

Third Party Channel Agreement ABB Value Provider Program

Confidential



Signed by "THIRD PARTY CHANNEL": Matelec SAL, Lebanon

Signature: _____

Full name: Farid Fakhr

Date & Place: 2015-05-20, Vaasa

Signature: _____

Full name: _____

Date & Place: _____

Effective date (dd-mm-yyyy): 20-05-2015

Signed by "ABB": ABB AB, SA Products, Sweden

Signature: _____

Full name: Gentil Oliveira

Date & Place: 2015-05-20, Vaasa

Signature: _____

Full name: _____

Date & Place: _____

Termination date (dd-mm-yyyy): 19-05-2017

Power and productivity
for a better world™



Preface

The AGREEMENT is obligatory for all ABB AUTHORIZED VALUE PROVIDERS .

Execution of the AGREEMENT is one of the preconditions for becoming an ABB AUTHORIZED VALUE PROVIDER.

The steps required to become an ABB AUTHORIZED VALUE PROVIDER are as follows:

A). Becoming a registered third party channel company of ABB

1. ABB third party channel company profile (ABB internal guideline) fulfilled
2. ABB Code of Conduct introduced
3. Non Disclosure Agreement (9AKK105152A8936) signed, approved and stored in the ABB register
4. Third Party Channel company information entered in the ABB register

B). Becoming an official third party channel company of ABB

5. Third Party Business Plan (9AKK105152A8937) signed and approved
6. Third Party Channel Agreement (9AKK105152A8938) signed and approved

C). Becoming an official third party channel company with product authorization

7. ABB business unit specific approval for authorization given for specific products

D). Becoming an ABB AUTHORIZED VALUE PROVIDER

8. Trademark License Agreement (9AKK105152A9867) signed and approved

Table of Contents

1. DEFINITIONS	4
2. PURPOSE AND STRATEGIC RATIONALE OF THE AGREEMENT	5
3. DURATION OF AGREEMENT	6
4. SINGLE ORDERS	7
5. OBLIGATIONS OF THIRD PARTY CHANNEL	8
6. RESTRICTIONS OF THIRD PARTY CHANNEL.....	10
7. OBLIGATIONS OF ABB	11
8. TERMINATION	12
9. LIMITATION OF LIABILITY.....	13
10. RETENTION OF TITLE	14
11. EXPORT CONTROL AND RESTRICTED USE	15
12. INTELLECTUAL PROPERTY RIGHTS.....	16
13. MISCELLANEOUS.....	17
14. APPENDICES.....	18
14.1 APPENDIX I: TERMS OF SALE.....	18
14.2 APPENDIX II: NON DISCLOSURE AGREEMENT	18
14.3 APPENDIX III: THIRD PARTY BUSINESS PLAN	18
14.4 APPENDIX IV: PRICING, DISCOUNTS AND TERMS	18
14.5 APPENDIX V: TRADEMARK LICENSE AGREEMENT RELATING TO USE OF ABB OWNED TRADEMARKS BY NON- ABB PARTIES	18
14.6 APPENDIX VI: FORMAT OF THE SINGLE ORDER	18

1. Definitions

In this AGREEMENT the following definitions will apply:

- 1.1 "ABB AUTHORIZED VALUE PROVIDER" means any electrical wholesaler, distributor, technical distributor, system integrator, panel builder and service provider satisfying the requirements of, and authorized by ABB as, a member of ABB VALUE PROVIDER PROGRAM who sells on its own account, in its own name and on its own responsibility the PRODUCTS and the SERVICES in the TERRITORY and the APPLICATION AREA on a non-exclusive basis.
- 1.2 "ABB VALUE PROVIDER PROGRAM" means a program based on multi-channel strategy and selective distribution policy with clearly defined third party channel offering, predefined performance criteria and requirements, processes and responsibilities, whose purpose is to support electrical wholesalers, distributors, technical distributors, system integrators, panel builders and service providers. This program does not include original equipment manufacturers or product branding.
- 1.3 "AFFILIATE" means any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by or is under common ownership with, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, a PARTY to the AGREEMENT. If ABB will be merged with another ABB entity, the legal successor of ABB shall become automatically PARTY to the AGREEMENT and shall have the same rights and obligations as its predecessor under the AGREEMENT, provided the successor complies with the criteria stipulated by this clause with regard to an AFFILIATE.
- 1.4 "AGREEMENT" means the main body of this Third Party Channel Agreement and all its appendices, as amended from time to time.
- 1.5 "APPLICATION AREA" means the focus on industrial disciplines in which the PRODUCTS and/or components for the PRODUCTS are used as specified in Appendix III.
- 1.6 "INTELLECTUAL PROPERTY RIGHTS" means patents, petty patents, utility models, trademarks, service marks, marks, trade and business names, logos, registered designs, design rights, copyright and neighbouring rights, database rights, domain names, mask work rights, semi-conductor topography rights and rights in inventions, trade secrets, confidential information of all kinds and other similar proprietary rights which may subsist in any part of the world and, whether or not registered, are owned by ABB and/or its AFFILIATES or under which ABB and/or its AFFILIATES have the right to grant licenses.
- 1.7 "PARTY" or "PARTIES" means THIRD PARTY CHANNEL, ABB or both of them.
- 1.8 "PRODUCT" or "PRODUCTS" means those products listed on the sales target table in Appendix III.
- 1.9 "SERVICES" means those activity areas of sales, support, service and/or engineering specified in Appendix III where authorized and competent personnel and facilities will be provided and maintained.
- 1.10 "SINGLE ORDER" means an individual contract between THIRD PARTY CHANNEL and ABB regarding the ordering of the PRODUCTS and the SERVICES in the format of Appendix VI.
- 1.11 "TERRITORY" means those focus regions specified in Appendix III.

2. Purpose and Strategic Rationale of the AGREEMENT

- 2.1 ABB wishes to develop a regional customer-oriented sales, support, service and engineering network of third party channel companies for ABB's range of standard and/or engineered products in Lebanon. By the AGREEMENT ABB appoints the THIRD PARTY CHANNEL to sell on its own account, in its own name and on its own responsibility the PRODUCTS and the SERVICES in the TERRITORY and the APPLICATION AREA on a non-exclusive basis. The THIRD PARTY CHANNEL company shall focus its sales to its TERRITORY; however, the THIRD PARTY CHANNEL is not restricted to sell the PRODUCTS and SERVICES outside its TERRITORY or outside the APPLICATION AREA. The THIRD PARTY CHANNEL company shall determine its sales prices at its sole discretion. ABB reserves the right to supply the PRODUCTS and the SERVICES directly or indirectly through third parties in and to the TERRITORY and the APPLICATION AREA.
- 2.2 It is understood between the parties that the THIRD PARTY CHANNEL shall be independent and shall not in any way be entitled to act on behalf or in the name of any ABB company in connection with the sale of the PRODUCTS and the SERVICES.
- 2.3 After fulfilling the entire authorization process of the ABB Value Provider Program the THIRD PARTY CHANNEL may use the ABB AUTHORIZED VALUE PROVIDER brand and will be able to obtain the structured support from ABB and focus on its strengths in an optimal manner, increase its visibility in the market, enhance its knowledge with respect to the PRODUCTS and the SERVICES, and meet and exceed the customer needs.

3. Duration of AGREEMENT

- 3.1 The AGREEMENT commences on the EFFECTIVE DATE shown on the first page of the AGREEMENT and continues to remain in effect until the TERMINATION DATE shown on the first page of the AGREEMENT unless sooner terminated as provided under Section 8. ABB has the sole option to extend the term of the AGREEMENT for subsequent one (1) year terms by a thirty (30)-day notice in writing before the expiration of the AGREEMENT.
- 3.2 If the provisions of any appendix of the AGREEMENT are inconsistent with the provisions under this Section 3 with respect to the EFFECTIVE DATE and/or the TERMINATION DATE, the provisions in the appendix shall prevail.

4. SINGLE ORDERS

- 4.1 The THIRD PARTY CHANNEL shall submit a SINGLE ORDER when purchasing the PRODUCTS or the SERVICES from ABB. Any ABB AFFILIATE shall be entitled to benefit from the terms of this Agreement. In case of any order between THIRD PARTY CHANNEL and ABB's AFFILIATE for the PRODUCTS or SERVICES, the terms of this Agreement shall be expressly incorporated in the Order, in addition to any local terms of the ABB AFFILIATE with any references to "ABB" being deemed to be a reference to the relevant ABB AFFILIATE. Neither Party shall have any liability under this Agreement relating to the obligations of its AFFILIATE under a SINGLE ORDER. Each SINGLE ORDER is an independent and entire transaction. Neither Party nor any ABB entity is obligated to place or accept such SINGLE ORDERS. The SINGLE ORDER will become effective and bind both the THIRD PARTY CHANNEL and the ABB entity after the ABB entity confirms such SINGLE ORDER in writing.
- 4.2 ABB and the THIRD PARTY CHANNEL understand and agree that all the sales by ABB to the THIRD PARTY CHANNEL of the PRODUCTS and the SERVICES shall be subject to the provisions of the AGREEMENT. Any general terms and conditions of ABB or the THIRD PARTY CHANNEL shall not apply between the PARTIES in any way with respect to the subject matter of the AGREEMENT, even if such general terms and conditions are explicitly named or referred to in a SINGLE ORDER.
- 4.3 ABB has the exclusive right to change the design of any PRODUCTS or stop manufacturing or selling the PRODUCTS at any time without liability or obligation to the THIRD PARTY CHANNEL, provided that ABB will keep the THIRD PARTY CHANNEL informed of the changes.
- 4.4 Even if requested by the THIRD PARTY CHANNEL, ABB shall be under no obligation to supply, sell or deliver the PRODUCTS that would entail changes, additions or other modifications to the PRODUCTS in order to comply with the requirements of construction, safety, environmental or other codes within the TERRITORY or any other locale nor shall ABB be required to so change any of the PRODUCTS already sold and delivered to meet such requirements, all sales made to the THIRD PARTY CHANNEL being made subject to this understanding.

5. Obligations of THIRD PARTY CHANNEL

The THIRD PARTY CHANNEL shall:

- (a) meet or exceed the sales targets specified in Appendix III, as well as fulfil the strategic goals and actions specified in Appendix III;
- (b) use every endeavour to promote and expand its market share in the TERRITORY and the APPLICATION AREA of the PRODUCTS and the SERVICES;
- (c) without prejudice to Section 4, purchase the PRODUCTS and the SERVICES from ABB and resell them with a focus on the TERRITORY and the APPLICATION AREA on its own account, in its own name and on its own responsibility, or, as the case may be, utilize or add value to the PRODUCTS that it purchases from ABB by creating or developing systems using the PRODUCTS, and then sell such systems in the TERRITORY and the APPLICATION AREA on its own account, in its own name and on its own responsibility; however, the third party channel company is not restricted to sell the PRODUCTS and SERVICES outside its TERRITORY or outside the APPLICATION AREA, and the THIRD PARTY CHANNEL company shall determine its sales prices at its sole discretion;
- (d) continuously fulfil the authorisation criteria defined by ABB;
- (e) update the ABB Third Party Channel Profile and Contact List in a timely manner or when requested by ABB;
- (f) together with ABB review the progress and development of the jointly agreed actions. The fulfilment of the actions and the achievement level of the targets shall be updated in Appendix III, or in the documents referred to in the Appendix III, as the case may be;
- (g) record and inform ABB of the date and the location of the PRODUCTS and the SERVICES sold in accordance with ABB's requirements;
- (h) abide by the Non Disclosure Agreement attached in Appendix II;
- (i) independently or jointly with ABB, as the case may be, participate in exhibitions, seminars, symposium and other promotional activities in the TERRITORY and the APPLICATION AREA and assume the associated costs and staffing as agreed in Appendix III;
- (j) pay ABB's invoices promptly and in accordance with Appendix IV, failure of which will render the THIRD PARTY CHANNEL liable for the payment of interest and justify suspension or termination by ABB, all according to the AGREEMENT;
- (k) acquire appropriate liability insurance and other insurance for all the THIRD PARTY CHANNEL employees according to applicable laws and the relevant labour agreements;
- (l) comply with all applicable laws and regulations applicable to the PRODUCTS, their sale, their application and the SERVICES. This includes without limitation all laws, regulations and instructions relating to safety. The THIRD PARTY CHANNEL shall defend, indemnify and save ABB harmless from any fines and/or penalties and/or liabilities assessed or imposed against or on ABB as the result of the violation of the THIRD PARTY CHANNEL of any such applicable law, rules, or regulations;
- (m) use its best efforts and reasonable diligence to protect ABB against loss by promptly reporting any adverse credit information of the THIRD PARTY CHANNEL or its customers (while respecting any data protection regulations);

- (n) promptly inform ABB of any serious defects or customer complaints related to the PRODUCTS and the SERVICES;
- (o) protect the ABB brand by conducting its business in a manner that will reflect favourably at all times on the PRODUCTS and the SERVICES and ABB, including the good name, goodwill and reputation of ABB;
- (p) notify ABB if the THIRD PARTY CHANNEL opens any new offices or branches or closes or ceases to operate through any of its offices or branches;
- (q) give ABB at least forty-five (45) days written notice in advance of any undertaking to formally represent or distribute systems incorporating products competitive with the PRODUCTS or the SERVICES, unless the THIRD PARTY CHANNEL is a system distributor as defined by ABB VALUE PROVIDER PROGRAM;
- (r) adhere to ABB compliance policies as follows:
 - i) The THIRD PARTY CHANNEL hereby warrants that it will not, directly or indirectly, and it has no knowledge that other companies or 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 ABB or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials). The THIRD PARTY CHANNEL shall, at all times, comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the AGREEMENT shall render ABB liable to reimburse the THIRD PARTY CHANNEL for any such consideration given or promised.
 - ii) The THIRD PARTY CHANNEL herewith acknowledges and confirms that it has received a copy of ABB's Code of Conduct or has been provided information on how to access the Code of Conduct online. The THIRD PARTY CHANNEL agrees to perform, and shall ensure that all of its agents, employees, directors and subcontractors perform, its contractual obligations under the AGREEMENT with substantially similar standards of ethical behaviour as laid down in ABB's Code of Conduct.
 - iii) A violation of any of these obligations in Section 5.1(r) constitutes a material breach of the AGREEMENT and shall entitle ABB to terminate the AGREEMENT with immediate effect and without prejudice to any further right or remedies on the part of ABB under the AGREEMENT or applicable law. The THIRD PARTY CHANNEL shall indemnify ABB for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of the AGREEMENT.
 - iv) ABB has established the following internet portal where the THIRD PARTY CHANNEL and its employees may report suspected violations of applicable laws, policies or standards of conduct: www.abb.com/ethics.
- (s) agree that all inventions, improvements, and/or developmental ideas acquired by THIRD PARTY CHANNEL, its officers, agents, or employees during the term of the AGREEMENT relating to the PRODUCTS or the SERVICES, whether or not patentable, shall be made available to ABB promptly after their discovery and remain the property of ABB, and that ABB shall have the exclusive rights in and control of said inventions, improvements and ideas, including the right to all patents thereon.
- (t) furnish or cause to be furnished to ABB all reasonable assistance in establishing and protecting the INTELLECTUAL PROPERTY RIGHTS, including but not limited to the execution of all documents necessary to obtain for ABB, at ABB's expense, full and complete protection of the INTELLECTUAL PROPERTY RIGHTS; and
- (u) without delay inform its customers of such problem in accordance with ABB's requirements, if ABB notifies the THIRD PARTY CHANNEL of any product problem and deems it necessary for the THIRD PARTY CHANNEL to notify its customers.

6. Restrictions of THIRD PARTY CHANNEL

6.1 The THIRD PARTY CHANNEL shall not during or after the termination of the AGREEMENT:

- (a) use any of the INTELLECTUAL PROPERTY RIGHTS related to the PRODUCTS or the SERVICES;
- (b) unless explicitly authorized, use or authorize anyone to use on any letter head, publication, other media, advertisement (including public signs and displays) or in any other way the name of ABB, any trademark or trade name, registered or unregistered, which is the property of ABB or its Affiliates. Usage of such name, trademarks or trade names has to be strictly compliant with any regulations or guidelines as defined by the competent ABB AFFILIATE. Usage of the ABB authorized value provider label is only allowed if the THIRD PARTY CHANNEL has concluded a written Trademark Licence Agreement relating to use of ABB owned trademarks by non-ABB parties with ABB Asea Brown Boveri Ltd, Zurich, Switzerland (to be attached as Appendix V);
- (c) apply to register any trademark or trade name, which is similar to or a colourable imitation of any trademark or trade name which is the property of ABB or its Affiliates;
- (d) appoint an agent or sub-agent for the PRODUCTS or the SERVICES, or assign or subcontract any of its benefits or obligations under the AGREEMENT without the prior written consent of ABB;
- (e) hinder in any way the sale of the PRODUCTS or the SERVICES; or
- (f) alter or interfere with the PRODUCTS or their packaging without the prior written approval of ABB. The THIRD PARTY CHANNEL agrees that any change made to the PRODUCTS by the THIRD PARTY CHANNEL voids any warranty unless such change has been approved in advance in writing, on a transaction-specific basis.

7. Obligations of ABB

7.1 ABB undertakes

- (a) to tune its internal operations to promote the co-operation with the THIRD PARTY CHANNEL and facilitate opportunities for business growth according to win-win principles;
- (b) to deliver the PRODUCTS and the SERVICES to the THIRD PARTY CHANNEL in accordance with the SINGLE ORDERS and the AGREEMENT;
- (c) to make reasonable efforts to provide necessary technical support to the THIRD PARTY CHANNEL;
- (d) to provide the THIRD PARTY CHANNEL with reasonable quantities of catalogs, manuals, advertising literature and other sales promotion materials as may be deemed necessary by ABB;
- (e) to provide the THIRD PARTY CHANNEL with appropriate training with respect to the PRODUCTS and the SERVICES as defined in Appendix III;
- (f) to provide exposure of ABB brand and the PRODUCTS and the SERVICES through the relevant exhibitions and advertising in relevant trade press at the discretion of ABB;
- (g) to provide the THIRD PARTY CHANNEL with advance notification of changes to the PRODUCTS or the SERVICES; and
- (h) to abide by the Non Disclosure Agreement as attached in Appendix II.

8. Termination

- 8.1 Either PARTY shall be at liberty, by notice in writing to the other, to terminate the AGREEMENT with immediate effect:
- (a) if the other PARTY is in breach of the AGREEMENT and fails to remedy the breach within a period of thirty (30) days after being given written notice to remedy such breach; or
 - (b) if the other PARTY becomes bankrupt or insolvent or has a receiver or liquidator appointed (other than for the purpose of amalgamation or reconstruction) or ceases or threaten to cease to carry on its business.
- 8.2 ABB shall be at liberty, by notice in writing to THIRD PARTY CHANNEL, to terminate the AGREEMENT with immediate effect:
- (a) if the minimum order intake figures and/or related actions as specified in Appendix III are not achieved by the THIRD PARTY CHANNEL not due to ABB's fault;
 - (b) if there is a change of management, ownership or control of the THIRD PARTY CHANNEL;
 - (c) if the THIRD PARTY CHANNEL fails to pay ABB's legitimate invoices within ninety (90) days of their becoming due; or
 - (d) if the THIRD PARTY CHANNEL fails, as determined at ABB's reasonable discretion, to remain technically-qualified and competent with respect to the PRODUCTS and the SERVICES.
- 8.3 In the event of termination:
- (a) all remaining and valid SINGLE ORDERS shall be processed and fulfilled according to the AGREEMENT as if it were not terminated;
 - (b) ABB reserves the right to buy back any stock of the PRODUCTS and the service products (e.g. spare parts) still held by the THIRD PARTY CHANNEL at the original purchase price less 10% (to cover ABB's handling and inspection charges); and
 - (c) the THIRD PARTY CHANNEL shall stop acting as the ABB AUTHORIZED VALUE PROVIDER, remove all signs related to the ABB AUTHORIZED VALUE PROVIDER denomination from its business place and all other places and shall stop the usage of and return all the tools, manuals and other promotional materials provided by ABB in connection with the ABB VALUE PROVIDER PROGRAM.
- 8.4 Notwithstanding anything to the contrary in the AGREEMENT, neither PARTY shall by reason of the termination of the AGREEMENT be liable to the other for compensation, reimbursement or damages on account of the loss of present or prospective profits on sales or anticipated sales, or on account of expenditures, investments, leases or other types of commitments made in connection with the business of either, or otherwise nor for damages categorized as indirect, special, incidental and/or consequential and ABB and the THIRD PARTY CHANNEL hereby waive any and all legal rights either may have to such damages.

9. Limitation of Liability

- 9.1 Notwithstanding anything contained in the AGREEMENT or its appendices to the contrary, with respect to any and all claims arising out of the performance or non-performance of the obligations under the AGREEMENT, whether arising in contract, tort, warranty, strict liability or otherwise, ABB's liability shall not exceed in the aggregate the average annual order value of the last three years or 1 Million USD whatever is lower and shall in no event be liable for loss of profit, loss of revenues, loss of power, loss of use, loss of production, costs of capital, downtime costs, delays and claims of customers of the THIRD PARTY CHANNEL, or costs connected with interruption of operation, loss of anticipated savings, increased costs of operation or for any special, indirect or consequential damage or loss of any nature whatsoever. To avoid any misunderstanding, with respect to any and all claims arising out of or relating to a SINGLE ORDER, the aggregate liability of ABB shall be the total amount of such SINGLE ORDER or 1 Million USD whatever is lower.

10. Retention of Title

- 10.1 The ownership of the PRODUCTS supplied shall remain with ABB, who reserves the right to dispose of them until ABB has received payment in full for the PRODUCTS and the SERVICES. Pending such payment the THIRD PARTY CHANNEL undertakes to mark or otherwise clearly identify the PRODUCTS as ABB's and store them separately from its own, and ABB may enter the THIRD PARTY CHANNEL's premises to inspect the PRODUCTS and ensure that they are so marked or clearly identified.
- 10.2 Payment in full shall become due immediately upon the commencement of any act or proceeding in which the THIRD PARTY CHANNEL's solvency is involved. The THIRD PARTY CHANNEL shall not in such circumstances be entitled to deduct, retain or set off the amount of any claim however arising against ABB whether or not for a liquidated sum..

11. Export Control and Restricted Use

- 11.1 The THIRD PARTY CHANNEL acknowledges that the supply of the PRODUCTS and the SERVICES may be subject to domestic and/or foreign statutory provisions and regulations regarding export control. The PARTIES acknowledge that such provisions and regulations may change from time to time and are applicable to the AGREEMENT according to the wording valid at the time. The THIRD PARTY CHANNEL and ABB will adhere to all such provisions and regulations and cooperate with the competent authorities accordingly. The PARTIES are not obliged to perform any act if such act is in breach of export control statutory provisions or regulations.
- 11.2 Without a necessary export or re-export permit from the competent authorities, the PRODUCTS may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon.
- 11.3 No PRODUCTS may be directly or indirectly used in any way in connection with the design, production, use or storage of chemical, biological or nuclear weapons or their delivery systems, or any other military applications.
- 11.4 Without prior written consent of ABB, no PRODUCTS may be installed, used, or applied in or in connection with the operation of any nuclear facilities including but not limited to nuclear power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Unless otherwise agreed in writing between the PARTIES, all the INTELLECTUAL PROPERTY RIGHTS in or related to the PRODUCTS and the SERVICES shall remain the property of ABB or its AFFILIATES. ABB will grant the THIRD PARTY CHANNEL a non-exclusive and non-transferable license to use and sell the PRODUCTS and the SERVICES as per the Single Orders and the AGREEMENT. ABB represents that to the extent necessary it either owns or has the right to use the INTELLECTUAL PROPERTY RIGHTS for the supply of the PRODUCTS and the SERVICES.
- 12.2 Where the PRODUCTS or the SERVICES infringe the intellectual property rights of any third party, ABB shall remedy the prejudice to the THIRD PARTY CHANNEL at ABB's cost and in the following way, at ABB's discretion:
- (a) procure for the THIRD PARTY CHANNEL the right to continue to use the PRODUCT;
 - (b) provide a substitute non-infringing product;
 - (c) modify the PRODUCT so that it becomes non-infringing; or
 - (d) remove the PRODUCT and refund the purchase price
- all in lieu of the monetary damages payable to the THIRD PARTY CHANNEL.
- 12.3 ABB will remedy an infringement of the intellectual property rights of any third party only if it is not caused by
- (a) changes in the PRODUCTS made by or at the request of the THIRD PARTY CHANNEL or any third person;
 - (b) a design furnished by the THIRD PARTY CHANNEL or a third party;
 - (c) the THIRD PARTY CHANNEL's particular use of the PRODUCTS;
 - (d) operation not in accordance with ABB's instructions; or
 - (e) processing or bundling with other products by the THIRD PARTY CHANNEL in any way where the infringement arises from such combination.
- 12.4 ABB's obligations under this section are subject to the following conditions:
- (a) the THIRD PARTY CHANNEL shall promptly advise ABB of any infringement claim;
 - (b) the THIRD PARTY CHANNEL shall provide full cooperation to ABB in connection with the infringement claim;
 - (c) the THIRD PARTY CHANNEL shall permit ABB to have sole control of the defense or settlement of any infringement claim; and
 - (d) the THIRD PARTY CHANNEL shall not settle any infringement claim itself without ABB's written consent.

13. Miscellaneous

- 13.1 Unless otherwise provided in the AGREEMENT, the AGREEMENT constitutes the entirety of the agreement between the PARTIES with respect to the subject matter of the AGREEMENT and supersedes and invalidates all prior commitments, representation, warranties and agreements of the PARTIES with respect thereto.
- 13.2 Unless otherwise provided in the AGREEMENT, the AGREEMENT shall not be amended, modified or supplemented in any manner except by an instrument in writing duly executed by the PARTIES.
- 13.3 If any provision of the AGREEMENT, or part thereof, is found to be unenforceable, invalid or contrary to law, it shall not affect any other part or aspect of the AGREEMENT, and the AGREEMENT shall remain in full force and effect pursuant to its terms, minus the said provision, unless such severance would invalidate the principal purposes of the AGREEMENT. If any provision is so severed, the PARTIES agree to use best efforts to achieve the same result as was intended by such provision.
- 13.4 Any failure or delay on the part of either PARTY to exercise a right or power under the AGREEMENT shall not operate as a waiver thereof; nor shall any single or partial exercise of a right or power preclude any other future exercise thereof. A waiver of a PARTY's rights under the AGREEMENT shall be effective only if that PARTY agrees expressly in writing.
- 13.6 Should changes in any applicable laws, rules or regulations made after the EFFECTIVE DATE result in (i) increase in the cost to ABB in performing the AGREEMENT, and/or (ii) increase in the time required by ABB for the performance of the AGREEMENT, then ABB shall be entitled to the re-imbursement of such increases in cost and/or the allowance of such additional time, as applicable.
- 13.7 **Governing Law and Dispute Resolution**
- (a) This AGREEMENT shall be governed by the laws of Sweden, excluding its conflict of laws rules and the United Nations Convention on International Sales of Goods.
 - (b) Any PARTY may give the other PARTY written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving PARTY shall submit to the other PARTY a written response. The notice and the response shall include a statement of each PARTY's position and a summary of arguments supporting that position, and the name and title of the attendees in meetings. The PARTIES shall meet within thirty (30) days after delivery of the disputing PARTY's notice. Each party shall appoint a senior management representative who shall attempt in good faith to resolve any dispute arising out of or relating to this AGREEMENT.
 - (c) If the matter has not been resolved to the satisfaction of both PARTIES within sixty (60) days of the initiating PARTY's notice, or if the PARTIES fail to meet within thirty (30) days, then either PARTY shall be free to submit the dispute for arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The venue of arbitration shall be Stockholm, Sweden, and the language of arbitration shall be English. The arbitration award shall be final and binding on both PARTIES.
- 13.8 The following appendices form part of the AGREEMENT. In the event of any contradiction or ambiguity, the following order of precedence shall apply, unless otherwise provided in the AGREEMENT:
- (a) Appendix V: Trademark License Agreement relating to use of ABB owned trademarks by non-ABB parties, if the PARTIES have entered into such agreement
 - (b) Appendices III, IV and VI
 - (c) the AGREEMENT without appendices
 - (d) the SINGLE ORDER
 - (e) other appendices of the AGREEMENT not listed in the above order.
- 13.9 Any notice provided for in the AGREEMENT shall be made in writing and sent to the following mailing address, facsimile number or email address until written notice of change is given ten (10) days in advance:

14. Appendices

14.1 Appendix I: Terms of Sale

The following terms of sale are attached:

To be specified

14.2 Appendix II: Non Disclosure Agreement

Attached hereto is the Non Disclosure Agreement signed by the THIRD PARTY CHANNEL and ABB.

14.3 Appendix III: Third Party Business Plan

14.4 Appendix IV: Pricing, Discounts and Terms

14.5 Appendix V: Trademark License Agreement relating to use of ABB owned trademarks by non-ABB parties

14.6 Appendix VI: Format of the SINGLE ORDER