

# ABB GENERAL TERMS AND CONDITIONS

## FOR PURCHASE OF IT SERVICES (2017-06 UK)

### 1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply:

#### 1.1 Definitions

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

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

**"Anti-Slavery Policy"**: means those parts of Customer's Supplier Code of Conduct which relate to slavery and/or human trafficking, as amended by notification to Supplier from time to time;

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

**"Claim"**: has the meaning given in Clause 11.3;

**"Cloud Software"**: has the meaning given in the applicable Service Specific Schedule;

**"Contract"**: comprises the Order, the terms of the applicable Service Specific Schedule(s), and these GTC;

**"Customer"**: means the customer entity which enters into the Order with Supplier;

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

**"Customer Materials"**: means any data, text, drawings, diagrams, images, Documents or other information which: a) are received, accessed or acquired by Supplier from or on behalf of any member of the Customer Group in the course of performing the Services or otherwise in connection with the Contract; or b) Supplier is required to generate, process, store or transmit pursuant to the Contract, and includes any Personal Data for which any member of the Customer Group is the data controller;

**"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;

**"GTC"**: means these ABB General Terms and Conditions for Purchase of IT Services as amended from time to time in accordance with Clause 18.3. A Service Specific Schedule shall, if applicable, be part of these GTC and, in case of a conflict, take precedence;

**"Hardware"**: has the meaning given in the applicable Service Specific Schedule;

**"Intellectual Property Rights" and "IPR"**: means (a) Patents, copyrights, database rights and rights in trademarks, trade names, designs, Know-how, and invention disclosures (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

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

extent confidential and proprietary and in written, electronic or any other form now known or hereafter developed;

**"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 wilfully, 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"** has the meaning given in the Software License Schedule

**"Order"**: means an order for Services, Software and/or Hardware, as applicable, entered into between the parties in accordance with Clause 3;

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

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

**"Pre-existing Materials"**: means all Documents, information and materials provided by Supplier relating to the Services which existed prior to the commencement of the Contract or which were created outside the scope of the Contract, including the pre-existing materials specified in an Order;

**"Service Credit"**: means an amount payable by Supplier to Customer as a service credit in accordance with Clause 7.4 and the Order;

**"Service Level Failure"**: has the meaning given in Clause 7.2;

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

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

**"Service Specific Schedule"**: means a Schedule to these GTC which applies only to certain services and/or software and hardware products provided by Supplier, as identified in an Order and/or the Service Specific Schedule itself;

**"Software"**: means the computer programs listed in the Order and all user documentation in respect of such programs and any Modification which is provided to Customer during the term of the Contract;

**"Specification"**: means the specification for the Work Product or Services 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 subcontractors which it engages in relation to the Services;

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

**"Work Product":** means all materials, deliverables and products resulting from the Services provided or developed by Supplier or Supplier's Team under the Contract, or otherwise provided by Supplier or Supplier's Team under the Contract, in any form or media (including computer programs, data, diagrams, Documents, reports, specifications (including any drafts);

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

## 1.2 Interpretation

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

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

1.2.3 In the event of a conflict between these GTC and any other document incorporated into the Contract, these GTC shall take precedence except that those terms of the Order that specifically and explicitly amend specific Clauses of these GTC, shall take precedence over these GTC.

## 2. TERM

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

2.2 The Contract shall continue for a period as specified in the relevant Order, unless it is terminated in accordance with Clause 16.

## 3. ORDER PROCESS

3.1 The Order shall reference and incorporate these GTC and be deemed to be accepted on the earlier of:

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

3.1.2 any act by Supplier consistent with fulfilling the Order issued by Customer,

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

3.2 These GTC apply to the Contract to the exclusion of any other terms that 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.

## 4. SUPPLIER RESPONSIBILITIES (GENERAL)

4.1 Supplier shall provide the Services, and deliver the Work Product to Customer, in accordance with these GTC, the applicable Service Specific Schedule and the applicable Order, and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

4.2 Supplier shall provide the Services, and deliver the Work Product, in a timely manner and meet any performance dates specified in an Order.

4.3 Supplier shall:

4.3.1 co-operate with the Customer Group in all matters relating to the Services; and

4.3.2 ensure that Supplier's Team use reasonable skill and care in the performance of the Services.

4.4 Supplier shall:

4.4.1 comply with, and ensure that Supplier's Team comply with, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer Group's premises and systems that have been communicated to it. In case Supplier's Team fails to accept or comply with such rules, regulations or requirements, Customer reserves the right to refuse Supplier's Team access to

the Customer Group's premises, which shall only be given to the extent necessary for the performance of the Services;

4.4.2 notify Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services or any other issues or circumstances which may reasonably be expected to jeopardise the timely provision of the Services and/or Work Product; and

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

4.5 Supplier shall comply with any security procedure, policy or standard provided to Supplier by Customer 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 Contract.

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

## 5. ACCEPTANCE OF WORK PRODUCT

5.1 Except where the Order sets out an acceptance procedure in respect of particular deliverables (including Software) and Services and subject to Clause 6, Customer shall within a period of fourteen (14) days following delivery of a Work Product by Supplier, inspect the delivery for completeness and visible damage and notify Supplier if the Work Product does not conform with the Specification.

5.2 Within seven (7) days of receipt of notice under Clause 5.1, Supplier (at Supplier's cost) shall repair or replace the relevant Work Product. Clause 5.1 shall apply to any repaired or replacement Work Product. Without prejudice to any other right or remedy Customer may have, if Supplier fails or is unable to repair or replace the relevant Work Product, Supplier shall, after expiration of an additional reasonable remediation period (as reasonably determined by Customer), refund all monies paid by Customer in respect of such Work Product and Customer shall have the right to terminate the Contract.

## 6. WARRANTIES (GENERAL)

6.1 Supplier warrants to each member of the Customer Group that:

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

6.1.2 the Services and Work Products will conform with all descriptions and Specifications as set out in the Order; and

6.1.3 the Services and Work Products will be provided in accordance with all applicable legislation, and Supplier will inform Customer as soon as it becomes aware of any changes in that legislation where it affects Supplier's ability to perform the Services.

6.1.4 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;

6.2 Without prejudice to any other right or remedy Customer may have, in the event that Supplier commits any breach of a warranty set out in Clause 6.1 it shall within a reasonable time specified by Customer, on receiving notice from Customer, re-perform the deficient Service or correct any defect or deficiency in the Work Product (as applicable). If Supplier fails or is unable to do so, Customer shall be entitled to terminate the relevant Service and, where such Service has a material effect on the Contract as a whole, terminate the Contract for material breach and claim damages in accordance with Clause 15.

6.3 To the extent permitted by applicable law any warranties implied in favour of Customer by statute are excluded from the Contract.

6.4 The provisions of this Clause 6 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by Supplier.

## 7. SERVICE LEVEL

7.1 Supplier must perform the Services so as to meet or exceed the Service Levels, if any.

7.2 If Supplier fails to provide any of the Services in accordance with the Service Levels ("Service Level Failure"), it must promptly notify Customer in writing.

7.3 As soon as practicable after notification under Clause 7.2 (and, in any event, within the period specified in the Order), Supplier must:

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

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

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

7.4 If, in any month, a Service Level Failure occurs and the Order provides for Service Credits to accrue in respect of such failure, Supplier must deduct those Service Credits from its next invoice (or, where no further invoices are due, Supplier must pay an amount equal to such Service Credits within thirty (30) days after receipt of a written demand for payment from Customer). The parties agree that the payment of Service Credits is without prejudice to any other remedy available to Customer whether under the Contract or otherwise. Three (3) consecutive Service Level Failures or three (3) Service Level Failures within a six (6) months period are deemed a material breach of contract.

## 8. CUSTOMER'S OBLIGATIONS

8.1 Customer shall:

8.1.1 co-operate with Supplier in all matters relating to the Services;

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

8.1.3 provide the Customer Material, in order to carry out the Services, as set out in the Order or otherwise within a reasonable time period after Supplier's timely request;

8.1.4 inform Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of Customer premises; and

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

8.2 If Supplier believes a failure by Customer 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 Customer. Any such notice shall include at least a description of Customer's failure in reasonable detail and a description of the effects on the Services and/or the Work Product, 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 Customer's failure to perform and assist Customer to remedy its failure.

## 9. BILLING AND PAYMENT

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

9.2 Supplier shall invoice Customer for the Charges in accordance with the relevant Order. Invoices shall comply with applicable laws, generally accepted accounting principles and the specific Customer requirements (as notified to Supplier from time to time), and contain the following minimum information: Supplier name, address and reference person including contact details; invoice date; invoice number; Order

number and Supplier number; address of Customer; quantity; specification of the Services; charges (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms as agreed.

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

9.4 Customer will reimburse expenses only at cost and to the extent agreed in writing.

9.5 Services charged on the basis of hourly or daily rates require written confirmation of Supplier's time sheets by Customer. Supplier shall submit such time sheets to Customer for confirmation as may be instructed by Customer but at the latest together with any related invoice. Confirmation of time sheets cannot be construed as acknowledgement of any claims.

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

9.7 If a party fails to make any undisputed payment due to the other party under the Contract by the due date for payment, then, without limiting the other party's remedies under Clause 16, 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 not to be sent before the due date for payment) the defaulting party shall pay interest on the overdue undisputed amount at the rate of four per cent (4 %) per annum.

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

## 10 IPR OWNERSHIP

10.1 Subject to anything to the contrary in the applicable Service Specific Schedule(s) or as agreed in a particular Order, as between Customer and Supplier, all Intellectual Property Rights in the Pre-existing Materials shall be owned by Supplier. Supplier licenses all such rights to each member of the Customer Group free of charge and on a non-exclusive, worldwide, perpetual, irrevocable basis to such extent as is necessary to enable Customer and the Customer Group to use and modify the Work Product and the Services and to create derivative works thereof. Such license shall include the right to have any third party exercise such rights for the benefit of Customer and the Customer Group.

10.2 Supplier represent and warrants that, if it has used or uses open source software or the Software 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 Customer's and its Affiliate's Intellectual Property Rights.

10.3 Subject to anything to the contrary in the applicable Service Specific Schedule(s) or as agreed in a particular Order, Supplier assigns to Customer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Work Products).

10.4 At its own expense, 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 the Contract, including securing for Customer all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Customer in accordance with Clause 10.2.

10.5 Supplier shall obtain waivers of any moral rights in the products of the Services (including the Work Products) to which any individual is now or may be at any future time entitled.

10.6 The parties acknowledge and agree that at all times the Customer Materials shall be the property of the applicable member of the Customer Group. Nothing in the Contract shall transfer any right or title in

the Customer Materials to Supplier. Customer grants to Supplier a license to use the Customer Materials free of charge and on a non-exclusive, worldwide, basis solely to such extent as is necessary to enable Supplier to provide the Services.

## 11 IPR WARRANTY AND INDEMNITY

11.1 Supplier represents and warrants that:

11.1.1 the supply, or use by the Customer Group or any Third Party Provider, of any Work Product, Software (including for purposes of this Clause 11 any Cloud Software), Hardware or Documentation;

11.1.2 the assignment or grant of any licence of any Intellectual Property Rights under the Contract; or

11.1.3 the provision, or the Customer Group or any Third Party Provider taking the benefit, of any of the Services,

will not infringe the Intellectual Property Rights of any person.

11.2 Supplier shall indemnify and hold each member of the Customer 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 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 Work Product, the Software, the Hardware or the Services or use of the Work Product, the Software, the Hardware or the Services.

11.3 If any third party makes a claim, or notifies an intention to make a claim, against Customer which may reasonably be considered likely to give rise to a liability under the indemnity in Clause 11.2 (a "Claim"), Customer shall:

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

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

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

11.4 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 Customer Material into the Software or Work Product or due to Supplier following Customer specific instructions in developing the Work Product.

11.5 If a Claim is made, Supplier may, at no cost to Customer and without prejudice to Supplier's obligations under Clause 11.1:

11.5.1 procure for the Customer Group the right to continue to use the infringing Software, Hardware, Work Product or other material, or continue to take the benefit of any Services, that are affected by the Claim in accordance with the terms of the Contract; or

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

11.6 If Supplier is not able to rectify the infringing situation in accordance with Clause 11.5 within reasonable time, Customer shall be entitled to terminate the Contract for cause and with no liability to Supplier with immediate effect.

## 12 CONFIDENTIALITY

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

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

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

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

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

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

12.3.1 to such of its employees, agents or sub-contractors as need to know the same for the purpose of exercising its rights or carrying out its obligations in connection with the Contract. Recipient shall ensure that such employees, agents or sub-contractors comply with this Clause 12; and

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

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

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

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

## 13 DATA PROTECTION

13.1 Supplier shall

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

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

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

13.2 If Customer 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 Customer 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 to the level of data protection in the country where Customer is domiciled without Customer'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 Customer 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 Customer. Customer may audit and verify Supplier's compliance with this Clause 13.2 any time upon reasonable notice.

13.3 Supplier agrees that it will not withhold or delay its consent to any changes to this Clause 13 which in Customer's reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations, and their application to the Services from time to time, and agrees to implement any such changes at no additional cost to Customer.

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

#### 14 INSURANCE

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

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

14.3 Nothing contained in this Clause 14 shall relieve Supplier from its liability. The insured amount cannot be considered nor construed as limitation of liability.

#### 15 LIABILITY

15.1 Subject to Clause 15.2 and excluding any liability under Clause 15.3, 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 the 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:

15.1.1 five hundred thousand US dollar (500,000 USD); or

15.1.2 (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 Customer under the respective Contract prior to the event giving rise to the liability.

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

15.2.1 death or personal injury arising out of negligence;

15.2.2 breach of Clauses 12 (Confidentiality) or 13 (Data Protection);  
15.2.3 gross negligence, wilful misconduct or fraudulent misrepresentation;

15.2.4 an indemnification obligation pursuant to Clauses 11 (IPR Indemnity) or 17.6 (Compliance with Laws, Integrity); or

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

15.3 Subject to Clause 15.2, 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 the Contract (whether arising for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise):

15.3.1 any indirect or consequential loss or damage; or

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

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

#### 16 TERMINATION

16.1 Except as otherwise provided in the Order, Customer may terminate the Contract for convenience in whole or in part by giving Supplier thirty (30) days written notice. In such event Customer shall pay to Supplier the value of the delivered but unpaid Software, Hardware or Services, as applicable. No further compensation will be due to Supplier.

16.2 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:

16.2.1 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

16.2.2 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.

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

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

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

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

#### 17 COMPLIANCE WITH LAWS, INTEGRITY

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

17.2 Supplier represents, warrants and undertakes that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including satisfying all necessary clearance requirements, proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the subject matter

of the Contract. If any of the Services, Software, Hardware and/or Work Product, as applicable, are or will be subject to export restrictions, it is Supplier's responsibility to promptly inform Customer in writing of the particulars of such restrictions. Customer will comply with the restrictions to the extent it has been informed by Supplier.

17.3 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 1977, the UK Bribery Act 2010 and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the Contract will render either party liable to reimburse the other for any such consideration given or promised.

17.4 Supplier herewith acknowledges and confirms that Supplier has received a copy of Customer's Code of Conduct and Customer's Supplier Code of Conduct or has been provided information on how to access both Customer Codes of Conduct online under [www.abb.com/Integrity](http://www.abb.com/Integrity). Supplier agrees to perform its contractual obligations in accordance with both ABB Codes of Conduct.

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

17.6 Any violation of an obligation contained in this Clause 17 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 Customer for all liabilities, damages, cost or expenses incurred as a result of any such violation or termination of the Contract, or arising from export restrictions concealed by Supplier.

## 18 MISCELLANEOUS

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

18.2 Subcontracting. Supplier shall be permitted to sub-contract the performance of its obligations under the Contract, provided always that it obtains Customer prior written consent. Supplier will be responsible for any acts and omissions of its sub-contractors as if they were Supplier's acts or omissions.

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

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

18.5 Rights and remedies. The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies

provided by law or otherwise available to the parties, except as expressly provided otherwise herein.

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

18.7 Entire agreement. The Contract constitutes the entire agreement between the parties and replaces any prior agreement between them in relation to its subject matter, save that nothing in this Contract excludes liability for fraud or fraudulent misrepresentation.

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

18.9 Third party rights.

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

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

18.9.3 Should a member of the Customer Group cease to have such status due to a divestiture, such entity shall be deemed a member of the Customer Group for purposes of using and receiving Services, Software, Hardware and Work Products, as applicable, for a transition period of six (6) months or such other period agreed by the parties.

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

18.11 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales excluding its conflict of law rules and the United Nations Convention on International Sale of Goods.

18.12 Jurisdiction. All disputes (including non-contractual disputes) arising out of or in connection with the Contract 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 London. 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.

## **19. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

19.1 In performing its obligations under the Contract, Supplier shall:

19.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015;

19.1.2 comply with the Anti-Slavery Policy;

19.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

19.1.4 include it its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 19.

19.2 Supplier represents and warrants that:

19.2.1 its responses to Customer's slavery and human trafficking due diligence questionnaire are complete and accurate;

19.2.2 it conducts its business in a manner that is consistent with the Anti-Slavery Policy; and

19.2.3 neither Supplier nor any of its officers, employees or other persons associated with it:

a. has been convicted of any offence involving slavery and human trafficking; and

b. to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

19.3 Supplier shall implement due diligence procedures for its subcontractors and suppliers to ensure that there is no slavery or human trafficking in its supply chains.

19.4 Supplier shall not subcontract its obligations under this Contract without the prior written consent of Customer. Upon request, Supplier shall provide Customer with a copy of any proposed subcontract together with any other information that Customer may reasonably require about the proposed subcontractor. If Customer agrees Supplier may subcontract its obligations, Supplier shall implement an appropriate system of due diligence, audit and training to ensure their compliance with the Anti-Slavery Policy.

19.5 Supplier shall notify Customer as soon as its becomes aware of:

19.5.1 any breach, or potential breach, of the Anti-Slavery Policy; or

19.5.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

19.6 Supplier shall prepare and deliver to Customer by the anniversary of the date of the Contract each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

19.7 Supplier shall:

19.7.1 maintain a complete set of records to trace the supply chain of all Services, Software and Hardware provided to Customer in connection with the Contract;

19.7.2 permit Customer and its third party representatives, on reasonable notice during normal business hours (but without notice in case of

any reasonably suspected breach of this Clause 19) to have access to and take copies of Supplier's records and any other information and to meet with Supplier's personnel to audit Supplier's compliance with its obligations under this Clause 19;

19.7.3 implement annual audits of its compliance and its subcontractors' and suppliers' compliance with the Anti-Slavery Policy, either directly or through a third party auditor.

19.8 Supplier shall implement a system of training for its employees, suppliers and subcontractors to ensure compliance with the Anti-Slavery Policy.

19.9 Supplier shall keep a records of all training offered and completed by its employees, suppliers and subcontractors to ensure compliance with the Anti-Slavery Policy and shall make a copy of the record available to Customer on request.

19.10 Supplier shall indemnify Customer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against Customer as a result of any breach of the Anti-Slavery Policy.

19.11 Customer may terminate the Contract with immediate effect by giving written notice to Supplier if Supplier commits a breach of this Clause 19.

