



AMENDMENT

Amendment (the "Amendment") to the Software Maintenance Agreement dated September 1, 2017 ("Agreement") by and between **ABB Enterprise Software Inc.** (an affiliate of ABB, Inc.) ("Contractor" or "ABB") and **City of Santa Clara, California** ("Customer"). (Collectively are referred to herein collectively as the "Party" or "Parties").

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ABB and Customer hereby agree to amend the Agreement as follows:

1. **Section 2** of the Agreement is deleted in its entirety and replaced with the following:

"Upon execution of this Amendment the term of this Agreement, unless terminated earlier as provided for herein, shall continue for five (5) years from the maintenance services renewal date of September 1, 2020 ("the Renewal Term"). Thereafter, the parties will negotiate an extension to this Agreement."

2. Upon execution of this Amendment the Parties agree to the following maintenance and support terms for the Renewal Term. The fees are due and payable in accordance with the terms of the Agreement and are exclusive of taxes.

Maintenance Service Fee

	Year 1 (09/01/2020 to 08/31/2021)	Year 2 (09/01/2021 to 08/31/2022)	Year 3 (09/01/2022 to 08/31/2023)	Year 4 (09/01/2023 to 08/31/2024)	Year 5 (09/01/2024 to 08/31/2025)
NM EMS SMA	\$177,215	\$172,464	\$177,215	\$182,145	\$187,254
				Total =	\$896,381

3. **Section 5** of the Agreement is amended to provide up to seventy-five (75) hours of Service during Year 1 and up to fifty (50) hours of Services during each of Years 2 through 5 of the Renewal Term.
4. **Appendix A** of the Agreement is amended to no longer provide SPIDER support. It is also amended to state that "Additional Support Hours is offered at a rate of \$38,700 for 100 man-hour blocks."


For the NM6.6 release that is currently installed and pending cutover on the Silicon Valley system, the maintenance services are amended to provide what is called Classic Support through December of 2022. Classic Support means that support is limited to software updates (patches) addressing fixes for Priority 1 and 2 defects only. P2 fixes are resolved at the discretion of ABB. Following that, the service provided will be what is called Limited Support. Limited Support means that support is limited to software updates (patches) addressing fixes for Priority 1 defects only.

5. The Parties recognize the intended sale and transfer of the Power Grids division of Contractor (ABB) to a company held by Hitachi and ABB (the "Joint Venture") which will be majority owned, and might be at some stage fully owned, by Hitachi. In this context, the Parties agree that Contractor has the rights and obligations under this Contract, without prior consent of Purchaser, to either a legal entity in the Contractor Group or directly to the Joint Venture or any legal entity in the Joint Venture group. Purchaser agrees, at the request of Contractor, to promptly execute all agreements and/or other documents required to effect such subcontract, assignment, transfer or novation.
6. The Parties are aware of the outbreak of a Coronavirus (commonly known as COVID-19) or any mutation of such virus ("the Outbreak"). The Outbreak is impacting or may impact normal business operations or performance or delivery pursuant to this Agreement. For a two year period beginning on the effective date of this Amendment, ABB shall be entitled to reasonable cost compensation, time extension or other reasonably required contract adjustments, if any consequences that are unknown as of the effective date of this Agreement and resulting out of, or in connection with the Outbreak, whether directly or indirectly, cause ABB to incur additional cost or lead to any delay in performance or delivery or otherwise affect the fulfillment of ABB's contractual obligations or duties pursuant to this Agreement.

THE PARTIES HEREBY AGREE THAT THIS AMENDMENT, INCLUDING THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR OR CONCURRENT PROPOSALS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AMENDMENT AND THE AGREEMENT. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND ARE RATIFIED HEREBY. EXCEPT AS PROVIDED IN THIS AMENDMENT, THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, each of the parties hereto have caused this Amendment to be duly executed and delivered on its behalf and in its name as of date indicated above.

ABB Enterprise Software Inc.

By: 

Name: Francisco Forn

Title: Vice President, Professional Services
Network Control

Date: 10/23/2020

ABB Enterprise Software Inc.

By: 

Name: Jarod Zhang

Title: Regional Controller, Network Control

Date: 10/23/2020

City of Santa Clara, California

By: 

Name: Deanna J. Santana

Title: City Manager

Date: 11/4/2020

Approved as to Form:

By: 

Name: Brian Doyle

Title: City Attorney

Date: _____