

## ABB GENERAL TERMS AND CONDITIONS FOR ABB IT RESELLER AGREEMENT (2017-12)

### Background:

(A) The Supplier is in the business of providing computer software, hardware and associated cloud services, including the Products.

(B) The Reseller wishes to obtain and the Supplier wishes to provide the Products for the purpose of reselling the Products to End Users, on the terms set out in this Reseller Agreement.

### Agreed Terms:

#### 1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Reseller Agreement.

##### 1.1 Definitions.

"Affiliate" means any entity, whether incorporated or not, which presently or in the future, directly or indirectly controls, is controlled by, or is under common control with a party, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, or by means of controlling the constitution of the board and the voting at board meetings;

"Annex" means an annex to the Order, which sets out the Specifications or other terms as agreed between the parties;

"Certificate" means the general document certified by a competent authority that the supplied good or service meets the required specifications.

"Charges" means the charges payable by Reseller for the Products, as set out in an Order;

"Cloud Services" means those Products provided by the Supplier which are indicated in the Order as being provided on a "software as a Service", "SaaS", "Subscription" or "Cloud" basis;

"Combined Product" means a Reseller product that uses or is combined with the Products;

"Contract" has the meaning given in Clause 2.1;

"Document" includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

"Documentation": means the documentation provided to Reseller by Supplier in connection with the Product, including the Specification and any user manuals or other documentation provided under the Contract, and including any documentation described in the Order;

"End User" means a party deriving or making use of the Products either directly or through the Reseller;

"End User Contract" means the order forms or agreement entered into between the Reseller and its End Users which relate to the supply of Products to End Users;

"Hardware" means the hardware to be provided by the Supplier, as set out in the Order;

"Intellectual Property Rights" 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;

"Malicious Software": means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on hardware, program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced willfully, negligently or without knowledge of its existence and includes computer programs commonly referred to as virus, worm, Trojan horses, time or logic bombs, backdoors and disabling codes or routines.

"Modification" means any maintenance release or Reseller specific modification;

"Notice" has the meaning given in Clause 21.9.

"Order" means an order for the Products entered into between the parties in accordance with Clause 4;

"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) reissues, 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 entity which is subject to applicable data protection laws and regulations;

"Products" means the Products provided by the Supplier under this Contract as set out in an Order which may be Software, Hardware or Cloud Services;

"Reseller" means the ABB entity which enters into the Order with the Supplier;

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

"Reseller Materials" means any data, text, drawings, diagrams, images, Documents or other information which:

a. are received or acquired by the Supplier from or on behalf of any member of the Reseller Group in the course of providing the Products;

b. are supplied to the Supplier by or on behalf of any member of the Reseller Group or an End User in connection with this Contract; or

c. the Supplier is required to generate, process, store or transmit pursuant to this Contract,

and includes any personal data for which any member of the Reseller Group is the data controller;

"Service Credit " means an amount payable by the Supplier to Reseller as a service credit in accordance with Clause 9.4 and the Order;

"Service Levels" means the service levels, if any, applicable to the Products, as set out in the Order;

"Service Level Failure" is defined in Clause 9.2;

"Specific Schedule" means a Schedule to this Contract which applies only to certain Products provided by the Supplier, as identified in an Order and/or the Specific Schedule itself;

"Software" means the computer programs listed in the Order and all Documentation in respect of such programs and any Modification which is provided during the term of this Contract;

"Specification" means the specification for the Products as set out in the Order;

"Supplier" means the party to the Order indicated to be the Supplier;

"Supplier's Team" means all employees, consultants, agents and sub-contractors which it engages in relation to the Products; and

"Third Party Provider" means any contractor, agent or third party who provides hardware, software or services to any member of the Reseller Group.

"VAT" means Value Added Tax or any similar sales tax.

## Interpretation:

1.2 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.

1.3 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. Contract Structure

2.1 A contract comprises

2.1.1 the Order entered into in accordance with Clause 4;

2.1.2 the terms of the applicable Specific Schedule(s); and

2.1.3 the terms and conditions included in this Reseller Agreement, (together, the "Contract")

2.2 In the event of a conflict between this Reseller Agreement and any other document incorporated into the Contract, this Reseller Agreement shall take precedence.

2.3 No terms and conditions of the Supplier shall apply to any transaction entered into by the Supplier and Reseller to which this Reseller Agreement applies unless such terms are specifically agreed by the Supplier and Reseller and incorporated into this Reseller Agreement (or any Order) in writing.

## 3. Term

3.1 The Supplier shall provide the Products from the date specified in the relevant Order.

3.2 A Contract shall continue as specified in the relevant Order, unless it is terminated in accordance with Clause 19.

## 4. Order Process

4.1 The parties agree that under this Reseller Agreement any company being part of the Reseller Group may issue Orders referencing this Reseller Agreement and thereby conclude separate Contracts with Supplier for the purchase of Licenses and Services.

4.2 The Order shall reference and incorporate this Reseller Agreement and be deemed to be accepted on the earlier of:

4.2.1 the Supplier and Reseller having issued written acceptance of the Order (including any electronic signature or acceptance of the Order); or

4.2.2 any act by the Supplier consistent with fulfilling the Order issued by Reseller,

at which point and on which date the Contract shall come into existence.

4.3 this Reseller Agreement applies to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (including any terms or conditions set out in the Annex), or which are implied by trade, custom, practice or course of dealing.

## 5. Resale of the Products

5.1 The Reseller may:

5.1.1 use the Products in order to deliver services to its End Users; and

5.1.2 resell or sub-license the Products, including as Combined Products, to End Users,

pursuant to the terms of a Contract.

5.2 Any resale or sub-license of the Products by the Reseller shall be on terms and conditions to be determined by the Reseller in its sole and absolute discretion, provided that such terms and conditions in the End User Contract shall be no less restrictive than the terms of this Reseller Agreement as it relates to the Reseller's use of the Products.

Where the Reseller resells or sub-licenses the Products to an End User, it shall do so only on the condition that any End User shall be considered the Reseller's customer and the credit and collection risk is with Reseller;

## 6. Supplier Responsibilities (General)

6.1 The Supplier shall provide the Products to Reseller or End-User as indicated in an Order, in accordance with this Reseller Agreement and the applicable Order.

6.2 The Supplier shall deliver the Products in a timely manner and meet any performance dates specified in an Order.

6.3 The Supplier shall:

6.3.1 co-operate with the Reseller Group in all matters relating to the Products; and

6.3.2 ensure that the Supplier's Team use reasonable skill and care in the production and delivery of the Products.

6.4 The Supplier confirms that any Certificate for the Products may be shared with End Users. In the event that a Certificate is needed in an End User country where Supplier has not yet obtained the relevant Certificate, Supplier will either provide the Certificate or allow Reseller to apply for such Certificate on Suppliers behalf. For the purpose of obtaining a Certificate, Reseller may share Confidential Information of Supplier with any authority or any organisation performing certification on behalf of such authority.

6.5 The Supplier shall:

6.5.1 observe, and ensure that the Supplier's Team observe: all health and safety rules and regulations and any other reasonable requirements that apply at any of the Reseller Group's premises and that have been communicated to it. In case Supplier's Team fails to accept or observe such rules, regulations or requirements, Reseller reserves the right to refuse the Supplier's Team access to the Reseller Group's premises, which shall only be given to the extent necessary for the delivery of the Products; observe, and ensure that the Supplier's Team observe: any security procedure, policy or standard provided to the Supplier by any member of the Reseller Group from time to time or as otherwise set out

in the Order; and in particular with the ABB Cyber Security Requirements for Suppliers as made available under [www.abb.com/Supplying/Cybersecurity](http://www.abb.com/Supplying/Cybersecurity), or as otherwise set out in a Contract.

6.5.2 notify Reseller as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Products or any other issues or circumstances which may reasonably be expected to jeopardise the timely provision of the Products; and

6.5.3 before the date on which the Products are to be delivered, obtain, and at all times maintain during the term of this Reseller Agreement, all necessary licences and consents and comply with all relevant legislation in relation to the Products and the performance of its obligations under this Reseller Agreement.

6.6 The Supplier shall comply with any additional responsibilities and/or obligations as set out in the applicable Service Specific Schedule and the Order.

## 7. Acceptance of Product

7.1 Except where the Order sets out an acceptance procedure in respect of particular Products and subject to Clause 8 the acceptance procedure/period shall be as set out in the applicable Specific Schedule.

## 8. Warranties (General)

8.1 The Supplier warrants to each member of the Reseller Group that:

8.1.1 the Products will conform with all descriptions, Documentation and Specifications as set out in the Order; and

8.1.2 the Products will be provided in accordance with all applicable legislation, and the Supplier will inform Reseller as soon as it becomes aware of any changes in that legislation where it effects the Supplier's ability to provide the Products.

8.1.3 Supplier will not insert or include, or permit or cause any person or software to insert or include, any Malicious Software into the Software as a whole or any individual Modification; and

8.1.4 the services will be performed consistent with Good Industry Practice standards.

8.2 Without prejudice to any other right or remedy Reseller may have, in the event that the Supplier commits any breach of any warranties (including any set out in a Specific Schedule) it shall within a reasonable time specified by Reseller, on receiving Notice from Reseller, correct any defect or deficiency in the Product. If the Supplier fails or is unable to do so, Reseller shall be entitled to return the relevant Product and, where this has a material effect on the Contract as a whole, terminate the Contract for material breach and claim damages in accordance with Clause 18.

8.3 To the extent permitted by applicable law any warranties implied in favour of Reseller by statute are excluded from this Reseller Agreement.

8.4 The provisions of this Clause 8 shall survive any performance, acceptance or payment pursuant to this Reseller Agreement and shall extend to any substituted or remedial Products provided by the Supplier.

## 9. Service Levels

9.1 The Supplier must provide Products, which meet or exceed the Service Levels.

9.2 If the Supplier fails to provide any of the Products in accordance with the Service Levels ("**Service Level Failure**"), it must promptly notify Reseller in writing.

9.3 As soon as practicable after notification under Clause 9.2 (and, in any event, within the period specified in the Order), the Supplier must:

9.3.1 perform a root-cause analysis to identify the cause of the Service Level Failure;

9.3.2 allocate such resources as may be necessary to remedy the Service Level Failure and any consequences; and

9.3.3 provide Reseller with a written report detailing the cause of, and procedure for correcting, the Service Level Failure and any consequences.

9.4 If, in any month, a Service Level Failure occurs and the Order provides for Service Credits to accrue in respect of such failure, the Supplier must deduct those Service Credits from its next invoice (or, where no further invoices are due, the Supplier must pay an amount equal to such Service Credits within 30 days after a written demand for payment from Reseller). The parties agree that the payment of Service Credits is without prejudice to any other remedy available to Reseller whether under this Reseller Agreement or otherwise.

9.5 If Supplier fails any Service level for any four months (whether or not consecutive) within a calendar year, Reseller may terminate this Reseller Agreement

## 10. Reseller's obligations

10.1 Reseller shall:

10.1.1 co-operate with the Supplier in all matters relating to the Products;

10.1.2 provide access to Reseller premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with Reseller in writing in advance, for the purpose of providing the Products;

10.1.3 provide the Reseller Material, in order to provide the Products, as set out in the Order or otherwise in a timely manner after Supplier's reasonable request;

10.1.4 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of Reseller premises; and

10.1.5 comply with any additional responsibilities as set out in the relevant Order.

10.2 If Supplier believes a failure by Reseller to perform its obligations has an adverse effect on Supplier's ability to perform its obligations in accordance with the Contract, Supplier shall promptly notify Reseller. Any such Notice shall include at least a description of Reseller's failure in reasonable detail and a description of the effects on the Products, in particular the extent of potential delay and estimated additional costs, if any. Supplier shall use all reasonable efforts to perform its obligations on time notwithstanding Reseller's failure to perform and assist Reseller to remedy its failure.

10.3 This Reseller Agreement does not place Reseller under any duty or obligation to order Licenses or Services from Supplier.

## 11. Billing and Payment

11.1 In consideration for the provision of the Products, Reseller shall pay to the Supplier the Charges in accordance with this Clause 11.

11.2 The Supplier shall invoice Reseller for the Charges in accordance with the relevant provisions of the applicable Specific Schedule, and the relevant Order. Invoices shall comply with applicable laws, generally accepted accounting principles and the specific requirements of Reseller (as notified to the Supplier from time to time), and at all times 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 Reseller; quantity; specification of the Products; charges (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms as agreed.

11.3 Invoices must be sent to the billing address specified in the Contract.

11.4 Reseller will reimburse expenses only at cost and to the extent agreed in writing.

11.5 Unless otherwise agreed in a specific Order Reseller shall make payment of undisputed invoices within ninety (90) days from receipt of the invoice.

11.6 If a party fails to make any undisputed payment due to the other party under a Contract by the due date for payment, then, without limiting the other party's remedies under Clause 19, if the undisputed payment remains outstanding thirty (30) days from the defaulting party's receipt of a written reminder by the other party (such reminder to be sent only after the due date for payment) the defaulting party shall pay interest on the overdue undisputed amount at the rate of 4% per annum. Such interest shall accrue on a daily basis from the expiry date of the grace period until actual payment of the overdue amount.

11.7 In relation to payments disputed in good faith, interest under Clause 11.6 is payable only after the dispute is resolved, on sums found or agreed to be due.

## 12. IPR Ownership

12.1 Subject to Clause 13 below and anything to the contrary in the applicable Specific Schedule(s) or as agreed in a particular Order, as between Reseller and the Supplier, all Intellectual Property Rights in the Products shall be owned by the Supplier. The Supplier grants to the Reseller Group for the term as indicated in the Order a non-exclusive, worldwide, irrevocable license to resell the Products as stand-alone and Combined Products together with Reseller's products and to permit its End Users to use the Products, including as Combined Products. Such license shall include the right to have any third party exercise such rights for the benefit of Reseller and Reseller Group.

12.2 Supplier represents and warrants that, if it has used or uses open source software or the Product contains open source software, Supplier has used, modified, and/or further developed the open source software in full compliance with the underlying license terms and conditions and such open source software has no viral effect on Reseller's and its Affiliate's Intellectual Property Rights.

12.3 The Supplier grants to the Reseller a temporary, royalty-free, non-exclusive licence to use the trademarks of the Supplier which are connected with the Products (the "Supplier Trademarks" subject to the following conditions:

12.3.1 the Reseller shall only use the Supplier Trademarks as necessary for the purposes of performing its obligations under this Reseller Agreement;

12.3.2 the licence granted pursuant to this Clause 12.3 shall terminate on expiry or termination of this Contract.

12.4 Subject to anything to the contrary agreed in a particular Order, the Supplier assigns to Reseller, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in all modifications of the Products which have been made by or specifically for Reseller.

12.5 At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to a Contract, including securing for Reseller all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Reseller in accordance with Clause 0.

12.6 The parties acknowledge and agree that at all times the Reseller Materials shall be the property of the applicable member of the Reseller Group. Nothing in this Reseller Agreement shall transfer any right or title in the Reseller Materials to the Supplier. Reseller grants to the Supplier a license to use the Reseller Materials free of charge and on a non-exclusive, worldwide, basis solely to such extent as is necessary to enable the Supplier to provide the Products.

## 13. IPR Warranty and Indemnity

13.1 The Supplier represents and warrants that:

13.1.1 the supply, or use by the Reseller Group or any Third Party Provider, of any Product, Software (including any Cloud Software), Hardware or Documentation;

13.1.2 the assignment or grant of any licence of any Intellectual Property Rights under this Reseller Agreement; or

13.1.3 the provision, or the Reseller Group or any Third Party Service Provider taking the benefit, of any of the Products,

will not infringe the Intellectual Property Rights of any person.

13.2 The Supplier shall indemnify and hold each member of the Reseller Group harmless from and against all costs, claims, demands, liabilities, expenses, damages or losses (including any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any alleged or actual infringement under any law, of any third party's Intellectual Property Rights or other rights arising out of the Products or use of the Software the Hardware or the Cloud Services.

13.3 If any third party makes a claim, or notifies an intention to make a claim, against Reseller which may reasonably be considered likely to give rise to a liability under the indemnity in Clause 13.2 (a "Claim"), Reseller shall:

13.3.1 as soon as reasonably practicable, give written Notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

13.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

13.3.3 reasonably cooperate with the Supplier and its professional advisers on reasonable prior Notice and at Supplier's cost, so as to enable the Supplier and its professional advisers to assess and defend the Claim; and

13.3.4 subject to the Supplier providing security to Reseller to Reseller's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

13.4 The Supplier shall not have any liability for any claim of infringement of Intellectual Property Rights if and to the extent the claim arises due to the incorporation of Reseller Material into the Product or due to the Supplier following Reseller specific instructions in developing the Product.

13.5 If a Claim is made, the Supplier may, at no cost to Reseller and without prejudice to the Supplier's obligations under Clause 13.1:

13.5.1 procure for the Reseller Group the right to continue to use the infringing Product or other material, or continue to take the benefit of any Products, that are affected by the Claim in accordance with the terms of this Reseller Agreement; or

13.5.2 modify or replace the infringing Product or other material or re-perform the applicable Products so that it becomes non-infringing (provided that the modified or replaced Product or other material, or the re-performed Products, provide the same performance and functionality and do not adversely affect the use of the Product or other material).

13.6 If the Supplier is not able to rectify the infringing situation in accordance with Clause 13.5 within reasonable time, Reseller shall be entitled to terminate the Contract and/or this Reseller Agreement for cause and with no liability to the Supplier with immediate effect.

## 14. Demonstration Products

14.1 In the event that Supplier provides Reseller with Products for marketing or demonstration ("Demonstration Products"), such Demonstration Products (i) are restricted for use only by the Reseller

and shall not be transferred to any third party; and (ii) may be used only for demonstration and marketing to, and internal evaluation purposes of End Users.

14.2 Demonstration Product licenses are non-exclusive, non-transferable, and limited to the number of copies specified in an Order.

14.3 Unless otherwise agreed by the Parties in writing, Demonstration Products receive the following limited support services from Supplier: (i) updates and patches of the Demonstration Products when such updates and patches are made generally available by Supplier; and (ii) help-desk assistance.

## 15. Confidentiality

15.1 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 (the "Recipient") by the other party (the "Discloser") or its agent and any other confidential information concerning Discloser's business or its products which the Recipient may obtain, except as permitted by Clause 15.3. The parties agree that, where Reseller is the Discloser, all Reseller Materials and all information concerning any member of the Reseller Group's business or products shall be confidential information.

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

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

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

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

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

15.3.1 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 a Contract. The Recipient shall ensure that such employees, agents or sub-contractors comply with this Clause 14; and

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

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

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

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

## 16. Data Protection

16.1 The Supplier shall take all necessary steps to ensure that Reseller data or information which comes into its possession or control in the course of providing the Products is protected and in particular the Supplier shall not: (i) use Reseller's data or information for any other purposes than for providing the Products; or (ii) reproduce the

data or information in whole or in part in any form except as may be required by the underlying contractual document, or (iii) disclose Reseller data or information to any third party or persons not authorized by Reseller to receive it, except with the prior written consent of Reseller.

16.2 If Reseller discloses Personal Data to Supplier, Supplier shall (i) apply appropriate physical, technical, logical and organisational security measures to protect Personal Data, (ii) comply with all applicable data protection laws and regulations; (iii) only process Personal Data in accordance with Reseller instructions and for the purpose the Personal Data was provided; and (iv) not transfer Personal Data to a country with a level of data protection that is not equivalent with the level of data protection in the country where Reseller is domiciled without Reseller's prior written consent and without complying with any legal requirement for such transfer, including the execution of EU Standard Contractual Clauses for the transfer of Personal Data. Supplier will further comply with any request by Reseller to access, correct, block or delete Personal Data and will return or destroy all Personal Data upon termination of the Contract unless instructed otherwise by Reseller. Reseller may audit and verify Supplier's compliance with this Clause 16.2 any time upon reasonable Notice.

16.3 The Supplier agrees that it will not withhold or delay its consent to any changes to this Clause 16 which in Reseller's reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations, and their application to the Products from time to time, and agrees to implement any such changes at no additional cost to Reseller.

16.4 Supplier acknowledges that the processing of Personal Data in accordance with this Reseller Agreement or a Contract may require the conclusion of additional data processing agreements or additional data protection agreements with Reseller or members of Reseller's Group; therefore, upon Reseller's request, Supplier shall, and shall ensure that its relevant Affiliate or subcontractor, promptly enter into any such agreement with any member of Reseller's Group, as designated by Reseller.

## 17. Insurance

17.1 The 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 (5mio USD) per event and ten million US dollar (10mio USD) per year and a professional indemnity insurance policy in the amount of not less than five million US dollar (5 mio USD) per occurrence and fifteen million US dollar (15 mio USD) per year, covering the liability arising out of a Contract and the related Products including Intellectual Property Rights infringement, computer virus, confidentiality and data protection. Such insurance policies shall remain in effect throughout the term of this Reseller Agreement and for a period of two (2) years after termination or expiration.

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

17.3 Nothing contained in this Clause 17 shall relieve Supplier from its liability. The insured amount cannot be considered nor construed as limitation of liability.

## 18. Liability

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

18.1.1 death or personal injury arising out of negligence;

18.1.2 breach of Clauses 15 (Confidentiality) or 16 (Data Protection);

18.1.3 gross negligence, wilful misconduct or fraudulent misrepresentation;

18.1.4 an indemnification obligation pursuant to Clauses 13 (IPR Indemnity) or 20 (Compliance with Laws, Integrity); or

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

18.2 Subject to Clause 18.1, under no circumstances shall either party be liable to the other for any of the following types of loss or damages arising under or in relation to a Contract (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise):

18.2.1 any indirect or consequential loss or damage; or

18.2.2 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.

18.3 Subject to Clause 18.1 and excluding any liability under Clause 18.2, the total liability of each party in respect of any losses incurred by the other party or any of its Affiliates under or in relation to a Contract, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, will not exceed the greater of:

18.3.1 USD 500,000; or

18.3.2 (i) a sum equal to the Charges agreed under the respective Contract, or (ii) if recurring Charges apply, twenty four (24) times the average monthly Charges paid or payable by Reseller under the respective Contract prior to the event giving rise to the liability.

18.4 Nothing in this Reseller Agreement shall operate as to exclude any conditions implied by applicable law.

## 19. Termination

19.1 Except as otherwise provided in the Order, Reseller may terminate the Reseller Agreement or any Contract:

19.1.1 for convenience in whole or in part by giving Supplier thirty (30) days written Notice;

19.1.2 if an End User terminates its End User Contract with Reseller by giving the Supplier (10) days written Notice.

In such events, Reseller shall pay to Supplier the value of the delivered but unpaid Products. No further compensation will be due to Supplier.

19.2 Either party may terminate the Contract for cause and with no liability to the other party with immediate effect by giving written Notice to the other party if:

19.2.1 the other party 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

19.2.2 the other party 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.

19.3 In addition, Reseller shall have the right to terminate the Contract(s) and/or the Reseller Agreement for cause and with no liability to the other party with immediate effect if the Supplier undergoes a Change of Control to a competitor of any member of the Reseller Group. For purposes of this Clause 19.3, a "Change of Control" occurs if either (i) the majority of shares carrying a right to vote in the Supplier or its parent company(ies) are acquired by a person who is not at the date of this Contract a majority shareholder, or (ii) there is a change in the ownership of the legal power to direct, or determine the direction of, the general management and policies of the Supplier or its parent company(ies).

19.4 The termination of the Contract(s) and/or the Reseller Agreement, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination.

19.5 Upon termination of this the Contract(s) and/or the Reseller Agreement the Supplier shall immediately safely return to Reseller all property and information of Reseller then in the Supplier's possession or under its control.

19.6 Following termination of this Reseller Agreement the Clauses which expressly or by implication survive termination shall continue in full force and effect.

## 20. Compliance with Laws, Integrity

20.1 Supplier shall provide the Products, in compliance with all relevant laws, regulations and applicable codes of practice.

20.2 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 this Reseller Agreement. If any of the Products are or will be subject to export restrictions, it is Supplier's responsibility to promptly inform Reseller in writing of the particulars of such restrictions. Reseller will comply with the restrictions to the extent it has been informed by Supplier.

20.3 Both parties warrant that each will not, directly or indirectly, and that each has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each party, or any other party in a manner contrary to applicable laws (including the U. S. Foreign Corrupt Practices Act, 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 a Contract will render either party liable to reimburse the other for any such consideration given or promised.

20.4 Supplier herewith acknowledges and confirms that Supplier has received a copy of Reseller's Code of Conduct and Reseller's Supplier Code of Conduct or has been provided information on how to access both Reseller Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Supplier agrees to perform its contractual obligations with substantially similar standards of ethical behaviour.

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

20.6 Any violation of an obligation contained in this Clause 20 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 Reseller for all liabilities, damages, cost or expenses incurred as a result of any such violation and termination of the Contract, or arising from export restrictions concealed by Supplier.

## 21. Miscellaneous

21.1 **Assignment and other dealings.** The 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 this Reseller Agreement. Reseller 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 this Reseller Agreement.

21.2 **Variation.** No variation of this Reseller Agreement 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 Reseller Agreement.

21.3 **Waiver.**

21.3.1 A waiver of any right or remedy under this Reseller Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

21.3.2 A failure or delay by a party to exercise any right or remedy provided under this Reseller Agreement 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 this Reseller Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.4 **Rights and remedies.** The rights and remedies provided under this Reseller Agreement 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.

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

21.6 **Entire agreement.** This Reseller Agreement constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to that subject matter.

21.7 **No partnership or agency.** Nothing in this Reseller Agreement 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.

#### 21.8 **Third party rights.**

21.8.1 The Supplier agrees that the Products may be used, received and resold by each member of the Reseller Group subject to the terms of this Reseller Agreement. The parties specifically acknowledge and agree that it is their intention that each member of the Reseller Group shall be entitled: (i) to the benefits of the Reseller Agreement as if it were party to it; and (ii) to use, receive and sell any of the Products provided by the Supplier hereunder, including as Combined Products; provided that any obligations set out in the Contract are obligations of Reseller, not of any other member of the Reseller Group. Reseller and the Supplier do not require the consent of any third party to rescind the Contract or to vary it in any way.

21.8.2 The parties acknowledge and agree that: (i) except as specifically provided in the Contract, no one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms, including but not limited to, and End User of the Reseller; (ii) any liabilities, losses, damages, costs and expenses incurred by any other members of the Reseller Group under or in connection with the Contract shall be deemed to have been suffered by Reseller (and shall be recoverable by Reseller from the Supplier in accordance with the terms of the Contract as if they had been suffered by Reseller); and (iii) Clause 21.8.2(i) shall not apply where it would prevent the applicable member of the Reseller Group from recovering any relevant liabilities, losses, damages, costs or expenses, in which case the applicable member of the Reseller Group may enforce the benefits conferred on it under the Contract.

#### 21.9 **Notices.**

21.9.1 Any Notice given to a party under or in connection with this Reseller Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid registered first-class post or special delivery at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by fax to its main fax number (provided that such Notice is also sent by first class mail);

(c) sent by email provided that the parties have agreed in writing that Notices may be sent by email and the email address which Notices must be delivered to.

21.9.2 Any Notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the Notice is left at the proper address;

(b) if sent by pre-paid recorded first-class post or special delivery, at the time recorded by the delivery service.

(c) if sent by fax or email, [at [9.00am] on the next working day after transmission].

21.9.3 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.

21.10 **Governing law.** This Reseller Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21.11 **Jurisdiction.** All disputes (including non-contractual disputes) arising out of or in connection with this Reseller Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. Place of arbitration shall be Reseller's place of registration. The language of the proceedings and of the award shall be English. The decision of the arbitrator is final and binding upon both parties, and neither party may appeal for revision.