



**PROGRAMMABLE AUTOMATION CONTROLLER (PAC) SUPPORT SERVICES AGREEMENT**

This Programmable Automation Controller (PAC) Support Services Agreement (the “**Agreement**”) is entered into as of the date payment is received in full by ABB Inc. or any of its affiliates (the “**Effective Date**”) by and between ABB Inc. (“**ABB**”) and the purchaser of the Services contemplated under this Agreement as defined herein (the “(the “**Buyer**”). ABB and Buyer shall individually be referred to herein as a “**Party**” and collectively, the “**Parties**”.

**PREAMBLE**

**WHEREAS**, Buyer purchased certain ABB products pursuant to either (i) ABB’s standard terms and conditions of sale in effect at the time of purchase or a mutually executed supply agreement (the “**ABB Sale Terms**”), (or (ii) a supply agreement with an ABB-authorized channel partner (the “**Third-Party Product Terms**”); and

**WHEREAS**, pursuant to its purchase of such ABB products, Buyer desires to receive certain technical and application engineering support from ABB from time to time; and

**WHEREAS**, ABB is willing to provide certain technical and application engineering support services subject to the terms of this Agreement;

**NOW THEREFORE**, in consideration of the premises, and other good and valuable consideration received and to be received, ABB and Buyer hereby agree as follows:

**Terms and Conditions**

**1. STATEMENT OF WORK FOR SERVICES**

a. Services.

- i. ABB will provide technical and application engineering support (the “**Services**”) for the products set forth in Section 1(b) below (the “**Products**”). Such Services will include: (i) installing, configuring, and maintaining the Products, (ii) obtaining any applicable software updates, (iii) diagnosing and fixing any operating matters, and (iv) any basic programming support tasks. For clarification purposes, ABB shall not be performing any Services at Buyer or Buyer’s designee’s location, as all Services will be provided remotely via telephone and/or e-email in ABB’s sole discretion.
- ii. All Services provided by ABB will be performed on Mondays through Fridays from 8 a.m. to 5 p.m. (CST) with the exception of all ABB observed holidays.
- iii. ABB may make such changes in the Services as it deems necessary, in its sole discretion.

b. Covered Products. Services will be provided for the following Products:

<b>ABB Hardware</b>
AC500 V3 PLC platform or Greater
CP600 control panels

ABB Software	
Automation Builder	2.4 and or greater
ABB Panel Builder	V2.80 or Greater



- c. Buyer's Authorized Representative: All Services shall be coordinated with and provided directly to Buyer's Authorized Representative as outlined in Section 2 below.
- d. Telephone and E-Mail Support:
  - i. The Authorized Representative may call ABB's support center as required during the term of this Agreement. The ABB telephone contact information for Services support is as follows: 1-800-752-0696.
  - ii. In performance of the Services, Buyer may appoint any member of its support center to support the Authorized Representative.
  - iii. Any Services may be requested or provided by e-mail. Any requests by the Authorized Representative should be submitted to: US-drivessupport@abb.com.
  - iv. In the event any Services require further or additional investigation, ABB will update the Authorized Representative accordingly. In the event ABB is unable to resolve the Buyer support request, ABB will follow-up with the Authorized Representative to confirm whether the issue was resolved or whether additional troubleshooting may be appropriate.
  - v. Buyer acknowledges that the Services are performed solely via telephone and/or e-mail, and the Services do not include any services on Buyer's site.

## 2. BUYER AUTHORIZED REPRESENTATIVE

- a. Authorized Representative Allocation. In order to receive the Services pursuant to the terms of this Agreement, Buyer shall appoint one (1) of its employees to serve as its authorized representative who is designated to receive and request any Services hereunder (the "**Authorized Representative**"). ABB shall not be obligated to provide any Services to any representative of Buyer who is not the Authorized Representative.
- b. Appointed Authorized Representative. Buyer acknowledges and agrees that the Authorized Representative is authorized to enter into the terms of this Agreement by paying for the Services and/or corresponding Program requirements as defined below, and Buyer is responsible for ensuring that ABB has accurate information at all times during the Term regarding the Buyer-designated Authorized Representative.
- c. Mandatory Training Requirements. No later than thirty (30) days after the Effective Date of this Agreement, the Authorized Representative shall register in ABB's Learning Management System ("**LMS**") for the "Automation Authorized Customer Training" program (the "**Program**"). ABB reserves the right to modify the scope of the Program at any time.



- d. Program Registration; Renewal. In order to register in ABB's LMS, the Authorized Representative must: (i) maintain a valid operational company email address, (ii) possess internet services sufficient to support his or her access to ABB Program requirements, and (iii) attend an in-person training at ABB's designated premises. **The Authorized Representative shall be obligated to complete the Program within one hundred twenty (120) days from the Effective Date of this Agreement.** If the Program is not completed within the designated time, ABB has the right not to perform the Services contemplated herein until such Program is completed. During each Renewal Term, the Authorized Representative must take an ABB assessment to ensure that the Authorized Representative remains qualified to receive the Services. If in ABB's sole discretion, reasonable doubt exists as to Authorized Representative's qualifications, ABB may require the Authorized Representative to re-take any or all portions of the ABB training, including, but not limited to, the ABB On-site Training subject to the fees set forth in Section 5.
- e. Voidable Event. In the event the Authorized Representative fails to meet the mandatory training requirements identified herein, ABB shall not perform any Services and shall not be liable to Buyer for any costs and/or expenses.
- f. Credentials. The Authorized Representative shall not be entitled to share his or her credentials with any Buyer or other individual or organization without ABB's prior express consent. Any transfer of credentials shall result in automatic termination of the Agreement for which Buyer shall not be entitled to a refund for any amount of fees already paid prior to the date of such termination. In the event Buyer and/or the Authorized Representative knows or believes that such credentials have been compromised, Buyer and/or the Authorized Representative shall immediately notify ABB in writing.
- g. Authorized Representative Replacement. In the event the Authorized Representative is no longer under the employment of Buyer's organization or Buyer possesses a business need to replace such Authorized Representative, Buyer shall immediately notify ABB in writing, and submit the replacement, subject to ABB's acceptance in its sole discretion, for ABB's mandatory training program.

### 3. BUYER RESPONSIBILITIES

- a. Authorize Representative Appointment. Buyer shall appoint an Authorized Representative as set forth herein and shall be responsible for any actions and/or omissions of such Authorized Representative.
- b. Payment. Buyer shall pay for the Services in accordance with the prices set forth in Section 5 and within the period of time addressed in Section 4.
- c. Contact Information. Buyer shall ensure that it maintains current and accurate contact information and shall ensure that any email or other filters are adjusted to receive communications from ABB personnel.



#### 4. PAYMENT

- a. Payment Terms. Unless specified to the contrary in writing by ABB, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice credit cards as acceptable to ABB in its sole discretion.
- b. Late Payment. Buyer shall pay, in addition to the overdue payment, a late charge equal to the lesser of one- and one-half percent (1 1/2%) per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus ABB's attorneys' fees and court costs incurred in connection with collection.

#### 5. PRICE

- a. Prices. The prices set forth in the table below may be changed at ABB's sole discretion.

Item	Price	Duration
Support Services Fee	\$750	Annual (i.e., the Initial Term and any Renewal Term)
Mandatory Training, Including ABB Factory Training for Authorized Representative	\$1,780	Required for any Authorized Representative or such replacement as may be required.
Bundle – Support and Mandatory Training	\$1,998	Annual Support and Required for any Authorized Representative or such replacement as may be required; if during a Renewal Term

- b. ABB Factory Training. The prices set forth in the table above for mandatory ABB Factory training only covers the cost of the Program. Buyer is responsible for any and all travel, accommodation, and any other expenses incurred by its Authorized Representative.
- c. Taxes. The price does not include any federal, state, or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Buyer agrees to pay or reimburse any such taxes which ABB is required to pay or collect. If Buyer is exempt from the payment of any tax or holds a direct payment permit, Buyer shall, upon payment, provide ABB a copy, acceptable to the relevant governmental authorities of any such certificate or permit.

#### 6. TERM; TERMINATION

- a. Term: The initial term of the Agreement (the "**Initial Term**") shall begin as of the Effective Date and shall terminate twelve (12) months thereafter (the "**Termination Date**"), unless otherwise terminated in accordance with the terms of this Agreement. Buyer has the option to extend the Agreement for an additional twelve (12) month period (a "**Renewal Term**") by completing a new Annual PAC Automation Support Contract (1 Year) in LMS.
- b. Termination. The Agreement may not be cancelled by Buyer Seller may terminate the Agreement in the event Buyer materially breaches this Agreement, in which case, Seller shall not be liable to Buyer, and Buyer shall not be entitled to a credit or refund for any unused aspect of the Fees.



- c. Future Renewal: If Buyer elects not to pursue a Renewal Term and subsequently elects to purchase Services in the future, the Parties will execute a new Agreement; however, Buyer's Authorized Representative may be required to complete the full Program, including the ABB Factory training. In the event that two (2) years have elapsed since entering into the Agreement, the Authorized Representative will automatically be required to complete the entire Program as described herein.

## 7. WARRANTY; REMEDIES

- a. Services. Buyer acknowledges and agrees that ABB is hereby providing the Services **AS IS, WHERE IS, and ABB makes no warranty either express or implied to Buyer or any other person or party regarding the Services provided hereunder. NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION, QUALITY CAPACITY, MATERIAL, OR WORKMANSHIP OR AS TO PATENT INFRINGEMENT OR THE LIKE SHALL APPLY.** Any information and/or recommendations set forth in or provided pursuant to the terms of this Agreement are provided in good faith. ABB makes no representation, warranty, or guarantee, express or implied, that any results described herein will be achieved during end-use conditions, or as to the effectiveness or safety of any design or application incorporating the Products. Buyer shall be responsible for determining whether the Products are suitable for its purposes through end user testing and/or analysis. Nothing in any document or statement, written or verbal, shall be deemed to amend or waive any provision of the ABB Sale Terms.
- b. Product Warranties. This Agreement expressly excludes any warranties on its Products or Services. In the event that Buyer has purchased the Products from ABB or any of its affiliates, ABB's warranties for any Products are provided pursuant to the ABB Sale Terms. In the event Buyer has purchased the Products from an ABB-authorized channel partner, Buyer acknowledges and agrees that it must consult with such third party pursuant to any Third-Party Product Terms.

## 8. LIABILITY AND INDEMNITY

- a. Without prejudice to applicable law, Buyer shall, without any limitations, indemnify and hold harmless ABB, and any affected ABB affiliates, for all liabilities, damages, cost, losses or expenses incurred by ABB (or such ABB affiliate) as a result of Customer's breach of this Agreement, which shall include, but shall not be limited to, Buyer's Authorized Representative's breach of this Agreement and any damages to ABB property or injury (or death) caused to individuals while Buyer's Authorized Representative may be on ABB's premises in connection with any training requirements set forth herein. Buyer shall, without any limitations, indemnify and hold harmless ABB and each relevant ABB affiliate for any claim made by a third party against ABB (or such ABB affiliate) in connection with the Services.
- b. Buyer is responsible for the control and management of all of its employees, including, but not limited to, its Authorized Representative, and shall be responsible for their acts or omissions as if they were the acts or omissions of Buyer. Buyer shall maintain in force, and upon request provide evidence of, adequate liability



insurance and statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers, which however will not relieve Buyer from any liability towards ABB (or any ABB affiliate). The insured amount cannot be considered as limitation of liability.

#### **9. LIMITATION OF LIABILITY**

In no event shall ABB be liable for special, indirect, incidental, or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Products or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Buyer or other third parties for any damages. ABB's liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case exceed one-half (1/2) of the purchase price allocable to the Services which gives rise to the claim. All causes of action against ABB arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one (1) year of the time of accrual thereof. In no event, regardless of cause, shall ABB be liable for penalties or penalty clauses of any description or for indemnification of Buyer or others for costs, damages, or expenses arising out of or related to the Services.

#### **10. CONFIDENTIALITY**

ABB and Buyer hereby agree to hold in confidence any and all information, know-how and data of a confidential and proprietary nature, which is disclosed by a party ("**Disclosing Party**") to the other party ("**Recipient Party**") under this Agreement and is in writing or other tangible form, labeled "Confidential" or, if disclosed other than in tangible form, is identified as confidential at the time of disclosure and confirmed as to substance in writing no later than ten (10) days from the date of disclosure (hereinafter "**Confidential Information**"). Excluded from this obligation is any and all Confidential Information which (a) was rightfully (to the extent as can be determined by Recipient Party's reasonable inquiry) in Recipient Party's possession or was rightfully (to the extent as can be determined by Recipient Party's reasonable inquiry) known to Recipient Party prior to its receipt from Disclosing Party; (b) is or becomes public knowledge by acts other than those of Recipient Party; (c) is developed by Recipient Party independent of any of the Confidential Information received under this Agreement; (d) is rightfully (to the extent as can be determined by Recipient Party's reasonable inquiry) received from a third party without a duty of confidentiality; (e) Recipient Party is required to disclose under operation of law provided Recipient Party gives Disclosing Party sufficient advance notice to allow Disclosing Party to seek a secrecy order or other protective orders as may be available at law to protect the confidentiality of the information; or (f) is disclosed by Recipient Party with Disclosing Party's prior written approval. No right or license is granted by ABB or Buyer in relation to such party's Confidential Information except as expressly set forth in this Agreement. Recipient Party shall return certified destruction to Disclosing Party, upon demand, any and all written documents entrusted to it by Disclosing Party and Recipient Party shall not copy or reproduce in whole or in part any such documents without the written permission of Disclosing Party, except that one copy



may be kept in Recipient Party's intellectual property files for archival purposes. The Parties shall have the right to utilize the Confidential Information only for the purposes of performing the work defined in a specific Purchase Order unless otherwise agreed in writing. Neither Party shall make any other use, in whole or in part, of any Confidential Information without the prior written consent of the other Party. The rights and obligations with respect to keeping the Confidential Information confidential and not using same without the permission of Disclosing Party, however, shall remain effective for five (5) years following the date of termination or expiration of this Agreement.

#### **11. INVENTIONS AND INFORMATION**

All right, title and interest in any inventions, developments, improvements, or modifications of or for Products and Services shall remain with ABB. Any design, manufacturing drawings or other information submitted to Buyer, as may be applicable, remains the exclusive property of ABB. Buyer shall not, without ABB's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Products and not for any other purpose, including the duplication thereof in whole or in part.

#### **12. EXPORT CONTROL**

Buyer represents and warrants that the d Services provided hereunder, and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Buyer agrees not to disclose, use, export, or re-export, directly or indirectly, any information provided by ABB, or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations. If applicable, ABB shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Buyer. Buyer shall furnish such documentation within a reasonable time after ABB's acceptance of a Purchase Order. Any delay in obtaining such license shall suspend performance of this Agreement by ABB. If an export license is not granted or, if once granted, is thereafter revoked, or modified by the appropriate authorities, this Agreement may be canceled by ABB without liability for damages of any kind resulting from such cancellation. At ABB's request, Buyer shall provide to ABB a Letter of Assurance and End-User Statement in a form reasonably satisfactory to ABB.

#### **13. FORCE MAJEURE.**

ABB shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Buyer, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production.

#### **14. NOTICES.**



All communications and notices given under this Agreement by Buyer will be made in writing and will be deemed to have been given when personally delivered or when deposited for mailing by first class registered or certified airmail, returned receipt requested, with proper postage prepaid, and addressed as follows: ABB Inc., 16250 W. Glendale Dr., New Berlin, WI 53151. All communications and notices given under this Agreement by ABB may be made via e-mail at the e-mail address provided by Buyer.

15. **MISCELLANEOUS.**

- a. Assignment. Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of ABB shall be void.
- b. Headings. The headings utilized in this Agreement are designed for the sole purpose of facilitating ready reference to the subject matter of this Agreement. Said headings shall be disregarded when resolving any dispute concerning the meaning or interpretation of any language contained in this Agreement.
- c. Successors and Assigns. This Agreement, and all obligations hereunder, shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective legal representatives, predecessors, successors and/or assigns. Nothing in this Agreement, whether expressed or implied, is intended to confer upon any person other than the Parties hereto and their respective representatives, successors and assigns, any rights, or remedies under or by reason of this Agreement.
- d. Laws; Governing Law. ABB does not assume any responsibility for compliance with federal, state, or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Products is the sole responsibility of Buyer. This Agreement and all claims and disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles. Any Party bringing a legal action or proceeding against any other Party arising out of or in connection with this Agreement shall bring the legal action or proceeding (i) in the United States District Court for the Southern District of New York; or (ii) in the Supreme Court of the State of New York, New York County, if there is no federal subject matter jurisdiction. The Parties hereto hereby irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement.
- e. Amendment. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless in writing and duly executed by the Parties.
- f. Merger. This Agreement contains the entire understanding of the Parties and replaces and supersedes all previous contracts and agreements, written or oral, relating to this Agreement or the subject matter of this Agreement. There are no other oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
- g. Severability. Any provision or portion of this Agreement that is declared invalid will not affect the validity of any other provision or portion of a provision of this Agreement.





- h. Execution and Enforceability. This Agreement may be signed in counterparts which, when taken together, shall be deemed as one and the same document. A facsimile signature or via email attachment in pdf format shall be conclusive evidence of each Party's agreement hereto. Each Party warrants and represents to the other that (a) its execution of this Agreement has been duly authorized by all necessary corporate action of such Party, and (b) it has all requisite legal rights necessary to grant the other Party all releases and covenants not to assert or sue granted to the other Party as set forth above.
- i. Authority. Buyer expressly warrants and represents, that the Authorized Representative and/or the individual purchasing the Services contemplated under this Agreement are authorized to bind the Buyer who is in good standing in its place of domicile.
- j. Entire Agreement. This Agreement constitutes the entire agreement between ABB and Buyer as to the Services provided under this Agreement. The Parties expressly reject any preprinted terms and conditions on either Party's documents. There are no agreements, understandings, restrictions, warranties, or representations between ABB and Buyer other than those set forth herein or herein provided.

**By submitting credit card information in connection with the Annual PAC Automation Support Contract (1 Year) and checking the box below, Buyer is hereby bound to the terms of the ABB Programmable Automation Controller (PAC) Support Services Agreement.**

**Buyer acknowledges and agrees that by submitting payment for the Services as defined herein that it has been afforded reasonable time to review the terms of the ABB Programmable Automation Controller (PAC) Support Services Agreement and [ABB's Privacy and Cookie Policy](#) and agrees to be bound by their terms.**