

Meeting Date: October 20, 2021

Staff Contact: Jared Ray, Operations/Maintenance Superintendent Plant
Maintenance, WW Mechanical

TITLE: C-21-29 – Approving Contract with ABB for System Maintenance & Support

ACTION: Recommend Approval

Summary:

Requesting approval to delegate signature authority to the Executive Director to enter into a contract with ABB Incorporated to provide Support and Service for the Reclamation Plants ABB Control System. This includes Kick-off call and site visit, dedicated phone support, case tracking, quarterly reporting and annual usage report. There is also cybersecurity support, parts discount and 80 hours of Field Service included for on-site maintenance. This service will be procured pursuant to the authority contained in section 7(a)(21) of the Rules Governing Procurement For The Albuquerque/Bernalillo County Water Utility Authority.

If approved by the Board, an Agreement will be executed between the Water Authority and Vendor to enable Vendor to provide Support and Service for the Reclamation Plants ABB Control System. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this contract, if any.

FISCAL IMPACT:

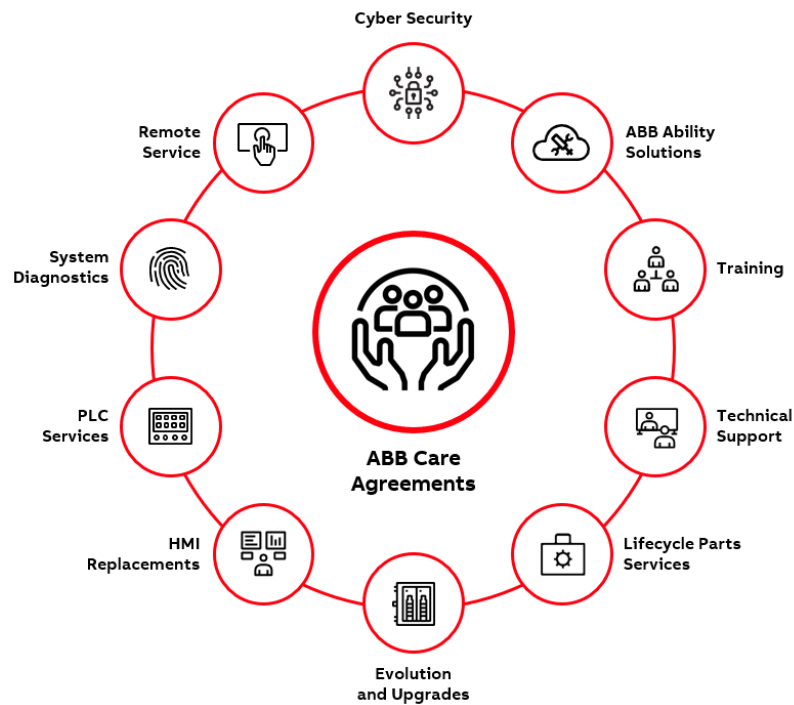
Funding for this contract is provided in the FY22 CIP Budget.

Let's write the future
Together



Industry Care

Proactive



Candida Kelcourse
Albuquerque Bernalillo County
South Plant Water Reclamation
4201 South Second St. SW
Albuquerque, NM 87105

Proposal Date: August 04, 2021
Proposal Number: EGR-210723-1 Rev 00
Service Account Manager: Kevin McManigle

Contents

1	Introduction	4
2	Scope of Work	5
2.1	Technical Account Manager	5
2.1.1	Contract Kick-off & Site Visit.....	5
2.1.2	Unique Call-in Process.....	5
2.1.3	Support Case Tracking.....	5
2.1.4	Quarterly Reporting & Conference Call.....	5
2.1.5	Annual Usage Report.....	6
2.2	Contract Management Team	6
2.3	Rapid Response Services.....	6
2.3.1	Telephone Support.....	6
2.3.2	Online Support.....	7
2.3.3	Application Support	8
2.4	Rapid Response Options	8
2.4.1	Optional ABB Ability™ Remote Insights.....	8
2.4.2	Optional Remote Access Link.....	9
2.5	Lifecycle Management Services	11
2.5.1	Sites and Systems Supported.....	11
2.5.2	Software Maintenance	12
2.5.3	Cyber Security Patch Delivery.....	12
2.5.4	Control System Benchmark	13
2.5.5	Onsite Field Service	13
2.5.6	Hardware & Software Discounts.....	14
2.5.7	In-Person Training Classes	14
2.5.8	Loyalty Offers.....	15
2.5.9	Parts & Services Utilization Account	15
3	Commercial Summary	17
3.1	Purchase Order	18
3.2	Invoice Schedule & Payment Terms	18
3.3	Cancellation.....	19
3.4	Terms and Conditions	19



3.4.1	Corona virus (COVID 19) Sales Contract Clause	19
3.5	Authorized Users	19
3.6	Travel and Living	20
3.7	Taxes and Duties	20
3.8	Proposal Validity	20
3.9	Confidentiality	20
3.10	Change Orders	20
3.11	Authorized Service Provider	20
3.12	Publication.....	20
3.13	Non-Solicitation	21
3.14	Use of Remote Insights Software	21
Appendix A – ABB US Service Standard Rate Sheet – 2021.....		22
Appendix B – My Control System Access		24
Appendix C – Optional ABB Ability™ Remote Insights Access		25
Appendix D – Cyber Security Patch Delivery		26
Appendix E – Change Order Form.....		27
Appendix F – Optional Remote Access Link Consent Form		28
Appendix G – Terms and Conditions.....		30

1 Introduction

Industry Care is a best-in-class service offering designed to increase your plants uptime, extend your plant's life, increase your operational efficacy, and ultimately, provide the means to support all service needs today and the expertise to plan for tomorrow's dynamic changes. With unparalleled knowledge resulting from solutions installed at thousands of facilities around the world, ABB is uniquely qualified to help manage all aspects of your plant, from your primary electrical equipment to your control system and all connected devices.

We build the right combination of services and values for your needs and demands. The core Industry Care package contains essential services like Telephone Support to give you quick and effective expert support, System Benchmark and Fingerprint to give you the power of knowledge about the status of your system and equipment, and the ABB Software Maintenance support you need to keep your system current and compliant. You can customize each with optional upgrades to fit your specific operation. For example, if your priority is knowing more about your asset health, asset monitoring and remote access can be added to your Industry Care package. Or if you need extra peace of mind with on-site support, mobilization to site or a resident engineer we can provide service with boots on the ground.

Industry Care Proactive provides a premium level of support that starts with a Technical Account Manager (TAM). The TAM serves as your primary support contact for all of your support needs and coordinates the entire service team.

Industry Care drives value for your plant by providing **rapid response** to issues and questions, including services and technologies that **extend the lifecycle** and **improve the reliability** of your control system, and **improve the operating performance** of your process. The Care contract value can be further enhanced by leveraging the full breadth and depth of ABB capabilities including electrification services, drives services, and ABB Ability™ digital technologies.

It's all about improving *your* business outcomes. From ABB's portfolio of technology and services from field service, tuning services, and spare parts to consulting, optimization, ABB Ability™ digital portfolio, and turnkey services; we support every stage of the plants life cycle and ensure maximum results from your full fleet of assets.

2 Scope of Work

2.1 Technical Account Manager

A Technical Account Manager (TAM) will be assigned to your plant as a single point of contact. The TAM will be familiar with your industry, proactively monitor your support needs, and ensure key resources within ABB are engaged to quickly solve any of the various issues that may arise. Below you will find a summary of the deliverables associated with your TAM, with detailed sections for each service to follow:

TAM Deliverables:

- Kick-off call & site visit
- Dedicated phone number for support
- Constant support case tracking
- Quarterly reporting & conference call
- Annual Usage Report

2.1.1 Contract Kick-off & Site Visit

Shortly after acceptance of the purchase order, your TAM will host a conference call to review the deliverables of this agreement and get your service underway. Additionally, plans will be made for installation of any hardware and software required in this agreement, as well as a site visit by the TAM.

The TAM will visit the plant site to expand the TAM's knowledge of the plant, plant personnel, maintenance and operational philosophy, and set the foundation for a collaborative working relationship. This trip is for a maximum of one day on site.

2.1.2 Unique Call-in Process

With this Care contract, you will receive a **dedicated phone number** to receive priority call handling and automatically route your call to your assigned TAM. In the event that your TAM is unavailable, an option will be provided to leave a message, or transfer to another TAM. Upon leaving a message, a notification will go out to your TAM alerting them that a message has been left.

2.1.3 Support Case Tracking

Your TAM will provide the initial level of technical support and escalate when necessary. All support activity will be logged in an ABB database to provide accurate tracking of all of the cases, as well as the status of each case.

2.1.4 Quarterly Reporting & Conference Call

The TAM will provide quarterly reports which summarize all of the support activity for the Industry Care agreement. The report will contain the agreed upon value or benefit derived from

the Care agreement during the previous quarter. In addition, action item statuses from quarterly conference calls will be provided.

The report will be reviewed during a quarterly conference call hosted by your TAM. During this call, all cases and support activity from the prior period, and the status of any open cases will be discussed. The TAM will solicit feedback on how well the support program is working, and any areas for improvement in the support process will be identified.

2.1.5 Annual Usage Report

In place of one of the Quarterly Conference calls, the TAM will provide a report of contract usage for the previous contract year. This report content is dependent upon available information and is intended to include the following:

- Number of Cases resolved
- Case open and close dates
- Money saved due to Care discounts

2.2 Contract Management Team

Contract management is adjusted to reflect the Scope of Work and also tailored to meet Customer requirements. The ABB contract management team includes an Operations Manager, Service Coordinator, Business Administrator, Sales Account Manager as well as the Technical Account Manager, with escalation to a Regional Director.

The Contract Team will be responsible for the quality monitoring, reporting and follow up of continuous improvement of Scope of Work. The Contract Team is responsible for execution of the following functions:

- Overall responsible for Scope of Work and single point of contact for Customer's Contract Holder
- Operations of a resource team to meet requirements from Customer and Scope of Work
- Review of available lifecycle information for registered installed base
- Provide information about recommended spare parts

2.3 Rapid Response Services

2.3.1 Telephone Support

Although your TAM will be the primary contact for technical support and issues, ABCWUA will also have access to an **unlimited number** of technical support cases with a **1 hour** response commitment during normal business hours throughout the duration of this contract. Escalation of support cases is made through the ABB Contact Center. Response time is defined as the time from the request has been received and acknowledged by a specialist.

Technical support is available 24/365 with afterhours support limited to cases where the system is down, in danger of going down, or when system performance is significantly off from expected. This support function may be utilized by any employee of the customer using the ABB Systems (excluding contractors, subcontractors, integrators, or any party other than an employee of the purchaser).

When an incident is categorized as an Emergency, work shall start immediately and continue outside of the agreed hours until the problem is resolved. The categorization is determined by the urgency and impact of the incident. Critical HSSE (Health, Safety, Security and Environmental) situations, loss of production, total loss of view of the process are situations that are categorized as Emergency. This may also include situations that could lead to a production loss or HSSE issue.

ABB Contact Center contact details are:

Email: AutomationSupportLine@us.abb.com

Telephone number: 1-800-HELP-365 (1-800-435-7365)

ABCWUA Request will include the following information to the ABB Contact Center:

- Customer name
- Name of inquirer
- Name of site
- Type of equipment
- Description of inquiry
- Priority of the inquiry
- Contact details of the inquirer

2.3.2 Online Support

Online support is available through the Premium version of MyABB / My Control System portal. Through My Control System, you can:

- Check my system licenses / Automation Sentinel status
- See system details pages and system reports
- Have access to subscriptions and software licenses of the installed control system(s)
- Access cyber security related information, recommendations and downloads
- Determine contact information of designated ABB Service organization
- Find My safety reports / My product alerts
- Research available training
- Access security updates and patches, service packs, new control system software versions
- See validation results and downloadable qualified third party security updates form Microsoft / McAfee ePO policies/Symantec definition files
- Find user manuals, data sheets, product updates
- Check the overall status of the process control system health, performance and validated software updates

Online support may be utilized by any employee of the customer using the ABB Systems (excluding contractors, subcontractors, integrators, or any party other than an employee of the purchaser). For each system under contract, ABCWUA will have up to fifteen (15) users, plus one (1) control system administrator. **ABCWUA is responsible for completing and returning the form in Appendix B for user access.**

2.3.3 Application Support

Under the Care program, ABB will provide an **unlimited number** of application technical support cases during the contract period. The application phone support cases are to assist when seeking advice on making minor adjustments to existing application logic.

Application technical phone support will be provided by system or process control engineers during normal business hours (excluding holidays). This support function may be utilized by any employee of the customer using the ABB Systems (excluding contractors, subcontractors, integrators, or any party other than an employee of the purchaser). Items such as tuning support, control logic additions/conversions, and control system optimization are not included and can be provided under an additional service contract

2.4 Rapid Response Options

2.4.1 Optional ABB Ability™ Remote Insights

Under the Industry Care Proactive contract, ABB will provide **three (3) ABB Ability™ Remote Insights licenses** for use by customer designated users. ABB Ability™ Remote Insights is a collaborative app that improves interaction between remote experts and field personnel by enabling live instruction and guidance that can be overlaid on live video using augmented reality technology. This new solution will simplify maintenance, reduce downtime, increase equipment effectiveness and improve safety. This allows you to expand the technical knowledge of your workforce as your personnel gain hands-on maintenance experience from ABB's global expert support network. **ABCWUA is responsible for completing and returning the form in Appendix C for user access.**

- Remote Insights service may be utilized by designated employees of the customer only. Contractors, subcontractors, integrators, or any party other than an employee of the purchaser are excluded from using the licenses supplied herein.
- Supported operating systems: iOS, Android, Windows 10
- Hands-free options through wearable technology (Hololens and Realware Headset) are supported
- ABB shall treat all the materials and information received from the site as confidential client data.
- Cellular/WiFi Service available in areas of plant intended for use with solution.

- Capture of Photo/Video of site equipment permitted as required by Remote Insights session.
- Additional licenses may be purchased at prices listed herein during the term of this contract.

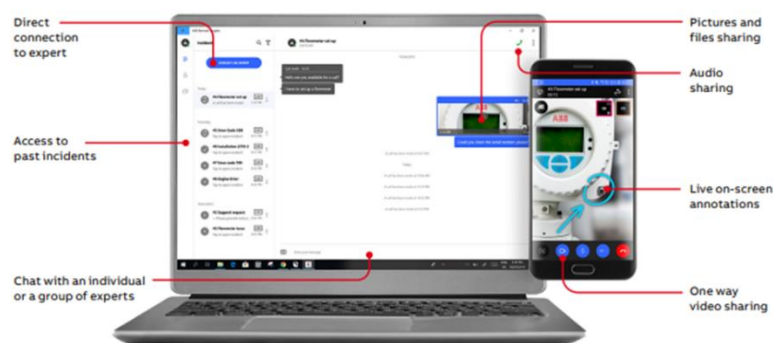


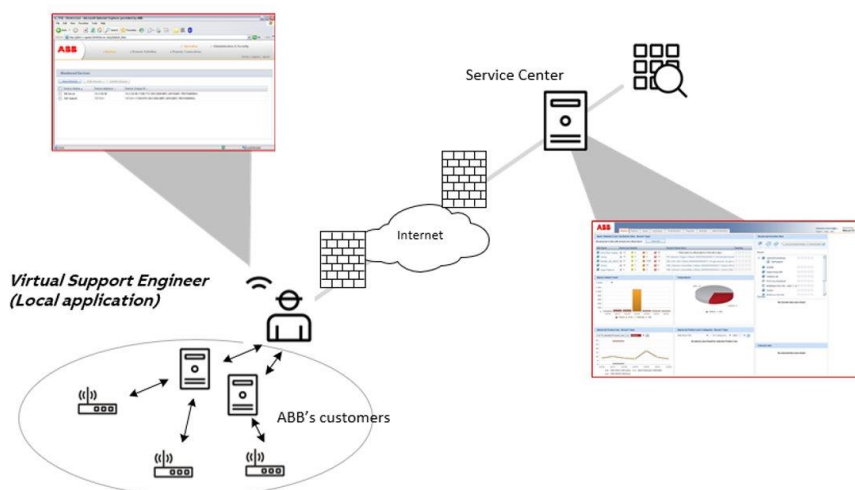
ABB MyLearning has designed a training course for customers to familiarize and utilize the Remote Insights application. The training course T1010E Remote Insights Quick Start Training is an on-demand, virtual class that can be taken any time.

2.4.2 Optional Remote Access Link

Remote Access Link (RAL) is a subscription service which allows ABB experts to remotely connect to a customer's control system in order to more quickly respond to technical issues. Installation of RAL can be completed upon receipt of the customer's authorization (see Appendix F).

Remote Connectivity

The ABB Remote Access Platform (RAP) - RAP provides ABB specialists a direct view of equipment and associated software applications via a selected node on the customers control system network. It facilitates remote troubleshooting, remote sessions associated with on-site service, monitoring of process data, and recommendation of improvements to applications related to the process. RAP also allows ABB specialists to help maintain and optimize the process automation system.



- Customer Provided VPN Connectivity - For an additional fee the customer may provide its own VPN connection method in place of the Remote Access Platform solution.

Customer RAP Responsibilities

- Request the connection to be active by returning RAP Consent form (Appendix F). Remotes Access Link service will remain inactive unless the customer chooses to activate anytime during the contract period.
- Provide Internet access
- Provide a PC for the VSE software. Minimum PC requirements are:
 - Windows 7 Operating System
 - 1 GB of RAM
 - 500 MB of Hard Drive Space
 - Minimum recommended Internet speed is a 3 Mbps
- Install VSE software on site machine. Firewall must be configured to allow outbound only connection through SSL port 443.

Customer VPN Responsibilities

- Provide VPN software
- Provide installation and login documentation
- Provide VPN user credentials
- Software must be compatible with Windows 7 or greater
- Minimum recommended Internet speed is 3 Mbps

2.5 Lifecycle Management Services

2.5.1 Sites and Systems Supported

The following table(s) outlines the sites and systems covered under this Contract with their corresponding software maintenance level.

ABCWUA - SID4672

Software Support Level	Maintain+ Level	# of Concurrent Users	19	System Functionality	<input type="checkbox"/> Turbine Analyst <input checked="" type="checkbox"/> History <input checked="" type="checkbox"/> Harm. Gateway
Licenses Included in System Identification					
License #	Product Description			Machine ID	
SL712062014284023	S+ Operations, Primary, v2.0			0154	
	Local Client - No Local Client				
	Real Time Data Server Tag Capacity - 30000 realtime tags				
	Remote Clients Support - (18 clients)				
	Harmony Connect - Yes				
	Harmony/INFI Driver - Yes				
	1 Full Office Client x1 - Packs of 1				
	History Server - Yes				
	Report Package (required with History Server) - Yes				
	4 Historical Logs x1000 - Packs of 1000				
SL087072014284023	S+ Operations, Redundant, v2.0			0164	
	Local Client - No Local Client				
	Real Time Data Server Tag Capacity - 30000 realtime tags				
	Remote Clients Support - (18 clients)				
	Harmony Connect - Yes				
	Harmony/INFI - Yes				
	1 Full Office Client x1 - Packs of 1				
	History Server - Yes				
	Report Package (required with History Server) - Yes				
	2 Historical Logs x1000 - Packs of 1000				
SL550244207165028	Composer Harmony Client, v6.0			000AF70E9753	
	SL231523104034058			65127	
	SL758295309122046			12738	
	SL67321119311105			000F20D883BC	
	SL315110815282061				

SL424335102144097	Harmony Gateway, v6.1	
SL632322303155097	Harmony Gateway, v6.1	
SL771205703193077	Harmony Gateway, v6.1	
SL913492211013120	Harmony Gateway, v6.1	
SL970125907133097	Harmony Gateway, v6.1	
SL068331112214033	IET800, vA.0	B89BE4030083
SL052331112214033	IET800, vA.0	b89be403195b
SL867410710025100	IET800, vA.0	B89BE404BC06
SL820410710025100	IET800, vA.0	B89BE4052175
SL369191115134105	S+ Engineering for Harmony Server, v1.1	10279
SL885191115134105	S+ Engineering for Harmony Server, v1.1	10363
SL150251115134105	S+ Engineering for Harmony Standalone, v1.1	10104
SL478251115134105	S+ Engineering for Harmony Standalone, v1.1	10288

2.5.2 Software Maintenance

As part of this contract, ABCWUA will have access to the **Maintain+** level of software maintenance. Please refer to the subsequent section for details on what systems and components are covered.

Maintain+ level provides access to software or firmware error corrections, performance improvements, and 3rd party compatibility updates for the current software version installed, as well as the availability to upgrade the currently installed software products from one version of the platform to the latest version of the same platform for platforms that are “Active” or “Classic” lifecycle status.

Delivery of software updates will be through the myABB / My Control System portal, or on physical media in certain situations. Flashable firmware updates will be available through this portal as well. Firmware updates delivered on physical media may be purchased for an additional fee.

The software maintenance updates provided by ABB will automatically be subject to the applicable end-user software license agreement. Software corrections for individual issues are not available prior to the release of a periodic software maintenance update. Purchaser may request the correction of a specific issue and ABB will attempt to make available, at its option, a temporary correction if ABB determines the issue to be business critical, and both technically and economically feasible.

2.5.3 Cyber Security Patch Delivery

Every month throughout the duration of this contract, ABB will provide a CD of all Microsoft validated patches for ABB control system software and associated ABB validation test status documentation. This document lists Microsoft security bulletins including relevant KB article numbers, criticality, affected Microsoft products, and ABB’s validation status.

Patch validation applies only for ABB software at “Active” or “Classic” status at the latest available service pack. The validation testing of Microsoft security updates is done along with McAfee VirusScan® Enterprise. Documentation about the latest patch level, scan engine, and virus definition file versions validated are published together with the Microsoft security update test results. The information and software provided is for use on ABB systems covered by this Contract. **ABCWUA is responsible for completing and returning the form in Appendix D for delivery contact and address of this disc.**

Note: As of January 14, 2020 security patches will not be available from Microsoft for Windows 7 and Server 2008.

2.5.4 Control System Benchmark

As part of the Care contract, ABB will conduct a Control System Benchmark during the term of the contract. The Control System Benchmark will provides to the customer an accurate depiction of the installed control system equipment, along with lifecycle status and criticality matrix, warranty information (if available) and which equipment is covered by the agreement within a report on the myABB customer portal.

The Control System Benchmark is conducted by running a Service Products Data Collector (SPDC) automated tool that can be downloaded from myControlSystem or provided to customer by USB storage media. The SPDC tool validates key parameters including:

- Lifecycle status of hardware and software
- ABB software versions are all loaded correctly and are on appropriate nodes
- Appropriate versions of Microsoft software, including patches are on every node
- Most up-to-date antivirus (McAfee or Symantec) software on every node
- Microsoft Windows, computer hardware and controller KPI's to determine system load
- Control hardware version
- Cybersecurity settings

In order to complete the Control System Benchmark the SPDC tool must be run from a Microsoft Windows workstation or server that is on the same network as all the other control system nodes. ABCWUA may apply virus checks to media prior to loading the SPDC tool on the system. The SPDC tool runs in the background and does not need to be attended. The length of time needed to complete varies based on system size.

2.5.5 Onsite Field Service

As part of the Industry Care contract, ABB will provide **80 hours per year** of OCS Field Services to perform on-site maintenance services. Service labor hours not used within the duration of this Contract shall be “lost” without compensation. Service labor time includes travel to and from the site, time for training required to obtain site access, diagnostic time, repair time, verification time, time awaiting the delivery of parts, time waiting for access to equipment, and time required to complete the documentation of the service call activities. A minimum of four (4) hours is

charged for any service call to a client's facility. The use of these hours are subject to defined Primary Working Hours as referenced in Appendix A.

Travel and living expenses are included with this Contract.

In the event all of the hours are used, additional hours may be purchased at **20 percent off** the current field service labor rates if purchased during the contract period. Additional purchased material, equipment rental, oil processing trailers, etc. are in addition to service hours and will be quoted per the service required.

2.5.6 Hardware & Software Discounts

ABB will provide hardware and software discounts off the current ABB price book for below listed hardware and software during the Industry Care contract period. Discounts for repairs and refurbished parts apply to listed hardware systems only. Discounts during the contract period will be extended at the following rates:

Hardware

New	Description
Symphony Plus Harmony (Rack)	40% discount (0.60 of list)
Symphony Plus (DIN)	10% discount (0.90 of list)
Repairs and Refurbished parts	
Repairs	10% discount (0.90 of list)
Refurbished	10% discount (0.90 of list)

Software

Symphony Plus	10% discount (0.90 of list)
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* Discount applies to currently licensed products. Includes software licenses, media, and USB dongles for new or expansion licensing. Some software expansions may impact the annual price of the Industry Care contract.

2.5.7 In-Person Training Classes

ABCWUA is also entitled to purchase in-center training classes from ABB University at **10 percent** off the current list price if purchased during the contract period.

- The discounted pricing would only apply to list price, ABB in-center training classes, scheduled as open enrollment events.

- The discounted pricing would not apply to on-site training events or coaching services.
- This discount cannot be combined with any other agreements or promotions.

ABB University has the right to cancel an open enrollment class that does not meet the student minimum to conduct the training class. ABB University commits to cancelling a class at least 2 weeks prior to the scheduled start date. If the customer chooses to cancel an enrollment, they must do so at least 2 weeks prior to the class start date to avoid a cancellation fee.

2.5.8 Loyalty Offers

As a participant in the Industry Care program, ABCWUA will have access to quarterly published Loyalty Offers throughout the duration of the contract. These are special access discounts only made available to contract holders. The Loyalty Offers are made available at the beginning of each calendar year quarter and provide discounts to part and labor packages.

2.5.9 Parts & Services Utilization Account

As an Industry participant, ABCWUA can establish a pre-paid Parts & Service Utilization Account in the amount of **\$80,000 per year**. Parts & Service Utilization Account funds may be used to purchase parts, repairs, field services at list prices. Any parts, repairs, or field services purchased over and above the value of the Parts and Services Utilization Account may be purchased at the discount levels shown below. Discounts apply only for listed hardware and software systems.

Hardware

New	Description
Symphony Plus Harmony (Rack)	40% discount (0.60 of list)
Symphony Plus	15% discount (0.85 of list)
Repairs and Refurbished parts	
Repairs	15% discount (0.85 of list)
Refurbished	15% discount (0.85 of list)
Software	
Symphony Plus	15% discount (0.85 of list)
Services	
Field Service Hours	20% discount (0.80 of list)

Loyalty Offers	Published Loyalty Offer Price
Training	Discount rate included in section 2.5.8

No other discounts apply when using Parts & Services Utilization account funds.

For the purpose of this agreement:

- The customer is responsible for returning all failed parts under the RMA issued within 14 days of receipt of the RMA. Failure to return failed parts will result in an additional charge of 20% of the list price against the account balance.
- The published spare parts list price for the part or repair cost will be deducted as ordered from the parts account balance.
- Any parts usage beyond the amount stated herein for the contract period will be invoiced separately at the list price less the discount stated herein. A purchase order will be required.
- All replaced components become property of ABB Inc.
- Customer is separately responsible for all shipping charges.
- Parts usage below the cap may not be applied toward any other portion of this contract.
- No combining of discounts is permitted.
- ***Parts & Service Utilization Funds not consumed within the term of the contract will be forfeited without compensation.***

3 Commercial Summary

Industry Care Proactive Contract – Three Year Contract:

The Contract starts **October 01, 2021** ending **September 30, 2024**.

Part Number	Description	Price	
PAENC-PRO-03	Industry Care – Proactive 3-year agreement	\$ 178,911	Year 1
		\$ 187,857	Year 2
		\$ 197,249	Year 3
		\$ 564,017	Total

OR

Industry Care Proactive Contract – Five Year Contract:

The Contract starts **October 01, 2021** ending **September 30, 2026**.

Part Number	Description	Price	
PAENC-PRO-05	Industry Care – Proactive 5-year agreement	\$ 178,911	Year 1
		\$ 187,857	Year 2
		\$ 197,249	Year 3
		\$ 207,112	Year 4
		\$ 217,467	Year 5
		\$ 988,596	Total

Optional Services*

	Part Number	Description	Price
1	n/a	Remote Insights: 3 users	\$3,960 Annual
2	n/a	Remote Acces Link	\$3,500 Annual

* Optional Services pricing valid when purchased at the same time as this Industry Care contract.

3.1 Purchase Order

PLEASE NOTE NEW SUBMISSION EMAIL ADDRESS.

This is a Three Year Contract, please submit your purchase order **referencing proposal number EGR-210723-1 Rev 00**. The Purchase Order needs to cover the full duration with line items for each year. Invoice dates are as follows:

Line Item	Part Number	Description	Invoice Date	Price
1	PAENC-PRO-03	Year 1	10/1/2021	\$ 178,911
2	PAENC-PRO-03	Year 2	10/1/2022	\$ 187,856
3	PAENC-PRO-03	Year 3	10/1/2023	\$ 197,249
TOTAL				\$ 564,017

Payment due NET-30 unless otherwise specified in a master agreement. The above table does not reflect any options. Should any options be purchased, the invoice amount in the above table needs to be increased by the annual amount of the option(s).

The purchase order must reference terms and conditions of this Contract. Please fax or email your purchase order to:

Fax – (440) 585-5081

E-mail – ServiceContracts@us.abb.com

3.2 Invoice Schedule & Payment Terms

The terms of payment for all systems, services, and products purchased under this agreement shall be 30 days from date on invoice, subject to **annual** invoices issued following receipt and acceptance of your Purchase Order. **Annual** invoicing will continue automatically for multi-year contract periods per the invoice schedule outlined in Section 3.1 Purchase Order.

If you let the contract expire or lapse at any time, you may reinstate for an additional fee of 5% per month of the most recent annual contract amount that you are not covered under contract, with a maximum fee of 15% of the most recent annual contract amount.

3.3 Cancellation

Contract termination is assessed in 12-month intervals. Termination of this contract will be subject to the following cancellation schedule:

Cancellation Schedule	
Cancellation Timing	Amount
Up to the end of the third month	50% of annual contract amount. Subsequent years of the committed contract period are waived.
Any time between months 4 and 12	Full annual contract amount. Subsequent years of the committed contract period are waived.

3.4 Terms and Conditions

This Contract will commence on its effective date as specified in Section 3 Commercial Summary above, and will remain in effect until the end of the agreement as specified in Section 3 Commercial Summary above.

The Terms and Conditions of this proposal are based on ABB Standard Terms and Conditions. No other terms and conditions shall apply. Where there is a conflict between the Terms and Conditions and this proposal, terms of this proposal shall take precedence.

3.4.1 Corona virus (COVID 19) Sales Contract Clause

The Parties are aware of the outbreak of a Coronavirus (commonly known as COVID-19) or any mutation of such virus which is or may impact normal business and execution of this Contract. The Parties agree that ABB is entitled to cost compensation, time extension, or other reasonably required contract adjustments, if any consequences whether directly or indirectly resulting out of, or in connection with the coronavirus outbreak, lead to delays in delivery of goods or provision of services or otherwise affect ABB's contractual obligations or duties.

3.5 Authorized Users

The Industry Care agreement and services are for the operator/operating company of the specific to the site and systems identified in this proposal. Third parties performing work or services are not authorized or permitted to utilize any of the features or benefits provided with this agreement.

3.6 Travel and Living

All travel and living expenses for services included in this Contract are included. Work performed outside the scope of this Contract are subject to travel and living expenses being invoiced separately at actual incurred cost plus 10% (administrative fee).

3.7 Taxes and Duties

All other taxes and duty not explicitly expressed herein will be billed to the consignee. This include VAT or/and Service related Withholding tax.

3.8 Proposal Validity

This Proposal is subject to acceptance within sixty (60) days from the date of proposal. All prices, schedules, and technical descriptions are valid throughout this period.

3.9 Confidentiality

The information contained in this proposal is proprietary to ABB Inc. and may not be disclosed to any third party or company without the written consent of ABB Inc.

3.10 Change Orders

During the term of this Care agreement, work requested by ABCWUA on equipment not included in Section 2 (inclusive) or that has been otherwise delineated as additional scope within this agreement will be completed by ABB under the following conditions:

- Additional Scope will be authorized by ABCWUA in writing via a Change Order. In the event a Change Order ABB will, at earliest convenience, provide written confirmation.
- ABCWUA shall amend applicable Purchase Orders prior to resources being dispatched to site. In event of an Emergency the Purchase order will be amended to include Change Order additional scope within 5 business days of written confirmation.
- Change Orders will be on a Time and Material basis.

A sample Change Order form is shown in Appendix E

3.11 Authorized Service Provider

During the execution of this Care agreement, ABB reserves the right to utilize an Authorized Service Provider for services on covered equipment. In the event an Authorized Service Provider is utilized, all warranties herein will still apply.

3.12 Publication

Customer approves the use of its name in ABB newsletters, press releases, proposals, experience lists, and resumes (for proposal purposes) of our employees.

3.13 Non-Solicitation

During the term of this Agreement and for one year after any termination of this Agreement, Purchaser will not, without the prior written consent of ABB, either directly or indirectly, on Purchaser's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by ABB or any customer of ABB. Purchaser acknowledges that money damages may not be a sufficient remedy for breach of this requirement. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity ABB may have, ABB shall be entitled to seek equitable relief, injunctive relief, or both.

3.14 Use of Remote Insights Software

Customer acknowledges and accepts that, from time to time, ABB may utilize Remote Insights software in the execution of work associated with this agreement. Remote Insights software facilitates augmented video and audio communications between ABB field resources and ABB technical support/engineering across a standard cellular/wifi connection utilizing an ABB supplied cellular/wifi enabled device. The Remote Insights request will be initiated by ABB and shall be limited to the time frame necessary to perform the services requested by ABB engineer.

Appendix A – ABB US Service Standard Rate Sheet – 2021

Primary Work Hours

The following labor rates are applicable during Primary Working Hours (PWH) defined as an 8-hour period beginning between 7:00 A.M. and 10:00 A.M. Monday through Friday, excluding national and ABB recognized holidays. The primary work hours include a one half-hour non-paid lunch period and two 15-minute breaks during the day.

Base Service Labor Rates

Technology	Service Type	Hourly Rate
Drives and Motors	Field Services	\$325
Open Control systems (OCS)	Field Services	\$315
	Process Application Engineering Services	\$355
Paper Quality Control Systems & Web Imaging Systems (QCS & WIS)	Field Services	\$315
	Sensor Specialist Services	\$352
	Systems Engineering Services	\$352
	Process Application Engineering Services	\$355
	Lorentzen & Wettre Engineering Services	\$355
	Lorentzen & Wettre Specialist Service	\$381
Power Generation	Turbine Control Systems Services	\$345
	Flame Scanner Services	\$345
	Power Plant Tuning	\$345
All	Project Management Services	\$347
	Process Control Tuning Services	\$349
	Regional Technical Advisor, Network & Security Services	\$355
	Process Optimization Services	\$370

Overtime Hours

For billing purposes ABB Inc. defines overtime as those hours worked outside the Primary Working Hours or in excess of eight (8) hours in one day. The standard charges for overtime are defined as follows:

- All work performed outside the PWH or over 8 hours in one day is charged at one and one half times the labor rate (Base Service Labor Rate X 1.5).
- All work performed on Saturday is charged at one and one half times the labor rate (Base Service Labor Rate X 1.5).
- All work performed on Sunday is charged at two times the labor rate (Base Service Labor Rate X 2).
- All work performed on national or an ABB holiday is charged at three times the labor rate (Base Service Labor Rate X 3).

Field Engineer Stand-By

Engineer Stand-By support occurs when a customer requests an engineer to perform “stand-by” duty where that engineer is specifically reserved for that Customer and cannot be dispatched to another Customer job site. The customer reserving the engineer in stand-by readiness mode shall be charged for Stand-By service.

Field Engineer Stand-By Service is charged at 4 PWH per day. If the “reserved” Field Engineer is called to this site, then 2 PWH will be credited to the customer. Overtime hours, travel expenses, travel time and other conditions of service per this rate sheet shall apply.

2021 Holiday Schedule

Friday, Jan. 1 - New Year's Day	Thursday, Nov. 11 – Veterans Day
Monday, Jan. 18 – Martin Luther King Jr. Day	Thursday, Nov. 25 –Thanksgiving Day
Monday, Feb. 15 – Presidents Day	Friday, Nov. 26 – Day After Thanksgiving
Monday, May 31 - Memorial Day	Thursday, Dec. 23 – Day Before Christmas
Monday, July 5 – Independence Day	Friday, Dec. 24 – Christmas Day
Monday Sept. 6 - Labor Day	

Appendix B – My Control System Access

Please complete the form below and include it with your Purchase Order to complete registration and/or renewal of your My Control System access.

Contact Name	Contact Phone Number	Contact address	e-mail	What system(s) is this contact responsible for? (Only required for multi-system contracts)	User Role
					Control System Administrator
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer
					Maintenance Engineer

Appendix C – Optional ABB Ability™ Remote Insights Access

Please complete the form below and include it with your Purchase Order to complete registration and/or renewal of your Remote Access licenses.

Contact Name	Contact Phone Number	Contact address e-mail	Plant	User Role
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician
				Technician

Appendix D – Cyber Security Patch Delivery

Please complete the form below and include with your Purchase Order to receive proper delivery of your Cyber Security Patch Disc(s).

Contact Name	Contact Phone No.	Address	City	State	Zip Code

Appendix E – Change Order Form

ABB Inc. is pleased to provide to you, this change to purchase order _____ dated _____, which includes terms and conditions and pricing per service agreement proposal _____ to support the following scope:

Labor	Quantity	List	Discount	Total
Standard labor (1X)				
Overtime labor (1.5x)				
Double time labor (2x)				
Holiday labor (3X)				
Total Labor				
Expenses	Quantity	List	Discount	Total
Miles				
Air fare				
Hotel				
Pier diem				
Car rental				
Parking/tolls				
Other				
Admin				
Total Expenses				
Parts	Quantity	List	Discount	Total
Parts				
Total Parts				
Miscellaneous	Quantity	List	Discount	Total
+				
+				
-				
Total Miscellaneous				
Total Price				

All the terms and conditions of Purchase Order _____ dated _____ remain in full force and effect and control this change.

If this proposal meets with your approval, please submit an adjusted or new purchase order referencing proposal number _____ for the amount of _____.



Appendix F – Optional Remote Access Link Consent Form

_____ (“Customer”) agrees and consents to allow ABB Inc. remote access to the ABB system(s) and equipment(s) installed in the _____ facility(s).

Access shall occur either by a Customer supplied remote access method or with the ABB Remote Access Platform (RAP) software that establishes connectivity via a Secured-Sockets Layer (SSL) tunnel between software installed at site and servers located in a secured environment that are maintained via ABB maintenance and security standards.

ABB will submit a listing of those ABB employees who will be remotely accessing the ABB systems and equipment, as modified from time-to-time (“ABB Employees”).

(Site Contacts Name, Email and Phone #) _____

Are those Customer representatives who may permit any other ABB employee or representative access. Only those ABB Employees identified by ABB and Site Contacts shall be permitted remote access.

The remote access request will be initiated by any Customer employee either by phone or email. A Customer employee shall be in communication with the ABB representative at times during the remote access session. ABB is not responsible for the actions of the Customer employee during the session. The remote access shall be limited to the time frame necessary to perform the services requested by Customer. A log/record will be created for each login if the customer is utilizing ABB RAP Solution and this log/record is accessible to customers by request for the previous two weeks of logs/records.

The services provided by ABB during the remote access session shall be governed by the terms and conditions in place between the Customer and ABB or in the event of no such terms and conditions, ABB standard terms and conditions.

CUSTOMER:

By: _____

Title: _____

Date: _____



RAP Setup Options

In order to keep all RAP connections secure, ABB has 2 recommendations regarding the installation of the Virtual Support Engineer (VSE) software on site. ABB currently has a list of recommended support groups that will be given access to a site depending on the system type.

☐ **Unassisted Remote Access** (Default Option)

- The VSE is installed and configured with the “Offline Mode” option turned OFF in control panel.
- ABB users will be allowed to connect to site on an as needed basis
- In case of emergency or after-hours support, ABB representative will be able to connect to site
- Default access to each site will be determined via recommended support group listings
- Additional users will be added on an as needed basis

☐ **Assisted Remote Access**

- The VSE is installed and configured with the “Offline Mode” option turned **ON** in control panel. This allows the customer to control who can access the site.
- The VSE is configured with a security policy setting which requires the customer to approve each user who attempts to connect and terminate the connection when the work is complete.
- In case of emergency or after-hours support, customer representative will need to give access
- Default users to each site will be determined via recommended support group listings.
- Site representative will need to send an email and verify new users

ABB Approved Groups (Select all that apply)

- ☐ Level 2 Technical Support
- ☐ Level 3 Technical Support
- ☐ Drive Support Group
- ☐ Optimization Group

ABB Approved Users (Type in approved users)

Appendix G – Terms and Conditions

ABB INC.

GENERAL TERMS AND CONDITIONS OF SALE

1. General. The terms and conditions contained herein, together with any additional or different terms contained in ABB's Proposal, if any, submitted to Purchaser (which Proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior communications and agreements regarding the order. Acceptance by ABB of the order, or Purchaser's acceptance of ABB's Proposal, is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, payment for or acceptance of any performance by ABB being acceptance. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser to which terms ABB hereby objects. Unless the context otherwise requires, the term "Equipment" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by ABB ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by ABB under the order. As used herein, the term "Purchaser" shall include the initial end use of the Equipment and/or services; provided, however, that Paragraph 13(a) shall apply exclusively to the initial end user.

2. Prices.

(a) Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.

(b) Unless otherwise stated herein, Services prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.

(c) 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. Purchaser agrees to pay or reimburse any such taxes which ABB or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide ABB a copy, acceptable to the relevant governmental authorities of any such certificate or permit.

(d) The price includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of ABB's Proposal. Any change after that date in such duties, fees, or rates, shall increase the price by ABB's additional cost.

3. Payment.

(a) Unless specified to the contrary in writing by ABB, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by ABB in the Proposal.

(b) If in the judgment of ABB the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, ABB may require payment in advance, payment security satisfactory to ABB, or may terminate the order, whereupon ABB shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date ABB is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.

(c) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 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.

4. Changes.

(a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by ABB and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change.

(b) ABB may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications. If Purchaser objects to any such changes, ABB shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

5. Delivery.

(a) All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Equipment shipped from outside the continental United States is delivered F.O.B. United States port of entry. Purchaser shall be responsible for any and all demurrage or detention charges.

(b) If the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, ABB may move the Equipment to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.

(c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for ABB's performance hereunder.

(d) Claims for shortages or other errors in delivery must be made in writing to ABB within ten days of delivery. Equipment may not be returned except with the prior written consent of and subject to terms specified by ABB. Claims for damage after delivery shall be made directly by Purchaser with the common carrier

6. Title & Risk of Loss. Except with respect to Software (for which title shall not pass, use being licensed) title to Equipment shall remain in ABB until fully paid for. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.

7. Inspection, Testing and Acceptance.

(a) Any inspection by Purchaser of Equipment on ABB's premises shall be scheduled in advance to be performed during normal working hours.

(b) If the order provides for factory acceptance testing, ABB shall notify Purchaser when ABB will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.

(c) If the order provides for site acceptance testing, testing will be performed by ABB personnel to verify that the Equipment has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of ABB, acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted.

8. Warranties and Remedies.

(a) Equipment and Services Warranty. ABB warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, Spare Parts and Refurbished or Repaired Parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Remedy Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.

(b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to ABB promptly after such discovery and within the applicable Warranty Remedy Period, ABB shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to ABB promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, ABB will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) Exceptions. ABB shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-ABB supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. ABB shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to ABB's instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by ABB but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

(d) Software Warranty and Remedies. ABB warrants that, except as specified below, the Software will, when properly installed, execute in accordance with ABB's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to ABB promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, ABB shall correct the

nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at ABB's facility necessary corrected or replacement programs. ABB shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. ABB does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Purchaser, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND ABB'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

9. Patent Indemnity.

(a) ABB shall defend at its own expense any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by ABB (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given ABB prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.

(b) ABB shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by ABB; (ii) any Equipment or Process supplied according to a design, other than an ABB design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of ABB.

(c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, ABB shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF ABB AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

(d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that ABB is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by ABB or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against ABB, Purchaser shall defend and indemnify ABB in the same manner and to the same extent that ABB would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

10. Limitation of Liability.

(a) In no event shall ABB, its suppliers or subcontractors 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 Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser 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 (except as provided in the section entitled "Patent Indemnity") exceed one-half (1/2) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim.

(b) 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 year of the time of accrual thereof.

(c) In no event, regardless of cause, shall ABB be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/Services.

11. Laws and Regulations. 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 Equipment or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, ABB assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Article 4. Nothing contained herein shall be construed as imposing responsibility or liability upon ABB for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. This Agreement shall be governed by the laws of the State of New York, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding New York law with respect to conflicts of law. Purchaser agrees that all causes of action against ABB under this Agreement shall be brought in the State Courts of the State of New York, or the U.S. District Court for the Southern District of New York. If any provision hereof, partly or completely,

shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

12. OSHA. ABB warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, ABB will replace the affected part or modify it so that it conforms to such standard or regulation. ABB's obligation shall be limited to such replacement or modification. In no event shall ABB be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser, or the alteration of the Equipment by any party other than ABB.

13. Software License.

(a) ABB owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by ABB; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The Purchaser's right to use the Software shall terminate immediately when the specified equipment is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with ABB's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to ABB the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

14. Inventions and Information. Unless otherwise agreed in writing by ABB and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with ABB. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of ABB. Purchaser 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 Equipment and not for any other purpose, including the duplication thereof in whole or in part.

15. 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 Purchaser, 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, and the price will be adjusted to compensate ABB for such delay.

16. Cancellation. Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by ABB attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

17. Termination. No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by ABB of Purchaser's written notice specifying such default, ABB shall have failed to initiate and pursue with due diligence correction of such specified default.

18. Export Control.

(a) Purchaser represents and warrants that the Equipment and 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. Purchaser 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.

(b) If applicable, ABB shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. 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, Purchaser shall provide to ABB a Letter of Assurance and End-User Statement in a form reasonably satisfactory to ABB.

19. Assignment. Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of ABB shall be void.

20. Nuclear Insurance – Indemnity. For applications in nuclear projects, the Purchaser and/or its end user customer shall have complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify ABB, its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.

21. Resale. If Purchaser resells any of the Equipment, the sale terms shall limit ABB's liability to the buyer to the same extent that ABB's liability to Purchaser is limited hereunder.

22. Entire Agreement. This Agreement constitutes the entire agreement between ABB and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between ABB and Purchaser other than those set forth herein or herein provided.