

AGREEMENT FOR PURCHASE OF  
SELF CHECKOUT SYSTEM  
062114-1

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2014, between the NAMPA PUBLIC LIBRARY ("Library" or "Purchaser") and \_\_\_\_\_ ("Supplier"), a corporation with its principal place of business located at \_\_\_\_\_.

WHEREAS, PURCHASER has agreed to purchase from SUPPLIER the following equipment:

Self Checkout System, as set forth in Supplier's Bid Proposal \_\_\_\_\_,  
dated \_\_\_\_\_, 2014,

hereafter the "EQUIPMENT," for the sum of \$ \_\_\_\_\_, the "BID AMOUNT," pursuant to SUPPLIER'S bid proposal dated \_\_\_\_\_, 2014, the "BID PROPOSAL;" and

WHEREAS SUPPLIER has supplied PURCHASER with the following documents:

1. BID PROPOSAL

all of which are collectively hereafter referred to as the "CONTRACT DOCUMENTS."

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by both parties, the PURCHASER and SUPPLIER hereby covenant and agree as follows:

1. The CONTRACT DOCUMENTS are contractual and binding and incorporated herein as if set forth in full. To the extent any term or condition specified in this Agreement conflicts with the CONTRACT DOCUMENTS, this Agreement shall govern.
2. SUPPLIER sells the EQUIPMENT to PURCHASER and PURCHASER buys the EQUIPMENT from SUPPLIER pursuant to the CONTRACT DOCUMENTS. Should the CONTRACT DOCUMENTS or different or additional terms and conditions contain any term or condition inconsistent with the terms of this Agreement, this Agreement shall govern.
3. SUPPLIER shall deliver the EQUIPMENT to PURCHASER on or before delivery dates as set forth in the tasks schedule proposed in the Contract Documents ("Delivery Dates") or as further negotiated and updated by the parties.

SUPPLIER agrees that (1) if the EQUIPMENT is not delivered to PURCHASER by the Delivery Dates or (2) if the EQUIPMENT is delivered to PURCHASER by the Delivery Dates but is incomplete or not operating property, SUPPLIER may be assessed the sum of \$200 per day, as liquidated damages, for each and every day following the Delivery Dates in which the EQUIPMENT remains undelivered, incomplete, or non-operational.

SUPPLIER agrees to the assessment of the liquidated damages, and further agrees that that liquidated damages may be withheld by PURCHASER from the BID AMOUNT owing by PURCHASER to SUPPLIER.

4. PURCHASER shall pay SUPPLIER the BID AMOUNT in the manner set forth in the CONTRACT DOCUMENTS, less any liquidated damages pursuant to this Agreement.
5. SUPPLIER hereby warrants the fitness of the EQUIPMENT for the purposes for which it is purchased by PURCHASER; SUPPLIER hereby warrants the EQUIPMENT from all failures, parts, and labor, unless the same were caused by PURCHASER, for a period no less than one-year from the date of acceptance by the PURCHASER.
6. Any and all bonds required will be maintained in full force by SUPPLIER until final acceptance of the EQUIPMENT has been issued by the PURCHASER.
7. In the event an action is brought to enforce any of the terms or provisions of this Agreement or the CONTRACT DOCUMENTS, or enforce forfeiture thereof for default by either of the parties hereto, the successful party to such action or collection will be entitled to recover from the losing party a reasonable attorney fee, together with such other costs as may be authorized by law.
8. SEVERABILITY. In the event any of the provisions of this Agreement or the CONTRACT DOCUMENTS shall be deemed illegal or unenforceable, such determination shall not operate to invalidate any of the remaining provisions of this Agreement or the CONTRACT DOCUMENTS, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.
9. This Agreement and the CONTRACT DOCUMENTS are established under the laws of the State of Idaho and shall be governed and construed in accordance with the laws of the State of Idaho, and all questions concerning their validity and construction shall be determined under such laws.
10. All covenants, agreements, and representations contained in this Agreement and the CONTRACT DOCUMENTS shall not be deemed to be merged into or waived by the instruments at closing, but shall expressly survive such closing and be binding upon the parties obligated thereby.
11. Standard Terms and Conditions:

STANDARD AND SPECIAL TERMS. In addition to the terms and conditions contained herein, there may also be special terms and conditions in the Request for Proposal, which apply to this Agreement.

**AMENDMENTS.** The terms of this contract shall not be waived, altered, modified, supplements or amended in any manner whatsoever without prior written approval of the Purchaser.

**WAIVER.** Failure of the Purchaser to enforce any provision of this contract shall not be a waiver or relinquishment by the Purchaser of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

**HOLD HARMLESS.** Supplier shall indemnify, defend, and hold harmless the Purchaser and its officers, employees, agents, and members from all claims, suits, or actions of any nature arising out of or related to the activities of Supplier, its officers, subcontractors, agents, or employees under this contract.

**COMPLIANCE WITH APPLICABLE LAW.** Supplier agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to work to be done under this contract. The Supplier agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age, or handicap, and the provisions of the American Disabilities Act.

**DELIVERY.** All deliveries shall be F.O.B. Destination with all transportation and handling charges paid by Supplier. Responsibility and liability for loss or damage shall remain with Supplier until final inspection and acceptance when responsibility shall pass to the Purchaser except as to latent defects, fraud, and Supplier's warranty obligations.

**INSPECTIONS.** Goods or goods and services furnished under this contract shall be subject to inspection and test by the Purchaser. If the Purchaser finds goods or services furnished to be incomplete or not in compliance with solicitation specifications, the Purchaser may reject the good or goods and services and require Supplier to either correct them without charge, or provide at a reduced price, whichever is equitable under the circumstances. If Supplier is unable or refuses to cure any defects within a time deemed reasonable by the Purchaser, the Purchaser may reject the goods or services and cancel the contract in whole or in part.

**PAYMENT OF SUPPLIER CLAIMS.** If Supplier fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to the Supplier or any subcontractor by any person in connection with the goods, or services if applicable, provided under this contract, the Purchaser may pay such claim and charge the amount of the payment against funds due or to become due to the Supplier under this contract. The payment of a claim by the Purchaser pursuant to this paragraphs shall not relieve the Supplier or its surety, if any, from obligation with respect to any unpaid claims.

**PAYMENT.** Payment will be made of all invoices and retainer amounts within forty-five days following the date the invoice is received.

**ASSIGNMENT/SUBCONTRACTS/SUCCESSORS.** Supplier shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Purchaser. No such written approval shall relieve

Supplier of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Supplier. Supplier shall remain liability to the Purchaser under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

**SAFETY AND HEALTH REQUIREMENTS.** Goods or services provided under this contract shall comply with all Federal Occupational Safety and Health Administration (OSHA) requirements.

**MATERIAL SAFETY DATA SHEET.** The Supplier shall provide the Purchaser with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions.

**ACCESS TO RECORDS.** The Supplier shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this contract in such a manner as to clearly document Supplier's performance hereunder. The Purchaser and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans, and writings of Supplier which relate to this contract to perform examination and audits and make excerpts and transcripts.

**CONFIDENTIALITY.** The Purchaser is a public entity subject to the Idaho Public Records Act, Idaho Code §§ 9-337 through 9-350. The Purchaser will provide reasonable opportunity for Supplier to object to disclosure pursuant to a public records request, to the extent, if any, that Supplier claims confidentiality, trade secrets, or other reasons for non-disclosure of public records associated with this Agreement. Supplier will hold harmless and indemnify the Purchaser with respect to any legal action brought about in relation to a public records dispute associated with this Agreement based upon Supplier's objection and assertion of a basis for non-disclosure.

**BREACH OF CONTRACT.** Should Supplier breach any provisions of this contract, the Purchaser reserves the right to cancel this contract upon written notice to Supplier. Supplier shall be liable for any and all damages suffered by the Purchaser as the result of Supplier's breach of contract, including, but not limited to incidental and consequential damages.

**FORCE MAJEURE.** Neither the Purchaser nor Supplier shall be held responsible for delay or default caused by fire, riot, acts of god, terrorist acts, acts of political sabotage, or war where such cause was beyond, respectively, the Purchaser, or Supplier's reasonable control. Supplier shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the contract.

**TERMINATION.** This contract may be terminated by mutual consent of both parties or by the Purchaser at its discretion. The Purchaser may cancel an order for goods or goods and services at any time with written notice to Supplier, stating the extent and effective date of

termination. Upon receipt of this written notice, Supplier shall stop performance under this contract as directed by the Purchaser. If this contract is so terminated, Supplier shall be paid in accordance with the terms of the contracts for goods delivered or services rendered, and accepted.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

13. This Agreement and the CONTRACT DOCUMENTS shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the PURCHASER and SUPPLIER execute, or cause to be executed by their duly authorized officials, this AGREEMENT, on the date first above written.

PURCHASER:

SUPPLIER:

NAMPA PUBLIC LIBRARY

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By: \_\_\_\_\_  
Mark Rose, Director

By: \_\_\_\_\_

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