, privileges and encumbrances.

### **3.11 No Security Interests Prior to Payment of the Fee**

Prior to payment of the full Fee of the Equipment, Purchaser will not create or agree to or permit to arise any encumbrance or security interest, however and wherever created or arising on the Equipment, including (without prejudice to the generality of the foregoing) any right of ownership, security, mortgage, pledge, charge, encumbrance, lease, lien, statutory or other right in rem, hypothecation, title retention, attachment, levy, claim or right of possession or detention (collectively, "**Security Interest**"). Purchaser will forthwith, at its own expense, take all action as may be necessary to discharge or remove any such Security Interest if it exists at any time. Purchaser will within twenty-four (24) hours after becoming aware of the existence of any such Security Interest give written notice thereof to Seller.

## **ARTICLE 4: TAXES**

### **4.1 Value Added Taxes**

Purchaser will pay promptly when due, and to indemnify and hold harmless Seller on a full indemnity basis from, all taxes, fees, levies, imposts, duties, charges, deductions or withholdings of any nature (including without limitation any value added, franchise, transfer, sales, gross receipts, use, business, excise, turnover,

personal property, stamp or other tax) together with any assessments, penalties, fines, additions to tax or interest thereon, however or wherever imposed, by any Government Entity or taxing authority in the US, Canada or any foreign country or by any international taxing authority (collectively, "**Taxes**") upon or with respect to, based upon or measured by the (a) use, operation or maintenance of the Equipment; and (b) purchaser, ownership, financing, delivery, import or export, sale, or other disposition of the Equipment. The indemnity does not extend to Taxes imposed by the US, Canada or any foreign country on the net income, gross receipts, capital or net worth of Seller.

### **4.2 Timing of Payment**

Any amount payable to Seller pursuant to this Article 4 will be paid within ten (10) days after receipt of a written demand therefor from Seller accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable; provided, however, that such amount need not be paid by Purchaser prior to the earlier of (a) the date any Tax is payable to the appropriate Government Entity or taxing authority or (b) in the case of amounts which are being contested by Purchaser in good faith or by Seller, the date such contest is finally resolved.

## **ARTICLE 5: CHANGE ORDERS**

Any changes requested by Purchaser affecting the ordered Equipment or scope of work related to Services must first be reviewed by Seller and may be agreed by Seller, at its sole option. Any resulting adjustments to affected provisions, including price and schedule must be mutually agreed in writing by the parties for any implementation of the change to occur. Seller may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the condition required under a Proposal ("**Specification**") or as required by Law. If Purchaser objects to any such changes, Seller will be relieved of its obligation to conform to the applicable Specifications to the extent that conformance may be affected by such objection.

## **ARTICLE 6: DELIVERY CONDITION AND INSPECTION OF EQUIPMENT**

### **6.1 Purchaser Inspection of Equipment Prior to Delivery**

If a Purchase Order provides for factory acceptance testing, Seller will notify Purchaser of the date on which Seller will conduct such testing prior to shipment. Purchaser may then inspect the Equipment at the manufacturer's facility to ensure its conformity with the Specifications. Any inspection by Purchaser of the Equipment at the manufacturer's facility will be scheduled in advance and will be performed during normal working hours and subject to rules and regulations in place at manufacturer's facility. Additional tests at the facility of production of the Equipment will be agreed upon specifically between Seller and Purchaser and will be charged to Purchaser. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.

### **6.2 Delivery of Equipment to Purchaser**

Seller will provide written notice to Purchaser of readiness of shipment of the Equipment ("**Delivery Notice**") and tender the Equipment to Purchaser in the condition set forth in the Specifications ("**Delivery**") at the Delivery Location. At Delivery, Purchaser will inspect the Equipment to ensure its conformity with the Specifications. In the event of any discrepancies, Purchaser and Seller will cooperate in good faith with one another and with the manufacturer in order to arrive at a mutually acceptable resolution of any such discrepancies. Purchaser will accept the Equipment and the date of tender by Seller to Purchaser will be deemed to be the "**Delivery Date**" for all purposes under these Terms.

### **6.3 Purchaser Acceptance of Equipment**

So long as the Equipment meets the Specifications, Purchaser will accept the Equipment when tendered for delivery by Seller. If Purchaser fails to take delivery of the Equipment when properly tendered by Seller in the Specification then, at Seller's sole and exclusive option:

**6.3.1** Seller may terminate the Agreement or a Purchase Order. If Seller terminates the Agreement or a Purchase Order Purchaser will: (a) indemnify Seller for all costs and expenses incurred by Seller as a result thereof, including but not limited to costs of storage, insurance and maintenance until Seller can resell the Equipment; (b) pay all amounts incurred by Seller to move the Equipment to storage; (c) pay the Cancellation Charges; and (d) be liable for any and all demurrage or detention charges.

**6.3.2** Seller will deem Purchaser's acceptance to have occurred and Purchaser will (a) indemnify Seller for all costs and expenses incurred by Seller as a result thereof, including but not limited to costs of storage, insurance and maintenance; (b) pay all amounts incurred by Seller to move the Equipment to storage at the risk of Purchaser; (c) pay the Fee for the Equipment; and (d) be liable for any and all demurrage or detention charges.

### **6.4 Return of Incorrect Equipment**

Purchaser may return Equipment that does not meet the Specifications only in the following circumstances:

**6.4.1** within (10) days of the Delivery Date as measured by the carrier's proof of the Delivery Date;

**6.4.2** all Equipment must be in full, original, unopened, master cartons of current catalog design and in saleable condition as originally shipped by Seller; and

**6.4.3** If the return was the fault of Seller, the freight will be covered by Seller. Seller will arrange for transportation by Seller designated carrier.

Returns for administrative errors caused by Purchaser are not allowed.

### **6.5 Damage During Transit**

Purchaser must make all claims for loss, damage and directly with the carrier. Claims for damage after Delivery will be made directly by Purchaser with the common carrier and must follow the Procedure for Handling Loss & Damaged Cargo Claims, which

are incorporated by reference as if set forth herein. Seller is not responsible for delays, loss or damage in transit.

#### 6.6 Partial Deliveries

Partial deliveries of Equipment are permitted and each Delivery is a sale. Purchaser will pay for each unit of Equipment delivered whether the Delivery is in whole or partial fulfillment of a Purchase Order. Seller may deliver Equipment in advance of the Scheduled Delivery Date.

#### 6.7 Selection of Carrier

Purchaser will have sole responsibility of choosing the carrier and routing from the Delivery Location. Purchaser will obtain any import licenses and other consents required for the Equipment at Purchaser's expense and will provide the licenses and consents to Seller prior to Delivery.

#### 6.8 Seller's Access to Site for Services

Any Services purchased by Purchaser will be performed pursuant to statement of work attached to a Purchase Order. Purchaser will ensure Seller's personnel and subcontractors have unrestricted access to Purchaser's sites for Services (each a "Site"). Purchaser acknowledges and agrees that securing the Sites and ensuring access in order for Seller to perform its Services is a material and critical element of Seller's performance of Services.

#### 6.9 Laws and Regulations

Seller does not assume any responsibility for compliance with federal, state or local laws and regulations. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, Seller assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change order to be mutually agreed by the Parties. Nothing contained herein shall be construed as imposing responsibility or liability upon Seller for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

### ARTICLE 7: TITLE AND RISK OF LOSS

#### 7.1 Transfer of Title

Except with respect to Software (for which title will not pass, use being licensed) title to the Equipment will pass from Seller to Purchaser upon delivery according to the applicable freight term.

#### 7.2 Risk of Loss

Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage with respect to the sale of Equipment will pass from Seller to Purchaser at Delivery. With respect to a Purchase Order that obligates Seller to complete the installation of purchased Equipment, risk of loss for the Equipment will pass from Seller to Purchaser at the earlier of the time Purchaser puts the installation to its specified purpose or until the completion of the installation pursuant to this Agreement. Seller will carefully pack all Equipment sold hereunder and Seller will assume no responsibility for damage after having received "in good order" receipts from the carrier.

### ARTICLE 8: SOFTWARE LICENSE

#### 8.1 Software License

Seller owns all rights in, or has the right to sublicense, all of the Software, if any, to be delivered to Purchaser under these Terms.

**8.1.1** Seller grants Purchaser a limited license to use the Software, subject to the following: (a) the Software may be used only in conjunction with Equipment; (b) the Software will be kept strictly confidential; (c) the Software will not be copied, reverse engineered, or modified; (d) Purchaser's right to use the Software will terminate immediately when the Equipment is no longer used by Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (e) the rights to use the Software are non-exclusive and non-transferable, except with Seller's prior written consent.

**8.1.2** Nothing herein will be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the US Copyright Act, nor to confer upon any Person who is not a named party to these Terms any right or remedy under or by reason of these Terms. "Person" means individual, firm, partnership, joint venture, trust, corporation, company, Government Entity, committee, department, authority or any body, incorporated or unincorporated, whether having distinct legal personality or not.

**8.1.3** In the event of termination of this license, Purchaser shall immediately cease using the Software and, will not retain any copies, notes or excerpts thereof.

**8.1.4** The Software includes services that may involve automatic or manual upload of information that identifies Equipment and/or the components therein, or that includes the current status of the Equipment, such as error logs, performance indicators, and other diagnostic information, which may be required for performing warranty services. Purchaser acknowledges that it is aware that such uploads may occur. Seller will not make such information available to any other users other than Purchaser's end customers.

#### 8.2 Cloud Terms

Seller licenses its cloud services to Purchaser under the terms and conditions found here [E-mobility TOU For Cloud Services NAM \(abb.com\)](#) (the "Cloud Terms"). Upon purchasing licenses to any of Seller's cloud services, Purchaser accepts the Cloud Terms without limitation or qualification. Purchaser will review the Cloud Terms regularly as Seller reserves the right to amend the Cloud Terms and any amendment is effective as of the publication of such amendment.

### ARTICLE 9: INTELLECTUAL PROPERTY, INVENTIONS AND INFORMATION

#### 9.1 Definitions

"Intellectual Property Rights" means all current and future rights in copyrights, trade secrets, trademarks, mask works, patents, design rights, trade dress, and any other

intellectual property rights that may exist anywhere in the world, including, in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing. "Technology" means all inventions, discoveries, ideas, concepts, methods, code, executables, manufacturing processes, unique compositions, mask works, designs, marks, and works of authorship fixed in the medium of expression, and materials pertaining to any of the preceding; whether or not patentable, copyrightable or subject to other forms of protection.

#### 9.2 Rights to Intellectual Property and Technology

Seller shall maintain all right, title and interest in any Technology and Intellectual Property Rights that Seller owned, created, conceived or discovered prior to entering into this Agreement, or owns, creates or discovers separately from the activities contemplated by this Agreement. Unless otherwise agreed in writing by Seller and Purchaser, Seller shall have all right, title and interest in any Technology and Intellectual Property Rights that Seller creates, conceives or discovers in furtherance of this Agreement, and Seller shall have all right, title and interest in any Technology and Intellectual Property Rights embodied in the Equipment and Services. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of Seller. Purchaser shall not, without Seller's prior written consent, copy or disclose such information to a third party, unless required by a public information request from a Governmental Entity. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

### ARTICLE 10: WARRANTY

#### 10.1 Warranty for Equipment

**10.1.1** Seller warrants that Equipment (other than Software and Spare Parts) supplied hereunder shall be delivered free of defects in material and workmanship ("Equipment Warranty") subject to the limitations and exclusions set forth in this Article 10. The Equipment Warranty (excluding spare parts and refurbished or repaired spare parts, which is covered below) shall end the earlier of twenty-four (24) months after the date of commissioning or thirty (30) months after the date of shipment of the Equipment by Seller ("Equipment Warranty Period"). This warranty may be extended through the purchase of an extended warranty package from Seller. **10.1.2** To obtain warranty service under the Equipment Warranty, Purchaser must promptly notify Seller in writing stating the nature of each defect and provide all available evidence thereof within five (5) days after first taking notice of such defect and in no case later than five (5) days after the expiration of the Equipment Warranty Period. Upon verification by Seller that the defect is covered by the Equipment Warranty, Seller will then, at its cost and at its discretion, either (i) repair the Equipment or any defective part therein, (ii) replace the Equipment with new or refurbished Equipment with substantially similar functionality; or (iii) refund the portion of the price applicable to the non-conforming portion of the Equipment. This remedy set forth herein shall be Purchaser's sole and exclusive remedy for breach of the Equipment Warranty. Seller reserves the right to charge Purchaser, and Purchaser shall pay, for any repair, service or testing that is not covered a defect under the Equipment Warranty.

**10.1.3** Unless otherwise instructed by Seller, Purchaser shall deliver the Equipment (minus any third party equipment or software) to a repair facility designated by Seller. If Seller chooses to check and repair the Equipment at any Site, Purchaser shall provide both access to the Equipment at the Site during normal business hours and remote access to the Equipment and its stored data through Purchaser's telecommunications network. Purchaser shall ensure that the Site meets all relevant health, safety and environmental best practices and guidelines. Seller may refuse to service the Equipment if conditions at the Site are dangerous or not in line with Seller's HSE guidelines.

**10.1.4** The Equipment Warranty shall not apply: (a) if the Equipment has not been properly installed in accordance with Seller's installation instructions, including improperly powering up the Equipment before commissioning by a Seller-certified technician, (b) if the Equipment has been customized, modified, enhanced or altered by Purchaser or a third party (unless authorized in writing by Seller), (c) if the Equipment has been damaged by Purchaser, its end users or any third party, including by dropping cables or connectors, (d) if the Software has not been timely updated to the most recent version and the damage was caused by the failure to timely update, (e) if the error or defect is the result of following drawings, designs or specifications provided by Purchaser, (f) if the failure is due to power outages, loss of network connectivity, or disruptions to the electrical supply, (g) if the damage is caused by excessive dirt accumulation, corrosion, ingress of foreign substances, vermin/insect infestation or vandalism, (h) if damage is due to cyber security intrusion including virus and hacking, (i) if the damage is caused by hazards including fire, flood, storm earthquake, lightning, spillage or leakage of chemicals or harmful substances, excessive voltage or mechanical shock, or water damage, (j) if the Equipment does not have sufficient ventilation, or (k) to parts that are intended to be replaced as part of normal maintenance of the Equipment.

#### 10.2 Warranty for Software

**10.2.1** Seller warrants that the Software will (a) perform in compliance in all material respects with settled, published specifications for the Equipment, (b) meet all mandatory Open Charge Point Protocol features, and (c) be fully compliant with all mandatory security requirements, in all three cases, at the time of purchase of the Equipment ("Software Warranty") subject to the limitations and exclusions set forth in this Article 10. The Software Warranty shall end on the earlier of twenty-four (24) months after the date of commissioning of the underlying Equipment or thirty (30) months after the date of shipment of such Equipment by Seller ("Software Warranty Period"). The Software Warranty is conditioned upon Purchaser updating the Software to the latest version when prompted.

**10.2.2** Under no circumstances does Seller warrant that (a) the Software will meet specifications that are planned for future releases of the Software even if announced before purchase, (b) the operation of the Software will be uninterrupted or error-free, (c) the Software will operate in combination with software or hardware not provided by Seller, (d) the Software will not be compromised by any harmful code, (e) the Software will be compatible with new or updated technologies, standards or features developed after the commencement of the Software Warranty, or (f) all

errors in the Software can be corrected. Seller shall, however, not have any obligation to provide any updates, including security updates, for the Software other than such necessary updates as required to comply with mandatory regulatory laws applicable to Seller. If the Purchaser does not install the updates that Seller provides, the Software and the Equipment may no longer be in conformity and the services of the digital elements may malfunction or be interrupted and/or in compliance with compulsory laws. Seller shall not be liable for any lack of conformity of the Equipment resulting from Purchaser's failure to install the relevant update which is supposed to maintain conformity.

**10.2.3** To obtain warranty service under the Equipment Warranty, Purchaser must promptly notify Seller in writing stating the nature of each defect before the expiration of the Software Warranty Period. Purchaser shall provide remote access to the applicable Equipment and hereby consents to the update and/or upgrade the Software by Seller without obtaining additional approval. Provided Seller is able to reproduce the defect, Seller will use commercially reasonable efforts to fix the defect so that it performs substantially in compliance with the terms of the Software Warranty. This obligation to use reasonable efforts shall be the Purchaser's sole and exclusive remedy for breach of the Software Warranty.

### 10.3 Warranty for Spare Parts

Seller warrants that any spare parts sold to Purchaser in relation to the Equipment will be free from defects in material and workmanship for a period of one (1) year from the date of purchase of the spare part ("**Spare Parts Warranty**"). To obtain warranty service under the Spare Parts Warranty, Purchaser shall first promptly notify Seller and, if directed by Seller, deliver the defective spare part to Seller's facility for service for evaluation and repair. Seller's obligation in relation to any spare part is limited to repair or replacement of any such defective spare part or a refund of the purchase price of the spare part at Seller's sole discretion.

### 10.4 Warranty for Services

Services will be free of defects in workmanship ("**Services Warranty**") during the Services Remedy Warranty Period. The period of validity of the Services Warranty begins upon the date of completion of such Services and ends ninety (90) days after the date of completion of Services (the "**Services Remedy Warranty Period**").

### 10.5 Warranty for Third Party Materials

Materials, optional equipment or add-ons supplied by Seller but manufactured by third parties is warranted only to the extent of such manufacturer's warranty, and the remedies, if any, provided by such manufacturer are assigned to Purchaser upon full payment of the Fee. Purchaser acknowledges and agrees that Seller is not liable for the acts or omissions of such third party manufacturer.

### 10.6 Disclaimer

TO THE EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

### 10.7 Advice

Seller may provide recommendations and advice (collectively, "**Advice**") on work performed by Purchaser, its customer, its subcontractors or agents (collectively, "**Purchaser's Work**"). Purchaser acknowledges, covenants and agrees that:

**10.7.1** Although Seller may provide Advice in connection with Purchaser's Work in order to assist Purchaser with Purchaser's management and supervisory functions and in making decisions in connection with Purchaser's Work, Seller's Advice excludes any management or supervisory responsibility in connection with Purchaser's Work and Seller will not assume any responsibility or liability for Purchaser Work, its use, implementation, output and fitness for purpose, nor for the operation of Purchaser's equipment, which responsibility will remain entirely with Purchaser;

**10.7.2** The Advice may indicate areas of risk and the means by which such risks may be mitigated. It is not possible to guarantee or warrant the outcome of such risk mitigation;

**10.7.3** Purchaser is responsible for determining whether the Advice are appropriate for Purchaser's stated or intended purposes and it is the sole responsibility of Purchaser to decide whether and how such Advice may be implemented;

**10.7.4** Purchaser retains at all times care, custody and control of Purchaser's Work and must ensure appropriate security and supervision thereof;

**10.7.5** Any Advice are specific to given circumstances, and Purchaser will seek Advice from, or enquire with, Seller if Purchaser's Work is delayed, is to be repeated or if seemingly similar work is to be undertaken.

**10.7.6** Nothing herein is or will be deemed to be a warranty provided by Seller to Purchaser in respect of any Advice including the adequacy, correctness or sufficiency of any such work, and all warranties are hereby expressly disclaimed *mutatis mutandis*.

## ARTICLE 11: IDENTIFICATION PLATES

Seller will affix and Purchaser will at all times maintain on the Equipment the identification plates containing the legends provided at Delivery during the Equipment Remedy Warranty Period and any extended remedy warranty period, if applicable.

## ARTICLE 12: PURCHASER INDEMNIFICATION

### 12.1 Indemnity

Purchaser will indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates and shareholders (individually a "**Indemnitee**" and collectively "**Indemnitees**") from any and all third party liabilities, obligations, losses, damages, fines, penalties, claims, actions, suits, costs, disbursements and expenses (including legal fees, costs and related expenses) of every kind and nature (collectively "**Expenses**") which are imposed on, incurred by or asserted against any

Indemnitee or the Equipment and which are in any way relating to, based on or arising out of any of the following:

**12.1.1** the operation, possession, use, non-use, control, leasing, subleasing, maintenance, storage, overhaul, testing or inspections of the Equipment (whether by Purchaser, any customer of Purchaser or any other Person other than Seller), including without limitation claims for death, personal injury, property damage, other loss or harm to any Person and claims relating to any Laws, including without limitation environmental control, noise and pollution laws, rules or regulations;

**12.1.2** energy charges and all charges payable for the use of or for services of the Equipment;

**12.1.3** the sale, import, export, condition, performance, merchantability, fitness for use, or other transfer of use or possession of the Equipment;

**12.1.4** Purchaser's fraud, fraudulent misrepresentation, gross negligence or willful misconduct;

**12.1.5** use of any Government Entity funds for the purchase of the Equipment without the consent of Supplier or breach of Section 23;

**12.1.6** any data breach, unauthorized disclosure or breach of any applicable Laws related to the use of any goods subject to a PO; and

**12.1.7** any Hazardous Materials which are or were (a) present in or about Purchaser's equipment or the Site prior to the commencement or during the Services, (b) improperly handled or disposed of by Purchaser or Purchaser's employees, agents, contractors or subcontractors, or (c) brought, generated, produced or released on Site by parties other than Seller.

### 12.2 Indemnity Inclusion

The foregoing indemnity by Purchaser is intended to include and cover any Expense to which an Indemnitee may be subject (in contract, tort, strict liability or under any other theory) regardless of the negligence, active or passive or any other type, of such Indemnitee, so long as such Expense does not fall within any of the exceptions listed in Article 12.3.

### 12.3 Exceptions to Indemnities

The indemnity provided for in Article 12.1 will not extend to Expenses of any Indemnitee to the extent resulting from or arising out of Expenses which Purchaser and Seller mutually agree or, absent mutual agreement, are judicially determined to have resulted from the willful misconduct of such Indemnitee.

### 12.4 Notice

Each Indemnitee will give prompt written notice to Purchaser of any liability of which such Indemnitee has knowledge for which Purchaser is, or may be, liable under Article 12.1; provided, however, that failure to give such notice will not terminate any of the rights of Indemnitees under this Article 11 except to the extent that Purchaser has been materially prejudiced by the failure to provide such notice.

### 12.5 Survival of Obligation

Notwithstanding anything in the Agreement to the contrary, the provisions of this Article 12 will survive termination of these Terms and continue in full force and effect notwithstanding any breach by Seller or Purchaser of the terms of the Agreement, or the termination of a Purchase Order or the Agreement.

## ARTICLE 13: INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS

### 13.1 Seller's Indemnity

Seller shall defend at its own expense any action brought against Purchaser alleging that the Equipment or the use of the Equipment directly infringes a patent in effect in the United States, an European Union member state or the country of the Site (provided there is a corresponding patent issued by the U.S., UK or an EU member state), or any copyright or trademark registered in the country of the Site and to pay all damages and costs finally awarded in any such action.

### 13.2 Exceptions to Seller Indemnities

The indemnity provided for in Article 13.1 will not extend to Expenses to the extent resulting from or arising out of any of the following: (a) Expenses which have resulted from the willful misconduct of Purchaser; (b) Expenses due to the Purchaser's indemnification obligation set forth in Article 12.1; (c) Expenses due to any other equipment or processes, including Equipment which have been modified or combined with other equipment or process not supplied by Seller; (d) Equipment supplied according to a design required by Purchaser; (e) Use of the Equipment contrary to Seller instructions; (f) Any patent issued after the Effective Date; (g) Any action settled or otherwise terminated without the prior written consent of Seller; or (h) Failure by Purchaser to give Seller prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense (including the right to settle or otherwise terminate such action on behalf of Purchaser).

### 13.3 Notice

Seller's obligation set forth in Article 12.1 is conditioned on Purchaser providing Seller prompt written notice of such IP Claim, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action on behalf of Purchaser.

### 13.4 Refunds

If Purchaser obtains a recovery of all or any part of any amount which Seller has paid to Purchaser, Purchaser will pay to Seller the net amount recovered by Purchaser.

### 13.5 No Double Recovery

Without limiting Purchaser's right to pursue payment from Seller for a particular Expense under this Article 13, Purchaser will not be entitled to actually receive payment from Seller for the same Expense twice.

### 13.6 Infringing Equipment

If, in any IP Claim, the Equipment is held to constitute an infringement or using the Equipment is finally enjoined, Seller will, at its option and its own expense (a) procure for Purchaser the right to continue using the Equipment; (b) modify or replace the

infringing Equipment with non-infringing equipment; or (c) remove the infringing Equipment it and refund the portion of the Fee allocable to the infringing Equipment. THE FOREGOING SENTENCES STATE THE EXCLUSIVE LIABILITY OF SELLER AND EQUIPMENT MANUFACTURER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.

### 13.7 Purchaser Indemnity

To the extent that Equipment subject to Article 13.1 or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that Seller is a contributory infringer) and by reason of such modification an action is brought against Seller, Purchaser will defend and indemnify Seller in the same manner and to the same extent that Seller would be obligated to indemnify Purchaser under this "Intellectual Property Indemnification" provision.

## ARTICLE 14: WAIVER AND LIMITATION OF LIABILITY

### 14.1 Waiver of Consequential Damages

TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL SELLER OR ITS SUPPLIER, CONTRACTORS OR AFFILIATES BE LIABLE, WHATEVER THE LEGAL BASIS FOR THE CLAIM, WHETHER IN CONTRACT OR IN TORT, NEGLIGENCE OR STRICT LIABILITY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, LIQUIDATED OR PUNITIVE DAMAGES OR FOR ANY DAMAGES FOR LOSS OF BUSINESS, LOSS OF USE, LOSS OF REVENUE OR PROFITS, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS AND CLAIMS OF CUSTOMERS OF PURCHASER OR OTHER THIRD PARTIES, LOSS ARISING FROM DELAYS, LOSS OF DATA AND OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, CYBER ATTACKS OR FAILURES OR INTERRUPTIONS TO NETWORK SYSTEMS, ARISING OUT OF, BASED ON, OR RESULTING FROM THESE TERMS, THE AGREEMENT OR THE USE OF, MISUSE OF, OR INABILITY TO USE THE EQUIPMENT, EVEN IF SELLER (OR ITS AGENTS OR AFFILIATES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 14.2 Limitation of Liability

14.2.1 Seller's aggregate liability for all claims whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from these Terms or the Agreement the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, commissioning, decommissioning, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under these Terms or a Purchase Order, or from any Services will in no case exceed (i) FOR EQUIPMENT AND SOFTWARE, THE AMOUNTS PAID TO SELLER BY PURCHASER FOR THE APPLICABLE EQUIPMENT GIVING RISE TO SUCH LIABILITY, AND (ii) FOR SERVICES, THE AGGREGATE FEE PAID BY PURCHASER FOR THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES.

14.2.2 All causes of action against Seller arising out of or relating to the Agreement or the performance or breach thereof will expire unless brought within one year of the time of accrual thereof.

14.2.3 In no event, regardless of cause, will Seller be liable for penalties or penalty clauses or liquidated damages of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and Services.

## ARTICLE 15: ENVIRONMENTAL, HEALTH AND SAFETY MATTERS

### 15.1 Safe Working Conditions.

Purchaser represents and warrants that it will maintain safe working conditions at its Site, including the implementing of appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method. Purchaser will properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site. "Hazardous Materials" are substances or chemicals that pose a risk to health, safety, property and the environment. Prior to Seller starting any Services at a Site, Purchaser will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Purchaser's equipment or the Site that Seller may encounter while performing Services. The provision of such documentation will in no way release Purchaser from its responsibility for said conditions.

### 15.2 Site Specific Procedures

Purchaser will disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Purchaser will keep Seller informed of changes in any such conditions. Purchaser will immediately advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Purchaser's responsibilities hereunder, Seller has the right but not the obligation to, from time to time, review, audit and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

### 15.3 Threat of Hazardous Materials

If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is likely to be, imperiled by security risks, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, remove some or all of its personnel from Site, suspend performance of all or any part of the purchase order, and/or remotely perform or supervise work. Any such occurrence will be considered a Force Majeure event. Purchaser will reasonably assist in ensuring the safe departure of personnel from the Site. Seller has no responsibility or liability for the pre-existing condition of Purchaser's equipment or the Site, which is the sole responsibility of Purchaser. Purchaser will, at its sole cost and expense, eliminate the hazardous conditions in accordance with applicable Law so that Seller may safely resume Services, and Seller will be entitled to an equitable adjustment of the Fee and

schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work.

## ARTICLE 16: CONFIDENTIALITY

### 16.1 Confidential Information

Seller and Purchaser (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with the Agreement. "Confidential Information" means (a) marked as "Proprietary", "Confidential" or with a comparable legend at the time of disclosure, (b) disclosed in any other manner and identified as confidential at the time of disclosure, or (c) by its nature or the circumstances surrounding disclosure is or reasonably should be understood to be confidential or proprietary to the Disclosing Party. In addition, prices for Equipment and Services will be considered Seller's Confidential Information.

### 16.2 Use of Confidential Information

Receiving Party will:

16.2.1 use the Confidential Information only in connection with its obligations pursuant to the Agreement and use of Equipment and Services.

16.2.2 use the same degree of care to avoid disclosure or misuse of the Disclosing Party's Confidential Information as it uses with respect to its own information of like importance, but in no case will the Receiving Party use less than reasonable care, and 16.2.3 not disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, each party will permit access to the other's Confidential Information only to its personnel who: (a) reasonably require access to Confidential Information for purposes approved by the Agreement, and (b) have undertaken a binding obligation of confidentiality with respect to the confidential information of others entrusted to him or her that is at least restrictive as the provisions set forth herein, and (c) have been apprised of the confidentiality obligations hereunder. A Receiving Party may only disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party will upon request return to Disclosing Party or destroy all copies of Confidential Information.

### 16.3 Exceptions to Confidential Information

The obligations under this Article 16 will not apply to any portion of the Confidential Information that (a) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (b) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best knowledge of Receiving Party, subject to a confidentiality obligation to Disclosing Party; (c) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (d) is required to be disclosed by Law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process will promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

### 16.4 Survival of Obligation of Confidentiality

As to any individual item of Confidential Information, the restrictions under this Article 16 will expire five (5) years after the date of disclosure except with respect to Confidential Information that constitutes a trade secret under the Laws of any jurisdiction in which case these obligations will survive until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Receiving Party or its representatives. This Article 16 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

## ARTICLE 17: NOTICES

### 17.1 Manner of Sending Notices

Any notice, request or information required or permissible under the Agreement will be in writing and in English, if permitted by Law. Notices will be delivered in person or sent by e-mail, letter (mailed airmail, certified and return receipt requested), or by expedited delivery addressed to the parties as set forth in Article 17.2. In the case of e-mail, notice will be deemed received upon actual receipt. In the case of a mailed letter, notice will be deemed received upon actual receipt. In the case of a notice sent by expedited delivery, notice will be deemed received on the date of delivery set forth in the records of the Person which accomplished the delivery. If any notice is sent by more than one of the above listed methods, notice will be deemed received on the earliest possible date in accordance with the above provisions.

### 17.2 Notice Information

Notices will be sent to each party at the address listed in the Purchase Order or to such other places and numbers as either party directs in writing to the other party.

## ARTICLE 18: FORCE MAJEURE

Seller will not be liable for any loss or expense, or any loss of profit, damage, detention or delay nor for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), delays attributable to outbreaks, epidemics and pandemics, Acts of God, fire, strike, labor difficulties, acts or omissions of any Governmental Entity or of Purchaser, compliance with Government Entity regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes (collectively, "Force Majeure"), unless such delay or failure arises as a direct consequence of the willful misconduct of Seller. "Government Entity" means any (a) national, state or local government, (b) board, commission, department, division, instrumentality, court, agency or political subdivision thereof

or (c) association, organization or institution of which any of the entities listed in (a) or (b) is a member or to whose jurisdiction any such entity is subject. In the event of delay due to Force Majeure, or an act of omission by Purchaser, or anyone employed by or engaged by Purchaser, the Scheduled Delivery Date will be extended by period equal to the delay plus a reasonable time to resume production, and the Fee will be adjusted to compensate Seller for such delay.

## ARTICLE 19: MARKET CHANGES AND MATERIALS SHORTAGE

### 19.1 Market Changes

The parties are aware of the challenges related to outbreaks, epidemics, war (declared or undeclared), Government Entity regulations and acts of Governmental Entity (including sanctions), civil unrest, and general shortages of electronic components and elements, market volatility, availability and cost of raw materials, commodities, as well as the shortage and market fluctuation of logistic/transportation availability, costs and capacities that may impact the normal business activity and cost of performance, the delivery and/or the execution of the scope or performance of work, the impacts of which are currently unknown. Notwithstanding anything herein to the contrary, if as a result of any of the foregoing, the costs of Seller's performance increases or Seller's performance obligations are materially adversely affected or delayed, the parties in the spirit of cooperation, will work together in good faith and within a reasonable time after the invocation of this Article 19.1, to negotiate alternative contractual terms in the form of equitable adjustments to Delivery, pricing and/or possible reductions of the contractually owed quantity of the Equipment to be delivered to Purchaser. Any Delivery will be performed with a view to employing reasonable efforts to ensure that the Purchase Order can be at least fulfilled in part. Each party waives any claim against the other Party either for direct damages and/or loss of profits and/or indirect and/or intermediate and/or consequential and/or punitive damages, penalties and/or liquidated damages arising from or anyhow connected with any of the challenges listed above.

### 19.2 Materials Shortages and Transportation Delays

Seller and Purchaser are aware of the shortage of raw materials, electronic components worldwide which is likely to last for the foreseeable future, as well as of market fluctuations in the availability and cost of other raw materials, commodities, other critical components and transportation capacities. Notwithstanding anything to the contrary in any quotation, proposal, Purchase Order or order confirmation, if after the date of Seller's Proposal or during the term of the performance of the Proposal or Purchase Order there are any changes to availability and/or market conditions for electronic components, raw materials, commodities and transportation capabilities directly or indirectly affecting Seller's performance, Seller will be entitled to relief in the schedule of the performance or Delivery of the directly or indirectly affected scope of work under the Proposal, Purchase Order or order confirmation. In such circumstances, Seller and Purchaser will meet without delay and discuss in good faith to find a mutually agreeable solution, with equitable adjustment to the Proposal, Purchase Order or order confirmation, Scheduled Delivery Date or completion of Services. Purchaser hereby acknowledges and agrees that in said circumstances Seller may not be able to comply with the originally agreed Scheduled Delivery Date.

## ARTICLE 20: NUCLEAR

Equipment and Services sold hereunder are not intended for use in connection with any nuclear facility or activity. Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, including without limitation any physical damage to a nuclear facility itself, resulting from a nuclear incident and, in addition to any other rights of Seller, Purchaser will indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability including, but not limited to, any physical damage to the nuclear facility or surrounding properties, if any. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability including but not limited to the requirement that the Purchaser and/or its end user customer will have complete insurance protection against liability and property damage including without limitation physical damage to a nuclear facility itself or any surrounding properties, if any, resulting from a nuclear incident and will indemnify Seller, its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident including, but not limited to, any physical damage to the nuclear facility. If Purchaser sells the Equipment, and if the end-user intends to use the Equipment or Services in connection with any nuclear facility or activity, Purchaser will require the end-user comply with the financial requirements under Price-Anderson Act (PAA) and secure a written release of liability which flows from the end-user to the benefit of Seller.

## ARTICLE 21: DATA PROTECTION

### 21.1 Personal Data and Data Collection

The parties agree that the protection of Personal Data is very important. If Purchaser discloses Personal Data to Seller, Seller will comply with all applicable data protection laws and regulations. Purchaser will comply with all applicable data protection laws and regulations in respect of any Personal Data it receives from Seller in the course of receiving the Equipment or Services. Purchaser may provide data, information, and material, including but not limited to data and information related to the Equipment and Services, location of the Equipment as well as end customers use of the Equipment and Services. Seller, its Affiliates and its subcontractors have the right to collect, store, aggregate, analyze or otherwise use such data, information and material for (i) providing and maintaining the Equipment and Services; (ii) preventing, detecting and repairing problems related to the security and/or the operation of the Equipment and Services; and (iii) improving and developing existing services, technologies, products and/or software and developing new services,

technologies, products and/or software, and all improvements and developments (including all resulting Intellectual Property Rights) are exclusively owned by Seller. In addition, Seller has the right to use such data, information, and material for statistical and benchmarking purposes if and to the extent it is anonymized or non-confidential. Seller may, but shall not be obliged to, delete such data, information and/or material at any time. Purchaser will ensure that it is permitted to provide such data, information and material to Seller and that Seller's, its Affiliates and its subcontractors use of such data, information and material as set out above will not infringe any third-party Intellectual Property Rights or any other rights of a third party or person.

### 21.2 Consent to Changes

The parties agree that neither will withhold or delay its consent to any changes to this clause which are required to be made in order to comply with applicable data protection Laws and regulations and/or with guidelines and order from any competent supervisory authority, and their application to the Equipment or Services from time to time, and agree to implement any such changes at no additional cost to the other party.

### 21.3 Data Processing Agreements

The parties acknowledge that the processing of Personal Data in accordance with a Purchase Order may require the conclusion of additional data processing agreements or additional data protection agreements. If and to the extent such additional data processing agreements or additional data protection agreements are not initially concluded as part of a purchase order, the parties will, and will ensure that their relevant affiliates, subcontractors or customers will, upon the other's request promptly enter into any such agreement with an affiliate, as designated by the other party and as required by mandatory Law or a competent data protection or other competent authority.

### 21.4 Acceptable Use Policy

For purposes of administering Software, Purchaser may be required to provide contact information (for example name, business telephone number, address, email, and user IDs) and other information as described in the registration form provided for the portal to access Software data. Purchaser is responsible for the accuracy and completeness of this information and for any and all activities that occur under an account that is attributable to Purchaser (including, for the avoidance of doubt, activities by third party users). Purchaser will ensure that (i) the users securely store and keep credentials (e.g. username, passwords, certificates, keys) confidential; (ii) the credentials that are allocated to a specified user are only used by such user; and (iii) the account is only used in relation to the Equipment, in accordance with the [ABB Acceptable Use Policy](#) and in such a way so as not to impair or compromise the stability or security of the portal and Seller's systems. Purchaser will notify Seller immediately on discovering any attempted or actual unauthorized use of an account that is attributable to Purchaser and immediately follow Seller's instructions when Seller requests that Purchaser change a user's access credentials. Seller reserves the right to change a user's access credentials or suspend Purchaser users' access to the portal if Seller is of the opinion that such action is necessary for security reasons.

## ARTICLE 22: BRIBERY AND CORRUPTION

### 22.1 Anti-Bribery

Each party represents and warrants that it will not, directly or indirectly, and it has no knowledge that other Persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to Government Entity officials or to agents, directors and employees of the other party or any other party in a manner contrary to applicable Laws (including but not limited to the *Corruption of Foreign Public Officials Act* (Canada), the *Foreign Corrupt Practices Act* (United States) and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials) and will comply with all relevant Laws, regulations, ordinances and rules regarding bribery and corruption.

### 22.2 No Liability

Nothing hereunder will render a party liable to reimburse the other party for any such consideration given or promised.

### 22.3 Violation of Anti-Bribery Rules

A party's material violation of any of the obligations contained in Article 22.1 may be considered by the other party to be a material breach hereunder and will entitle such non-breaching party to terminate a Purchase Order with immediate effect and without prejudice to any further right or remedies on the part of the non-breaching party hereunder or applicable Law. A breaching party will indemnify the non-breaching party of Article 22.1 for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above-mentioned obligations.

### 22.4 Integrity Standards

Purchaser represents and warrants that it will comply with Seller's Integrity Provisions Appendix attached hereto.

## ARTICLE 23: US GOVERNMENT CONTRACTS

### 23.1 Application

This Article 23 applies only if the Agreement is for the direct or indirect sale to any agency of the US government and/or is funded in whole or in part by any agency of the US government. Purchaser agrees that all Equipment and Services meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy America(n) Act, Trade Agreements Act, or other domestic preference requirements are applicable to these Terms, the country of origin of Equipment is unknown unless otherwise specifically stated herein. Purchaser agrees that any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.22-41). The version of any applicable FAR clause listed in this Article 23 will be the one in effect on the effective date of these Terms.

### 23.2 Purchaser as Agency of the US Government

If Purchaser is an agency of the US Government, then as permitted by FAR 12.302, Purchaser agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms. Purchaser further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the prices for Equipment or Services subject to these Terms.

### 23.3 Contractor of the US Government

If Purchaser is procuring the Equipment or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the US Government, then Purchaser agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Fee. Purchaser will (i) disclose the ultimate end-user and end use for the Equipment, (ii) disclose the destination of all Purchase Orders if outside the United States.

## ARTICLE 24: LAW AND JURISDICTION

### 24.1 Choice of Law

**24.1.1** For sales of Equipment and Services in the United States, the Agreement is being delivered in the State of New York and the Agreement and all Purchase Orders will in all respects be governed by and construed in accordance with the Laws of the State of New York, excluding its conflicts of laws rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

**24.1.2** For sales of Equipment and Services in Canada, the Agreement is being delivered in Ontario and the Agreement and all Purchase Orders will in all respects be governed by and construed in accordance with the laws of the Province of Ontario excluding its conflicts of laws rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods unless the Law does not so permit.

### 24.2 Jurisdiction

**24.2.1** For sales of Equipment and Services in the United States, the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Federal District Court in New York County and the State of New York Superior or Municipal Court in New York, New York.

**24.2.2** For sales of Equipment and Services in Canada, the Courts of the District of Toronto, Province of Ontario, will have jurisdiction unless the Law does not so permit, but Seller will also have access to the jurisdiction of the competent Courts where Purchaser is located.

### 24.3 Personal Jurisdiction

Both parties agree to submit to personal jurisdiction, if in the United States, in the courts of New York, and if in Canada, the courts of Ontario, unless prohibited by Law.

### 24.4 Service of Process

The parties hereby consent to the service of process (a) in the manner directed by any of the courts referred to above; (b) by mailing copies of the summons and complaint to the person to be served by first-class mail to the address set forth in Article 24.2, postage prepaid, return receipt requested; or (c) in one of the manners specified by law in Article 24.1.

### 24.5 Prevailing Party in Dispute

If any legal action or other proceeding is brought in connection with or arises out of any provisions in the Agreement or a Purchase Order, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceedings. The prevailing party will also, to the extent permissible by Law, be entitled to receive pre- and post-judgment Default Interest.

### 24.6 Waiver of Trial by Jury

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF PURCHASER AND SELLER HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY. EACH OF PURCHASER AND SELLER HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS BROUGHT IN ANY OF THE COURTS REFERRED TO IN ARTICLE 24.2, AND HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

## ARTICLE 25: MISCELLANEOUS

### 25.1 Press Releases

The parties will give copies to one another, in advance if possible, of all news, articles and other releases provided to the public media regarding the Agreement or the Equipment.

### 25.2 Third Parties

Except as expressly provided in the Agreement with regard to Indemnitees, Purchaser and Seller do not intend that any terms of the Agreement will be enforceable by any Person who is not a party to these Terms.

### 25.3 Rights of Parties

The rights of the parties hereunder are cumulative, not exclusive, may be exercised as often as each party considers appropriate and are in addition to its rights under general Law. The rights of one party against the other party are not capable of being waived or amended except by an express waiver or amendment in writing. Any failure to exercise or any delay in exercising any of such rights will not operate as a waiver or amendment of that or any other such right. Any defective or partial exercise of any such rights will not preclude any other or further exercise of that or any other such right and no act or course of conduct or negotiation on a party's part or on its behalf will in any way preclude such party from exercising any such right or constitute a suspension or any amendment of any such right.

### 25.4 Language of Agreement

The parties acknowledge having specifically requested that the Agreement, Purchase Orders and all related documents and correspondence be drafted in English. *Les parties reconnaissent avoir exigé que la présente entente et tous les documents s'y rapportant soient rédigés en anglais.* If the Agreement is translated into another language, whether or not signed by Purchaser and Seller in such other language, solely the terms and provisions of this English version of the Agreement will prevail in any dispute.

### 25.5 Use of Word "including"

The term "including" is used in the Agreement without limitation.

### 25.6 Headings

All article and paragraph headings and captions are purely for convenience and will not affect the interpretation of the Agreement. Any reference to a specific article, paragraph or section will be interpreted as a reference to such article, paragraph or section of the Agreement.

### 25.7 Invalidity of any Provision

If any of the provisions of the Agreement becomes invalid, illegal or unenforceable in any respect under any Law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

### 25.8 Amendments in Writing

The provisions of the Agreement may only be amended or modified by a writing executed by Purchaser and Seller.

### 25.9 Counterparts

This Agreement may be executed in any number of identical counterparts, each of which will be deemed to be an original, and all of which together will be deemed to be one and the same instrument when each party has signed and delivered one such counterpart to the other party.

### 25.10 Delivery of Documents by E-mail

Delivery of an executed counterpart of the Agreement or of any other documents in connection with the Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any party delivering an executed counterpart of the Agreement or other document by e-mail will also deliver an originally executed counterpart, but the failure of any party to deliver an originally executed counterpart of the Agreement or such other document will not affect the validity or effectiveness of the Agreement or such other document.

### 25.11 Assignment

Any assignment, substitution of party or transfer by operation of Law of the Agreement or of any rights or obligations under the Agreement without prior written consent of Seller will be void.

### 25.12 Non-Survival

The following Articles will not survive termination or cancellation of this Agreement: 1.4, 1.5, 6, 8, and 10. All other Articles shall survive the termination or cancellation of the Agreement.

### 25.13 Entire Agreement

This Agreement constitutes the entire agreement between the parties in relation to the purchase of Equipment and Services by Purchaser from Seller and supersedes all previous proposals, agreements and other written and oral communications in relation hereto. The parties acknowledge that there have been no representations, warranties, promises, guarantees or agreements, express or implied, except as set forth in the Agreement.

### 25.14 Resale

If Purchaser resells any of the Equipment or Services, the sale terms will limit Seller's liability to its customer to the same extent that Seller's liability to Purchaser is limited hereunder. In addition, Purchaser will immediately assign to its customer all rights and benefits of any remaining warranties to such Equipment. Upon sale of the Equipment, Purchaser irrevocably and unconditionally consents to the transfer of, and access any data collected by the Equipment to its customer.

### 25.15 Trademarks

Each party hereby grants to the other party a non-exclusive, limited, revocable, and non-transferable license during the Term to use the other party's trademarks solely for co-branding purposes related to the performance hereunder.

**INTEGRITY PROVISIONS APPENDIX**

**Applicable Integrity Laws** means:

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

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

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

1. Seller and Purchaser ("**Parties**") will comply with all Applicable Integrity Laws in connection with this Agreement. Both Parties shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the Agreement shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Clause in connection with this Agreement. Both Parties confirm that they have not violated, shall not violate, and shall not cause the other Party to violate, any Applicable Integrity Laws in connection with this Agreement.
2. Each Party represents and warrants that, to the best of its knowledge, at the date of this Agreement neither it, nor any of their respective directors or officers are a Restricted Party. Each Party agrees that it shall promptly notify the other Party if it becomes a Restricted Party.
3. If, as a result of (i) Trade Control Laws issued or amended after the date of this Agreement, (ii) Purchaser becoming a Restricted Party, or (iii) any necessary export license or authorization from a Sanctions Agency is not granted, the performance by ABB or by any affiliates or third parties engaged in any manner in relation to the Agreement becomes illegal or impracticable, ABB shall, as soon as reasonably practicable, give written notice to Purchaser of its inability to perform or fulfil such obligations. Once such notice has been received by Purchaser, ABB shall be entitled to either immediately suspend the performance of the affected obligation under the Agreement until such time as ABB may lawfully discharge such obligation or unilaterally terminate the Agreement in whole or in part from the date specified in the said written notice or from any subsequent date thereafter. ABB will not be liable to Purchaser for any costs, expenses or damages associated with such suspension or termination of the Agreement.
4. In the event of suspension or termination as set out in the Agreement, ABB shall be entitled to the Fee and any reasonable associated costs necessarily incurred by ABB in regard to such suspension or termination including, but not limited to, all reasonable costs associated with suspending or terminating any subcontract placed or committed for goods or services in connection with this Agreement.
5. Purchaser represents that it is the ultimate end recipient of any items provided under this Agreement, that the items are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any items received from ABB to any third party or country in violation of Trade Control Laws.
6. Purchaser further represents and warrants that the [Products and/or Services] provided under this Agreement shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of ABB.
7. For the avoidance of doubt, no provision in this Agreement shall be interpreted or applied in a way that would require any party to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable Trade Control Laws.