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PURCHASE AND SALE AGREEMENT FOR EQUIPMENT BETWEEN Washtenaw Community College AND

THIS PURCHASE AND SALE AGREEMENT (hereinafter referred to as "Agreement") is entered into this _____ day of _____, 2016, by and between Washtenaw Community College (hereinafter "Buyer"), and _____ (hereinafter "Company").

WHEREAS, Company is in the business of selling and servicing _____ equipment; and

WHEREAS, Buyer desires to purchase such equipment.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the parties to this Agreement, as follows:

1. **Sale of Equipment.** Company hereby sells to Buyer and Buyer hereby purchases from Company the equipment described on **Exhibit A** attached hereto and incorporated herein, and licenses the software contained therein (hereinafter "Equipment"). Such Equipment shall be shipped FOB Installation Site, freight pre-paid and absorbed by Company.

2. **Purchase Price.** Buyer shall pay to Company for the Equipment and for all obligations specified herein, as full and complete consideration therefore, the sum of _____ (\$ _____) (hereinafter "Purchase Price").

3. **Payment.** Payment of the Purchase Price, shall be made by Buyer to Company in accordance with the following schedule:

A. **All Purchase Orders under \$100,000**, payment will be net 30 after delivery and acceptance.

B. **All Purchase Orders \$100,000 and above;**

1. Twenty Percent (20%) of the purchase price due at time of order;
In the event the Company does not deliver the equipment by the estimated delivery date of _____, 2016, the Purchase Price, shall be reduced by 2% per month late. After 3 months past the estimated delivery date, the Buyer shall have the option of cancelling the Agreement in its entirety and be fully refunded within fifteen (15) days the 20% payment described above.

2. Seventy Percent (70%) of the purchase price within thirty (30) days after delivery of the equipment; and

3. Ten Percent (10%) of the purchase price within thirty (30) days after Buyer's acceptance of the equipment. Acceptance of equipment shall be deemed to occur on the date when, in the reasonable opinion of the Buyer, the equipment conforms to the specifications,

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and has continuously operated in compliance with the specifications for 30 days.

4. In the event that Buyer does not accept the Equipment, Company shall refund all prior payments made under the contract within fifteen (15) days of receipt of notification from Buyer that it does not accept the Equipment.

4. **Taxes.** Buyer represents that it is a tax-exempt entity under the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Michigan. Company shall take all action required to cause the purchase of the Equipment hereunder to be treated as a tax-exempt transaction, and in no event shall Buyer be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement.

5. **Installation.** Company shall install the Equipment at the Installation Site in accordance with the installation schedule set forth in **Exhibit B** attached hereto and incorporated herein (the "Installation Schedule"), and connect the same to the safety switches or electrical outlets to be provided and installed by Buyer. Company shall be responsible for all costs associated with delivery and installation of the Equipment. Time is of the essence to this Agreement. Company shall comply with all permits and licenses required by Federal, State, or local authorities in connection with the delivery and installation of the Equipment.

6. **Training.** Prior to Acceptance of the Equipment or at such other time as the parties may mutually agree, Company shall provide, at no cost or expense to Buyer, training in operation of the Equipment for employees designated by Buyer. Such training is described on **Exhibit C** attached hereto and incorporated herein

7. **Software.** Company hereby grants to Buyer a LIMITED, NONEXCLUSIVE LICENSE and/or SUBLICENSE (hereinafter "License") to use the software identified in **Exhibit A** hereof (hereinafter "Software") in connection with the sale of Equipment.

A. **License Fee.** Any charge for the License is included in the Purchase Price set forth in Paragraph 2 of this Agreement.

B. **Updates.** During the Warranty Period, or for as long as Buyer purchases any maintenance support services from Company, Company shall provide to Buyer, without additional charge, any and all routine Software changes and updates intended to provide general improvements to the performance of the Equipment that are announced by Company or that are required to comply with applicable federal statutes and regulations.

C. **Term.** This License shall commence upon delivery of the Equipment to the Buyer and shall continue for as long as Buyer retains full legal right and title to operate the Equipment.

8. **Equipment Warranty.** The warranty provided to Buyer by Company with respect to the Equipment is set forth in **Exhibit D** attached hereto and incorporated herein. The warranty period shall commence upon Acceptance of the Equipment.

9. **Patents and Copyrights.** Company warrants that it owns the Equipment, Software, and Documentation and that it has the rights in the Equipment, Software and Documentation granted hereby. Company shall indemnify and hold harmless Buyer, and its trustees, officers, employees and agents, against

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any and all losses, liabilities, judgments, awards and costs (including legal fees and expenses) arising out of or related to any claim that Buyer's use or possession of the Equipment, Software or Documentation pursuant to and for the purposes set forth in this Agreement, or the license granted hereunder, infringes or violates any United States patent, copyright, trade secret, or other proprietary right of any third party. Company shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Buyer gives Company notice of any such claim of which it learns. No such settlement which prevents Buyer from continuing to use the Equipment and Software as provided herein shall be made without the Buyer's prior written consent.

10. **Indemnification.**

A. Company shall indemnify and hold Buyer its trustees, officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against Buyer that the Equipment has caused damage to property or bodily injury (including death); or (ii) the acts or omissions of the Company, its agents or employees in connection with this Agreement; or (iii) any defects in any Equipment supplied by the Company; or (iv) any breach or default in the performance of the obligations of Company hereunder including any breach of warranty. Company's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the negligence or misconduct of Buyer.

11. **General.**

A. **Compliance with Laws.** Company shall perform this Agreement in compliance with all applicable Federal, State, and local laws, rules, regulations, and ordinances, and represents that it shall have obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under this Agreement.

B. **Notices.** All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by the United State Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carrier. All notices or communications between Buyer and Company pertaining to this Agreement shall be addressed as follows:

If to Buyer:
Washtenaw Community College
Attention: William Johnson
Vice President and Chief Financial Officer
4800 E. Huron River Drive
Ann Arbor, MI 48105

If to Company:

Attention: _____

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein.

C. **Modifications.** No revision or modification of this Agreement shall be effective unless in writing and executed by authorized representative of both parties.

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D. Assignment. The prior written approval of Buyer shall be required to allow a delegation or assignment of duty to perform any obligation owed to Buyer by Company, its agents, employees, contractors or affiliates.

E. Severability. If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

F. Construction and Jurisdiction. This Agreement shall be governed by the laws of the State of Michigan. Each of the parties to this Agreement hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of Washtenaw County, Michigan for any proceeding arising in connection with this Agreement and each such party agrees not to commence any such proceeding except in such courts.

Entire Agreement. This Agreement, the documents referenced herein and all Exhibits hereto (Exhibits A through D) are intended as the complete and exclusive statement of the agreement between Buyer and Company with respect to the subject matter hereof, and supersede all prior agreements and negotiations related thereto.

G. Parts. For a seven-year period from the date hereof, Company agrees to make available and sell to Buyer such parts as to maintain the Equipment in good working order and to offer a maintenance program.

H. Insurance. Company shall carry and at all times maintain in full force and effect, at its sole expense, policies of general liability and product liability insurance in the minimum amount of Five Million Dollars (\$5,000,000) for each claim for each policy year. Company shall provide at least thirty (30) days written notice to Buyer prior to cancellation of any policy.

I. Specification Conflicts. In the event of any ambiguity or conflict among the provisions of this Agreement and Exhibits hereto, requests for proposals issued by the Buyer relating to the purchase of the Equipment, Purchase Orders issued by the Buyer, the Company's proposals, quotes or order acknowledgments, manufacturers' product specifications, and other documents relating to the Company's sale of the Equipment to the Buyer, the Company shall be required to comply with the most stringent requirement which provides the highest quality and greatest benefit to the Buyer, unless otherwise specifically directed by the Buyer in writing. The terms and conditions of this Agreement are intended to govern the purchase and sale of the Equipment, and any conflicting terms and conditions, or additional terms and conditions, in any vendor prepared document shall not apply.

IN WITNESS WHEREOF, Washtenaw Community College and _____ have signed this agreement as of the day and year first written above, and the person executing this agreement on behalf of each party represents and warrants that this agreement has been authorized by all necessary parties, is validly executed by an authorized officer or agent, and is binding upon and enforceable against the company in accordance with its terms.

Washtenaw Community College

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By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A

Description of Equipment

<u>QUANTITY</u>	<u>ITEM NO</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
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[or use the following]

See Attached Quotation # _____ dated _____

In the event of any inconsistency between the terms in main body of the Agreement and the terms in Exhibit A attached hereto, the terms in main body of the Agreement will control.

EXHIBIT B

Installation Schedule

Company shall be responsible to install the Equipment only when Buyer has properly prepared the site at Buyer's sole expense. Buyer shall be responsible for having the site fully ready to receive the Equipment on the estimated delivery date.

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EXHIBIT C

Training

If applicable and necessary, training on the use and operation of the Equipment and related disposables will be provided at a mutually agreeable time at the request of Buyer. Training will be conducted at Buyer's location, and the training, as well as any written materials distributed by Company, shall be provided to Buyer at no additional cost.

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EXHIBIT D

Equipment Warranty

For a one (1) year period from date of Acceptance (the "Warranty Period"), Company warrants that the Equipment provided to Buyer pursuant to this Agreement shall be free from defects in material, manufacturing workmanship, and title, and that the Equipment will operate in conformance with the agreed upon Specifications and will operate as described in all marketing and advertising materials provided to Buyer (the "Warranty"). The Warranty also shall apply to any replacement part or to any Enhancement. Further, Company warrants that all service repairs shall be free from defects in materials and workmanship for the greater of (i) the balance of the Warranty Period or (ii) ninety (90) days after the date the repair is completed.

To enable Company to properly administer the Warranty, Buyer shall (i) promptly notify Company of any claim hereunder, and (ii) provide Company with the opportunity to inspect and test parts claimed by Buyer to be defective.

Defective Equipment will be shipped by Buyer to Company's Technical Service Center under Company's Loaner program. Under this program Buyer will inform Company of defective Equipment in order to have a "Loaner" piece of equipment shipped to Buyer within twenty-four (24) hours of such notification. Buyer will have full use of the Loaner equipment until defective Equipment has been repaired or replaced and received by Buyer.

If during the Warranty Period and after trouble-shooting assistance from Company, it is Buyer's opinion that on-site service is required, warranty service will be available from Company, free of charge, on an appointment basis, Monday through Friday, 8:00 a.m. to 5:00 p.m.