

# CONFIDENTIALITY UNDERTAKING

This CONFIDENTIALITY UNDERTAKING (“AGREEMENT”) is entered into by and between TEMPORARY RESOURCE (as defined below) and the CUSTOMER (as defined below) in order to regulate certain terms that apply to TEMPORARY RESOURCE’s performance of SERVICES on behalf of the CUSTOMER. TEMPORARY RESOURCE and the CUSTOMER may be each be regarded as a Party, and both together the as the Parties.

WHEREAS:

## AGREEMENT

### 1. DEFINITIONS

- 1.1. **AFFILIATE:** Means any entity which directly or indirectly controls, is controlled by, or is under common control with CUSTOMER.
- 1.2. **CUSTOMER:** Means the AFFILIATE of Hitachi ABB Power Grids AG that has issued the relevant WORK ORDER.
- 1.3. **CUSTOMER RESOURCES:** Means any and all CUSTOMER or AFFILIATE owned or provided equipment, services or workspace.
- 1.4. **CONFIDENTIAL INFORMATION:** Means any and all data and/or information that is related to CUSTOMER and/or its AFFILIATES that is disclosed or otherwise made available to TEMPORARY RESOURCE during the term of this AGREEMENT (whether in writing, orally, electronically or by other means, and whether or not labelled as “confidential”). CONFIDENTIAL INFORMATION does not include information (a) which is generally available to the public other than as a result of a breach of this AGREEMENT; or (b) which is already in the possession of TEMPORARY RESOURCE without restriction prior to any disclosure hereunder; or (c) which is or has been lawfully disclosed to the TEMPORARY RESOURCE by someone who is free lawfully to disclose the same without confidentiality restrictions; or (d) which is independently created by TEMPORARY RESOURCE and no CONFIDENTIAL INFORMATION disclosed hereunder has been used directly or indirectly in such creation.
- 1.5. **DEVELOPMENT:** Means any and all INTELLECTUAL PROPERTY which is made, conceived or written by TEMPORARY RESOURCE, and which is based upon or otherwise derived from the SERVICES or CUSTOMER RESOURCES.
- 1.6. **INTELLECTUAL PROPERTY:** Means patents, utility models, copyrights, database rights, trademarks, trade names, service marks, designs, design patents, trade secrets, know-how, inventions, or any other similar forms of protection whether registered or unregistered, along with any applications, reissues, confirmations, renewals, extensions, divisions or continuations which are based on or otherwise derived therefrom.
- 1.7. **SERVICES:** Means all work, as set out in the WORK ORDER, performed by TEMPORARY RESOURCE on behalf of the CUSTOMER including any modifications and extensions of such work.
- 1.8. **SUPPLIER:** Means the company that holds the contract for TEMPORARY RESOURCE’s employment, consultancy, engagement or similar, and that is supplying the CUSTOMER with TEMPORARY RESOURCE’s SERVICES.
- 1.9. **TEMPORARY RESOURCE:** Means \_\_\_\_\_, an individual residing at \_\_\_\_\_, who performs the SERVICES as detailed in the applicable WORK ORDER.
- 1.10. **WORK ORDER:** Means the electronic agreement for the provision of the SERVICES between the CUSTOMER and TEMPORARY RESOURCE’s SUPPLIER, which includes the job or project description, and is set out in the Fieldglass software.

### 2. Compliance with CUSTOMER’s Code of Conduct

- 2.1. I, \_\_\_\_\_ (TEMPORARY RESOURCE name) acknowledge and confirm that I have read the CUSTOMER Code of Conduct available at <http://www.hitachiabb-powergrids.com/integrity>.
- 2.2. I undertake to perform the SERVICES as detailed and agreed by myself in the applicable WORK ORDER in accordance with the standards of ethics and behaviour that are set out in the Code of Conduct.

### 3. CONFIDENTIAL INFORMATION

- 3.1. In consideration for CUSTOMER agreeing to TEMPORARY RESOURCE's performance of the SERVICES, TEMPORARY RESOURCE agrees to use the CONFIDENTIAL INFORMATION under the terms set forth herein
- 3.2. TEMPORARY RESOURCE shall treat as confidential and safeguard all CONFIDENTIAL INFORMATION.
- 3.3. TEMPORARY RESOURCE shall only use the CONFIDENTIAL INFORMATION and/or CUSTOMER RESOURCES for the purpose of providing SERVICES.
- 3.4. TEMPORARY RESOURCE shall not distribute, disclose, disseminate, or otherwise make available CONFIDENTIAL INFORMATION to any third party except:
  - i. upon prior written authorization from CUSTOMER, or
  - ii. as may be required by applicable law or legal process, in which case TEMPORARY RESOURCE shall provide the CUSTOMER with prompt written notice of such requirement prior to such disclosure and shall cooperate in good faith within any reasonable and lawful actions which CUSTOMER takes to resist such disclosure, to limit the information to be disclosed, or to limit the extent to which the information so disclosed may be used or made available to third parties; or
  - iii. to other SUPPLIER employees or agents, provided that TEMPORARY RESOURCE has confirmed that such SUPPLIER employees or agents need to know the CONFIDENTIAL INFORMATION to facilitate the performance of the SERVICES, and that such SUPPLIER employees or agents are bound by obligations of confidentiality that are identical to the confidentiality obligations set forth herein.
- 3.5. TEMPORARY RESOURCE shall apply reasonable safeguards against the unauthorised disclosure of CONFIDENTIAL INFORMATION.
- 3.6. If TEMPORARY RESOURCE is aware of, or becomes aware of, any actual or possible unauthorized disclosure of CONFIDENTIAL INFORMATION, TEMPORARY RESOURCE shall promptly notify CUSTOMER.
- 3.7. Upon request of CUSTOMER, TEMPORARY RESOURCE shall return to CUSTOMER or destroy all CONFIDENTIAL INFORMATION in its possession or control.
- 3.8. All CONFIDENTIAL INFORMATION remains at all times the property of CUSTOMER and nothing contained in this AGREEMENT may be construed as granting or conferring rights by license or otherwise in any CONFIDENTIAL INFORMATION to TEMPORARY RESOURCE.

### 4. INTELLECTUAL PROPERTY

- 4.1. In consideration for CUSTOMER agreeing to TEMPORARY RESOURCE's performance of the SERVICES, any and all DEVELOPMENTS (meaning programming of software engineering and development, creation of presentations, instructions, handbooks etc.) shall become CUSTOMER's property subject to the terms set forth herein. TEMPORARY RESOURCE will disclose promptly to CUSTOMER each DEVELOPMENT and, upon CUSTOMER's request, TEMPORARY RESOURCE will assist CUSTOMER, or anyone it designates, in filing patent or copyright applications in any country in the world. Each copyrightable work, to the extent permitted by law, will be considered a work made for hire and the authorship and copyright of the work shall be in CUSTOMER's name. TEMPORARY RESOURCE shall execute all papers and do all things which may be necessary or advisable, in the opinion of CUSTOMER, to process such applications and to vest in CUSTOMER, or its designee, all the right, title and interest in and to the DEVELOPMENT. If for any reason TEMPORARY RESOURCE is unable to effectuate a full assignment of any DEVELOPMENT, TEMPORARY RESOURCE will transfer to CUSTOMER, or its designee, its transferable rights, whether they be exclusive or nonexclusive, or as a joint inventor or partial owner of the DEVELOPMENT.
- 4.2. TEMPORARY RESOURCE agrees to hold all DEVELOPMENT confidential in accordance with Section 3 of this AGREEMENT.
- 4.3. If TEMPORARY RESOURCE is aware of, or becomes aware of, any actual or possible infringement of the INTELLECTUAL PROPERTY or DEVELOPMENTS, TEMPORARY RESOURCE shall promptly notify CUSTOMER.

### 5. WARRANTIES AND LIABILITY

5.1. TEMPORARY RESOURCE represents and warrants the following:

- i. TEMPORARY RESOURCE has the right and authority to enter into this AGREEMENT and perform the obligations set forth herein.
- ii. TEMPORARY RESOURCE acknowledges that CUSTOMER is the owner of the INTELLECTUAL PROPERTY and DEVELOPMENTS.
- iii. TEMPORARY RESOURCE agrees not challenge or otherwise interfere with any CUSTOMER right related to the INTELLECTUAL PROPERTY or DEVELOPMENTS.

5.2 TEMPORARY RESOURCE acknowledges that violation of this AGREEMENT may cause irreparable injury to the CUSTOMER for which monetary damages may not be adequate. TEMPORARY RESOURCE agrees that if a court of competent jurisdiction determines that TEMPORARY RESOURCE has breached, or attempted or threatened to breach, any of its obligations under this AGREEMENT.

## **6. TERM AND TERMINATION**

- 6.1 This AGREEMENT enters into force upon being signed by TEMPORARY RESOURCE and shall apply retroactively for any SERVICES rendered prior to its execution. This AGREEMENT shall expire when TEMPORARY RESOURCE no longer provides the SERVICES.
- 6.2 CUSTOMER reserves the right to terminate this AGREEMENT at its sole and absolute discretion by providing TEMPORARY RESOURCE notice.
- 6.3 Notwithstanding any termination or expiration of this AGREEMENT, the terms and obligations set forth Sections 3, 4 and 5 of this AGREEMENT shall survive.

## **7. MISCELLANEOUS**

- 7.1 The invalidity or unenforceability of any provision of this AGREEMENT does not adversely affect the validity or enforceability of the remaining provisions, and the AGREEMENT is given effect as if the invalid or unenforceable provision had been replaced by a provision with a similar economic effect.
- 7.2 Failure to exercise or enforce any term of the AGREEMENT does not constitute a waiver of such term and does not affect the right later to enforce such term or any other term therein contained.
- 7.3 Amendments of this AGREEMENT are only valid if in writing and signed by both Parties.
- 7.4 This AGREEMENT constitutes the entire agreement between the Parties and replaces any prior agreement between the Parties with regards to its subject.
- 7.5 Any notice shall be given by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in this AGREEMENT or to such other address as such Party may have notified in writing. E-mail and fax require written confirmation of the receiving Party.
- 7.6 The relationship of the Parties is that of independent parties dealing at arm's length, and nothing in this AGREEMENT may be construed to constitute a partnership or joint venture between the Parties or to constitute any Party to be the agent of the other Party
- 7.7 This AGREEMENT is drafted in English. If this AGREEMENT is translated into any language other than English, the English wording will prevail in case of any discrepancies. Each notice or other communication under this AGREEMENT shall be in English.
- 7.8 This AGREEMENT is governed by the laws of Customer's place of registration, under exclusion of its conflict of laws rules. Any dispute arising in connection with this AGREEMENT which cannot be settled amicably within sixty (60) calendar days from the notification of such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. Place of arbitration shall be Customer's place of registration. The language of the arbitration shall be English. The decision of the arbitrator will be final and binding upon both Parties, and neither Party may seek recourse to appeal for revisions of the decision. However, no Party will be prevented from seeking an injunction or other interim relief or remedy with a competent court.

## Signature

TEMPORARY RESOURCE

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Work Order ID: \_\_\_\_\_ (Found in Fieldglass)

Supplier: \_\_\_\_\_

Date: \_\_\_\_\_

Location: \_\_\_\_\_