

# **DIGITAL CONTROLS CORPORATION**

## **AGREEMENT FOR SUPPORT AND MAINTENANCE**

This agreement is made between DIGITAL CONTROLS CORPORATION (Digital), an Ohio Corporation with its principal place of business at 444 Alexandersville Road, Miamisburg, OH 45342, and Customer named in the Service Schedule.

### **1. SERVICE SCHEDULES**

The Service Schedule is created and provided in writing by Digital Controls for services requested by the Customer. This document will include the details of the service type, coverage hours, pricing, etc.

Digital and Customer agree that each Service Schedule executed by the parties, which references this Agreement, shall constitute a separate agreement which incorporates the terms of this Agreement for Support and Maintenance. The Service Schedule and this Agreement for Support and Maintenance shall be read and interpreted together. The term "Agreement" as used herein shall refer to the contract created by the incorporation of the terms of this Agreement for Support and Maintenance into each such Service Schedule.

### **2. TERM OF AGREEMENT**

Except as otherwise provided, this Agreement shall remain in force for at least one (1) year from the effective date as specified in the Service Schedule. It will automatically renew on an annual basis until terminated, as provided herein. This Agreement may be terminated by customer, without cause, at the end of the first year or any time thereafter upon a sixty (60) day written notice to Digital. Digital may terminate this Agreement without cause upon sixty (60) day written notice to Customer. Digital may terminate this Agreement, or suspend service provided by it if Customer fails to make payment in full within thirty (30) days after Customer is invoiced. Customer shall in any event remain fully liable for past due amounts and damages as provided by law for all costs and expenses incurred by Digital on account of such default including fees paid by Digital to third parties on behalf of Customer, and all reasonable legal fees.

### **3. CHARGES**

- a. Charges will be invoiced on an annual basis as specified on the Service Schedule; however, Customer may request monthly, quarterly, or semi-annual billing which will incur an uplift of 20%, 10% or 5% respectively.
- b. Customer agrees to pay charges in accordance with the terms of the invoice.
- c. Charges may be adjusted by Digital as business conditions mandate. Any adjustments will be reflected on all subsequent invoices.
- d. Services required by Customer outside the period of coverage set forth or for services not provided in the Agreement, may be rendered per incident at Digital's standard time and material rates then in effect. Services not provided by this Agreement include, but are not limited to: installation, de-installation, project consulting, configuration changes, relocation, replacement of damaged equipment due to flood, fire, water, lightning or

other causes other than normal usage. Relocation or modification of systems and equipment by unauthorized personnel (hacking) are not covered by this Agreement.

- e. Customer may at any time change the period of coverage or the billing cycle with a sixty (60) day written notice to Digital.
- f. The charges shall be payable in advance for the period of support and maintenance covered by the invoice and due within thirty (30) days after the date of the invoice.
- g. Any charges due for services not covered under this Agreement shall be invoiced separately and shall be due upon receipt.

#### **4. SERVICE TYPES**

- a. **Software Support**  
This program provides software fault isolation and resolution as well as requested version upgrades as available. A media charge may be assessed for upgrades. Digital engineers or Digital's subcontractors will provide software support via telephone during the hours specified in the Service Schedule. Second level support is available when required to Digital engineers from the authoring companies.
  
- b. **Hardware Unit Exchange**  
This program provides support and maintenance to those Customers who do not require on site maintenance but do require some help in problem isolation and resolution with minimal system down time. Upon concurrence, by a Digital engineer, of a failure of covered equipment, the Digital engineer will authorize overnight delivery of an emergency replacement unit. The Digital engineer will provide telephone assistance for the installation of the replacement unit. The Customer will then return the failed unit to Digital. Replacement equipment shipped to Customer under this plan will automatically become part of the existing Agreement under the same terms and conditions as the original unit. The fixed monthly maintenance charge covers handling and freight to the customer, and repair expenses. The customer is responsible for handling and all shipping fees for the return of the faulty units to Digital. Service under this plan will be provided during normal business hours (8:00 AM to 5:00 PM EST, Monday through Friday except holidays).

If the failed unit is not received by Digital within fifteen (15) working days, the Customer agrees to payment of a monthly usage charge amounting to nine (9) percent of the unit list price per month.

Legacy products that have gone beyond their End-of-Life will be supported and replacement parts supplied on a best effort basis. Digital may at its sole discretion use substitute and like replacements in its effort to provide best available uptime for Customer equipment.

c. **Hardware On-Site**

This program is designed for Customers who require on site fault isolation and resolution. Digital or Digital's subcontractors shall maintain the equipment in accordance with the provisions of the Agreement, and shall make reasonable effort to respond within the timeframes defined in the Service Schedule. Digital or Digital's subcontractors shall provide preventive maintenance, as prescribed by the manufacturer, for the equipment and features described in the Service Schedule on an "as time permits" basis. All spare parts and/or repairs on covered units are included in the associated monthly rates.

**5. NOTICES**

All notices hereunder shall be in writing, delivered by first class mail, fax, or electronic mail, (a) if to Customer to the address used for the last invoice; or, (b) if to Digital (Attention: Contract Administrator) to the locations below:

Mail: Digital Controls Corporation  
444 Alexandersville Road  
Miamisburg, OH 45342  
Attention: Contract Administrator  
Email: customerhelpdesk@digitalcontrols.com  
FAX: 937-384-0842.

**6. INUREMENT**

This Agreement is for the benefit of the parties hereto and shall be binding upon their successors as well as surviving entities of any merger, sale, consolidation or reorganization.

**7. SEVERABILITY**

In the event that any of the terms in this Agreement are declared to be illegal by any court or tribunal of competent jurisdiction, such terms or term shall be null and void and shall be deemed deleted from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.

**8. FORCE MAJEURE**

Digital shall not be liable to Customer for any delay or failure to perform its obligations under this agreement if such delay or failure arises from any cause or causes beyond the reasonable control of Digital, including, but not limited to labor disputes, strikes, other labor or industrial disturbances, acts of God, floods, lightning, shortages of materials, rationing, utility or communications failures, earthquakes, war, acts of the public enemy, riots, insurrections, embargoes, blockages, or actions, restrictions, laws, regulations or orders of any government, agency or subdivision thereof.

**9. LIMITATION OF LIABILITY**

Neither party shall be liable for any direct, indirect, incidental, special or consequential damages, or for any loss of business or profits, notwithstanding advice to the other of the possibility of such damages or for any damages, regardless of their nature, caused in

whole or in part by Digital, Customer or any third party. Neither party makes any express or implied warranties of any kind, including those of merchantability and fitness for a particular purpose with respect to any service hereunder and expressly disclaims the same.

#### **10. ENTIRE AGREEMENT**

This Agreement for Support and Maintenance along with all related Services Schedules, constitute the entire agreement between the parties hereto and supersedes all prior agreements and communications with respect to the subject matter.

#### **11. DISPUTE RESOLUTION**

Any controversy or claim arising out of or related to this Agreement, or the furnishing of any product or service by Digital to Customer, shall be settled by arbitration. The arbitration shall be held in Dayton, Ohio and conducted by a single arbitrator under the then current rules of the American Arbitration Association. The arbitrator shall be chosen from a panel of persons knowledgeable in business information and data processing systems. The arbitrator shall not be authorized to award punitive or other non compensatory damages to either party. The decision of the arbitrator shall be final and binding and the award so rendered may be entered in any court having jurisdiction thereof. Any dispute subject to this Agreement shall be initiated by the commencement of arbitration proceedings within two (2) years after the acts or occurrences giving rise thereto.

#### **12. EFFECTIVE DATE**

The Agreement will be Effective upon the execution of each Service Schedule for those specific products defined in it. All subsequent products added for support or maintenance will be added effective at the time of the written inclusion to the Service Schedule.

This document is the Digital Controls Support and Maintenance Agreement of record effective \_\_\_\_\_ (date).

Charles V. Landreville  
Senior Vice President  
Digital Controls Corporation