

WILLIAMS-CARVER PURCHASING AGREEMENT

1. AGREEMENT. Seller shall furnish the goods ("Goods") and/or services ("Services") described in the attached **Purchase Order** in accordance therewith and these Terms and Conditions (collectively, "**Agreement**"). The Agreement shall control over any inconsistent terms or conditions in Seller's documentation.

2. GOODS. The following provisions apply to the sale of Goods:

a. **DELIVERY.** Seller shall make deliveries in accordance with the Purchase Order. If Seller fails to make timely delivery, Buyer may expedite delivery at Seller's expense or terminate all or part of this Agreement. Goods delivered early are at Seller's risk until the scheduled delivery date. Buyer may return such Goods at Seller's expense for proper delivery and/or withhold payment. Seller must package Goods to permit safe transportation with exterior labels and packing lists identifying contents. Buyer's count will be accepted as final and conclusive on all shipments without packing lists.

b. **INSPECTION.** Buyer may reject nonconforming Goods. Seller shall pay all expenses, charges and costs of unpacking, examining, repackaging and shipping rejected Goods. If any nonconformity becomes apparent during installation, Buyer may request Seller replace any or all part of the Goods at Seller's expense.

c. **RISK OF LOSS.** Risk of loss shall remain with Seller until final acceptance. If loss of the Goods is partial, Buyer may require delivery of Goods not destroyed.

d. **LICENSE.** Seller hereby grants a perpetual, irrevocable, royalty-free, non-exclusive license to use all applicable software programs or intellectual property.

3. SERVICES. The following provisions apply to the performance of Services:

a. **INVOICES.** If the Purchase Order does not provide a schedule for payment, Seller shall submit monthly invoices, which describe the Services with reasonable detail, itemize all reimbursable expenses and include supporting documentation and lien waivers in a form satisfactory to Buyer. Buyer shall make payment within thirty (30) days of receipt of undisputed invoices.

b. **INSURANCE.** Seller shall furnish an Insurance Carrier's Certificate showing that Seller has Workers' Compensation and Employer's Liability, Commercial General Liability and Automobile Public Liability insurance coverage with carriers, limits and other requirements reasonably satisfactory to Buyer.

4. EQUIPMENT. In addition to provisions of Section 2, the following provisions apply to the sale of all non-expendable, tangible Goods having a useful life of more than one (1) year, including any equipment, machinery or other apparatus that may be used repeatedly without material impairment of its condition ("Equipment"):

a. **ACCEPTANCE TESTING.** Buyer may require testing to verify Equipment's proper operation and compliance with specifications as a condition precedent to final acceptance and payment.

b. **OPERATORS AND TECHNICAL SERVICE MANUALS.** Seller shall deliver two (2) sets of operators and technical service manuals, which must include component part listings, list prices, associated catalog numbers and schematic drawings.

c. **COMPONENT AVAILABILITY AND PRICING GUARANTEE.** All components are guaranteed to be available for five (5) years from the date of acceptance of Equipment. If components are unavailable, Seller shall offer comparable Equipment at comparable pricing.

d. **INSTALLATION SCHEDULE.** Seller shall install Equipment installation according to any schedule in the Purchase Order or at Buyer's direction.

e. **SITE AND UTILITY MODIFICATIONS.** Seller must give Buyer written notice of any site or utility modifications necessary for the installation of any Equipment prior to execution of the Purchase Order.

f. **TRAINING.** Seller shall provide training at the site of the Equipment and any certifications required by federal, state or local regulations. Seller shall provide trainees manuals and other necessary training materials.

5. EQUIPMENT SUPPORT. In addition to the provisions of Section 3, the following provisions apply to any Equipment service and maintenance arrangement set forth in the Purchase Order ("Equipment Support Obligation"):

a. **SCHEDULED MAINTENANCE.** Seller shall provide regularly scheduled maintenance in accordance with the Purchase Order and manufacturer's specifications.

b. **REPAIR SERVICE.** Seller shall repair Equipment in accordance with the Purchase Order and manufacturer's specifications. If Equipment cannot be repaired to manufacturer's specifications within one (1) calendar week of a service call, Seller shall provide comparable equipment until the Equipment can be repaired. If replacement equipment cannot be provided, the duration of the Equipment Support Obligation shall automatically be extended by one (1) calendar quarter for every calendar week the Equipment is out of service.

c. **UPGRADE AND RECALL ALERTS.** Seller shall provide upgrade or recall alert monitoring and notify Buyer immediately of any alert. If the alert represents a safety issue necessitating removal of Equipment, Seller shall promptly provide comparable equipment until appropriate repairs can be made. If replacement equipment cannot be provided, the duration of the Equipment Support Obligation shall automatically be extended, at no cost to Buyer, by one (1) calendar quarter for every calendar week the Equipment is out of service.

d. **DOCUMENTATION.** Seller shall provide Buyer with maintenance and repair records as specified in the Purchase Order or otherwise reasonably requested by Buyer.

e. **RESPONSE TIME.** Subject to any other requirements in the Purchase Order, Seller shall respond by telephone or email within twenty-four (24) hours of Buyer's first telephone call or email requesting service for the Equipment and to provide a technician at the location of the Equipment within seventy-two (72) hours. Each time Seller fails to meet this response time, the duration of the Equipment Support Obligation shall be automatically extended, at no cost to Buyer, by one (1) calendar month.

f. **DURATION.** Subject to any other requirements in the Purchase Order, the Equipment Support Obligation shall be for a period of one (1) year from the date the Equipment is accepted by Buyer and any Equipment Support Obligation may be terminated by: (i) Buyer upon ten (10) days prior written notice to Seller, or (ii) either party upon written notice to the other party in the event such other party materially breaches its obligations under the Equipment Support

Obligations and the breaching party fails to cure within five (5) days after written notice of the breach.

6. CHANGES. Buyer may make changes to the Agreement. If a change causes an increase in costs or time of performance, an equitable adjustment to this Agreement shall only be made by a written amendment signed by Buyer if Seller provides written notice to Buyer within five (5) days of such change.

7. REPRESENTATIONS AND WARRANTIES. In addition to any special or manufacturer warranties, Seller warrants and represents that (i) Goods are new and of merchantable quality and fit for their intended purpose, (ii) Goods or Services shall conform to the requirements of the Purchase Order and/or samples or other descriptions otherwise furnished by Seller, (iii) Goods or Services shall be free from defects in workmanship, manufacture, design and material defects for a period of one (1) year from the date the Service is rendered or Goods are accepted, (iv) Goods or Services shall not infringe the rights of any third party under the intellectual property laws of the United States, any state or any foreign country, (v) Seller shall comply with all applicable federal, state and local laws, ordinances, regulations and rules, (vi) Seller's provision of Goods or Services shall not violate any legal or contractual rights of a third party and (vii) the Goods and Services shall be lien free. This warranty includes parts, labor and travel for on-site visits. Seller shall commence all repairs within three (3) business days of notification by Buyer. If Seller makes three (3) service trips for the same warranty item during any ninety day (90) period, Seller shall replace any parts or components of such Goods.

8. INDEMNITY. Seller shall indemnify, hold harmless and defend Buyer, its affiliates and their respective trustees, directors, managers, officers, directors, employees, representatives and agents, as applicable, from and against, and shall reimburse them with respect to, any and all claims, demands, causes of action, proceedings, losses, damages, debts, expenses, liabilities, fines, penalties, deficiencies, judgments or costs, including reasonable attorney fees, court costs, amounts paid in settlement and costs and expenses of investigations, at any time and from time to time asserted against or incurred by any such indemnified party arising out of, in connection with, resulting from or by reason of (i) any breach, nonfulfillment of, or any inaccuracy in, any representation, warranty or covenant of the Seller, or (ii) any act or omission of the Seller or any subcontractor, supplier or other person or company for whom Seller is responsible. Buyer may set off against sums due Seller any such expenses or potential liabilities of Buyer.

9. LIMITATION ON LIABILITY. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR NONCONTRACTUAL DAMAGES OR LOST PROFITS OR INCOME ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING RELATING TO THE PERFORMANCE OR BREACH HEREOF, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

10. GENERAL PROVISIONS.

a. BINDING NATURE OF AGREEMENT; ASSIGNMENT. This Agreement is binding and shall inure to the benefit of the parties and their respective successors, assigns, heirs and personal representatives, except Seller may not assign or transfer its rights or obligations hereunder without the prior written consent of the Buyer.

b. NO EXCLUSIVE AGREEMENT; TERMINATION FOR CONVENIENCE. This is not an exclusive Agreement. Buyer may engage others to provide the same or similar Goods and Services. Buyer may cancel all or any portion of this Agreement without cause and solely for its convenience without penalty, cancellation fees or restocking charges. Buyer shall only pay for the portion of Goods or Services accepted, and in no event, shall Buyer be liable for lost or anticipated revenues or profits. Upon termination of this Agreement for any reason, Buyer shall be entitled to a pro-rata refund of any pre-paid fee, cost or expense.

c. INDEPENDENT CONTRACTOR. Seller is an independent contractor and nothing herein shall be construed to create a partnership, joint venture or agency relationship between Seller and Buyer. Neither party shall have the authority to enter into agreements of any kind on behalf of the other party and shall have no power or authority to bind or obligate the other party in any manner to any third party.

d. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended solely for the benefit of the parties, and it is not intended to confer third-party beneficiary rights upon any other person.

e. GOVERNING LAW; VENUE. This Agreement shall be governed by and shall be construed, interpreted, and enforced in accordance with the laws of the State of Kansas, without reference to principles of conflicts of law. All disputes arising out of or relating to this Agreement, or the breach or default of this Agreement, shall be determined solely by a state or federal court located in or whose jurisdiction includes Wyandotte County, Kansas.

f. SURVIVAL. Upon termination or expiration of this Agreement, any and all rights and obligations of the parties shall terminate, provided, however, that any right or obligation that by its nature or express duration extends beyond the termination of this Agreement, shall survive such termination and continue in effect. The provisions of this Agreement that do not survive termination shall nonetheless be controlling on, and shall be used in construing and interpreting, the rights and obligations of the parties with regard to any dispute, controversy or claim which may arise under, out of, in connection with, or relating to this Agreement.

g. NOTICES. All notices shall be in writing and shall be delivered personally, emailed or mailed, postage prepaid, to the parties at the addresses and to the attention of the contact persons identified in the Purchase Order. A party may change its address for such communications by giving written notice to the other party.

h. ENTIRE AGREEMENT; AMENDMENT. This Agreement contains the entire agreement among the parties with respect to its subject matter and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, and any course of dealing or usage of the trade inconsistent with its terms. This Agreement may not be modified or amended except by a written amendment signed by Buyer.

i. NO WAIVER. No failure or delay in the exercise of any right, power, or privilege shall operate as a waiver of such right, power, or privilege. No waiver of any default on one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of a right, power, or privilege shall preclude the further or full exercise thereof.

j. SEVERABILITY. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provisions shall not affect the validity and enforceability of any

other provisions and the rest of this Agreement shall continue in effect to the fullest extent possible.

k. **REMEDIES.** The parties' rights and remedies are not exclusive and the exercise thereof shall not constitute an election of remedies and the aggrieved party may seek any additional remedies available in law or equity.

l. **AUTHORITY.** Each party represents that it has full power and authority to enter into and perform this Agreement, and the person accepting the Purchase Order or executing this Agreement has been properly authorized and empowered to take such action. Each party further acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

m. **HEADINGS.** The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.