AGREEMENT

on

R&D Work (Containing Software)

relating to the subject of

<br>

DATE: ........................................

CONTRACT No: .....................................

BETWEEN:

(1)  ABB Switzerland Ltd, Corporate research a company incorporated in ........................ with registered number ........................ whose registered office is at ................................., (“ABB”) and

(2)  .................., a company incorporated in ............ with registered number ................................., whose registered office is at ....................., (“University”).
RECITALS:

(A) Under this Agreement, ABB orders and University carries out R&D Work for ABB.

(B) University has agreed to transfer the rights in and to the results of the R&D Work to ABB.

(C) ABB has agreed to pay for the R&D Work on the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“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 ABB or University by virtue of a controlling interest of 50% or more of the voting rights or the capital;

“Documentation” means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine readable to be supplied by University as specified in Schedule 1.

“Employee(s)” means a person employed by University engaged in the process of providing R&D Work, including, for the avoidance of doubt, the University representative;

“Information” means the data, the Know-how, and the Intellectual Property Rights obtained as the result of R&D Work carried out hereunder;

“Intellectual Property (Rights)” means technical Know-how, inventions, data, and discoveries, whether patentable or not, and all copyrightable materials including, but not limited to software programs, tapes, documentation and reports;

“Know-how” means a body of information and data that is secret, substantial, and identified in any appropriate form;

for this purpose:

“secret” means that the Know-how package as a body or in the precise configuration and assembly of its components is not generally known or easily accessible, so that part of its value consists in the lead which the receiving party gains when it is communicated to it; it is not limited to the narrow sense that each individual component of the Know-how should be totally unknown or unobtainable outside University's scope of activities or business;

“substantial” means that the Know-how includes information which must be useful, that is, can reasonably be expected at the date hereof to be capable of improving the competitive position of ABB or its Affiliates, for example by helping them to enter a new market or giving them an advantage in competition with other manufacturers or
providers of services who do not have access to the secret Know-how or other compatible secret Know-how connected with the ordered R&D Work;

“identified” means that the Know-how is described or recorded in such a manner as to make it possible to verify that it satisfies the criteria of secrecy and substantiality and to ensure that the user is not unduly restricted in the exploitation of the Know-how to be identified, the Know-how can either be set out in the R&D Work documentation to be supplied by University or in a separate document or recorded in any other appropriate form at the latest when the R&D Work documentation is transferred to ABB;

“Open Source Software” means publicly available and accessible software which can be used, modified and further developed by everybody in compliance with the relevant publicly available underlying licence terms and conditions;

“R&D Work” means the research and development work, including but not limited to related technical consultancy, engineering and related services, to be performed by University according this Agreement;

“Student(s)” means a person who is an enrolled student of University who is engaged in the process of providing R&D Work.

1.2 Unless otherwise specified in this Agreement:

(a) Reference to clauses and sub-clauses are to clauses and sub-clauses of this Agreement;

(b) The use of the singular includes the plural and vice versa;

(c) References to a “person” shall be construed so as to include any individual, firm, ABB, University, government, local or municipal authority or any joint venture, association or partnership (whether or not having separate legal personality).

(d) References to ABB and University include their permitted successors and assigns;

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. In the event of a conflict between the provisions of the Schedules and the provisions set out in the body of this Agreement, the provisions set out in the body of this Agreement shall prevail.

2. APPLICATION OF TERMS

2.1 No terms or conditions endorsed upon, delivered with or contained in University’s quotations, acknowledgements or acceptances, specifications or similar documents will form part of the contractual relationship for R&D Work, and University waives any right which it otherwise might have to rely on such other terms and conditions.
3. **OBLIGATIONS OF UNIVERSITY**

3.1 University shall perform the R&D Work:

(a) in accordance with the applicable laws and regulations; and

(b) in accordance with the specifications described in Schedule 1 (Project Administration) and Schedule 2 (Scope of R&D Work); and

(c) with all reasonable skill and care and in accordance with the highest professional standards attained by companies or research institutions offering R&D Work of the type offered by University; and

(d) in such a way as to conform in all respects with this Agreement and related specifications.

3.2 Notwithstanding the above, the parties agree the nature of the R&D Work is uncertain and hereby accept that no particular set of results or specific outcome shall be guaranteed by University.

3.3 University shall have available for its employees, students and other persons involved in the R&D Work provided under this Agreement (either by electronic data files or otherwise documented) the data as specified in Schedule 3 (University’s Researchers and University Representative) and shall, throughout the duration of this Agreement, update and provide ABB with updated Schedule 3.

3.4 University shall be responsible to enter with employees, students, sub-contractors and any other persons involved in providing the R&D Work into written confidentiality agreements and agreements for assignment of Intellectual Property Rights arising as a result of such R&D Work to the full extent permissible under applicable laws. In the event the assignment of the Intellectual Property Rights is not permissible under applicable mandatory local law, University shall obtain by written agreement the respective user rights or other rights with the same or similar economic effect required for commercial use of the R&D Work for the purposes of ABB and ABB’s Affiliates.

3.5 University is prohibited from including Open Source Software in any result of R&D Work. In the event that the provision of results of R&D Work require use of Open Source Software University must fully specify and inform ABB in writing about all Open Source Software planned to be implemented into the results of R&D Work to be provided under this Agreement, and obtain ABB’s prior written approval. In the event ABB has approved the use of Open Source Software by University or its sub-contractors expressly in writing, University confirms that it has used, modified, and/or further developed Open Source Software in full compliance with the underlying Open Source software licence terms and conditions.
3.6 For any software included in the result of R&D Work ABB shall be provided with the source code in addition to copies of the machine readable version and Documentation.

4. OBLIGATIONS OF ABB

4.1 In consideration of the R&D Work provided by University under this Agreement, ABB shall pay to University the fee in accordance with Schedule 1 (Project Administration).

4.2 ABB reserves the right to withhold any payment payable under sub-clause 4.1 if University has not completed its obligations contained herein or in a related agreement between ABB and University.

5. INTELLECTUAL PROPERTY AND RELATED MATTERS

5.1 University agrees that, during the course of R&D Work under this Agreement, it will not enter into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would or might affect, conflict with or prejudice the R&D Work or the rights of ABB under this Agreement, or which would or might prejudice the general objectives of the R&D Work.

5.2 University hereby assigns to ABB, with full title guarantee, all rights in and to any Intellectual Property Rights and Know how created or arising from the R&D Work for the full duration of such rights, wherever in the world enforceable, and shall procure such an assignment from the Employee, the Student, University representative and any other party who shall engage in the R&D Work (sub-clause 3.4). University further agrees to (or in the case of the Employee, the Student or any other party it shall engage in the R&D Work to procure that they shall) execute, upon ABB’s request and its cost, all further documents and assignments and do all such further things as may be necessary to perfect ABB’s title to the Intellectual Property or to register ABB as owner of the Intellectual Property Rights with any registry, including but not limited to governmental registration authorities or private registration organisations.

5.3 The Intellectual Property Rights in any materials or software (whether written or machine-readable) created by or licensed to University or any of its Affiliates prior to this Agreement or outside of this Agreement and any subsequent modifications to the same (“Pre-Existing Works”) will remain vested in University or the third party. University shall immediately give notice in writing to ABB if in the course of the project Pre-Existing Works are used and/or are likely to be required for
commercialisation of the project’s results by ABB. University herewith grants ABB and its Affiliates an irrevocable option for a comprehensive, perpetual, worldwide, non-exclusive license for the use of the Pre-Existing Works including the right to sub-licence, in return for appropriate consideration. In determining the license fee, the Parties shall bear in mind the development and further costs of ABB within the R&D Work. If the Parties are unable to reach agreement over the appropriate consideration and other conditions of the granting of such license despite six (6) months good faith discussion, the Parties shall turn to confidential mediation for six (6) months and only thereafter revert to arbitration as per clause 14 to litigate said consideration and/or conditions.

5.4 University confirms that ABB and its Affiliates shall have all rights of further development, adaptation, promotion, marketing, manufacture, distribution, exploitation and dealing in relation to the results of the R&D Work and the Intellectual Property created or arising from the R&D Work.

5.5 Without prejudice to the assignments in sub-clauses 5.2 and 5.3, University agrees that, if requested by ABB, it will at the expense of ABB co-operate with ABB in making patent applications in respect of the results of the R&D Work.

5.6 University agrees that the assignment of rights under this clause 5 shall in no way impose upon ABB an obligation to protect, enforce, exploit or make use of any such rights.

5.7 To the full extent permissible by applicable laws, University shall procure waivers of moral rights arising as a result of the R&D Work from the Employee, the Student or any other party it shall engage in the R&D Work.

5.8 For the avoidance of doubt, ABB shall have the right to sub-license, assign, and otherwise transfer its rights under sub-clauses 5.2 and 5.3.

5.9 University shall refrain from any action prejudicial to the subsistence of Intellectual Property created or arising from the R&D Work and from action prejudicial to the assignments in sub-clauses 5.2 and 5.3.

5.10 Subject always to sub-clauses 5.2 and 5.3 and the express prior written consent of ABB, University shall have the right to use the Intellectual Property created or arising from the R&D Work for the purposes of its own non-commercial R&D work, provided that University shall keep the Intellectual Property strictly confidential unless it obtains the prior written consent of ABB to any proposed use or disclosure. Such consent of ABB shall not imply consent to any use by University of Intellectual Property resulting from the R&D Work after execution of this Agreement. If University wants to use the R&D Work for its own business purposes, it has to obtain a license from ABB.
6. **INTELLECTUAL PROPERTY RIGHT INFRINGEMENTS**

6.1 University shall immediately give notice in writing to ABB of any challenge to ABB’s Intellectual Property or any inadvertent disclosure or unauthorised use of ABB’s Intellectual Property or Know-how which comes to its knowledge. University shall at ABB’s expense give such assistance as is reasonably requested by ABB to assist ABB in the prevention of any such infringement, challenge, inadvertent disclosure, or unauthorised use. University shall not institute any legal proceedings without ABB’s prior written consent.

7. **CONFIDENTIALITY AND PUBLICATION**

7.1 University shall:

   (a) Keep confidential all Intellectual Property and Know-how including confidential commercial and financial information disclosed by ABB, or its Affiliates to University during the course of the R&D Work and after execution of this Agreement;

   (b) Not disclose to third parties without the express prior written consent of ABB any results of work performed as part of the R&D Work;

   (c) Ensure that no publication of work connected with the R&D Work occurs without the express prior written consent of ABB.

7.2 University shall procure that the obligations in sub-clause 7.1 are observed by its Employees, Students, officers and agents and by any party retained by University including University representative and any other person who shall engage in the R&D Work by University’s decision.

7.3 University agrees to notify ABB immediately if it becomes aware of any disclosure in breach of the obligations in this clause 7. At the request of ABB, University will take all such steps as are necessary to prevent further disclosure.

7.4 The provisions of this clause 7 shall not apply to:

   (a) any information which is in the public domain at the date of this Agreement or which subsequently comes into the public domain other than by breach of these confidentiality provisions or other confidentiality agreement;

   (b) any information already in the possession of University at the date of this Agreement, other than under an obligation of confidentiality; or

   (c) any information obtained without obligation of confidence from a third party not in breach of a confidentiality agreement with ABB concerning the information obtained.
7.5 The provisions of this clause 7 shall be deemed effective from the date first contacts were established between the parties with respect to the subject matter of the R&D Work and shall remain in full force and effect without limit of period after termination. Confidentiality obligations shall end five years after completion of the project.

7.6 University is authorized to publish the results of the R&D Work in accordance with standard academic practice, subject always to prior explicit written consent of ABB. University shall submit to ABB in writing a copy of the proposed publication any employee or student (including, for the avoidance of doubt, the Employee and the Student) intends to publish, at least sixty (60) calendar days prior to the date of planned publication for the purpose of obtaining express prior written consent of ABB. ABB may (i) require from University to delay the proposed publication for a maximum of six (6) months after receipt of the request for written consent to publication, if, in ABB’s reasonable opinion, that delay is necessary in order to seek patent or similar protection for R&D Work and the results of the R&D Work or any of ABB’s pre-existing Intellectual Property; or (ii) prevent the publication or request such modification to protect ABB’s Intellectual Property Rights, ABB’s pre-existing Intellectual Property, confidential information, or business interests; (iii) request that a thesis is held on restricted access and not made publicly available, to the extent necessary for the protection of ABB’s Intellectual Property Rights, ABB’s pre-existing Intellectual Property, confidential information, or business interests. Should ABB seek restricted access for the thesis or require any external examiners to sign confidentiality undertakings as a condition of receipt of the thesis, it will give notice to University in writing within forty (40) calendar days of receipt of the draft thesis (“Thesis Notice”). ABB shall send to University its written consent to the publication or any other decision within forty (40) calendar days after ABB has received details of the proposed publication. If University does not receive such written consent or other decision within that period, its employee or student shall contact ABB directly to obtain the written consent or other decision from ABB. In such case ABB shall send to University an immediate answer within fifteen (15) calendar days.

8. WARRANTIES

8.1 University warrants that it has full power and authority under its articles, statutes, constitution or under other relevant basic organisational documents and applicable mandatory laws and has taken all necessary action and has obtained all authorisations, licences, consents and approvals to execute and perform this Agreement.

8.2 University warrants that it has not, prior to entering into this Agreement, entered into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would or might affect, conflict with or prejudice this Agreement or the rights of ABB under it, or which would or might prejudice the general objectives of the R&D Work, and that to the
best of its knowledge none of its employees, students, officers, agents or other persons engaged in the R&D Work has done so.

8.3 University warrants that it has entered with employees, students and any other persons involved in providing the R&D Work into assignments of Intellectual Property Rights arising as a result of such R&D Work to the full extent permissible under applicable laws.

8.4 University warrants that to the best of its knowledge it will not in the course of providing the R&D Work provide to ABB any materials, modifications, documentation or other deliverables that will infringe the Intellectual Property Rights of any third party.

8.5 University warrants that it has fulfilled all obligations relating to the use of Open Source Software as specified in Sub-clause 3.5.

8.6 Without prejudice to any other right or remedy which ABB may have, if any R&D Work is not supplied in accordance with, or University fails to comply with, any of the terms of this Agreement, ABB shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the R&D Work has been accepted by ABB:

(a) to terminate this Agreement in accordance with sub-clause 9.2;

(b) at ABB’s option to give University the opportunity at University's expense either to remedy any defect in the R&D Work or to carry out any other necessary work to ensure that this Agreement is fulfilled;

8.7 ABB shall have the right to inspect and to test the R&D Work or parts of it at any time prior to the supply.

8.8 University shall not be liable to ABB for the commercial use of the R&D Work, or for the quality or quantity of the products manufactured and the services rendered using the R&D Work.

9. TERM AND TERMINATION OF THIS AGREEMENT

9.1 This Agreement shall become effective on .............. and, subject to sub-clause 9.2, shall continue for a fixed term of ...(xx) years unless earlier terminated by ABB on thirty (30) calendar days’ written notice.

9.2 Either party may terminate this Agreement immediately by written notice to the other if the other commits a material breach of the terms and conditions of this Agreement which (in the case of a breach capable of a remedy) it does not remedy within thirty (30) calendar days of receiving written notice of the breach, if not agreed otherwise.
by the parties in writing for a specific breach. ABB shall have the right to terminate
this Agreement by written notice in the event University is not able to perform the
R&D Work for any reason, or failure to achieve the stated purpose of the R&D Work
for any reason, or if a key researcher ceases to be available to work on the R&D
Work.

9.3 Upon termination University shall immediately and at University’s expense:
(a) safely return to ABB all property and Information of ABB then in its
possession or under its control; and
(b) provide ABB with full written details of the R&D Work and of methods
used in the R&D Work, insofar as they have not already been provided.

9.4 Termination shall be without prejudice to the accrued rights of either party at the
termination date. The obligations set forth in clauses 5, 6, 7, 8 and 13 shall survive
termination.

10. FORCE MAJEURE

10.1 Neither party shall be liable for any delay in performing or for failure to perform its
obligations hereunder if the delay or failure results from any cause or circumstance
whatsoever beyond its reasonable control, including any breach or non-performance
by the other party (hereinafter “event of force majeure”), provided the same arises
without the fault or negligence of such party. If an event of force majeure occurs, the
date(s) for performance of the obligation affected shall be postponed for as long as is
made necessary by the event of force majeure, provided that if any event of force
majeure continues for a period of or exceeding three (3) months, either party shall
have the right to terminate this Agreement forthwith by written notice to the other
party. Each party shall use its reasonable endeavours to minimise the effects of any
event of force majeure.

11. ASSIGNMENT AND SUB-CONTRACTING

11.1 This Agreement is personal to University and University shall not assign, sub-
contract, transfer, or charge in any kind this Agreement or any part of it, without prior
written approval of ABB.

12. MISCELLANEOUS

12.1 RELATIONSHIP OF PARTIES
The relationship between ABB and University is that of companies dealing at arm’s
length and nothing in this Agreement shall be construed so as to constitute University
as an agent or employee of ABB or so as to have any kind of partnership with ABB,
and University is not authorised to represent ABB as such.
12.2 NOTICES

Any notice to be given hereunder shall be in writing and in the English language and shall be delivered personally, by express courier service, registered or certified mail, or transmitted by facsimile copy, to the other party at the address specified below:

If to ABB: […]
If to University: […]

12.3 Representatives

Parties have appointed representatives as first point of contact in respect of R&D Work (Schedule 1, Project Administration). Each party shall keep the other party informed of any changes to its representative.

12.4 VARIATIONS

No variation of or amendment to this Agreement shall be binding unless made in writing and signed by both parties.

12.4 WAIVERS

Failure to enforce or exercise, at any time or for any period, any term of this Agreement does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.

12.5 SEVERABILITY

The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights, and this Agreement shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced by a provision with a similar economic effect to that of the deleted provision if this can be achieved by another provision.

12.6 ENTIRETY

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and replaces any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking, or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated herein. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in accepting this
Agreement (unless such untrue statement was made fraudulently) and that party’s only remedies shall be for breach of contract as provided herein.

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

12.8 FURTHER ASSURANCES
The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.

13. GOVERNING LAW AND DISPUTES
This Agreement shall be governed by and construed in accordance with Swiss law under exclusion of its conflict of laws rules and the United Nations Convention on International Sale of Goods. Any dispute or difference arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination or the legal relationships established by this Agreement, which cannot be settled amicably, shall be finally resolved by arbitration and submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The language of the arbitration shall be English. Place of arbitration shall be Zürich.

However, ABB shall not be prevented from enforcing its Intellectual Property Rights, or seek an injunction or other interim remedy in the competent court of the country where the Intellectual Property Right infringement occurred, or the injunction or the other interim remedy shall be enforced.

14. SCHEDULES
Schedule 1: Project Administration
Schedule 2: Scope of R&D Work
Schedule 3: University’s Researchers and University Representative

15. SIGNATURES

ABB Switzerland Ltd, Corporate Research

Place, date
SCHEDULE 1

PROJECT ADMINISTRATION

R&D Work:

ABB representative:

University representative:

Specification of R&D Work:

Project Title:

ABB Project Number:

ABB Project Manager:

Fee (incl. currency):

Payment schedule

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<th>Milestones</th>
<th>Payment [CHF]</th>
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<td>Milestone 1</td>
<td>XX</td>
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<td>Milestone 2</td>
<td>XX</td>
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<tr>
<td>Milestone 3</td>
<td>XX</td>
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Payments shall be made in accordance with the actual progress of the Project:

ABB Reference No.:

Form in which research work would be delivered:

Period within which the R&D Work has to be completed:

Further terms and conditions: The Order price corresponds to a maximum amount and depends on the costs incurred and services rendered.

Administration and invoicing procedures:

1. University shall send invoice(s) to ABB
2. Invoices shall be issued in the agreed currency
3. University indicates bank account on invoice
4. All invoices must include the ABB reference number

All invoices must be addressed to:
SCHEDULE 2

SCOPE OF R&D WORK
SCHEDULE 3

UNIVERSITY’S RESEARCHERS
AND UNIVERSITY REPRESENTATIVE

[REMARK: Please add the details about all persons involved in the R&D Work]

Name:
Address:
Citizenship(s):
Function / Scope of Work:

Name:
Address:
Citizenship(s):
Function / Scope of Work:

Name:
Address:
Citizenship(s):
Function / Scope of Work:

Name:
Address:
Citizenship(s):
Function / Scope of Work: