

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF SITE SERVICES

### (2025-1 STANDARD)

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**1. DEFINITIONS AND INTERPRETATION**

1.1 The following terms have the following meaning:

**ABB Contractor:** the party ordering the Services from Subcontractor;

**ABB Contractor Data:** any data or information, including Personal Data, acquired by Subcontractor in preparation of or during the fulfilment of the Subcontract, irrespective of whether such data or information relates to ABB Contractor, its Affiliates or their respective customers or suppliers;

**ABB GTC/Site Services:** these ABB General Terms and Conditions for Purchase of Site Services (2020-1 Standard);

**Affiliate:** any entity which directly or indirectly controls, is controlled by, or is under common control with a Party;

**Applicable Integrity Laws:**

- (i) Anti-bribery and anti-corruption laws: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended) and any other applicable laws, regulations and official governmental orders relating to anti-corruption, anti-bribery, anti-money laundering and anti-tax evasion in relevant jurisdictions;
- (ii) Sanctions and trade control laws and regulations: any applicable laws, regulations, or administrative or regulatory decisions or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of this Contract that sanction, prohibit or restrict certain activities including direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, (collectively, “Trade Control Laws”); and
- (iii) Human rights and anti-modern slavery laws and international frameworks: 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, regulations and international frameworks;

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

**Effective Date:** the day when the Subcontract becomes effective as

stated in the Subcontract;

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

**Order:** ABB Contractor’s order issued to Subcontractor for the purchase of the Services;

**Party:** ABB Contractor or Subcontractor, collectively referred to as the Parties;

**Personal Data:** any data or information of an identified or identifiable natural person;

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

**Project Designed Goods:** the material, components, machinery and equipment, supplies and other items delivered by a third party for the completion of the Project and defined in the Subcontract;

**Records:** all books, accounts, records and supporting or underlying documents and materials reflecting financial transactions and services related to any business conducted for or on behalf of ABB Contractor or its Affiliates;

**Restricted Person:** 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);

**Sanctions Agency:** any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws and has jurisdiction over the Contract 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;

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

**Services:** the services to be provided by Subcontractor on Site which are specified in the Subcontract and may include supervision of civil and installation works, provision of commissioning and testing of Project

Designed Goods and all other undertakings, obligations and responsibilities of Subcontractor specified in the Subcontract, including all equipment;

Site: the location where Subcontractor shall perform the Services;

Subcontract: a written agreement, comprising of:

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

and/or the Order, which is accepted by Subcontractor and ABB Contractor. Subcontractor shall be deemed to have accepted the Subcontract by performing the Subcontract in whole or in part;

Subcontractor: the party performing the Services to ABB Contractor;

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

Variation Order: a change to the Subcontract such as to alter the Schedule, or to amend, omit, add to, or otherwise change the Services or any parts thereof.

1.2 References to clauses are references to clauses of the ABB GTC/Site Services.

1.3 Headings are for convenience only and do not affect the interpretation of the ABB GTC/Site Services.

## 2. APPLICATION

2.1 The Subcontract, including the ABB GTC/Site Services, shall be the exclusive terms and conditions which shall govern the contractual relationship between ABB Contractor and Subcontractor.

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

2.3 Any amendments to the Subcontract shall be agreed in writing.

## 3. SUBCONTRACTOR'S RESPONSIBILITIES

3.1 Subcontractor shall perform the Services:

3.1.1 in accordance with the applicable laws and regulations, including but not limited to statutes, ordinances, permits or approvals (collectively the Applicable Laws) of any federal, state, local or other authority or labour union applicable to the Services, and shall keep ABB Contractor indemnified against all penalties and liabilities for non-compliance with any such Applicable Laws. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Subcontractor shall be in compliance with generally accepted best practice of the relevant industry. The Schedule and the Subcontract Price may be adjusted to take account of any increase or decrease in cost or delay resulting from a change in the Applicable Laws which materially affects Subcontractor in the performance of its obligations under the Subcontract, provided however that adjustments relevant to the performance of the Services are obtained by ABB Contractor from Client under the Main Contract;

3.1.2 in accordance with the Subcontract and ABB Contractor instructions;

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

3.1.4 on the dates specified in the Schedule;

3.1.5 in the quantity specified in the Subcontract; and

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

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

3.3 Subcontractor shall access the Site only with ABB Contractor's prior written approval. ABB Contractor shall grant Subcontractor access to the respective portions of the Site (as may be required in ac-

cordance with the Schedule) to enable Subcontractor to perform its obligations under the Subcontract. Subcontractor shall not carry out any work activity on Site without ABB Contractor first reviewing Risk Reduction and Method Statement specified in the Special Terms and Conditions.

3.4 Subcontractor shall cooperate with ABB Contractor to schedule and perform the Services so as to avoid conflict or interference with work performed by other parties at Site.

3.5 Subcontractor shall coordinate the performance of the Services with ABB Contractor's Site management, taking into account the conditions prevailing at Site. Subcontractor shall supply all equipment relevant to the Services and special tools of whatever kind, commissioning spares and consumables required for the Services. For the avoidance of doubt, special tools shall include all items required to work on the instrumentation and the control equipment and to install, set up and configure the controls and transmitters provided with the Project Designed Goods. All spare parts, special tools and consumables shall become the property of ABB Contractor.

3.6 Subcontractor shall in a timely manner obtain and pay for all permits, licenses, visas and approvals necessary to allow its personnel to perform the Services in accordance with the Schedule. Personnel shall comply with particular country specific travel safety instructions and/or restrictions as provided by ABB Contractor. Subcontractor shall employ and provide sufficient number of competent and experienced personnel for the performance of the Services. Upon ABB Contractor's request Subcontractor shall remove forthwith any person who, in the opinion of ABB Contractor, misconducts or is incompetent or negligent. Any person so removed shall be replaced within fifteen (15) calendar days by a competent substitute. Subcontractor shall bear all costs relating to such removal. Subcontractor shall hire only persons free from contagious diseases.

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

3.8 ABB Contractor may request Subcontractor to nominate and use a local sub-supplier to provide Services in the country of Site and to enter into the respective supply agreement with such sub-supplier. If Subcontractor nominates a sub-supplier for this purpose, Subcontractor warrants and undertakes to ABB Contractor that Subcontractor will coordinate its respective duties and obligations with the duties and obligations of that sub-supplier. Subcontractor will ensure that its sub-supplier shall provide the Services and perform all work incidental thereto and/or otherwise necessary to ensure that the Project Designed Goods are completed and operational in accordance with the Subcontract.

3.8 Subcontractor shall be responsible for any activities performed by its employees in relation to the Subcontract. In particular:

3.8.1 Subcontractor assumes full and exclusive responsibility for any occupational accident or disease occurred to its employees in relation to the Subcontract;

3.8.2 the Parties agree that the Subcontract does not imply any employment relationship between ABB Contractor and Subcontractor, or between ABB Contractor and Subcontractor's employees assigned to the performance of the Subcontract. ABB Contractor shall remain free of any responsibility or liability for labour, social security or taxes with respect to Subcontractor and its employees assigned to the performance of the Subcontract;

3.8.3 Subcontractor shall hire in its own name all employees required to perform the Subcontract, who shall under no circumstances act as ABB Contractor's employees;

3.8.4 Subcontractor shall be solely and exclusively responsible for any claims and/or lawsuits filed by its employees and shall, without limitation, defend, indemnify and hold harmless ABB Contractor from any

claim, proceeding, action, fine, loss, costs, damages and expenses arising out of or relating to any such claims and/or lawsuits, and any non-compliance with Applicable Laws. Subcontractor undertakes to appear in court at its own costs if requested by ABB Contractor, acknowledging its status as sole and exclusive employer, and to provide ABB Contractor with all requested documentation necessary to ensure proper legal defence of ABB Contractor in court.

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

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

4.1 Subcontractor shall comply and ensure compliance by any of its employees with all HSE Requirements, as specified in the Special Terms and Conditions.

4.2 Subcontractor's compliance with HSE Requirements requires the active participation of all levels of Subcontractor's management and supervision. Subcontractor shall appoint and keep assigned during the entire performance of the Services certified HSE Manager and Site Manager, who are to be approved by ABB Contractor. Upon Effective Date, Subcontractor shall provide evidence to ABB Contractor of the HSE Manager's and Site Manager's professional HSE certification accredited by a reputable industry body. The HSE Manager and Site Manager shall have responsibility and authority for co-ordinating implementation of the Project HSE Plan. The HSE Manager and Site Manager shall have a direct line of communication to ABB Contractor's representative.

Subcontractor shall allocate sufficient and qualified HSE resources to satisfy its obligations with regard to HSE. Resources allocation shall be reviewed periodically by Subcontractor and shared with ABB Contractor to ensure HSE Requirements can be met. Subcontractor shall ensure that all its personnel working on Site have received relevant training and introduction before being allowed to work on Site. Subcontractor shall have qualified HSE engineers, officers and advisors at senior level to support the line management throughout the entire performance of the Services. Subcontractor shall immediately remove from Site any person who, in ABB Contractor's opinion, fails to comply with any HSE Requirements.

4.3 Regular HSE meetings shall be held between ABB Contractor and Subcontractor personnel as per a meeting schedule to be agreed upon, and upon reasonable ABB Contractor request. Subcontractor shall also hold regular HSE meetings involving line management and employees' representatives. The minutes of all the meetings shall be recorded and be available promptly for review by ABB Contractor upon written request. In addition to these regular meetings, ad-hoc meetings shall be organized by Subcontractor for specific design, construction or installation issues, to address risk identification and risk assessment related to the activity and/or related to the potential consequence on the Project.

4.4 Subcontractor shall perform daily monitoring of Site activities by Site supervisory personnel as an integral part of the Services. Informal daily Site tours shall be conducted regularly during each shift to ensure all activities comply with the agreed method statement as referred to in the Special Terms and Conditions. Subcontractor shall actively participate in all ABB HSE forums, meetings, inspections and initiatives.

4.5 Subcontractor shall be solely responsible for the health and safety of all its employees at Site and shall immediately advise ABB Contractor and the relevant authority, if so required, of the occurrence of any incident or near-miss on or about the Site or otherwise in connection with the performance of the Services. Within twenty four (24) hours after the occurrence of any such incident or near-miss, Subcontractor shall furnish ABB Contractor with a written report, which shall be followed within fourteen (14) calendar days by a final report. Subcontractor

shall also provide such a report to the appropriate authority when required. This procedure shall not relieve Subcontractor from the full responsibility to protect persons, environment and property, and from any of its liabilities.

4.6 Subcontractor shall, if requested by ABB Contractor, perform medical examination of its employees prior to arrival on Site and provide ABB Contractor with the results of such examination, unless such provision would violate Applicable Laws. ABB Contractor reserves the right for medical reasons to deny Subcontractor's personnel access to Site.

4.7 Subcontractor shall maintain the whole area of its operations in a clean, tidy and safe condition and arrange all items necessary for performing the Services in an orderly manner. Any rubbish, waste material, debris, etc. generated from performing the Services shall be systematically cleared off the working areas and Subcontractor shall be responsible for disposing material in accordance with HSE Applicable Laws (as defined in the Special Terms and Conditions) and other regulations. In addition, Subcontractor shall store, transport, treat and remove to, at and from Site any such substance or material that could cause damage or harm to the environment in the most environmental friendly way possible and in accordance with HSE Applicable Laws and other regulations. Subcontractor shall also clear all its items constituting a fire hazard from Site. If Subcontractor fails to immediately comply with written instructions to clear materials, ABB Contractor shall clear such materials at Subcontractor's risk and expense.

4.8 Subcontractor shall notify ABB Contractor of all hazardous materials (as such term is defined in HSE Applicable Laws or other regulations) to be used for the commissioning and/or testing of the Project Designed Goods. Subcontractor shall furnish ABB Contractor with copies of all applicable safety data sheets and provide any appropriate special handling instructions no later than ten (10) calendar days prior to the performance of the Services.

4.9 Subcontractor shall communicate in time to ABB Contractor its audits and inspections plan, in order to allow ABB Contractor to participate in its audits and inspections if ABB Contractor wishes so. In addition, ABB Contractor shall have the right to carry out its own HSE audits at Site during all phases of the Services to assess Subcontractor compliance with the HSE Requirements. Subcontractor shall provide all relevant resources, documentation and assistance as required by ABB Contractor to perform such audits.

4.10 ABB Contractor shall have the right to request Subcontractor to suspend the performance of the Subcontract or any part thereof, including postponing the provision of Subcontractor's work, for such times and in such manner as ABB Contractor considers necessary (i) for proper HSE in the execution of Subcontractor's work or (ii) due to any default by Subcontractor with HSE Requirements, in which case Subcontractor shall bear all costs and be liable for the delay arising from such suspension. Without prejudice to any other rights or remedies to which ABB Contractor may be entitled, ABB Contractor shall have the right to terminate the Subcontract in accordance with Clause 15.2.

4.11 Subcontractor shall ensure that its subcontractors are subject to and comply with the same obligations and HSE Requirements as applicable to Subcontractor.

#### **5. VARIATION ORDERS**

5.1 ABB Contractor may issue, using the form provided in the Annexes, Variation Orders to Subcontractor in order to alter the Schedule, or to amend, omit, add to, or otherwise change the Services or any parts thereof. Subcontractor shall carry out such Variation Orders only upon receipt of a written Variation Order and continue to be bound by the provisions of the Subcontract. The value of each Variation Order shall then be added to or deducted from the Subcontract Price, as appropriate; agreed unit prices shall continue to apply. The Variation Order shall, as the case may be, express the amount of time by virtue of which the Schedule shall be shortened or extended.

5.2 Subcontractor shall not postpone or delay the performance of a Variation Order on the grounds of dispute, or that it is subject to acceptance

by Subcontractor, or agreeing to the value amount, or time extension to Schedule.

## 6. PERFORMANCE OF THE SERVICES

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

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

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

Subcontractor shall provide no later than at the time of acceptance of the Subcontract the customs tariff numbers of the country of consignment, and the countries of origin for all Services. For controlled Services, the relevant national export control numbers must be indicated and, if the Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. Proofs of preferential origin as well as conformity declarations and marks of the country of consignment or destination are to be submitted without being requested; certificates of origin upon request.

## 7. DELAY

7.1 If Subcontractor does not comply with the Schedule, ABB Contractor reserves the right to instruct Subcontractor in writing to expedite its performance. Subcontractor shall take such measures as instructed by ABB Contractor for acceleration of progress so as to complete the performance of the Services, or the relevant part thereof, according to Schedule. Subcontractor shall not be entitled to any additional payment for taking such steps to meet the Schedule. Subcontractor shall notify ABB Contractor in writing within twenty-four (24) hours of the occurrence and cause of any delay and make every effort to minimise or mitigate the costs or the consequences of such delay.

7.2 If Subcontractor fails to perform the Services according to Schedule, Subcontractor shall pay liquidated damages to ABB Contractor as for the rate specified in the Subcontract. Subcontractor shall pay the liquidated damages upon written demand or upon receipt of an invoice from ABB Contractor. ABB Contractor reserves the right to deduct the amount of liquidated damages from any payments due or which may become due to Subcontractor without prejudice to any other recovery method. Payment of liquidated damages shall not relieve Subcontractor from any of its obligations or liabilities under the Subcontract.

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

7.4 If Subcontractor does not perform the Services within such final period, ABB Contractor reserves the right to:

7.4.1 terminate the Subcontract pursuant to Clause 15 (Termination);

7.4.2 refuse any subsequent performance of the Services;

7.4.3 recover from Subcontractor any costs and expenses reasonably incurred by ABB Contractor in obtaining the Services in substitution from another subcontractor; and/or

7.4.4 claim, in addition to liquidated damages under Clause 7, damages for any costs, losses, expenses and liquidated damages incurred by ABB Contractor which are attributable to Subcontractor's delay.

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

## 8. MONITORING AND ACCEPTANCE OF THE SERVICES

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

8.2 Notwithstanding any monitoring, Subcontractor shall remain fully responsible for the Services' compliance with the Subcontract. This applies whether or not ABB Contractor has exercised its right of monitoring and shall not limit Subcontractor's obligations under the Subcontract. For the avoidance of doubt, monitoring of Services by ABB Contractor and/or its authorised representatives shall not exempt Subcontractor from or limit Subcontractor's warranties or liability in any way.

8.3 ABB Contractor shall have a reasonable time to review for acceptance the Services upon completion. Such reasonable time period shall be determined, as applicable, by the specifics of the Services, the defective performance and the circumstances of the provision of the Services.

## 9. SUSPENSION OF THE SUBCONTRACT

9.1 ABB Contractor may at its own discretion suspend performance of the Subcontract at any time for convenience for a period of ninety (90) calendar days in the aggregate without any compensation to Subcontractor. In case the suspension extends beyond ninety (90) calendar days, Subcontractor shall be compensated by ABB Contractor for direct and reasonable costs incurred by such suspension, such as costs of protection, storage and insurance. The agreed time for performance of the Subcontract or the concerned part thereof shall be extended by the time of the suspension.

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

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

9.4 Subcontractor shall not suspend performance of the Subcontract.

## 10. FORCE MAJEURE

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

10.2 Force Majeure means the occurrence of any of the following events, provided that they are unforeseeable and beyond the control of the affected Party: flood, earthquake, volcanic eruption, war (whether declared or not), or terrorism.

10.3 The affected Party shall provide continuous updates on status and efforts to resolve the delay, and shall ultimately be entitled to an extension of time only, but no monetary compensation for the delay. Each Party shall use reasonable endeavours to minimise the effects of the Force Majeure event.

10.4 If a Force Majeure event exceeds twelve (12) months, either Party may terminate the Subcontract forthwith by written notice to the other Party without liability.

## 11. WARRANTY AND REMEDIES

11.1 Subcontractor warrants that the Services:

11.1.1 comply with the Subcontract, including but not limited to the

specifications stipulated therein and Subcontractor's responsibilities as defined in Clauses 3 and 4;

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

11.1.3 comply with good engineering practices.

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

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

11.4 In case of non-compliance with the warranty provided under this Clause 11, or in case of any other breach of the Subcontract, ABB Contractor may at its own discretion enforce any or more of the following remedies at Subcontractor's expense:

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

to obtain prompt replacement of the non-compliant Services by other Services conforming with the Subcontract; to carry out (or to instruct a third party to carry out) any additional work necessary to make the Services comply with the Subcontract;

11.4.2 to refuse any further Services, but without exemption from Subcontractor's liability for the defective Services;

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

11.4.4 to terminate the Subcontract in accordance with Clause 15.2.

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

## **12. SUBCONTRACT PRICE, PAYMENT, INVOICING**

12.1 The Subcontract Price is deemed to cover all obligations of Subcontractor under the Subcontract and includes the costs of the Services specified and all other costs necessary for the performance of the Services, including but not limited to supervision, fees, taxes, duties, transportation, profit, overhead, licenses, permits, and travel, whether indicated or described or not.

12.2 The prices stipulated in the Subcontract are firm unless amended in a Variation Order.

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

12.4 Subcontractor shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and ABB Contractor requirements, containing the following minimum information: Subcontractor name, address and reference person including contact details; invoice date; invoice number; Order number and Subcontractor number; address of ABB Contractor; quantity; specification of Services; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; Authorized Economic Operator and/or Approved Exporter Authorization number and/or other customs identification number, if applicable.

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

12.6 Subcontractor shall make payment in due time for all equipment and labour used in connection with the performance of the Subcontract in order to avoid the imposition of any liens or encumbrances against any portion of the Services and/or the Project. In case of the imposition of such liens or encumbrances by any person who has supplied directly or indirectly such equipment or labour in relation to the Subcontract, Subcontractor shall, at its own expense, promptly take all action necessary to cause such liens or encumbrances to be released or discharged.

Upon ABB Contractor's request, Subcontractor shall furnish satisfactory evidence to verify compliance with the above. In the alternative, ABB Contractor may at its own discretion pay to release the lien and withhold such amounts from Subcontractor.

12.7 ABB Contractor reserves the right to withhold the whole or part of any payment to Subcontractor which, in the opinion of ABB Contractor, is necessary for protection of ABB Contractor from loss on account of claims against Subcontractor, or failure by Subcontractor to make due payments to its subcontractors or employees, or not having paid taxes, dues or social insurance contributions. ABB Contractor reserves the right to set off such amount owed to Subcontractor, or withhold payment for Services not performed in accordance with the Subcontract. However, Subcontractor has no right to set off any amounts owed by ABB Contractor to Subcontractor, unless approved by ABB Contractor in writing.

## **13. LIABILITY AND INDEMNITY**

13.1 Subcontractor shall indemnify ABB Contractor and Client against all liabilities, losses, damages, injuries, costs, actions, suits, claims, demands, charges or expenses whatsoever arising in connection with death or injury suffered by persons employed by Subcontractor or any of its subcontractors.

13.2 Without prejudice to applicable mandatory law, Subcontractor shall, without limitation, indemnify and hold harmless ABB Contractor and Client from all liabilities, damages, costs, losses or expenses incurred as a result of Subcontractor's breach of the Subcontract. Subcontractor shall, without limitation, indemnify and hold harmless ABB Contractor from any claim made by a third party against ABB Contractor in connection with the Services, including but without limitation to claims that such Services infringe a third party's Intellectual Property Rights. Upon ABB Contractor's request, Subcontractor shall assume and pay for the defence of ABB Contractor against any third party claims,

13.3 Subcontractor assumes full responsibility for the acts or omissions of its employees and/or subcontractors as if such acts or omissions were those of Subcontractor.

13.4 ABB Contractor reserves the right to set off claims under the Subcontract against any amounts owed to Subcontractor.

## **14. INSURANCE**

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

14.2 All insurance policies shall be endorsed to include ABB Contractor as additional insured and provide a waiver of insurer's right of subrogation in favour of ABB Contractor. All insurance policies and waivers of recourse shall, upon request by ABB Contractor, be extended to also similarly apply to Client. Subcontractor shall no later than the Effective Date provide to ABB Contractor certificates of insurance as well as confirmation that premiums have been paid. Subcontractor shall also provide upon ABB Contractor's request copies of such insurance policies.

14.3 In case of loss or damage related to the covers in Clause 14, all deductibles shall be to Subcontractor's account.

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

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

14.6 Should Subcontractor fail to provide insurance certificates and maintain insurance according to Clause 14, ABB Contractor may procure such insurance cover at Subcontractor's expense.

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

14.8 Nothing in this Clause 14 shall relieve Subcontractor from any liability towards ABB Contractor. The insured amounts cannot be considered as limitation of liability.

## 15. TERMINATION

15.1 ABB Contractor may at its own discretion terminate the Subcontract for convenience in whole or in part at any time with immediate effect by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall stop performance of the Subcontract. ABB Contractor shall pay Subcontractor for the Services performed and for the materials purchased for execution of the Services before termination which cannot be used by Subcontractor for other purposes (such materials shall become property of ABB Contractor upon payment), and other verified, proven and direct expenses incurred for discontinuing the Subcontract. However, in no event shall the total amount to be paid by ABB Contractor exceed the amount of accumulated costs as stated in the Special Terms and Conditions, or in the absence thereof the amount due by ABB Contractor at the time of termination according to the Subcontract. Subcontractor shall have no further claim for compensation due to such termination. Subcontractor waives any claim for compensation of loss of anticipated profits.

15.2 ABB Contractor may at its own discretion terminate the Subcontract with immediate effect if:

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

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

15.2.3 Subcontractor fails to provide, if requested by ABB Contractor, adequate assurance of Subcontractor's future performance, whereby ABB Contractor shall be the sole judge of the adequacy of said assurance; or

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

- a) Subcontractor becomes insolvent; or
- b) an order is made for the winding up of Subcontractor; or
- c) documents are filed with a court of competent jurisdiction for the appointment of an administrator of Subcontractor; or
- d) Subcontractor makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

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

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

15.2.7 there is a change of control of Subcontractor; or

15.2.8 the performance by ABB Contractor of any of its obligations hereunder becomes illegal or impracticable as a result of Trade Control Laws issued or amended after the date of this Contract and/or the Subcontractor becoming a Restricted Person; or

15.2.9 any actual or imminent violation of Applicable Integrity Laws or other breach of Integrity provisions hereunder.

15.3 Upon termination according to Clause 15.2, ABB Contractor shall be entitled to reclaim all sums which ABB Contractor has paid to Subcontractor under the Subcontract and to claim compensation for any

costs, losses or damages incurred whatsoever in connection with such termination.

15.4 Any claims for payment by the Subcontractor resulting from sub-items 15.2.8 or 15.2.9 above, including claims for services previously rendered, shall be either suspended until ABB Contractor is able to lawfully fulfill such obligation or automatically terminated and cancelled and all payments previously made shall be promptly refunded to ABB Contractor to the extent permitted under applicable laws. ABB Contractor will not be liable to the Subcontractor for any costs, expenses or damages associated with such suspension or termination of the Subcontract. Such termination would be without prejudice to all rights of recourse which could be exercised by ABB Contractor.

15.5 Upon termination according to Clause 15.2, ABB Contractor, at its own discretion, may (or may employ other suppliers to) complete the Subcontract. Any such work shall be performed at Subcontractor's risk and expense.

15.6 Upon termination according to Clause 15.2, ABB Contractor may enter into, and Subcontractor shall undertake to assign, any agreements with Subcontractor's subcontractors. Any costs related to such assignments shall be to the account of Subcontractor.

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

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

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

15.10 Termination of the Subcontract, however arising, shall not affect or prejudice the accrued rights of the Parties as at termination.

## 16. COMPLIANCE, INTEGRITY

16.1 Subcontractor shall perform the Services in compliance with all relevant laws, regulations, and codes of practice.

16.2 Subcontractor and its subcontractors must comply with the ABB Lists of Prohibited and Restricted Substances and with the reporting and other requirements regarding Conflict Minerals made available under [www.abb.com](http://www.abb.com) – **Supplying – Material Compliance** or otherwise and shall provide ABB Contractor with documents, certificates and statements as requested. Any statement made by Subcontractor to ABB Contractor (whether directly or indirectly) with regard to materials used for or in connection with the Services shall be deemed to be a representation under the Subcontract.

16.3 Both Parties will comply with all Applicable Integrity Laws in connection with the Subcontract and ensure that their respective employees, directors, officers, and Affiliates or third parties engaged in any manner in relation to the Subcontract shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Clause in connection with the Subcontract. 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 the Subcontract.

16.4 Subcontractor has reviewed, understands and agrees to perform its contractual obligations in accordance with the principles set out in ABB Code of Conduct and ABB's Subcontractor Code of Conduct. Subcontractor is hereby informed, and will inform its employees, officers, directors, Affiliates and third parties engaged in relation to the Subcontract, of the following ABB reporting channels where any suspected or observed violations of Applicable Integrity Laws, ABB Code of Conduct, ABB Subcontractor Code of Conduct, these Integrity

Provisions or similar applicable rules may be reported, including anonymously (where permitted by law):

Web portal: [www.abb.com/integrity](http://www.abb.com/integrity)

Mail: ABB Ltd, Legal & Integrity, Affolternstrasse 44, 8050 Zurich, Switzerland

16.5 Subcontractor acknowledges that it will be subject to ABB Contractor's applicable integrity risk management processes, including due diligence where applicable. Subcontractor undertakes and accepts liability for conducting an appropriate level of due diligence of their Affiliates and third parties engaged by Subcontractor in connection with this Subcontract and ensuring Affiliates and third parties undertake appropriate integrity provisions that are materially equal to this Clause.

16.6 Subcontractor shall timely inform ABB Contractor of any material changes to information provided in connection with ABB Contractor's onboarding procedures or due diligence processes. Subcontractor shall provide ABB Contractor with any additional information or certifications of compliance required upon request. Subcontractor shall, upon ABB Contractor's request, ensure and certify that its employees, officers, directors, Affiliates or third parties engaged in connection with this Subcontract have undergone industry standard integrity risk awareness training.

16.7 Each Party represents and warrants that neither it, nor any of their respective directors or officers, are a Restricted Person. Each Party agrees that it shall promptly notify the other Party if it becomes a Restricted Person.

16.8 Subcontractor shall, at its own cost, be responsible for compliance with all applicable export laws and obtaining any necessary customs import clearance. Unless otherwise agreed, Subcontractor shall, at its own cost, obtain all export licenses and any other clearances or authorizations required under applicable Trade Control Laws and provide ABB Contractor with written notice of such license(s), clearance(s) or authorization(s) and all applicable conditions.

16.9 Subcontractor agrees to provide ABB Contractor with written notification that identifies whether Goods and/or Embedded Software are subject to export controls. In particular, the Subcontractor will notify ABB Contractor if the Goods or Embedded Software are subject to the U.S. Export Administration Regulations ("EAR") or the International Traffic in Arms Regulations ("ITAR"). Further, Subcontractor shall provide ABB Contractor with all Harmonized Tariff Schedule codes, Export Control Classification Numbers, Country of Origin certificate(s), manufacturer name, Free Trade Agreement qualification, and Chemical Abstract Service number, Material Safety Data Sheets (MSDS), if applicable, and any subsequent changes thereto, for any Goods and/or Embedded Software provided in connection with this Subcontract. Upon request, Subcontractor agrees to provide to ABB Contractor all relevant information necessary to verify customs tariff codes.

16.10 Subcontractor confirms that no goods, materials, parts, equipment, services, technology, technical data or software that are included in, incorporated into, or provided in connection with the Subcontract, originate in, or are transshipped through, Cuba, Iran, North Korea, Syria, Russia, Belarus, and Crimea, Donetsk, Kherson, Zaporizhzhia and Luhansk regions of Ukraine (such list may be amended by ABB Contractor from time to time). Further, Subcontractor will not take any action, furnish any information, or make any request that would be reportable or would result in a violation of law or penalty for ABB Contractor or any of its Affiliates under any applicable antiboycott laws and regulations.

16.11 Subcontractor shall, throughout the course of the Subcontract and for a period of five (5) years after the completion of this Subcontract, maintain complete and accurate Records. ABB Contractor and its authorized representatives shall have the right to access and audit, including obtain copies of or extracts from the Records, including, but not limited to those kept by Subcontractor, its employees, agents, assigns, Affiliates, successors or third parties engaged in connection with the Subcontract. Such Records shall be made available to ABB Contractor during normal business hours at the Subcontractor's office or other place of business, subject to three (3) days written notice by ABB Contractor. If audited data includes any commercially sensitive

information of the Subcontractor or other third parties, such data will only be made available to the members of the ABB Contractor integrity team who are not involved in day-to-day operations of any business that competes with the Subcontractor or to an independent third-party auditor, if appointed by ABB Contractor for the purposes of the audit. Said commercially sensitive information will be considered by ABB Contractor as Subcontractor's confidential information not to be disclosed otherwise without Subcontractors approval.

16.12 Subcontractor shall immediately notify ABB Contractor in writing of any potential or actual breach of Applicable Integrity Laws, ABB Subcontractor Code of Conduct, or this Integrity Clause by either the Subcontractor, its Affiliates, or any third parties engaged by Subcontractor in relation to the Subcontract.

16.13 In the event of such notification or in the event that ABB Contractor otherwise has reason to believe that a potential or possible breach has occurred, Subcontractor shall comply with ABB Contractor's requests for information about the breach, including making available its Records, employees, officers, directors and any Affiliates or third parties engaged in relation to the Subcontract for any audits, inquiries or investigation which ABB Contractor deems necessary and in line with Clause 16.11 above. ABB Contractor may withhold payments until such time as ABB Contractor has received confirmation to its satisfaction that no breach has occurred or will occur. ABB Contractor shall not be liable to Subcontractor for any claim, losses or damages whatsoever related to its decision to suspend or withhold payments under this provision.

## 17. ASSIGNMENT AND SUBCONTRACTING

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

17.2 Upon ABB Contractor's request, Subcontractor shall provide ABB Contractor with all requested information related to affiliates or third parties engaged by Subcontractor in connection with this Subcontract. ABB Contractor shall have the right to reject or request replacement or immediate termination of any third party.

17.3 ABB Contractor may at its own discretion assign, transfer, encumber, subcontract or deal in any other manner with the Subcontract or parts thereof to its Affiliates.

## 18. NOTICES AND COMMUNICATION

Any notice shall be given in the language of the Subcontract by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Subcontract or to such other address as such Party may have notified in writing. E-mail and fax require written confirmation issued of the receiving Party.

## 19. WAIVERS

Failure to enforce or exercise any term of the Subcontract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

## 20. GOVERNING LAW AND DISPUTE SETTLEMENT

20.1 The Subcontract is governed by the laws of the country (and/or the state, as applicable) where ABB Contractor is registered, however under exclusion of its conflict of law rules and the United Nations Convention on International Sale of Goods.

20.2 If ABB Contractor and Subcontractor are registered in the same country, any dispute arising in connection with the Subcontract which cannot be settled amicably or by mediation shall be submitted for resolution to the jurisdiction of the competent courts at ABB Contractor's place of registration.

20.3 If ABB Contractor and Subcontractor are registered in different countries, any dispute arising in connection with the Subcontract which cannot be settled amicably or by mediation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance therewith. Place of arbitration shall be ABB Contractor's place of registration. The language of the proceedings and of the award shall be English. The decision of the arbitrators is final and binding upon both Parties, and neither Party may

appeal for revision.

20.4 Subcontractor shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting ABB Contractor's liability, ABB Contractor may at its own discretion, after receiving any claim notice from Subcontractor, monitor the record-keeping and instruct Subcontractor to keep further contemporary records. ABB

Contractor is entitled either itself or using such reputable and competent agents or representatives as it may authorize at its own discretion to audit the systems and retain records of Subcontractor specific to the Subcontract and Subcontractor shall ensure that ABB Contractor has similar rights to audit the systems and retain the records of any Subcontractor's subcontractors. No such audit or inspection shall relieve Subcontractor of liability or responsibility.

## **21. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION**

21.1 Subcontractor shall keep in strict confidence all ABB Contractor Data and any other information concerning ABB Contractor's or its Affiliates' business, their products and/or their technologies which Subcontractor obtains in connection with the Services to be performed (whether before or after acceptance of the Subcontract). Subcontractor shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the performance of the Services to ABB Contractor. Subcontractor shall ensure that such employees, agents, subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Subcontractor and shall be liable for any unauthorized disclosures.

21.2 Subcontractor shall apply appropriate safeguards, adequate to the type of ABB Contractor Data to be protected, against the unauthorised access or disclosure of ABB Contractor Data and protect such ABB Contractor Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. Subcontractor may disclose confidential information to Permitted Additional Recipients (which means Subcontractor's authorised representatives, including auditors, counsels, consultants and advisors) provided always that (i) such information is disclosed on a strict need-to-know basis, and (ii) such Permitted Additional Recipients sign with Subcontractor a confidentiality agreement with terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information. Subcontractor shall comply with, and ensure that the Permitted Additional Recipients comply with, any security procedure, policy or standard provided to Subcontractor by ABB Contractor or any of its Affiliates from time to time, 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 the Subcontract.

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

21.4 Subcontractor shall install and update at its own costs required adequate virus protection software and operating system security patches for all computers and software utilized in connection with providing the Services.

21.5 Subcontractor shall inform ABB Contractor without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any ABB Contractor Data.

21.6 Subcontractor agrees that ABB Contractor may provide any information received from Subcontractor to Affiliates of ABB Contractor and to third parties.

## **21.7 Protection of Personal Data**

21.7.1 If ABB Contractor discloses Personal Data to Subcontractor, Subcontractor shall comply with all applicable data protection laws and regulations.

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

21.7.3 Subcontractor will use all reasonable endeavors to deliver the applicable ABB Contractor's Privacy Notice (Supplier or Contractor Notice) made available at [www.abb.com/Privacy Notices](http://www.abb.com/Privacy Notices) to its employees that will be involved in providing the Services for the ABB Contractor.

21.7.4 Subcontractor will use all reasonable endeavors to deliver the applicable ABB Contractor's Privacy Notice (Supplier or Contractor Notice) made available at [www.abb.com/Privacy Notices](http://www.abb.com/Privacy Notices) to its employees that will be involved in providing the Services for the ABB Contractor.

21.7.5 Subcontractor agrees that it will not withhold or delay its consent to any changes to this Clause 21 which in ABB Contractor's or its Affiliates' reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority, and agrees to implement any such changes at no additional cost to ABB Contractor.

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

## **22. SEVERABILITY**

The invalidity or unenforceability of any term of the Subcontract shall not adversely affect the validity or enforceability of the remaining terms. The Subcontract shall be given effect as if the invalid or unenforceable term had been replaced by a term with a similar economic effect.

## **23. SURVIVAL**

23.1 Provisions of the Subcontract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

23.2 The obligations set forth in Clauses 11 (Warranty and Remedies), 13 (Liability and Indemnity) and 21 (Confidentiality, Data Security, Data Protection) shall remain for an indefinite period and survive expiration or termination of the Subcontract.

## **24. ENTIRETY**

The Subcontract constitutes the entire agreement between the Parties and replaces any prior agreement between the Parties, whether oral or in writing, with regard to its subject.

## **25. RELATIONSHIP OF PARTIES**

The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Subcontract may be construed to constitute Subcontractor as an agent or employee of ABB Contractor or so as to have any kind of partnership with ABB Contractor or Client, and Subcontractor shall not represent itself as or act on behalf of ABB Contractor or Client.

## **26. ELECTRONIC SIGNATURE**

The Parties acknowledge electronic signature (e. g. Adobe Sign), applied by authorized persons, to be sufficient and binding for any docu-

ments related to the Subcontract, including, without limitation, documents for which the Subcontract requires written form, or which require to be signed by the Parties.