

ABB Inc.  
305 Gregson Drive  
Cary, NC 27511

**Commencement Date:** 9/15/2022

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**Expiration Date:** 9/14/2024

This Agreement is entered into by and between ABB Inc., (hereinafter "ABB") and \_\_\_\_\_ (hereinafter "Participant"). Unless otherwise specified hereunder, ABB and Participant shall include their respective Subsidiaries as hereinafter defined by Section 6.0. This Agreement is necessary to permit, for a limited period of time, Participant to disclose to ABB and ABB to disclose to Participant, information considered to be confidential to the disclosing party. The purpose of the exchange of such information is to discuss the potential sale of certain ABB-owned properties in the United States and Canada specifically including company financial information, property information, operational information, environmental-related obligations and liabilities and all necessary and relevant reports, assessments, data, and information regarding environmental matters and/or related thereto.

The parties' primary representatives for disclosing and receiving confidential information are:

ABB: Jeffrey Morency

Participant: \_\_\_\_\_

## **1.0 CONFIDENTIAL INFORMATION**

1.1 "ABB Confidential Information" shall mean all information or items identified by ABB as confidential and disclosed by ABB to Participant relating to ABB's past, present and future research, development, and business activities including, but not limited to product design, manufacture and marketing, past, present and future research, development, and business activities including, but not limited to ABB's information pertaining to its products, financial condition, business plans, customer identities, technical information, and similar information regardless of whether such information is in written, oral, electronic, or other form.

1.2 "Participant Confidential Information" shall mean all information or items identified by Participant as confidential and disclosed by Participant to ABB relating to Participant's past, present and future research, development, and business activities including, but not limited to past, present and future research, development, and business activities including, but not limited to Participant's information pertaining to its products, financial condition, business plans, customer identities, technical information, and similar information regardless of whether such information is in written, oral, electronic, or other form.

## **2.0 CONFIDENTIAL INFORMATION DISCLOSURE**

2.1 Confidential Information may be disclosed by one party to the other during the term of this Agreement. Confidential Information may be conveyed by the parties in visual, written, oral, printed, or machine-readable form. All disclosures of information by one party to the other will be deemed to be confidential at the time of disclosure.

2.2 When Confidential Information is disclosed in written form and accepted, the writing must contain an appropriate legend, such as "Confidential Information."

2.3 When information is disclosed in oral form by the disclosing party and accepted by the receiving party, the oral information must be identified as confidential at the time of disclosure and reduced to a writing and delivered in written

form to the receiving party within 30 days after the date of the disclosure or the information will not be Confidential Information.

2.4 Upon the request of either party, the other party will, at its own expense, immediately return or confirm the destruction of all Confidential Information, except that either party may retain one (1) copy of all Confidential Information for legal and records keeping purposes.

### **3.0 CONFIDENTIALITY OBLIGATIONS**

3.1 Subject to the provisions of Sections 4.0 and 5.0, for a period of two (2) years measured from the date of termination or, if the Agreement is not terminated, the date of expiration, the receiving party agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of disclosed and accepted Confidential Information as the receiving party employs with similar information of its own which it does not desire to have published, disclosed, or disseminated. The recipient agrees to use received Confidential Information only for the purpose specified in the preamble above.

3.2 Following the period of confidentiality as specified in Section 3.1, no obligation is assumed by, or is to be implied against the receiving party with respect to such Confidential Information and such information will be considered non-confidential.

3.3 The receiving party may disclose the disclosing party's Confidential Information to its employees and employees of its parent and Subsidiary companies with a business need-to-know. The receiving party will inform the employee(s) receiving the Confidential Information of the existence of this Agreement, and of the obligations contained herein and will instruct the employee to comply with all obligations imposed on the receiving party under this Agreement.

Upon receiving the disclosing party's prior consent, the receiving party may disclose Confidential Information to third parties such as consultants agents or affiliates. Before disclosure to any above third parties, the receiving party shall have a written agreement with such third party sufficient to require that the third party will treat Confidential Information in accordance with this Agreement.

### **4.0 PERMISSIBLE DISCLOSURE**

Disclosure of Confidential Information will not be precluded if such disclosure is:

- (a) in response to a valid order of a court or governmental body of the United States or any political subdivision thereof; provided, however, that the disclosing party will first have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purpose for which the order was issued;
- (b) otherwise required by law; or
- (c) necessary to establish the disclosing party's rights under this Agreement.

### **5.0 NON-CONFIDENTIAL INFORMATION**

Notwithstanding any other provision of this Agreement, the confidentiality obligations specified in Section 3.0 will not apply to any received Confidential Information which:

- (a) is already in the possession of the receiving party or any Subsidiary without obligation of confidence, prior to receipt from the disclosing party;
- (b) is independently developed by the receiving party or any Subsidiary of that party;
- (c) is or becomes publicly available without breach of this Agreement;
- (d) is rightfully received by the receiving party or any Subsidiary of that party from a third party;
- (e) does not have an appropriate legend as set forth in Section 2.2; or

(f) is released for disclosure by one party with the other party's written consent.

## **6.0 SUBSIDIARY**

"Subsidiary" shall mean a corporation, company or other entity,

(a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is,

now or hereafter, owned or controlled, directly or indirectly, by a party hereto, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

## **7.0 TERM OF AGREEMENT**

The term of this Agreement will begin on the Commencement Date and will expire on the Expiration Date, unless terminated earlier by ABB. ABB may terminate this Agreement prior to the Expiration Date with or without cause for any reason by giving at least fifteen (15) days written notice to the Participant.

## **8.0 OTHER INTELLECTUAL PROPERTY RIGHTS**

No license or immunity is granted by this Agreement by either party to the other, either directly or by implication, estoppel, or otherwise, under any patents, copyrights, trademarks, or mask works, or any trade secrets or know-how other than that disclosed hereunder. The disclosure of information hereunder will not constitute any representation, warranty, assurance or guarantee, by either party to the other, with respect to the infringement, misappropriation or violation of any of the intellectual property rights of third parties.

## **9.0 DISCLAIMERS**

9.1 Each party provides information on an "AS IS" basis.

9.2 The disclosing party will not be liable to the receiving party for any damages arising out of the receiving party's use of the disclosing party's Confidential Information. The disclosing party may change or cancel its plans at any time. Therefore, use of such Confidential Information of the disclosing party is at the receiving party's own risk.

## **10.0 GENERAL PROVISIONS**

10.1 Unless required by law, each party agrees not to disclose (i) that discussions have been held by and between the parties and (ii) the existence, the terms, conditions or subject matter of this Agreement to third parties without the prior written consent of the other party.

10.2 All rights and obligations which by their nature survive the expiration or termination of this Agreement will remain in effect beyond expiration or termination.

10.3 Nothing contained in this Agreement will be construed as conferring any rights to use in advertising, publicity or other marketing activities, any name, trade name, trademark, acronym or other designation of the other party, including any contraction, abbreviation, or simulation of any of the foregoing.

10.4 This Agreement shall be construed, and legal relations between Participant and ABB shall be determined, in accordance with the laws of the United States of America and, specifically, the State of North Carolina, as if said Agreement were executed in, and fully performed in the State of North Carolina.

10.5 Any failure of either party to require strict performance by the other party, or any waiver or failure to act by either party in the event of breach or default of any section or subsection of this Agreement, shall not be construed as a consent to, or waiver of, any other breach of the same or of any other section or subsection.

10.6 If any section or subsection of this Agreement is either found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section or subsection

in every other respect and the remainder of this Agreement shall continue in effect so long as it still expresses the intent of the parties. If the intent of the parties cannot be preserved, this Agreement shall be either renegotiated or terminated.

10.7 It is understood by the parties hereto that the terms and conditions of this Agreement shall not be interpreted as requiring either party to (i) disclose any information, confidential or otherwise, to the other party or (ii) enter into any future contractual relationships.

10.8 Neither party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other party. Any attempt to do so is void.

10.9 This Agreement may be modified only by written amendments signed by authorized representatives of ABB and Participant. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement, including the rights and obligations of the parties hereto with respect to the disclosure and receipt of Confidential Information. This statement of the agreement supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

10.10 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

Transmission of a facsimile or by email of a pdf copy of the signed counterpart of this Agreement shall be deemed the equivalent of the delivery of the original. It is the intent and agreement of each party hereto that if any signature hereon is not an original, but is a digital, mechanical, or electronic reproduction (such as, without limitation, a photocopy, fax, email, PDF, Adobe image, Adobe Sign, DocVerify, DocuSign, jpeg, telegram, telex, or telecopy), then such signature shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory and each party may rely upon such instrument as an original for all purposes.

THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

*[Signature Page Follows]*