



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: **2** **3** (WA 10/13/2020)

CONTRACT #: AR2762

Starting Date: 11/20/2017

Expiration Date: 11/19/2027

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Election Systems & Software (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Consumables Pricing: Addition of secondary pricing model for consumables. Eligible Users may elect to use current Ballot-on-Demand per Click pricing model or new Ballot-on-Demand Consumables pricing model based on its scope of services. Contractor shall provide full Standard Market Rate pricing sheet effective on date of purchase for Eligible Users review and approval prior to execution of order(s) under Ballot-on-Demand Consumables Pricing Model.

New Technology: This contract may be modified to incorporate new technology or technological upgrades associated with the procurement item(s) under contract, including new or upgraded: (i) systems; (ii) apparatuses; (iii) modules; (iv) components; and (v) other supplementary items. Further, a maintenance or service agreement associated with the procurement item under the resulting contract(s) may be modified to include any new technology or technological upgrades. Any contract modification incorporating new technology or technological upgrades will be specific to the procurement item under contract and substantially within the scope of the original procurement or contract. A formal amendment is not required where the hardware or software component is only an upgrade or replacement of a previous version of a hardware or software component already available in the contract.

Update name of Attachment F: Utah Pricing Catalogue to Attachment F: Utah Pricing Catalogue – Ballot-on-Demand per Click Model

Add Attachment I: Utah Pricing Catalogue – Ballot-on-Demand Consumables Model (Standard Market Rate Price Sheet)

Effective Date of Amendment: 10/9/2020

Signature page follows

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH DIVISION OF PURCHASING



10/12/2020



10/12/2020

Contractor's Signature

Date

Director, State of Utah Division of Purchasing

Date

Richard J. Jablonski

Christopher Hughes

Director & Chief Procurement Officer

Contractor's Name (Print)

Print Name and Title

VP of Finance

Title (Print)

**STATE OF UTAH OFFICE OF THE LIEUTENANT
GOVERNOR**



Justin Lee (Oct 12, 2020 10:02 MDT)

10/12/2020

By (authorized signature)

Date

Justin Lee

Director of Elections

Print Name and Title

For Division of Purchasing Internal Use

Purchasing Agent	Phone #	E-mail Address	Contract #
Windy Aphayrath	801-957-7138	waphayrath@utah.gov	AR2762 (Amendment 2)

Attachment I: Utah Pricing Catalogue – Ballot-on-Demand Consumables Model (Standard Market Rate Price Sheet)

ES&S Equipment Description and Pricing		
Quantity	Description	Total Price
1	Ballot-On Demand Compact Printer	Subject to ES&S's Standard Market Rate on the Date of Purchase

ES&S Implementation Services Description and Pricing		
Quantity	Description	Total Price
1	Ballot-On-Demand Compact Printer Installation Fee	Subject to ES&S's Standard Market Rate on the Date of Purchase

ES&S Consumables Description and Pricing		
Quantity	Description	Total Price
1	Ballot-On-Demand Printer - Fuser	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Black Toner	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Cyan Toner	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Magenta Toner	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Yellow Toner	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Black Image Drum	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Cyan Image Drum	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Magenta Image Drum	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Yellow Image Drum	Subject to ES&S's Standard Market Rate on the Date of Purchase
1	Ballot-On-Demand Printer- Transfer Belt	Subject to ES&S's Standard Market Rate on the Date of Purchase

1	Blank Ballot Stock	\$0.12
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STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 2

CONTRACT #: AR2762

Starting Date: 11/20/2017

Expiration Date: 11/19/2027

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and
(Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Update to Attachment F: Utah Pricing Catalog and Attachment H: Sales Order Form Updates to the attachments identified in this amendment will provide the following –

- DS200 Tabulator without Ballot Bin
- Express Vote as a Tabulator
- Portable Printer
- Ballot-on-Demand Software for non-ES&S laptops
- Ballot-On-Demand Portable Printer Installation Fee
- Pollbook Options
 - Epollbook with upgraded pedestal stand
 - Optional pollbook printers
 - DYMO 450
 - MY3
 - CentralPoint Software for Epollbook unification at polling locations
 - Annual maintenance and licensing as it pertains to the items listed in this amendment

Effective Date of Amendment: 02/07/2017

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

By (authorized signature)

Print Name and Title

Date

STATE OF UTAH DIVISION OF PURCHASING

By (authorized signature)

Print Name and Title

Date

STATE OF UTAH OFFICE OF THE LIEUTENANT
GOVERNOR

By (authorized signature)

Print Name and Title

Date

Purchasing Agent
Windy Aphayrath

Phone #
801-538-3097

e-mail
waphayrath@utah.gov

Contract #
AR2762

ES&S EQUIPMENT DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Three (3) 8GB Thumb Drives, Initial Annual License Fee, Shipping & Handling, and One (1) Year Warranty)	\$103,880.00 Per Unit
1	DS450 Central Scanner (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Two (2) 8GB Thumb Drives, Initial Annual License Fee, Shipping & Handling, and One (1) Year Warranty)	\$45,511.00 Per Unit
1	DS200 Tabulator (Includes Scanner, Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, 4GB Jump Drive, Shipping & Handling, and One (1) Year Warranty)	\$5,186.00 Per Unit
1	DS200 Tabulator WITHOUT Ballot Box (Includes Scanner, Internal Backup Battery, Plastic Rolling Carrying Case, Paper Roll, 4GB Jump Drive, Shipping & Handling, and One (1) Year Warranty)	\$4,785.00 Per Unit
1	ExpressVote BMD (Includes Terminal, Soft-Sided Case, Internal Backup Battery, ADA Keypad, Headphones, 4GB Flash Drive, Shipping & Handling, and One (1) Year Warranty)	\$3,204.00 Per Unit
1	ExpressVote Tabulator (Includes Tabulator Terminal, Internal Backup Battery, Base Model Rolling Kiosk with AutoCast, ADA Keypad, Headphones, 4GB Flash Drive, Hub, Printer, Shipping & Handling and One (1) Year Warranty)	\$5,010.00 Per Unit
1	Ballot-On-Demand Compact C711 Printer	\$1,975.00 Per Unit
1	Ballot-On-Demand Portable Printer with Case	\$2,325.00 Per Unit
1	Ballot-On-Demand Portable Printer	\$1,275.00 Per Unit
1	Ballot-On-Demand Portable Printer Case	\$1,450.00 Per Unit
1	Ballot-On-Demand Laptop (Includes Initial Annual Ballot-On-Demand Software License)	\$2,820.00 Per Unit
1	Election Management Hardware (Includes One (1) Dell Optiplex 5040 MINI Desktop Workstation, Symantec Endpoint Protection, Adobe Acrobat Standard XI, One (1) Uninterruptible Power Supply (UPS) Battery Backup, One (1) OKI B432 Mono Laser Duplex Printer, One (1) Startech 6' USB Cable, One (1) Year Warranty, and Offsite Installation)	\$3,975.00 Per Unit

ES&S INITIAL ANNUAL SOFTWARE LICENSE DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	ElectionWare PYO Software License (1 – 100,000 Registered Voters in County)	\$15,395.00 Per License
1	ElectionWare PYO Software License (100,001 + Registered Voters in County)	\$24,495.00 Per License
1	Synthesized Audio Capability for PYO Customers requiring non-English languages	\$2,165.00 Per Additional Language
1	ElectionWare Reporting Software License	\$4,815.00 Per License
1	Ballot-On-Demand Software License	Included in Price of Ballot- On-Demand Laptop
1	Ballot-On-Demand Software License (Customer Installed on Customer Owned Laptop)	\$1,720.00 Per License

ES&S IMPLEMENTATION SERVICES DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner Installation Fee (1st Unit)	\$1,925.00 Per Unit
1	DS850 Central Scanner Installation Fee (Each Additional Unit)	\$1,000.00 Per Unit
1	DS450 Central Scanner Installation Fee (1st Unit)	\$1,925.00 Per Unit
1	DS450 Central Scanner Installation Fee (Each Additional Unit)	\$1,000.00 Per Unit
1	DS200 Tabulator Installation Fee	\$115.00 Per Unit
1	ExpressVote BMD Installation Fee	\$105.00 Per Unit
1	ExpressVote Tabulator Installation Fee	\$135.00 Per Unit
1	Ballot-On-Demand Compact C711 Printer Installation Fee	\$100.00 Per Unit
1	Ballot-On-Demand Portable Printer Installation Fee	\$100.00 Per Unit
1	Project Management Day	\$1,650.00 Per Day
1	Election On-Site Support Event (One (1) Person for Three (3) Days Onsite)	\$4,525.00 Per Event
1	Equipment Training Day	\$1,650.00 Per Day
1	Software Training Day	\$1,650.00 Per Day
1	Certified Technician Training	\$3,000.00 Per Technician

ES&S TRADE-IN ALLOWANCES, DISCOUNTS, AND LEASE-PURCHASE PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	TSX and OS Trade-In Allowance	(\$50.00) Per TSX Unit (Includes Trade-In Allowance for OS Units)

NOTE: Total trade-in allowance is limited to 10% of total sale before application of trade-in allowance.

Additional Discount: On the condition that all Utah counties purchase new voting systems from ES&S, ES&S will provide an 8% rebate on Tabulation System Hardware and Accessible Voting System Hardware after all Utah counties purchase new voting systems from ES&S. The 8% rebate is conditioned on sales and related deliveries to all Utah counties being completed by December 31, 2019.

Lease-Purchase Pricing: ES&S's affiliate, Nationwide Capital, can provide financing to Utah counties for terms ranging from 3 to 10 years. Interest rates are dependent upon the length of the financing term and applicable rates at the time the sale transaction between ES&S and the county is consummated. Please contact your ES&S sales representative for financing options.

ES&S POST-WARRANTY MAINTENANCE AND LICENSE DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
	Gold Hardware Maintenance (Annual Onsite Maintenance)	
1	DS850 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$4,580.00 per unit, per year after 1- year warranty
1	DS450 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$3,130.00 per unit, per year after 1- year warranty
1	DS200 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$210.00 per unit, per year after 1-year warranty
1	ExpressVote BMD Gold Hardware Maintenance (Annual Onsite Maintenance)	\$140.00 per unit, per year after 1-year warranty
1	ExpressVote Tabulator Gold Hardware Maintenance (Annual Onsite Maintenance)	\$155.00 per unit, per year after 1-year warranty
	Silver Hardware Maintenance (Maintenance Once Every 24 Months)	
1	DS850 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$2,895.00 per unit, per year after 1- year warranty
1	DS450 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$2,170.00 per unit, per year after 1- year warranty
1	DS200 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$170.00 per unit, per year after 1- year warranty
1	ExpressVote BMD Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$110.00 per unit, per year after 1-year warranty
1	ExpressVote Tabulator Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$135.00 per unit, per year after 1-year warranty
	Bronze Hardware Maintenance (Depot Repair Only)	
1	DS200 Bronze Hardware Maintenance (Depot Repair Only)	\$125.00 per unit, per year after 1-year warranty
1	ExpressVote BMD Bronze Hardware Maintenance (Depot Repair Only)	\$85.00 per unit, per year after 1-year warranty
1	ExpressVote Tabulator Bronze Hardware Maintenance (Depot Repair Only)	\$115.00 per unit, per year after 1-year warranty

	Certified Technician Program (Subject to the standard terms and conditions of the ES&S certified technician program)	
1	DS850 Certified Technician Program	\$1,435.00 per unit, per year after 1- year warranty (Price does not include Certified Technician Training)
1	DS450 Certified Technician Program	\$980.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)
1	DS200 Certified Technician Program	\$85.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)
1	ExpressVote BMD Certified Technician Program	\$50.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)
	Annual Firmware Licenses	
1	DS850 Firmware License	\$1,805.00 per unit, per year after 1- year warranty
1	DS450 Firmware License	\$1,805.00 per unit, per year after 1- year warranty
1	DS200 Firmware License	\$90.00 per unit, per year after 1- year warranty
1	ExpressVote BMD Firmware License	\$75.00 per unit, per year after 1-year warranty
1	ExpressVote Tabulator Firmware License	\$75.00 per unit, per year after 1-year warranty

Annual Software Licenses		
1	ElectionWare PYO Software License (1 – 100,000 Registered Voters in County)	\$15,395.00 per license, per year after 1-year warranty
1	ElectionWare PYO Software License (100,001 + Registered Voters in County)	\$24,495.00 per license, per year after 1-year warranty
1	Synthesized Audio Capability for PYO Customers requiring non-English languages	\$2,165.00 per additional language, per year after 1-year warranty
1	ElectionWare Reporting Software License	\$4,815.00 per license, per year after 1-year warranty
1	Ballot-On-Demand Software License (1 – 100,000 Registered Voters in County)	\$580.00 per license, per year after 1- year warranty
1	Ballot-On-Demand Software License (100,000 – 200,000 Registered Voters in County)	\$465.00 per license, per year after 1- year warranty
1	Ballot-On-Demand Software License (200,001 + Registered Voters in County)	\$350.00 per license, per year after 1- year warranty

ES&S PER ELECTION RENTAL PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner (Rental Fee for One (1) Election Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Three (3) 8GB Thumb Drives, Installation, and Round-Trip Shipping)	\$20,675.00 per unit, per election
1	DS450 Central Scanner (Rental Fee for One (1) Election Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Two (2) 8GB Thumb Drives, Installation, and Round-Trip Shipping)	\$12,595.00 per unit, per election
1	DS200 Tabulator (Rental fee for One (1) Election Includes Scanner, Internal Battery Backup, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, 4GB Jump Drive, Installation, and Round-Trip Shipping)	\$1,200.00 per unit, per election
1	ExpressVote BMD (Rental Fee for One (1) Election Includes the Terminal, Internal Battery Backup, Soft-Sided Case, Detachable ADA Keypad, 4GB Flash Drive, Headphones, Installation, and Round-Trip Shipping)	\$780.00 per unit, per election
1	Ballot-On-Demand Software License (Rental Fee for One (1) Election Includes one (1) Software License)	\$1,500.00 per rented laptop, per election
1	Ballot-On-Demand Hardware (Rental Fee for One (1) Election Includes Ballot-On-Demand C711 Printer, Laptop, Installation, and Round-Trip Shipping)	\$969.00 per unit, per election

NOTE: Firmware fees are included in the price of the rental hardware. No additional rental charge for Election Management Software (ElectionWare Software) if County pays annual software license fees. Election Management Hardware rental fees are per quote and are based upon customer configuration needs.

ES&S CONSUMABLES DESCRIPTION AND PRICING

DESCRIPTION	PRICE
DS200:	
DS200 Paper Roll	\$1.75 Per Roll
DS200 Back-Up Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
DS200 Coin Cell Motherboard Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
DS450:	
Dell Printer Toner	\$120.00 Per Cartridge
ML420 Printer Ribbon	\$14.38 Per Ribbon
1-Part Printer Paper	\$48.11 Per Box
8 1/2" x 11" Standard Printer Paper	\$3.33 Per Box (500 sheets)
UPS Battery Backup	\$410.00 Per Battery
DS450 Motherboard Battery	Per Quote
DS850:	
OkiData B430DN Toner	\$216.42 Per Cartridge
ML420 Printer Ribbon	\$14.38 Per Ribbon
1-Part Printer Paper	\$48.11 Per Box
8 1/2" x 11" Standard Printer Paper	\$3.33 Per Box (500 sheets)
UPS Battery Backup	\$410.00 Per Battery
DS850 Motherboard Battery	Per Quote
ExpressVote BMD:	
ExpressVote Thermal Activation Card - 11 inch	\$22.50 Per Package (250 cards)
ExpressVote Thermal Activation Card - 14 inch	\$23.75 Per Package (250 cards)
ExpressVote Thermal Activation Card - 17 inch	\$26.25 Per Package (250 cards)
ExpressVote Thermal Activation Card - 19 inch	\$30.00 Per Package (250 cards)

Headphone Sanitary Ear Cover	\$0.16 Per Unit
ExpressVote Back-Up Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
ExpressVote Coin Cell Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
Ballot-on-Demand:	
Ballot-on-Demand Paper Costs (if applicable)	All Ballot-On-Demand Supplies included in Ballot-On-Demand Click Charges
Other:	
9" Numbered Pull Tite Seal	\$0.24 Per Seal
Numbered Padlock Seal	\$0.23 Per Seal
8" Tool-less Roto Wire Seal	\$34.95 Per Package (100 seals)
Barcode 1" x 3-3/8" Non Residue Tamper Evident Labels	\$44.95 Per Package (100 seals)

NOTE: Unit costs for consumables do not include shipping & handling, which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.

ES&S ADDITIONAL SERVICE OPTIONS DESCRIPTION AND PRICING

DESCRIPTION	PRICE
Voice File Services (For ElectionWare Reporting Customers)	
Language Setup Charge - English	\$350.00 Per Setup
Language Setup Charge - Spanish	\$350.00 Per Setup
Language Setup Charge - All Other languages	\$525.00 Per Setup
Political Parties	\$5.25 Per Party
Ballot Faces	\$15.75 Per Ballot Face
Contests / Issues	\$17.00 Per Contest / Issue

Candidates / Yes-No Responses	\$10.25 Per Candidate / Yes-No Response
Propositions / Amendments / Instructions	\$21.00 Per Proposition / Amendment / Instructions
Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)	\$0.40 Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)
Resubmission	\$350.00 for English & Spanish and \$525.00 (for each additional language), plus the applicable fee for each element changed for each language
Media burn (Flash / PCMCIA Cards, Mem Packs, PEBs, and Jump Drives)	\$12.50 Per Piece of Media
Ballot Layout and Programming Services (for Electionware Reporting customers)	Pricing available upon request
Ballot-On-Demand Charges	
Ballot Processing Fee for each Black & White Ballot Sheet Printed	\$0.45 Per Sheet (Subject to a minimum 500 ballot sheet minimum per printer per election)
Ballot Processing Fee for each Ballot Sheet Printed with Color	\$0.55 Per Sheet (Subject to a minimum 500 ballot sheet minimum per printer per election)
Ballot-On-Demand Set-Up Fee Per Election Event	
Remote Access: \$350.00 per election set-up + \$1.00 per unique PDF (up to 4 computers) \$40.00 per computer over 4 units Rework of set up due to customer changes after initial set up is complete: \$175.00 per change event \$40.00 per computer over 4 units \$350.00 fee for L&A Test deck creation + ballot processing fee for each printed sheet On-Site: \$1,650.00 per day per person	

NOTE: Items within additional services section do not include shipping & handling (if applicable), which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.

ES&S VALUE ADDED DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	COTS Soft-Sided Ballot Box	\$99.95 per ballot box
1	COTS Plastic Ballot Box	\$150.00 per ballot box
1	DS200 Tote Bin	\$225.00 Per Tote Bin
1 Package	ExpressVote Privacy Shield	\$99.95 per package of 6 privacy shields
1	ExpressVote Table	\$325.00 Per Table
1	ExpressVote Kiosk	\$935.00 Per Kiosk (Price Includes Installation and Shipping & Handling)
1	Additional 4GB Thumb Drives	\$105.00 Per Thumb Drive
1	Additional 8GB Thumb Drives	\$210.00 Per Thumb Drive
1	ExpressLink Printer	\$725.00 Per Printer
1	ExpressLink Software	\$3,580.00 Initial Annual License Fee Per County (This fee is not charged in Counties using ES&S PollBooks)
1	Client/Server Election Management System	\$13,122.00 (Includes Offsite Installation)
	E PollBook	
1	E PollBook (Cost includes Tablet with Barcode Scanning and Signature Capture Capabilities, Tablet Protector Sleeve, Back Strap, Lazy Susan Stand, Stylus with Tether, Micro-SD Card w/SD Adapter, 16GB Thumb Drive, USB Dongle, USB Power Cable, 6-ft Power Cable, Touch Screen Cleaning Kit, Carrying Case, ExpressPoll Software, One (1) Year Warranty, Shipping & Handling, Acceptance Testing and Loading of Software on the Unit)	\$935.00 Per Pollbook
1	E PollBook (Cost Includes Tablet with Barcode Scanning and Signature Capture Capabilities, Lazy Susan Stand with Turntable Pedestal, 1 USB Port, Tablet Protector Sleeve, Back Strap, Stylus with Tether, Micro-SD Card w/SD Adapter, 16GB Thumb Drive, Power Supply and Cable, Carrying Case, ExpressPoll Software, One (1) Year Warranty, Shipping & Handling, Acceptance Testing, and Loading of Software on the Unit)	\$1,145.00 Per Pollbook
1	DYMO 450 Turbo Printer with Power Supply/Cord and USB Cable	\$131.00 Per Printer
1	MY3 Printer with Power Supply/Cord, USB Cable, and Battery Backup	\$412.00 Per Printer

1	CentralPoint Initial Annual Software License and Hosting Fee (1 - 75,000 Registered Voters in a County)	\$3,875.00 Per License
1	CentralPoint Initial Annual Software License and Hosting Fee (75,001 - 150,000 Registered Voters in a County)	\$5,815.00 Per License
1	CentralPoint Initial Annual Software License and Hosting Fee (150,001 - 300,000 Registered Voters in a County)	\$7,750.00 Per License
1	CentralPoint Initial Annual Software License and Hosting Fee (300,001 - 500,000 Registered Voters in a County)	\$11,625.00 Per License
1	CentralPoint Initial Annual Software License and Hosting Fee (500,001 + Registered Voters in a County)	\$19,375.00 Per License
1	E PollBook Post-Warranty Fees	\$99.00 per PollBook For License, Maintenance, and Support Fees starting in Year 2.
1	E PollBook Post-Warranty Fees with Ballot-On-Demand Capability	\$199.00 per PollBook For License, Maintenance, and Support Fees starting in Year 2.
Mail Ballot Verifier		
1	MBV 1000	\$88,400.00 Per Unit (Includes Installation and Shipping & Handling)
MBV 1000 Post-Warranty Fees and Click Charges		
<p>\$7,500.00 per unit for License, Maintenance and support fees starting in Year 2. Annual hardware and software fees include processing of 15,000 pieces per year.</p> <p>Click Charges after overage:</p> <p>15,000 - 30,000: \$0.30 per scan</p> <p>30,001 - 50,000: \$0.25 per scan</p> <p>50,001 - 100,000: \$0.20 per scan</p> <p>100,001 +: \$0.15 per scan</p>		

NOTE: Unless otherwise noted, items within the Value Added Features section do not include shipping & handling, which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 1

CONTRACT #: AR2762

Starting Date: 11/20/2017

Expiration Date: 11/19/2027

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Election Systems & Software (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Add Attachment II: Sales Order Form

Form is for use by Counties and Local Units of Government in the State of Utah that have elected to acquire ES&S equipment under this contract.

Effective Date of Amendment: 11/28/2017

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

By (authorized signature)

Print Name and Title

Date

STATE OF UTAH DIVISION OF PURCHASING

By (authorized signature)

Print Name and Title

Date

STATE OF UTAH OFFICE OF THE LIEUTENANT
GOVERNOR

By (authorized signature)

Justin Lee Director of Elections

Print Name and Title

Date

Purchasing Agent

Windy Aphayrath

Phone #

801-538-3097

e-mail

waphayrath@utah.gov

Contract #

AR2762



Contract # AR2762

STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the State of Utah's Division of Purchasing and the following Contractor:

Election Systems & Software, LLC

Name

11208 John Galt Boulevard

Address

Omaha

NE

68137

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Dan Clark Phone # 402-578-4641 Email dlclark@essvote.com

Vendor # VC216674 Commodity Code # 93690000000

2. GENERAL PURPOSE OF CONTRACT: To provide election hardware, software, support, services, and training.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on Bid#WA17018.
4. CONTRACT PERIOD: Effective Date: 11/20/2017 Termination Date: 11/19/2027 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
5. Payment: Prompt Payment Discount (if any): N/A.
6. Administrative Fee, as described in the Solicitation and Attachment A: None.
7. ATTACHMENT A: State of Utah Standard Terms and Conditions for ☐ Goods ☐ Services, or ☒ IT
ATTACHMENT B: Standard Purchase Agreement
ATTACHMENT C: Standard Services Agreement
ATTACHMENT D: Lease-Purchase Agreement
ATTACHMENT E: Detailed Scope of Work
ATTACHMENT F: Utah Pricing Catalogue
ATTACHMENT G: Certified Technician Program
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.
8. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, RFP WA17018, and Contractor's response to Bid #WA17018
9. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

[Signature Page Follows]

Agreed and Accepted by:

ELECTION SYSTEMS & SOFTWARE, LLC

By (authorized signature)

Print Name and Title

Date

Address

City, State Zip

Agreed and Accepted by:

STATE OF UTAH DIVISION OF PURCHASING

By (authorized signature)

Print Name and Title

Date

Address

City, State Zip

STATE OF UTAH OFFICE OF THE LIEUTENANT GOVERNOR

By (authorized signature)

Print Name and Title

Date

Address

City, State Zip

Windy Aphayrath

Division of Purchasing Contact Person

801-538-3097

Telephone Number

Fax Number

waphayrath@utah.gov

Email

(Revision 16 June 2016)

**ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT**

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

THE BELOW STANDARD TERMS AND CONDITIONS HAVE BEEN MODIFIED.

1. DEFINITIONS:

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Signature Page(s)" means the cover page that Division and Contractor sign.
- f. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- n. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- o. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
- q. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the

Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.

- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
 - t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
 - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
 3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
 4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
 5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
 6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above

Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

- 18. TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given thirty (30) days or such other period of time as may be mutually agreed upon by the parties after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.

- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.

- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.

- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year after completion of acceptance testing for such Good or Customer Deliverable ("Warranty Period"). Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which Eligible User has not been warned.

The foregoing Hardware Warranty shall not include the repair or replacement of any components that are consumed in the normal course of operating the Good or Customer Deliverable, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Any repaired or replaced item of Good or Customer Deliverable shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Good or Customer Deliverable will become the property of ES&S. If applicable, ES&S shall remove all State of Utah and Eligible User data from any replaced components of the Good or Customer Deliverable. This warranty is effective provided that (I) the State of Utah or an Eligible User notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the Good or Customer Deliverable to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the Good or Customer Deliverable to be repaired or replaced is not damaged as a result of accident, theft, vandalism (including hacking), neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of Contractor, State of Utah or an Eligible User, including, but not limited to, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) State of Utah or an Eligible User have installed and is using the most recent update, provided to it by Contractor. This warranty is void for any units of hardware which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of one (1) year from the date of Acceptance that the software portions of the Goods and Custom Deliverables ("Warranty Period"), that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the

ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems.

Any repaired or replaced item of Good or Customer Deliverable shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Good or Customer Deliverable will become the property of ES&S. If applicable, ES&S shall remove all State of Utah and Eligible User data from any replaced components of the Good or Customer Deliverable. This warranty is effective provided that (I) the State of Utah or an Eligible User notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the software portion of the Good or Customer Deliverable to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the software portion of the Good or Customer Deliverable to be repaired or replaced is not damaged as a result of accident, theft, vandalism (including hacking), neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of Contractor, State of Utah or an Eligible User, including, but not limited to, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) State of Utah or an Eligible User have installed and is using the most recent update, provided to it by Contractor.

Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.

- 25. SYSTEM WARRANTY:** Contractor warrants that the Contractor hardware and Contractor software portion of any Good or Custom Deliverable will operate in conjunction with the third party items provided by Contractor during the Warranty Period, provided that (i) the State of Utah or an Eligible User have installed and is using the most recent update, provided to it by Contractor, and (ii) the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, Contractor will repair or replace the item of Contractor hardware and Contractor software portion of any Good or Custom Deliverable that is causing such breach to occur. The State of Utah or an Eligible User acknowledge that Contractor has merely purchased the third party items included in the Contractor hardware and Contractor software portion of the Good or Custom Deliverable for resale the State of Utah or an Eligible User, and that the proprietary and intellectual property rights to the third party items are owned by parties other than Contractor ("Third Parties"). The State of Utah or an Eligible User further acknowledge that except for the payment to Contractor for the third party items, all of its rights and obligations with respect thereto flow from and to the Third Parties.
- 26. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 27. UPDATES AND UPGRADES:** During the initial license term or any license renewal term, Contractor may provide new releases, upgrades or maintenance patches to the Contractor software portion of any Good or Custom Deliverable, together with appropriate Documentation ("Updates"), on a schedule defined by Contractor. The State of Utah or an Eligible User is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be Contractor software for purposes of this Contract upon delivery. The State of Utah or an Eligible User may install the Updates in accordance with ES&S' recommended instructions or may request that Contractor install the Updates. Contractor may charge the State of Utah or an Eligible User at its then-current rates to (i) deliver the Updates to the State of Utah or an Eligible User, (ii) train the State of Utah or an Eligible User on Updates, if such training is requested by the State of Utah or an Eligible User; (iii) install the Updates or (iv) provide maintenance and support on the Contractor software portion of the Good or Custom Deliverable that is required as a result of the State of Utah's or an Eligible User's failure to timely or properly install an Update. The State of Utah or an Eligible User shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by the State of Utah's or an Eligible User's failure to install and use the most recent Update provided to it by Contractor. If the State of Utah or an Eligible User proposes changes in the Contractor software to Contractor, such proposals will become Contractor's property. Contractor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to the State of Utah or an Eligible User's or any third party. Contractor represents to the State of Utah or an Eligible User's that the Updates will comply with all applicable state law requirements at the time of delivery. The State of Utah or an Eligible User's shall be responsible to ensure that it has installed and is using only certified versions of Contractor software portion of the Good or Custom Deliverable in accordance with applicable law. Contractor grants to the Eligible Users a non-exclusive, non-transferable license to Updates provided by Contractor during the term of this Contract. Such Updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all Updates as released by Contractor during this Contract.
- 28. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 29. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.

30. SECURE PROTECTION AND HANDLING OF PUBLIC DATA: If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions outlined below. Eligible Users reserve the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the contract:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Eligible User reserves the right to determine if Contractor's level of protection adequately meets the Eligible User's security requirements.

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key and include all data as part of a designated backup and recovery process.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

31. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

32. DATA BREACH RESPONSIBILITIES: This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.

33. STATE INFORMATION TECHNOLOGY POLICIES: If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables it is important that contractors follow the same policies and procedures that DTS follows for their own internally developed goods and deliverables to minimize security risk, ensure applicable State and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor agrees to comply with the following DTS Policies which are available upon request:

1. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
2. **DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
3. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
4. **DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.

34. PUBLIC INFORMATION: Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.

35. DELIVERY: Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance provided such inspection and acceptance occurs no later than thirty (30) days after delivery, when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.

36. ELECTRONIC DELIVERY: Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.

37. ACCEPTANCE PERIOD: A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation as well as the acceptance testing criteria to be mutually agreed upon by the parties. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation or the acceptance testing criteria ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables,

or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

38. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

39. PROMPT PAYMENT DISCOUNT: Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

40. PAYMENT:

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.

3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

41. INDEMNIFICATION – INTELLECTUAL PROPERTY: Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

42. OWNERSHIP IN INTELLECTUAL PROPERTY: The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

43. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

44. OWNERSHIP, PROTECTION AND USE OF RECORDS: Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws. Eligible Users shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use an Eligible User's confidential data without prior written permission from Eligible User.

45. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

46. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.

47. CONFIDENTIALITY: Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:

Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.

Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.

48. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

49. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract.

The Division will issue a written notice of default providing a thirty (30) day period or such other period of time as may be mutually agreed upon by the parties in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a pro-rata refund of the Goods, Custom Deliverables, or Services based on the use of such Good, Custom Deliverable or Service furnished by Contractor that are defective or Services that were inadequately performed under this Contract.

- 50. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 51. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 52. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 53. WORKERS' COMPENSATION:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Subcontractors must submit proof of certificate of insurance that meets the above requirements.
- 54. LIABILITY INSURANCE:** Contractor agrees to provide and to maintain during the performance of this Contract, at its sole expense, a policy of general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate. It shall be the responsibility of Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor.

Contractor must provide proof of insurance to the Division and must add the State of Utah as an additional insured with notice of cancellation. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause.
- 55. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.
- 56. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 57. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 58. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 59. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 60. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule

R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.

- 61. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
- 62. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 63. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 64. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 65. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 66. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 67. REPORTS AND FEES:**

1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be 0.0% and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

- 68. TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
- 69. PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 70. ADDITIONAL INSURANCE REQUIREMENTS:**
1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
 2. Any other insurance policies described or referenced in the Solicitation for this Contract.

3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.
- 71. STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
- 72. STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.
- 73. TRAVEL COSTS:** The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
- 74. LIMITATION OF LIABILITY:** Neither the State of Utah, Eligible Users nor the Contractor shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Contract. Neither the State of Utah, Eligible Users nor the Contractor shall be liable for any other party's negligent or willful misconduct. Except for intellectual property infringement claims, personal injury (including death) and property damage, Contractor's total liability to the State of Utah or an Eligible User under this Contract will not exceed the aggregate amount to be paid to Contractor under this Contract with respect to the State or the aggregate amount to be paid by an Eligible User with respect to such Eligible User which brings such claim.

Revision Date: March 24, 2017

**ELECTION SYSTEMS & SOFTWARE, LLC
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date").

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");

AND: ("Customer").

RECITALS:

- A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in _____ (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
- _____ Exhibit A (Pricing Summary)
- _____ Exhibit B (ES&S Equipment Description and Pricing)
- _____ Exhibit C (ES&S Software Description and Pricing)
- _____ Exhibit D (Election Support Services)
- _____ Exhibit E (Hardware and Software License, Maintenance and Support Services (Post-Warranty Period))
- _____ Exhibit F (ES&S Equipment and ES&S Software Installation)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of** _____, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291
Email: _____

Fax No.: _____
Email: _____

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other ES&S proprietary equipment.
- d. "ES&S Firmware" means ES&S' proprietary software which is included on ES&S' Equipment.
- e. "ES&S Hardware Maintenance Services" and "ES&S Software License, Maintenance and Support Services" means those services described on Exhibit E.
- f. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- g. "Software" means ES&S Software and Third Party software.
- h. "Third Party Items" means hardware, equipment and software manufactured and developed by parties other than ES&S.

**ARTICLE 2
SALE OF ES&S EQUIPMENT AND LICENSE OF ES&S SOFTWARE**

2.1 **Purchase Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment described on Exhibit B. The payment terms for the ES&S Equipment is set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment and ES&S Software.

2.2 **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time employees to use the ES&S Software described on Exhibit C and Documentation supplied by ES&S. The license allows Customer to use and copy the ES&S Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section 2.2 do not permit Customer to use the source code for the ES&S Software. The license does not permit Customer to take any of the following actions:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S

Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or

c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent.

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.3 License Fees. In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.2, Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A. The consideration for ES&S' grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment.

2.4 Term of Licenses. The licenses granted in Section 2.2 shall commence upon the delivery of the ES&S Software described in Section 2.2 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Exhibit A. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.3, or 3.6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.5 Updates. During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in state or local law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

(i) the total cost of any third party items that are required in order to operate the Updates;

(ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and

- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software License and Maintenance and Support described on Exhibit F if it has so elected in Section B of the signature page to this Agreement.

2.6 **Compliance with Laws.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the Equipment and Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in the Customer's state.

2.7 **State Recertifications.** In the event that any future state certifications or recertifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the Software and/or Equipment licensed and sold hereunder, Customer shall be responsible for:

- (i) the total cost of any third party items that are required in order for the Equipment and/or Software to remain certified;
- (ii) Customer's pro-rata share of such future state certification or recertification costs; and
- (iii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Equipment and/or Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 2.7(ii) and 2.7(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement.

ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss.** ES&S anticipates shipping the Equipment and Software identified on Exhibits B-C to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification, and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer. The parties shall conduct and complete, within thirty (30) days after delivery, the equipment and software installation procedures outlined on Exhibit F to confirm that the ES&S Equipment and ES&S Software are installed and performing in accordance with the warranties set forth in Sections 3.2(a) and 3.2(b) below (the "ES&S Equipment and ES&S Software Installation"). Upon completion of the ES&S Equipment and ES&S Software Installation, representatives of both parties will execute the "Certificate of Completed ES&S Equipment and ES&S Software Installation" included at Exhibit F.

3.2 **Warranties.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a 1-year period (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. The Warranty Period will commence upon completion of the Acceptance Testing. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including, but not limited to, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) Customer has installed and is using the most recent Update, provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

b. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' EQUIPMENT AND ES&S SOFTWARE INSTALLATION SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK

(COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH REPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

3.3 **Routine Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, Customer may request that ES&S provide the Routine Maintenance Services described in Article II, Subsection 1(b) of Exhibit E for one or more units of ES&S Equipment. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such Routine Maintenance Services is set forth on Exhibit A and shall be due within thirty (30) days after Customer's receipt of ES&S' invoice. The terms and conditions of Article II, Subsection 1(b) of Exhibit E shall govern the providing of the Routine Maintenance Services. When the ES&S Equipment is not in use, Customer shall properly store the ES&S Equipment in accordance with the storage requirements established in the Documentation. Upon termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance Services described on Exhibit E if it has so indicated in Section B of the signature page to this Agreement.

3.4 **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

3.5 **Taxes; Interest.** Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.5, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

3.6 **Proprietary Rights.** Customer acknowledges and agrees as follows:

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The

aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.7 **Indemnification.** To the fullest extent permitted under applicable law, Customer shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following:

a. Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's copyright, trademark or patent existing as of the date hereof (a "Third Party Infringement Claim") resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by third parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items purchased by Customer and used with the ES&S Equipment or ES&S Software;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and

d. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software License and Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 3.7, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

3.8 **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.9 **Term; Termination.** This Agreement shall be effective on the Effective Date. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, at any time by either party if the

other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party.

3.10 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

3.11 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

3.12 **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter the premises during normal business hours where the ES&S Equipment is located and remove them.

3.13 **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State of Nebraska, County of Douglas. ES&S is providing Equipment, Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Article 2 and Sections 3.2(c), 3.4-3.9, 3.11, 3.12(b) and this Section 3.13 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

Sale Summary:		
Description	Refer to	Amount
ES&S Equipment	Exhibit B	\$
ES&S Software License Fees	Exhibit C	\$
Election Support Services	Exhibit D	\$
Shipping and Handling	Note 1	\$
Total Net Sale		\$
Terms & Conditions:		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.5. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.		
Note 2: <u>Payment terms are as follows:</u> 100% of Total Net Sale due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.		
Note 3: Services in excess of those set forth in <u>Exhibit D</u> shall be charged at the rate of \$ per day, including expenses.		
Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:		
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	
ES&S Equipment		
ES&S Software		
Warranty:		
ES&S Equipment and ES&S Software – Warranty Period:	1 year	
Anticipated Warranty Period: _____ to _____		
Ongoing Services:		
Description	Refer to	Annual Fee
Routine Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 3.3	N/A
Post Warranty Hardware Maintenance Services	Exhibit E	\$
Services commence in _____. Fees reflect a one-year term. Payment is due at the start of the maintenance period.		
Post Warranty Software Maintenance & Support Services		
- ES&S Firmware	Exhibit E	\$
- All Other ES&S Software	Exhibit E	\$
Services commence in _____. Fees reflect a one-year term. Payment is due at the start of the maintenance period.		

EXHIBIT B
ES&S EQUIPMENT DESCRIPTION AND PRICING

[illegible]

EXHIBIT C
ES&S SOFTWARE DESCRIPTION AND PRICING

DESCRIPTION	NUMBER OF LICENSES
Election System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):	
ES&S Firmware (see Notes 1 and 2 below)	
Total License Fees (including all applicable Documentation)	

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

Note 2: ES&S Firmware license fee included in the total cost of the ES&S Equipment.

EXHIBIT D
ELECTION SUPPORT SERVICES

1. **Covered Elections.** The services described herein shall be provided only for the following elections (the "Elections"):

--

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the Elections set forth above, and the descriptions listed in the table below, and that a change in the Elections or descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Project Management	A project manager appointed by ES&S shall be responsible for the overall planning, communication, management and coordination of ES&S Services. This person shall be the liaison for Customer with ES&S as it pertains to all products, services and obligations set forth in the Agreement.	ES&S	
Shipping Material Disposal	Dispose of shipping materials (boxes, packaging, etc.)	Customer	
ES&S Software and Third-Party Hardware & Software Installation	Deliver and install the ES&S Software and third party hardware and software purchased and licensed hereunder. ES&S will review and provide the Customer staff with written documentation identifying the system requirements and configurations necessary to operate the ES&S Software and third party hardware and software.	ES&S	
Ballot Layout/Coding Services	Accumulate and provide all necessary election data for preparation of election data files. Assist Customer staff in creating election ballot layouts and coding files using ES&S' software.	Customer ES&S	

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Training – ES&S Software	A system overview that covers the ES&S Software licensed by Customer. Class size is limited to 10 and course participant manuals are included. (Customer will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	ES&S	
Training – ES&S Equipment	ES&S will provide classroom-style training with hands-on practice with the ES&S Equipment purchased hereunder. General operations, ballot marking and tabulation procedures, log audit capability, reporting, backups and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	ES&S	
Voter Awareness	Assistance provided to Customer in the design of a customized approach to introduce the ES&S voting system to the public. ES&S and Customer will work together to determine appropriate combination of public demonstration which may include the internet, video, radio, poster, newspaper, etc., that best meets the needs of Customer.	ES&S	
Training – Poll Worker Train – The-Trainer	ES&S agrees to conduct Poll Worker “Train the Trainer” classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	ES&S	
Pre-Election L&A Testing	ES&S will assist in the development of logic and accuracy procedures (according to State Elections Code), and assist in the actual L&A testing procedures.	ES&S	

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Election Day Support	For each site support event, ES&S provides one trained representative who is available to the customer the day immediately prior to the election, Election Day and until noon on the day immediately after Election Day ("Site Support Event"). Site Support Event representatives are not technicians. Although needs vary by customer, depending upon the customer's needs and the customer's scheduling of support staff for an election, Site Support Event representatives may assist with election administration, procedural guidance, hardware and software operation, Election Day call center staffing, as a roving troubleshooter during Election Day, and election night accumulation of results. They also will liaison with ES&S support desks if necessary. Note: It is not the responsibility of the Site Support Event representatives to repair tabulation or results reporting equipment. If you have a technical issue, the Site Support Event representative will assist in contacting the technicians in the appropriate support office. Site Support Events are billed per person, per Site Support Event. The current individual rate per Site Support Event is \$.	ES&S	
	Total Election Support Service Days: ____ Total Fees: \$ _____		

Role/Function	Area of Work or Description	Primary Responsibility
Installation – ES&S Equipment	ES&S will inspect the ES&S Equipment at the customer's delivery location to make sure it is operating in accordance with its Documentation	ES&S
	Total Installation Fees: \$ _____	

[END OF EXHIBIT D]

EXHIBIT E
HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT
SERVICES
(POST-WARRANTY PERIOD)

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit E shall in effect for the coverage period as described in Schedule F-1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit E shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit E terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit E, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software License, Maintenance and Support Services under this Exhibit E, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule E1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Maintenance Term are due on the date of the expiration of the Warranty Period. The Hardware Maintenance and Software License, Maintenance and Support Fees for any Renewal Period shall be the then current fees in effect and are due and payable no later than thirty (30) days prior to the beginning of such renewal period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit E or the Agreement. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Exhibit E through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Exhibit E for the ES&S equipment set forth on Schedule E1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services

provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each Twelve/Twenty four (12/24) months during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule F1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule F1 as "depot repair only" shall only be provided pursuant to Section 1(b) below.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule F1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant

to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

g. **Parts Availability.** In the event that ES&S is unable to procure such parts in sufficient quantities or at prices acceptable to ES&S, ES&S may terminate this Agreement in accordance with Article I, Section 1 above and this Agreement shall be of no further force and effect thereafter.

ARTICLE III **SOFTWARE**

1. **Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively,

"ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Article 2 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule F1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to Updates in accordance with the terms of Article 2, Section 2.5 of the General Terms.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Exhibit E. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5. **Reinstatement of Software License and Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, including a reinstatement charge, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

Schedule F1

PRICING SUMMARY AND PAYMENT TERMS

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$
ES&S Firmware License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$
Total Maintenance Fees for the Initial Term:		\$
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: <u>Invoicing and Payment Terms are as Follows:</u> \$ due upon Contract Execution for the Coverage Dates of ***** through *****. \$ due on or before ***** for the Coverage Dates of ***** through *****.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term:

Qty	Description	Coverage Period (Note: *** Indicates Depot Repair Only)	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
			\$	\$
			\$	\$
			\$	\$
Total Maintenance Fees for the Coverage Period *****through*****				\$
Total Hardware Maintenance Fees for the Initial Term				\$

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12/24month period shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location:

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

Note 5: Upon expiration of the Initial Term, this Exhibit E shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under this Exhibit E

1. Telephone support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). The inspection includes:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective parts with new or remanufactured federally and state certified parts.

- Conducting a final test to verify that the unit is working according to manufacturer's specifications.
- Use of a checklist tailored for each piece of ES&S Equipment.
- Update of maintenance records which are kept by serial number and available to the Customer through the Customer's ES&S Web-based portal.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.
 - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

Note: Except for those Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES

Initial Term:

Listed below are the Software Modules and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
			\$
			\$
			\$
Total License, Maintenance and Support Fees for the Coverage Period *****through*****			\$
Total Software License, Maintenance and Support Fees for the Initial Term			\$

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
			\$	\$
			\$	\$
			\$	\$
Total License, Maintenance and Support Fees for the Coverage Period *****through*****				\$
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.

- Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
 - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
 3. Customer shall have reviewed Training Checklists.
 4. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
 5. Customer shall be responsible for data extraction from Customer voter registration system.
 6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
 7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
 8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
 9. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
 10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.

EXHIBIT F
ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS200

Date: _____ **Machine SN:** _____ **Certified Firmware:** _____

Visual Inspection:

- ☐ Ensure that there are no scratches or gouges on any part of the unit
- ☐ Verify that all labels are placed in their appropriate place and in their correct orientation
- ☐ Ensure the Printer paper roll is installed in the Printer.

Physical Inspection:

- ☐ Apply AC to Wall Power Adapter. Connect Wall Power Adapter to the back of the unit and press the "POWER" button.
- ☐ Observe the rear LED, located next to the Wall Power Adapter Cord Connector, if the LED is amber and blinking slowly this indicates that the Battery Pack is charging. If the LED is a solid green, the Battery Pack is completely charged.
 - Verify AC Plug Icon is present and does not have an "X" located in upper right corner of the screen.
- ☐ Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
 - Touch the two circles (one in the Upper Left Corner and one in the Lower Right Corner of the screen) and then touch the "Save & Exit" button.
- ☐ Verify the **DS200 Firmware Version** is _____; **PMB** is _____; **Scanner** is _____ on Startup Printout.
- ☐ Insert the 512MB Flash Drive containing the BMW Demo Election in USB port B.
 - When the unit recognizes the 512MB Flash Drive w/ Demo Election, the Election Icon will go from having an "X" to a green ✓ mark on it.
- ☐ Check the date and time on the top portion of the display to ensure the date and time is correct.
 - If a change is needed, press the lower right arrow on the display screen then press the "go to admin button" and on the next screen enter the password.
 - Go to "systems settings", "date and time" and then press date or time and a keyboard will come up so you can make changes. Press the "enter key". You will go back to the original screen where you will press previous and here you will "accept new time."
- ☐ Press the "OPEN POLLS" button on the screen to scan the BMW Demo Ballots.
- ☐ Ensure that the test ballots scan in all four orientations.
- ☐ Insert the 2 Demo Ballots to check the Multi-Sheet Sensor. Two sheets should be rejected.
- ☐ Press and hold the "CLOSE POLLS" button for two seconds to close the polls.
- ☐ Verify that the Precinct Report Printout should read 4 ballots cast.
- ☐ Disconnect the Wall Power Adapter cord from unit.
 - Unit should continue to operate, and the X should appear over the AC icon.
- ☐ Re-connect Wall Power Supply cord
 - The X should disappear from the AC icon.

- ☐ Check Modem Operation. (If Unit is equipped with a Modem)
- ☐ Power down the unit by touching the "Shutdown" button on the Touch Screen.
- ☐ Verify that the Display switch operates correctly by completing the following:
 - With the Wall Power Adapter still connected to the unit, lower the Display to the closed position.
 - Raise the Display back to the opened position.
 - The unit should power back up.

Note: The Display switch will not operate if the Wall Power Supply cord has been removed.

- ☐ Verify all Locks and Doors have a smooth function and are locked.

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS450

Date: _____ Machine SN: _____ Location: _____

Visual Inspection:

- ☐ Insure that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Printer paper roll installed

Physical Inspection:

- ☐ Power up on D/C
- ☐ Firmware Version _____ Power Management _____ Scanner _____
- ☐ Rear LED and Power Icon check when A/C applied
- ☐ Display switch operation
- ☐ Date and time
- ☐ Touch Screen Calibration
- ☐ Election Icon
- ☐ OPEN POLLS
- ☐ Ballots scan in all four orientations (DAC and All-Fill)
- ☐ Multi-Sheet Sensor
- ☐ CLOSE POLLS
- ☐ Precinct Report Printout, verify results
- ☐ Power down by Shutdown button on screen
- ☐ Locks and Doors have a smooth function and are locked.

Inspector: _____

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS850

Date: _____ Machine SN: _____ Location: _____

Visual Inspection:

- ☐ Insure that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Printer paper roll installed

Physical Inspection:

- ☐ Power up on D/C
- ☐ Firmware Version _____ Power Management _____ Scanner _____
- ☐ Rear LED and Power Icon check when A/C applied
- ☐ Display switch operation
- ☐ Date and time
- ☐ Touch Screen Calibration
- ☐ Election Icon
- ☐ OPEN POLLS
- ☐ Ballots scan in all four orientations (DAC and All-Fill)
- ☐ Multi-Sheet Sensor.
- ☐ CLOSE POLLS
- ☐ Precinct Report Printout, verify results
- ☐ Power down by Shutdown button on screen
- ☐ Locks and Doors have a smooth function and are locked.

Inspector: _____

**ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION
EXPRESSVOTE**

Date: _____ (Format: mm/dd/yy) **Machine SN:** _____ **Location:** _____

Visual Inspection:

- ☐ Confirm that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Verify that the battery is installed
- ☐ Inspect all fasteners and plastic parts

Setup:

- ☐ Place the ExpressVote on level surface.
- ☐ Connect to A/C power
- ☐ Unlock left side access door, flip power switch to ON position
- ☐ Connect navigation keypad to RJ port near power switch
- ☐ Insert USB stick containing the EQC data and enter code when prompted
- ☐ Insert USB stick containing sample Election Data and enter code when prompted.

Print Testing:

- ☐ Insert a ballot activation card and begin voting following instructions on screen
- ☐ Insert additional activation cards to test each ballot configuration in the election.
- ☐ Review printed card for complete, dark print
- ☐ Reinsert voted card and review summary to confirm scanner is working properly

Audio Testing:

- ☐ Plug in audio headset to listen to audio
- ☐ Verify audio can be heard throughout the voting process
- ☐ Use the triangular navigation buttons to navigate the ballot
- ☐ Press the Repeat key, Tempo and volume buttons to confirm all operations.
- ☐ Activate all buttons to confirm navigation keypad is fully operational

Inspector: _____

Attach printed paper records from ExpressVote to this checklist.

EXHIBIT F
ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

CERTIFICATE OF COMPLETED ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

The undersigned do hereby certify that the ES&S Equipment listed below has been installed under the criteria specified in the Agreement. Serial Numbers of respective Equipment are attached.

DS200 Units	DS450	DS850	ExpressVote Units
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>
<u>Units Installed</u>	<u>Units Installed</u>	<u>Units Installed</u>	<u>Units Installed</u>

Firmware Version: _____

Customer: _____

Representative: _____
(Printed Name & Title)

(Signature)

ES&S
Representative: _____
(Printed Name)

(Signature)

Date: ____/____/____

[END OF EXHIBIT F]

**ELECTION SYSTEMS & SOFTWARE, LLC
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date").

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");

AND: _____ ("Customer").

RECITALS:

- A. Customer has entered into a lease purchase agreement through a separate third party to lease/purchase certain ES&S voter tabulation equipment (the "ES&S Equipment") and agrees to license/purchase related software and services from ES&S for use in the _____ (the "Jurisdiction"). The terms and conditions under which such software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

 Exhibit A (Pricing Summary)

Exhibit B (ES&S Equipment Description)

Exhibit C (ES&S Software Description and Pricing)

Exhibit D (Third Party Items)

 Exhibit E (Election Support Services)

Exhibit F (Hardware and Software License, Maintenance and Support Services (Post-Warranty Period))

Exhibit G (ES&S Equipment and ES&S Software Installation)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of** _____, without regard to conflicts of law principles that would require the application of the laws of any other state. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State of Rhode Island, County of _____.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291
Email:

CUSTOMER
ADDRESS
ADDRESS
Fax No.:
Email:

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date _____

Date _____

**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment and Third Party hardware or equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other ES&S proprietary equipment as set forth on Exhibit B and leased/purchased by Customer through a separate third party lease/purchase agreement.
- d. "ES&S Firmware" means ES&S' proprietary software which is included on ES&S' Equipment.
- e. "ES&S Hardware Maintenance Services" and "ES&S Software License, Maintenance and Support Services" means those services described on Exhibit F.
- f. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- g. "Software" means ES&S Software and Third Party software.
- h. "Third Party Items" means hardware, equipment and software manufactured and developed by parties other than ES&S and leased/purchased by Customer through a separate third party lease/purchase agreement.

**ARTICLE 2
LICENSE OF ES&S SOFTWARE**

2.1 **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time employees to use the Equipment, Software and Documentation supplied by ES&S. The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The license does not permit Customer to take any of the following actions:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Equipment or Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Equipment, Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S Equipment, ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or

c. Cause or permit any change to be made to the Equipment or Software without ES&S' prior written consent.

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Equipment or Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.2 **License Fees.** In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.1, Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A. Any license or royalty fees payable to any Third Parties for the use of any Third Party Items are the sole responsibility of Customer.

2.3 **Term of Licenses.** The licenses granted in Section 2.1 shall commence upon the delivery of the ES&S Software described in Section 2.1 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.1, 2.2, or 3.6 with respect to, such license. Upon the termination of either of the license granted in Section 2.1 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.4 **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any third party items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the

Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software License and Maintenance and Support described on Exhibit F if it has so elected in Section B of the signature page to this Agreement.

2.5 **Compliance with Laws.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the Equipment and Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in the Customer's state.

2.6 **State Recertifications.** In the event that any future state certifications or recertifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the Equipment licensed set forth hereunder, Customer shall be responsible for:

- (i) the total cost of any Third Party Items that are required in order for the Equipment and/or Software to remain certified;
- (ii) Customer's pro-rata share of such future state certification or recertification costs; and
- (iii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Equipment and/or Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 2.6(ii) and 2.6(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software set forth under this Agreement.

ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss.** ES&S anticipates shipping the Equipment and Software identified on Exhibits B-D to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification, and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer. The parties shall conduct and complete, within thirty (30) days after delivery, the equipment and software installation procedures outlined on Exhibit G to confirm that the ES&S Equipment and ES&S Software are installed and performing in accordance with the warranties set forth in Sections 3.2(a) and 3.2(b) below (the "ES&S Equipment and ES&S Software Installation"). Upon completion of the ES&S Equipment and ES&S Software Installation, representatives of both parties will execute the "Certificate of Completed ES&S Equipment and ES&S Software Installation" included at Exhibit G.

3.2 **Warranties.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a 1-year period commencing upon delivery (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, , PCMCIA cards or marking devices. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including, but not limited to, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) Customer has installed and is using the most recent Update, provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

b. **System.** ES&S warrants that the ES&S Equipment and ES&S Software will operate in conjunction with the Third Party Items during the Warranty Period, provided that (i) Customer has installed and is using the most recent Update, provided to it by ES&S, and (ii) the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will repair or replace the item of ES&S Equipment or ES&S Software that is causing such breach to occur. Customer acknowledges that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties") and all rights and obligations with respect to the Third Party Items flow from and to the Third Parties.

c. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' EQUIPMENT AND ES&S SOFTWARE INSTALLATION SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH REPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

3.3 **Routine Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, Customer may request that ES&S provide the Routine Maintenance Services described in Article II, Subsection 1(b) of Exhibit F for one or more units of ES&S Equipment. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit

fee for such Routine Maintenance Services is set forth on Exhibit A and shall be due within thirty (30) days after Customer's receipt of ES&S' invoice. The terms and conditions of Article II, Subsection 1(b) of Exhibit F shall govern the providing of the Routine Maintenance Services. When the ES&S Equipment is not in use, Customer shall properly store the ES&S Equipment in accordance with the storage requirements established in the Documentation. Upon termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance Services described on Exhibit F if it has so indicated in Section B of the signature page to this Agreement.

3.4 **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

3.5 **Taxes; Interest.** Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.5, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

3.6 **Proprietary Rights.** Customer acknowledges and agrees as follows:

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.7 **Indemnification.** To the fullest extent permitted under applicable law, Customer shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following:

a. Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's copyright, trademark or patent existing as of the date hereof (a "Third Party Infringement Claim") resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and

d. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software License and Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 3.7, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

3.8 **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.9 **Term; Termination.** This Agreement shall be effective on the Effective Date. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party.

3.10 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

3.11 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by

confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

3.12 Disputes.

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable.

3.13 Entire Agreement. This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing the Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Software or services, but shall remain fully responsible for such performance. The provisions of Article 2 and Sections 3.2(c), 3.4-3.9, 3.11, 3.12(b) and this Section 3.13 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

Sale Summary:										
Description	Refer to	Amount								
ES&S Software License Fees	Exhibit C	\$								
Election Support Services	Exhibit D	\$								
Shipping and Handling	Note 1	\$								
Total Net Sale		\$								
Terms & Conditions:										
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.5. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.										
Note 2: <u>Payment terms are as follows:</u> 100% of Total Net Sale Due Within Thirty (30) Business Days After delivery of the Software or the performance of the Election Support Services:										
Note 3: Services in excess of those set forth in <u>Exhibit E</u> shall be charged at the rate of \$1,575 per day, including expenses.										
Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows: <table><tr><td><u>Equipment/Software</u></td><td><u>Estimated Delivery Date</u></td></tr><tr><td>ES&S Equipment</td><td></td></tr><tr><td>ES&S Software</td><td></td></tr><tr><td>Third Party Items</td><td></td></tr></table>			<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	ES&S Equipment		ES&S Software		Third Party Items	
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>									
ES&S Equipment										
ES&S Software										
Third Party Items										
Warranty:										
ES&S Equipment and ES&S Software – Warranty Period:	1 year									
Anticipated Warranty Period: _____ to _____										
Ongoing Services:										
Description	Refer to	Annual Fee								
Routine Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 3.3	N/A								
Post Warranty Hardware Maintenance Services	Exhibit F	\$								
Services commence in _____. Fees reflect a one-year term. Payment is due at the start of the maintenance period.										
Post Warranty Software Maintenance & Support Services										
- ES&S Firmware	Exhibit F	\$								
- All Other ES&S Software	Exhibit F	\$								
Services commence in _____. Fees reflect a one-year term. Payment is due at the start of the maintenance period.										

EXHIBIT B
ES&S EQUIPMENT DESCRIPTION AND QUANTITIES

[illegible]

EXHIBIT C
ES&S SOFTWARE DESCRIPTION AND PRICING

DESCRIPTION	NUMBER OF LICENSES
Election Management System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):	
ES&S Firmware (see Notes 1 below)	
Total License Fees (including all applicable Documentation)	

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

**EXHIBIT D
THIRD PARTY ITEMS**

DESCRIPTION:

QUANTITY

TOTAL 3RD PARTY ITEMS

Note 1:

The configuration and specification of Third Party Items as per this Exhibit D are subject to change by ES&S and/or the manufacturer. Should the actual configuration and specifications differ from those set forth herein, ES&S agrees to provide, and Customer agrees to accept, Third Party Items that are comparable to those described above.

**EXHIBIT E
ELECTION SUPPORT SERVICES**

1. **Covered Elections.** The services described herein shall be provided only for the following elections (the "Elections"):

--

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the Elections set forth above, and the descriptions listed in the table below, and that a change in the Elections or descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Project Management	A project manager appointed by ES&S shall be responsible for the overall planning, communication, management and coordination of ES&S Services. This person shall be the liaison for Customer with ES&S as it pertains to all products, services and obligations set forth in the Agreement.	ES&S	\$ 1,575.00
Shipping Material Disposal	Dispose of shipping materials (boxes, packaging, etc.)	Customer	
ES&S Software and Third-Party Hardware & Software Installation	Deliver and install the ES&S Software and third party hardware and software purchased and licensed hereunder. ES&S will review and provide the Customer staff with written documentation identifying the system requirements and configurations necessary to operate the ES&S Software and third party hardware and software.	ES&S	\$1,575.00
Ballot Layout/Coding Services	Accumulate and provide all necessary election data for preparation of election data files. Assist Customer staff in creating election ballot layouts and coding files using ES&S' software.	Customer ES&S	 \$1,575.00

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Training – ES&S Software	A system overview that covers the ES&S Software licensed by Customer. Class size is limited to 10 and course participant manuals are included. (Customer will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	ES&S	\$1,575.00
Training – ES&S Equipment	ES&S will provide classroom-style training with hands-on practice with the ES&S Equipment purchased hereunder. General operations, ballot marking and tabulation procedures, log audit capability, reporting, backups and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	ES&S	\$1,575.00
Voter Awareness	Assistance provided to Customer in the design of a customized approach to introduce the ES&S voting system to the public. ES&S and Customer will work together to determine appropriate combination of public demonstration which may include the internet, video, radio, poster, newspaper, etc., that best meets the needs of Customer.	ES&S	\$1,575.00
Training – Poll Worker Train – The-Trainer	ES&S agrees to conduct Poll Worker "Train the Trainer" classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	ES&S	\$1,575.00
Pre-Election L&A Testing	ES&S will assist in the development of logic and accuracy procedures (according to State Elections Code), and assist in the actual L&A testing procedures.	ES&S	\$1,575.00

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Election Day Support	For each site support event, ES&S provides one trained representative who is available to the customer the day immediately prior to the election, Election Day and until noon on the day immediately after Election Day ("Site Support Event"). Site Support Event representatives are not technicians. Although needs vary by customer, depending upon the customer's needs and the customer's scheduling of support staff for an election, Site Support Event representatives may assist with election administration, procedural guidance, hardware and software operation, Election Day call center staffing, as a roving troubleshooter during Election Day, and election night accumulation of results. They also will liaison with ES&S support desks if necessary. Note: It is not the responsibility of the Site Support Event representatives to repair tabulation or results reporting equipment. If you have a technical issue, the Site Support Event representative will assist in contacting the technicians in the appropriate support office. Site Support Events are billed per person, per Site Support Event. The current individual rate per Site Support Event is \$4,125.	ES&S	\$1,575.00
	Total Election Support Service Days: ____ Total Fees: \$ _____		

Role/Function	Area of Work or Description	Primary Responsibility
Installation/Equipment	ES&S will unbox, assemble, and inspect the ES&S Equipment at the Customer's delivery location to ensure the Equipment is installed and operating properly and in accordance with the criterion on Exhibit G.	ES&S
	Total Installation Fees: \$ _____	

[END OF EXHIBIT E]

EXHIBIT F
HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT
SERVICES
(POST-WARRANTY PERIOD)

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit F shall in effect for the coverage period as described in Schedule E-1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit F shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit F terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit F, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software License, Maintenance and Support Services under this Exhibit F, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule F1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Maintenance Term are due on the date of the expiration of the Warranty Period. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit F or the Agreement. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Exhibit F through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Exhibit F for the ES&S equipment set forth on Schedule F1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their

Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each Twelve/Twenty four (12/24) months during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule F1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule F1 as "depot repair only" shall only be provided pursuant to Section 1(b) below.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule F1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant

to Subsection 1(c)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective twelve (12) month period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective twelve (12) month period with such Initial Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

g. **Parts Availability.** In the event that ES&S is unable to procure such parts in sufficient quantities or at prices acceptable to ES&S, ES&S may terminate this Agreement in accordance with Article I, Section 1 above and this Agreement shall be of no further force and effect thereafter.

ARTICLE III **SOFTWARE**

1. **Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively,

"ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Article 2 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule F1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Article 2, Section 2.5 of the General Terms.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Exhibit F. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5. **Reinstatement of Software License and Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, including a reinstatement charge, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

Schedule F1

PRICING SUMMARY AND PAYMENT TERMS

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$
ES&S Firmware License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$
Total Maintenance Fees for the Initial Term:		\$
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: <u>Invoicing and Payment Terms are as Follows:</u>		
\$ due upon Contract Execution for the Coverage Dates of ***** through *****. \$ due on or before ***** for the Coverage Dates of ***** through *****		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term:

Qty	Description	Coverage Period (Note: *** Indicates Depot Repair Only)	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
			\$	\$
			\$	\$
			\$	\$
Total Maintenance Fees for the Coverage Period *****through*****				\$
Total Hardware Maintenance Fees for the Initial Term				\$

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12/24month period shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location:

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

Note 5: Upon expiration of the Initial Term, this Exhibit E shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under this Exhibit F

1. Telephone support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). The inspection includes:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective parts with new or remanufactured federally and state certified parts.

- Conducting a final test to verify that the unit is working according to manufacturer's specifications.
- Use of a checklist tailored for each piece of ES&S Equipment.
- Update of maintenance records which are kept by serial number and available to the Customer through the Customer's ES&S Web-based portal.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.
 - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

Note: Except for those Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES

Initial Term:

Listed below are the Software Modules and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
			\$
			\$
Total License, Maintenance and Support Fees for the Coverage Period *****through*****			\$
Total Software License, Maintenance and Support Fees for the Initial Term			\$

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
			\$	\$
			\$	\$
			\$	\$
Total License, Maintenance and Support Fees for the Coverage Period *****through*****				\$
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change consumable items, Any other changes made by the customer must be pre-approved in writing by ES&S.
 - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer voter registration system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
9. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.

EXHIBIT G
ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS200

Date: _____ **Machine SN:** _____ **Certified Firmware:** _____

Visual Inspection:

- ☐ Ensure that there are no scratches or gouges on any part of the unit
- ☐ Verify that all labels are placed in their appropriate place and in their correct orientation
- ☐ Ensure the Printer paper roll is installed in the Printer.

Physical Inspection:

- ☐ Apply AC to Wall Power Adapter. Connect Wall Power Adapter to the back of the unit and press the "POWER" button.
- ☐ Observe the rear LED, located next to the Wall Power Adapter Cord Connector, if the LED is amber and blinking slowly this indicates that the Battery Pack is charging. If the LED is a solid green, the Battery Pack is completely charged.
 - Verify AC Plug Icon is present and does not have an "X" located in upper right corner of the screen.
- ☐ Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
 - Touch the two circles (one in the Upper Left Corner and one in the Lower Right Corner of the screen) and then touch the "Save & Exit" button.
- ☐ Verify the **DS200 Firmware Version** is _____; **PMB** is _____; **Scanner** is _____ on Startup Printout.
- ☐ Insert the 512MB Flash Drive containing the BMW Demo Election in USB port B.
 - When the unit recognizes the 512MB Flash Drive w/ Demo Election, the Election Icon will go from having an "X" to a green ✓ mark on it.
- ☐ Check the date and time on the top portion of the display to ensure the date and time is correct.
 - If a change is needed, press the lower right arrow on the display screen then press the "go to admin button" and on the next screen enter the password.
 - Go to "systems settings", "date and time" and then press date or time and a keyboard will come up so you can make changes. Press the "enter key". You will go back to the original screen where you will press previous and here you will "accept new time."
- ☐ Press the "OPEN POLLS" button on the screen to scan the BMW Demo Ballots.
- ☐ Ensure that the test ballots scan in all four orientations.
- ☐ Insert the 2 Demo Ballots to check the Multi-Sheet Sensor. Two sheets should be rejected.
- ☐ Press and hold the "CLOSE POLLS" button for two seconds to close the polls.
- ☐ Verify that the Precinct Report Printout should read 4 ballots cast.
- ☐ Disconnect the Wall Power Adapter cord from unit.
 - Unit should continue to operate, and the X should appear over the AC icon.
- ☐ Re-connect Wall Power Supply cord
 - The X should disappear from the AC icon.

- ☐ Check Modem Operation. (If Unit is equipped with a Modem)
- ☐ Power down the unit by touching the "Shutdown" button on the Touch Screen.
- ☐ Verify that the Display switch operates correctly by completing the following:
 - With the Wall Power Adapter still connected to the unit, lower the Display to the closed position.
 - Raise the Display back to the opened position.
 - The unit should power back up.

Note: The Display switch will not operate if the Wall Power Supply cord has been removed.

- ☐ Verify all Locks and Doors have a smooth function and are locked.

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS450

Date: _____ Machine SN: _____ Location: _____

Visual Inspection:

- ☐ Insure that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Printer paper roll installed

Physical Inspection:

- ☐ Power up on D/C
- ☐ Firmware Version _____ Power Management _____ Scanner _____
- ☐ Rear LED and Power Icon check when A/C applied
- ☐ Display switch operation
- ☐ Date and time
- ☐ Touch Screen Calibration
- ☐ Election Icon
- ☐ OPEN POLLS
- ☐ Ballots scan in all four orientations (DAC and All-Fill)
- ☐ Multi-Sheet Sensor.
- ☐ CLOSE POLLS
- ☐ Precinct Report Printout, verify results
- ☐ Power down by Shutdown button on screen
- ☐ Locks and Doors have a smooth function and are locked.

Inspector: _____

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS850

Date: _____ Machine SN: _____ Location: _____

Visual Inspection:

- ☐ Insure that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Printer paper roll installed

Physical Inspection:

- ☐ Power up on D/C
- ☐ Firmware Version _____ Power Management _____ Scanner _____
- ☐ Rear LED and Power Icon check when A/C applied
- ☐ Display switch operation
- ☐ Date and time
- ☐ Touch Screen Calibration
- ☐ Election Icon
- ☐ OPEN POLLS
- ☐ Ballots scan in all four orientations (DAC and All-Fill)
- ☐ Multi-Sheet Sensor
- ☐ CLOSE POLLS
- ☐ Precinct Report Printout, verify results
- ☐ Power down by Shutdown button on screen
- ☐ Locks and Doors have a smooth function and are locked.

Inspector: _____

**ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION
EXPRESSVOTE**

Date: _____ (Format: mm/dd/yy) **Machine SN:** _____ **Location:** _____

Visual Inspection:

- ☐ Confirm that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Verify that the battery is installed
- ☐ Inspect all fasteners and plastic parts

Setup:

- ☐ Place the ExpressVote on level surface.
- ☐ Connect to A/C power
- ☐ Unlock left side access door, flip power switch to ON position
- ☐ Connect navigation keypad to RJ port near power switch
- ☐ Insert USB stick containing the EQC data and enter code when prompted
- ☐ Insert USB stick containing sample Election Data and enter code when prompted.

Print Testing:

- ☐ Insert a ballot activation card and begin voting following instructions on screen
- ☐ Insert additional activation cards to test each ballot configuration in the election.
- ☐ Review printed card for complete, dark print
- ☐ Reinsert voted card and review summary to confirm scanner is working properly

Audio Testing:

- ☐ Plug in audio headset to listen to audio
- ☐ Verify audio can be heard throughout the voting process
- ☐ Use the triangular navigation buttons to navigate the ballot
- ☐ Press the Repeat key, Tempo and volume buttons to confirm all operations.
- ☐ Activate all buttons to confirm navigation keypad is fully operational

Inspector: _____

Attach printed paper records from ExpressVote to this checklist.

EXHIBIT G
ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

CERTIFICATE OF COMPLETED ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

The undersigned do hereby certify that the ES&S Equipment listed below has been installed under the criteria specified in the Agreement. Serial Numbers of respective Equipment are attached.

DS200 Units	DS450 Units	DS850 Units	ExpressVote Units
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>
<u>Units Installed</u>	<u>Units Installed</u>	<u>Units Installed</u>	<u>Units Installed</u>

Firmware Version: _____

Customer: _____

Representative: _____
(Printed Name & Title)

(Signature)

ES&S
Representative: _____
(Printed Name)

(Signature)

Date: ____/____/____

[END OF EXHIBIT G]

**NATIONWIDE CAPITAL, LLC
EQUIPMENT LEASE PURCHASE AGREEMENT**

This Equipment Lease Purchase Agreement ("Agreement") is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

BETWEEN: **Nationwide Capital, LLC** ("Lessor");

AND: _____ ("Lessee").

RECITALS:

A. Lessor hereby agrees to lease to Lessee and Lessee agrees to lease from Lessor, in accordance with the **GENERAL TERMS** of this Agreement which are attached hereto, certain equipment as set forth herein for use in Lessee's conduct of elections in _____ ("Jurisdiction").

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

_____ Exhibit A (Equipment Description & Quantities)

_____ Exhibit B (Schedule of Payments & Option Purchase Price)

_____ Exhibit C (Certificate of Acceptance & Insurance)

_____ Exhibit D (Certificate of Appropriations and Authority)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Nebraska**, without regard to conflicts of law principles that would require the application of the laws of any other state. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State of Nebraska, County of Douglas.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, has had an opportunity to review this Agreement with legal counsel, understands it and intends to be bound by it.

NATIONWIDE CAPITAL, LLC
11128 John Galt Boulevard, Suite 200
Omaha, NE 68137
Fax No.: (402) 970-1291
Email: _____

Fax No.: _____
Email: _____

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

EQUIPMENT LEASE PURCHASE GENERAL TERMS

1. **Agreement to Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, in accordance with the terms and provisions of this Agreement, the equipment described on Exhibit A attached hereto, together with all attachments, replacements, substitutions, proceeds, additions, accessions, repairs and accessories incorporated therein or affixed thereto (collectively, the "Equipment"). The Equipment shall remain the sole and exclusive property of Lessor, and Lessee shall have no right, title or interest in the Equipment except the right to use the same, subject to the terms and conditions of this Agreement.

2. **Term.** The term of this Agreement shall commence upon the Effective Date and shall continue until the end of the term as set forth on Exhibit B ("Term").

3. **Payments.** Lessee hereby agrees to pay to Lessor all sums due and owing hereunder on or before the dates on which the same are due and payable as set forth in Exhibit B attached hereto ("Lease Payments"). In the event that any Lease Payments or any other sums due and owing under this Agreement are not paid within five (5) days from the due date, Lessor may assess a delinquency fee ("Late Charge") on each delinquent Lease Payment in an amount not exceeding the greater of (i) \$500.00 or (ii) five percent (5.00%) of each such Lease Payment. Lessor may apply payments received from Lessee in satisfaction of sums accrued hereunder in such order as Lessor may, in its sole discretion, determine. Acceptance of payment that does not include all accrued Late Charges, expenses, and interest shall not constitute a waiver of Lessor's right to collect the same at a later date. Lessor may also exercise each and every right and remedy available to Lessor upon the occurrence of an Event of Default hereunder. All such Lease Payments shall be payable to Lessor at its address set forth herein or at such other address as Lessor may provide to Lessee. If Lessee fails to pay any Lease Payment or any other amount due hereunder within ten (10) days after the due date thereof, Lessee shall pay to the Lessor interest on such late payments from the due date until paid at the highest rate permitted under applicable law.

4. **Option to Purchase.** Provided Lessee has complied with all terms and conditions of this Agreement and is not otherwise in default hereunder, Lessee shall have the option to purchase all, but not less than all, of the Equipment from Lessor which is then subject to this Agreement on an "AS IS, WHERE IS" basis without warranty by Lessor for the Option Purchase Price set forth in Exhibit B.

Lessee shall provide Lessor with written notice not less than **one hundred and twenty (120)** days prior to the date specified in Exhibit B for the exercise of such purchase option. In the event that Lessee does not exercise its option to purchase the Equipment, Lessee shall return the

Equipment to Lessor in accordance with Section 18 below. In the event that Lessee does exercise its option to purchase the Equipment, Lessor shall provide Lessee with a bill of sale for the Equipment and Lessee shall be deemed to have acquired all right, title and interest in and to the Equipment, free of any lien, encumbrance or security interest except such liens, encumbrances or security interests as may be created, or permitted and not discharged, by Lessee, but without any other warranties.

5. **Lessee's Representations and Warranties.** Lessee hereby represents, warrants and agrees as follows:

a. That all requirements for execution, delivery and performance of this Agreement have been or will be complied with in a timely manner;

b. That Lessee has the necessary power and authority to contract for the Equipment contemplated herein as necessary requirements to accomplish each of the foregoing;

c. That Lessee and its Jurisdiction have both waived any immunity (if such immunity was otherwise allowed) from allowing Lessor to enforce the terms of this Agreement;

d. That all payments hereunder have been and will be duly authorized and paid when due out of funds then on hand and legally available for such purposes. Lessee shall, to the extent permitted by applicable law and in accordance with the terms and conditions of this Agreement, include in its budget for each successive fiscal period during the term of this Agreement a sufficient amount to permit Lessee to discharge all of its obligations hereunder and Lessee has budgeted and made available for the current fiscal period sufficient funds to fully comply with its obligations hereunder;

e. That Lessee has an immediate need for and expects to make immediate use of the Equipment which need is not temporary or expected to diminish in the foreseeable future, specifically, Lessee will not give priority or parity in the appropriation of funds for the acquisition or use of any additional property for purposes or functions similar to those of the Equipment;

f. That Lessee will not attach or affix the Equipment to real property in any manner, and the Equipment shall, in all events, remain personal property;

g. That Lessee will not sell, offer to sell, lease, rent or otherwise transfer or hypothecate the Equipment or any interest therein;

h. That Lessee will keep the Equipment free from any adverse lien, security interest, claim or encumbrance and in

good order and repair and shall notify Lessor immediately of any attachment or other judicial notice affecting the Equipment and shall indemnify and hold harmless Lessor from any loss or damages caused thereby;

i. That Lessee will permit Lessor to examine and inspect the Equipment at any reasonable time at any building or place where the Equipment is located; and

j. That all parts, replacements, additions and substitutions to or for any Equipment shall immediately become part of the Equipment and the property of Lessor.

6. **Lessee's Waivers.** To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon a Lessee by the UCC, including, but not limited to, Lessee's rights to: (a) cancel or terminate this Agreement except as set forth herein; (b) repudiate this Agreement; (c) reject the Equipment; (d) revoke acceptance of the Equipment; (e) recover damages from Lessor for any breaches of warranty or for any other reason, including but not limited to any claim for implied warranties of infringement, merchantability, or fitness for a particular purpose; (f) require Lessor to accept any risk of loss; (g) a security interest in the Equipment in Lessee's possession or control for any reason; (h) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this Agreement; (i) accept partial delivery of the Equipment; (j) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for those due from Lessor; (k) recover any general, special, incidental, or consequential damages, for any reason whatsoever; and (l) specific performance, replevin, detinue, sequestration, claim and delivery or the like for any Equipment described in this Agreement.

To the extent permitted by applicable law, Lessee also waives any rights conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages, or which may otherwise limit or modify any of Lessor's rights or remedies.

7. **Use of Equipment.** Lessee shall be responsible for the payment of all operating expenses associated with the Equipment. Lessee shall use the Equipment only for its proper purposes and will not install, use, operate or maintain the Equipment improperly, carelessly or in violation of any applicable law, ordinances, rules or regulations of any governmental authority or in a manner contrary to the nature of the Equipment or the use contemplated by the manufacturer. Lessee shall keep and use the Equipment solely within the Jurisdiction and solely for the conduct of Lessee's operations. Concurrently with the execution of this Agreement, Lessee shall enter into that certain Voter Tabulation System and Services Agreement (End User Customer), by and between Lessee and Election Systems & Software, LLC. Lessee shall be solely responsible for the payment of all transportation charges in the delivery of the Equipment to and from the Lessee's locations.

8. **Maintenance of Equipment.** Lessor shall not be responsible or obligated to make any repairs, replacements or provide maintenance on the Equipment. At its sole and separate expense and in accordance with the terms and conditions of that certain Services and Support Agreement of even date herewith between Lessee and Election System & Software, LLC, Lessee shall arrange for all services, repairs and maintenance to the Equipment which may be necessary to keep the Equipment in such condition, normal wear and tear excepted, as when delivered to the Lessee hereunder and to maintain the Equipment as recommended by the manufacturer. All such replacements shall be free and clear from all liens, encumbrances and claims of others and shall become part of the Equipment and subject to the terms of this Agreement. Lessor may, at its option, perform the foregoing items as may be necessary to preserve the Equipment and charge all costs and expenses associated with the Lessor's performance of such maintenance to the Lessee which shall be in addition to any other payments due by Lessee hereunder.

9. **Changes to the Equipment.** Any parts, replacements, additions and substitutions or other items installed or placed in or on or attached to the Equipment shall become the property of the Lessor unless Lessor requests that Lessee remove such features prior to returning the Equipment at the end of the term of this Agreement. In the event that the Equipment is damaged due to Lessee's removal of such items, Lessee shall be responsible, at its sole expense, for repairing such damage. Except as set forth herein, Lessee shall not, without the prior written consent of the Lessor, make any alterations, modifications, changes or improvements to the Equipment unless such changes are required to maintain Federal and/or State certification.

10. **Damage or Destruction to Equipment.** Lessee shall bear the entire risk of loss for any damage, theft or destruction of the Equipment from any and every cause whatsoever and no loss, damage, theft or destruction or other event shall release Lessee from its obligations to pay the full amount of the Lease Payments or from any other obligation under this Agreement. Lessee shall promptly notify Lessor in writing of any loss, theft, damage to or destruction of the Equipment, and Lessee shall (a) promptly replace, at Lessee's expense, the same in good repair, condition and working order or (b) if the Equipment is damaged or destroyed beyond repair or lost by theft, immediately pay to Lessor all remaining amounts due and owing pursuant to this Agreement, including, but not limited to, the Option Purchase Price as set forth on Exhibit B.

11. **Insurance.** Lessee, at its option, shall (a) be self insured with regard to the Equipment or (b) purchase and maintain insurance with regard to the Equipment. Lessee shall indicate on the Certificate of Acceptance its election to be self-insured or insured by a company with regard to the property set forth on Exhibit B. Regardless of Lessee's choice of insurance hereunder, during the term of the Agreement, Lessee shall, at its own cost and expense, provide, maintain and pay for casualty insurance against

the loss, theft or damage to the Equipment for the full replacement value. In addition Lessee shall, at its own cost and expense, provide, maintain and pay for comprehensive liability insurance coverage insuring against such risks including injury and death to any person and damage to any property owned by third parties with coverage as are customary for lessees of property similar in nature to the Equipment being leased hereunder. If insurance policies are to be provided by an insurance company, such insurance company shall be authorized to do business in the State where the Equipment is located and shall name Lessor as an additional insured. All insurance policies shall contain the insurer's agreement to give thirty (30) days' written notice to Lessor before cancellation of any policy of insurance. Lessee shall deliver the policies or copies thereof or certificates of insurance to Lessor. If Lessee fails to provide insurance or if any insurance obtained by the Lessee is cancelled or lapses or is discontinued for any reason, Lessor shall be entitled to insure the Equipment with insurance comparable to the insurance required hereunder. Insurance proceeds from casualty losses shall be payable solely to Lessor. As set forth in Section 10, insurance proceeds received by Lessor shall be paid to Lessee at such time as Lessee has provided satisfactory proof that such repairs or replacements have been completed. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, execute and endorse all documents, checks or drafts in connection with any insurance claim.

12. **Indemnification.** To the fullest extent permitted by law, Lessee shall indemnify and hold Lessor, its agents, employees, officers and directors harmless from and against any and all claims, losses, liabilities, damages, judgments, suits, damages, penalties, costs and expenses and all legal proceedings of any nature whatsoever, including, but not limited to, negligence, tort and strict liability, and any and all costs and expenses in connection therewith, including attorney fees, arising out of or in any manner related to, the manufacture, purchase, financing, ownership, delivery, rejection, non-delivery, possession, use, transportation, storage, operation, maintenance, repair, return or other disposition of the Equipment, or with this Agreement, including without limitation, claims for injury to or death of persons and for damage to property. Lessee shall immediately give Lessor written notice of any such claim or liability.

13. **No Warranties.** Except for representations, warranties, and service agreements relating to the Equipment made or entered into by the manufacturer, developer or supplier, all of which are hereby assigned to Lessee, Lessee acknowledges and agrees as follows: (a) Lessor is not the manufacturer, developer or supplier of the Equipment or the manufacturer's or developer's agent or a dealer therein; (b) the Equipment is of size, design, capacity, description and manufacture selected by the Lessee; (c) Lessee is satisfied that the Equipment is suitable and fit for Lessee's purposes; (d) LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR

REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE TITLE, FITNESS, CONDITION, MERCHANTABILITY, DESIGN, DELIVERY, INSTALLATION OR OPERATION OF THE EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, AND LESSOR HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH WARRANTIES; (e) THE EQUIPMENT IS LEASED ON AN "AS IS" BASIS, "WITH ALL FAULTS"; and (f) Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature, direct, consequential or otherwise, caused directly or indirectly by any Equipment leased hereunder, or by any delay or failure to provide delivery, installation, maintenance, repairs, service or adjustment by the manufacturer, developer or supplier. No defect in or unfitness of the Equipment shall relieve Lessee of the obligation to pay any Lease Payments hereunder or perform any other obligation under this Agreement. Lessor shall have no obligation under this Agreement with respect to the Equipment, including any obligation to install, test, adjust, service or maintain the Equipment. Lessor agrees, as long as no Event of Default (as defined in Section 14 hereof) shall have occurred, Lessor will permit Lessee to enforce in Lessee's own name, and at Lessee's sole expense, any supplier's or manufacturer's warranty or agreement relating to the Equipment, to the extent that such warranty or agreement is assignable.

14. **Events of Default.** An Event of Default shall occur hereunder if Lessee: (a) fails to pay any amount due hereunder when due, and such failure continues for a period of five (5) days; (b) fails to perform or observe any other covenant, condition or agreement to be performed or observed by Lessee hereunder, or either breaches any representation or provision contained herein; (c) attempts to remove, sell, transfer, encumber, part with possession, or sublet any item of Equipment or assign Lessee's rights or duties hereunder or permit the Equipment or any part thereof to be used by anyone other than Lessee or Lessee's employees and agents; (d) institutes insolvency, bankruptcy or reorganization proceedings, or such proceedings are instituted against Lessee, or Lessee makes a general assignment for the benefit of, or enters into any composition or arrangement with creditors; (e) shall create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any nature whatsoever upon, affecting or relating to the Equipment or this Agreement; (f) performs or fails to perform any other act, as a result of which Lessor deems itself insecure or deems any of its Equipment to be in jeopardy; or (g) has made any warranty, representation or statement which is false in any material respect when made or furnished.

15. **Remedies.** Upon the occurrence of any Event of Default, Lessor may, with or without canceling or terminating this Agreement, in its sole discretion, do any one or more of the following: (a) accelerate all sums due and owing or to become due and owing hereunder for the

full term of the Agreement, including the Option Purchase Price. Lessee shall be responsible for all costs and expenses incurred by Lessor; (b) institute suit against Lessee to enforce performance by Lessee of the covenants, terms and provisions of this Agreement; (c) require the Lessee to assemble the Equipment and make the Equipment available to Lessor at a place designated by Lessor at Lessee's sole cost and expense; (d) enter upon any premises where any of the Equipment is located without notice, demand, a court order or any other legal process and repossess any or all such Equipment. Lessee hereby waives any resulting damages therefrom and shall be responsible for all costs and expenses associated with repossessing the Equipment; (e) sell the Equipment at a public or private sale or relet the Equipment. In such event, if the proceeds of such sale are less than the sum of (i) the costs of repossession, sale, relocation, storage, reconditioning, reletting and installation, including reasonable attorney's fees, (ii) the unpaid Lease Payments outstanding plus the then-applicable Option Purchase Price calculated from Exhibit B as of the last preceding Lease Payment Date set forth in Exhibit B, and (iii) any past due amounts hereunder (plus any interest on such unpaid principal balance at the rate set forth herein), all of which shall be paid to Lessor and Lessor shall retain all such proceeds and Lessee shall remain liable for any deficiency; (f) exercise any other right or remedy which may be available to it under any applicable law. In such event, Lessee shall be liable for any and all costs and expenses incurred by Lessor in connection therewith, including, but not limited to reasonable attorney's fees, court costs and disbursements, repossession costs, storage costs, recondition costs and reselling costs, subject to applicable laws.

16. **Non-Cancelable; Obligations Unconditional.**

Except as specifically set forth in Section 18 below, this Agreement cannot be cancelled or terminated by Lessee. Lessee agrees that Lessee's obligations to pay all amounts due and perform all other obligations hereunder shall, in any and all events be absolute, irrevocable, unconditional and independent and shall be paid and performed without abatement, deduction or offset of any nature whatsoever.

17. **Non-Appropriation.** Lessee agrees that the responsible financial officer of Lessee or such other individual who has authority to budget funds for the continuation of this Agreement shall do all things lawfully within his or her power to obtain and maintain funds from which the Lease Payments may be made, including making provisions for such Lease Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. In the event funds for the succeeding fiscal period are not able to be obtained after the exhaustion of all efforts herein, Lessee may terminate this Agreement at the end of any fiscal period during the term of the Agreement by providing written notice to Lessor no later than **one hundred and twenty (120)** days prior to the first day of such fiscal period

for which appropriations are not unable to be made. The failure by the Lessee to obtain the appropriation of funds for the full amount necessary to make the required payments hereunder in any fiscal period subsequent to the current fiscal period shall terminate all of the Lessee's rights hereunder, including any and all rights in the Equipment effective on the last day of the last fiscal period in which appropriations were properly made.

18. **Termination; Return of Equipment.** Provided Lessee has not exercised the purchase option as set forth in Section 4, this Agreement shall terminate upon the expiration of the term or any earlier termination as specifically set forth in this Agreement. Upon the expiration or earlier termination of this Agreement, Lessee shall promptly, at its sole expense, assemble and return the Equipment to locations designated by Lessor. Lessee will also return to Lessor all manufacturer warranty agreements, maintenance records and other documents relating to all of the Equipment. If Lessor takes possession of any equipment not subject to its interests, it shall notify Lessee and may dispose of such equipment if Lessee fails to take possession within thirty (30) days. If any item of Equipment is not returned in at least as good and repair as when delivered to Lessee, ordinary wear and tear excepted, Lessee shall pay to Lessor, within five (5) days after receipt of written notice from Lessor, an amount to repair and recondition such item of Equipment to restore it to good working condition and appearance in accordance with the manufacturer's documentation.

19. **Services and Support Agreement.** The terms and conditions respecting software licensure, delivery, warranties, hardware and software maintenance and support services are set forth in that certain Services and Support Agreement of even date herewith between Lessee and Election Systems & Software, LLC.

20. **Assignment.** Unless Lessee receives Lessor's prior written consent, Lessee shall not (a) assign, transfer, pledge, hypothecate, grant any security interest in, subcontract, delegate any of its rights, duties and obligations, or otherwise dispose of this Agreement or the Equipment or any interest in the Agreement or Equipment, or (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign or transfer this Agreement or Lessor's interest in the Equipment without notice to Lessee. Any assignee of Lessor shall have all of the rights of Lessor under this Agreement, and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim, or offset that Lessee may have against Lessor.

21. **Security Interest.** Lessee agrees that this Agreement shall constitute an authenticated security agreement and that the Equipment and all of Lessee's right, title and interest in and to this Agreement are subject to a security interest for the benefit of Lessor upon the terms and conditions set forth herein and shall secure (a) payment and performance of all of Lessee's obligations

under this Agreement, and (b) to the extent permitted by law, all indebtedness at any time due and owing by Lessee to Lessor or Lessor's assignees. Lessee further assigns to Lessor all of Lessee's right, title and interest in and to this Agreement to secure (a) payment and performance of all of Lessee's obligations under this Agreement, and (b) to the extent permitted by law, any and all indebtedness, however evidenced, at any time due and owing by Lessee to Lessor. Lessee hereby authorizes Lessor to file financing statements or other documentation, and Lessee hereby agrees to take such other and further action as may be required by Lessor to maintain and perfect such security interests. Lessee hereby acknowledges and agrees that, by filing any financing statements as allowed by this Section 22, Lessor has not transferred any title to the Equipment to Lessee except for the leasehold rights as set forth herein; rather, such financing statements (i) shall perfect Lessor's security interest in Lessee's rights under this Agreement and (ii) shall be precautionary to give notice to third parties of Lessor's continuing title to the Equipment.

22. **Lessor's Right to Perform.** If Lessee fails to make any payment or to perform any obligation imposed on Lessee under this Agreement, Lessor may make any such payment or perform any such obligation. The amount of any such payment and Lessor's costs and expenses, including, without limitation, reasonable attorney fees and expenses, shall immediately be payable by Lessee to Lessor upon demand. Such sums shall bear interest as set forth herein, from the date of payment by Lessor.

23. **Usury.** Notwithstanding any provision contained herein to the contrary, if this Agreement should be construed, for any reason, to be subject to the usury laws of any state, in no event shall interest or any other fee or charge accrue or be payable in excess of the highest lawful rate. If, from any circumstance whatsoever, amounts payable hereunder exceed the limit prescribed by law, such amounts shall be reduced to the maximum amount permitted by applicable law, and if from any circumstance the holder hereof shall ever receive as interest or other fees an amount which would exceed the highest lawful rate, such excess shall be applied to the reduction of the unpaid balance due hereunder and not to the payment of interest or such fees, or if such excess exceeds the unpaid balance, such excess shall be refunded to Lessee. This provision shall control every other provision of all agreements between the undersigned and the holder hereof.

24. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by commercial overnight courier (with written verification of receipt) or (c) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or email address set forth on such signature page unless other names or addresses are provided by either or both parties in accordance herewith.

25. **Benefit; Severability.** Except as otherwise provided herein, this Agreement shall be binding upon and shall inure to the benefit of Lessor, Lessee and their respective heirs, successors and assigns. (This reference to Lessee's assigns shall not constitute consent by Lessor to any assignment of this Agreement by Lessee.) In addition, Lessor shall have the right to at all times by notice to the Lessee, to designate or appoint any person or entity to act as agent or trustee for Lessor for any purposes hereunder. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any provision of this Agreement shall be held to be prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

26. **Waiver.** No covenant or obligations hereunder by Lessee may be waived except by the written consent of the Lessor and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the conditions giving rise to such remedy. Lessor's rights hereunder are cumulative.

27. **Entire Agreement.** Time is of the essence. This Agreement constitutes the entire understanding and agreement between Lessor and Lessee, and there are no understandings or agreements between the parties, oral or written, which are not set forth herein. This Agreement may not be amended except by written agreement authenticated by Lessor and Lessee.

[END OF GENERAL TERMS]

EXHIBIT A

EQUIPMENT DESCRIPTION & QUANTITIES

[illegible]

EXHIBIT B

SCHEDULE OF PAYMENTS & OPTION PURCHASE PRICE

Payment Number	Payment Date			Total Payment	Option to Purchase Price
	Month	Date	Year		
					\$1.00

Lease Term: _____

Payments shall be sent via wire transfer to the following account of Lessor:

[INSERT WIRE INFORMATION]

EXHIBIT C
CERTIFICATE OF ACCEPTANCE & INSURANCE

1. **Acceptance of Equipment.** In accordance with the terms of this Agreement, Lessee hereby certifies that all of the Equipment described herein as more fully set forth on Exhibit A to the Agreement (i) has been received by the Lessee; (ii) has been examined and inspected by the Lessee; (iii) has been found to be in good operating condition and operation in accordance with its documentation; (iv) has been found to be of the size, design, quality, type and manufacture as specified by the Lessee; and (v) has been found to be suitable for Lessee's intended purpose and use. Therefore, in accordance with the foregoing, Lessee hereby unconditionally and irrevocably accepts the Equipment, in the condition it was received, for all purposes of this Agreement.

2. **Use.** The primary use of the Equipment shall be for the conduct of elections in the Jurisdiction.

3. **Equipment Location.** The Equipment shall be located at the following location(s):

Location Name: _____
Address: _____
City, State, Zip: _____

4. **Invoices.** All invoices shall be sent to the following address to the attention of the individual set forth below:

Lessee Name: _____
Attention: _____
Address: _____
City, State, Zip: _____

5. **Insurance.** Lessee hereby certifies that the requisite insurance coverage as set forth in Section 11 of the Agreement has been secured and shall remain in force for the term of the Agreement. Lessee shall designate Lessor as the loss payee under such insurance coverage. Please designate the type of insurance below:

_____ Company Insured _____ Self-Insured

Insurance Company/Agent Name: _____
Insurance Company Address: _____
Insurance Company Phone Number: _____
Policy Number: _____

IN WITNESS WHEREOF, I hereby have accepted and executed this Certificate of Acceptance & Insurance on this ____ day of _____, 20__

By Lessee:

Signature: _____

Printed: _____

Title: _____

EXHIBIT D
CERTIFICATE OF APPROPRIATIONS AND AUTHORITY

I, _____, do hereby certify that I am duly elected or appointed and acting _____ of Lessee; that I have custody of the financial records and budget information of the Lessee; that all monies for the payment of all sums due under this Agreement are available for the fiscal year ending ___, 20___, are available from unexhausted and unencumbered appropriations and/or funds within Lessee's budget for such fiscal year; that appropriations and/or funds have been designated for the payment of all sums due under this Agreement that may come due in such fiscal year; and that I have the power under legislative authority to contract for the equipment and/or services acquired by Lessee as set forth herein.

IN WITNESS WHEREOF, I have duly executed this Certificate of Appropriations and Authority this ___ day of _____, 20___.

By Lessee:

Signature: _____

Printed: _____

Title: _____

1. Introduction

This Scope of Work is intended to provide eligible users with the required information for the acquisition of election hardware, software, support, services and training. Eligible users will determine specific terms of purchase, quantities, and service plans. Eligible users have no obligation to use this contract, so agreements will be made on a case by case basis, but it is anticipated that there will be a phased-in implementation of new voting equipment over a few years, beginning in early 2018.

This Scope of Work will be issued under AR2762 Voting Systems.

1.1 Background

Prior to 2005, the selection and purchase of voting equipment in Utah was the responsibility of each county, who administer elections in the State. After the 2000 Presidential Election, Congress passed the Help America Vote Act (HAVA) of 2002 that made federal funds available for states to replace voting equipment. In 2005 the State of Utah purchased new voting equipment for each county using a \$21.5 million HAVA grant, in addition to \$10 million in state funds. Although the State initially purchased the uniform voting solution consisting of all necessary equipment, ownership of the equipment was turned over to the counties.

Since the purchase occurred at the state level, the equipment used was uniform across the state. Counties received equipment in 2005, and the estimated longevity of the current equipment is approximately 10 years. The Lieutenant Governor's Office convened the Voting Equipment Selection Committee (VESC) to make recommendations to replace the aging equipment. The VESC was composed of representatives from county election offices, the Lieutenant Governor's Office, and other election experts. The group issued a Request for Proposals (RFP) in May 2017 and a subsequent RFP evaluation committee was established. The RFP evaluation committee examined and scored RFP responses, and selected ES&S for the statewide cooperative contract. ES&S provided the best value for the state.

1.2 Scope of Work

- Provide eligible users with configuration of hardware, software and services that best meets their election model, processes and budget, including:
 - Election Management System (EMS)
 - Tabulation Systems
 - Accessible Voting System
 - Training
 - Service and Maintenance
 - Peripheral systems such as ballot-on-demand printers or e-poll books, as determined by eligible users.
- Term of Contract
 - Contract period: Effective Date: 11/20/2017 Termination date: 11/19/2027
- Pricing
 - Eligible users shall negotiate exact quantities of equipment and terms of service in separate agreements, under this master agreement, with information provided in Attachment F.
 - Pricing information included in Attachment F shall be maintained for the life of the contract.

- In the event that the Utah State Legislature provides funding for new voting systems, the State would make these funds available exclusively to counties that purchase new voting Tabulation System Hardware and Accessible Voting System Hardware from ES&S. ES&S will provide an 8 percent rebate on Tabulation System Hardware and Accessible Voting System Hardware purchased by any county that uses State funds, provided that the aforementioned county purchase and take delivery of the new Tabulation System Hardware and Accessible Voting System Hardware by no later than March 31, 2021.
- In the event that State funding is not made available prior to March 31, 2021, ES&S will provide the following rebates:
 - 1-6 counties purchase ES&S equipment = 2% rebate
 - 7-14 counties purchase ES&S equipment = 4% rebate
 - 15-22 counties purchase ES&S equipment = 6% rebate
 - 23-29 counties purchase ES&S equipment = 8% rebate
- All rebates described in the two bullet points above are to be provided retroactively contingent on sales and related deliveries completed by March 31, 2021.
- Warranty
 - The specific details regarding warranty is set forth in Attachment A.
 - New releases or upgrades to be provided at no additional charge during the term of the warranty shall include coming releases of the EMS that support the electronic adjudication of ballot images, where ballot exceptions may be corrected within the software by an adjudication team, and that generates a new Cast Vote Record based on changes made and tracked by the user.
 - The release of EVS 6.0.0.0 to include this feature must have completed testing by a laboratory that has been accredited by the United States Election Assistance Commission to test voting equipment by April 30, 2018.
 - ES&S shall provide training and procedures for using this upgraded feature beginning in January 2018.
 - Milestone guarantee
 - ES&S has agreed to make adjudication software available to all authorized State of Utah users no later than April 30, 2018. This includes complying with all applicable State of Utah certification requirements which are in effect as of the effective date of this Agreement (AR2762 Voting Systems). If ES&S is unable to complete this requirement by April 30, 2018, ES&S will compensate the State of Utah \$5,000.00 for every business day that the adjudication software is not available after this deadline, up to a maximum of \$1,000,000.00. These funds will be held in trust by the Lieutenant Governor's Office and will be used to assist all those counties who have already adopted the system and those that will be purchasing the system in the future. Notwithstanding the foregoing, ES&S shall not be assessed any amounts hereunder in the event the State of Utah fails to certify ES&S' adjudication software due to an act, error or omission by the State of Utah or a force majeure event, provided ES&S submits its adjudication software to the State of Utah for approval on or before April 30, 2018 and such ES&S adjudication software complies with the State of Utah certification requirements which are in effect as of the effective date of this Agreement (AR2762 Voting Systems).
- Implementation Plan

- ES&S will continuously provide an available project manager, sales manager and account manager for the duration of the contract.
- ES&S will work with eligible users to develop a Project Plan detailing clear responsibilities including, but not limited to:
 - Project Kickoff meeting:
 - First step in the initial task and timeline planning from delivery to your first Election use.
 - Review of existing processes and systems
 - Discuss the transition from existing or previous voting system.
 - Project Planning:
 - Creation of the Work Breakdown Structure (WBS) for all major deliverables
 - Develop Communications Plan to ensure the lines of communication remain open and clear.
 - Training of all hardware and software components
 - Logic and Accuracy testing routines
 - Poll Worker Training Best Practices
 - Support for pre-Election, Election Day, and post-Election
 - Delivery, Installation and Acceptance Testing
 - ES&S shall ship the equipment and software on or before the delivery date agreed to by eligible user.
 - ES&S shall install all hardware and assist with acceptance testing, as requested.
 - The parties shall conduct and complete, within thirty (30) days after delivery, the equipment and software installation procedures outlined on Attachment E to confirm that the ES&S Equipment and ES&S Software are installed and performing in accordance with acceptance criteria mutually agreed upon by the parties.
 - The warranty period begins upon completion of acceptance testing by eligible users.
 - Training as outlined in ES&S response to RFP WA17018, section 3.18.8.
 - Monitoring and Controlling the Project
 - Routine status meeting check-ins with all key personnel and stakeholders
 - Updated Status Reports detailing the progress on all agreed upon tasks, deliverables and milestones defined in the project plan
 - Creation of and Continuous Review of the Action Item List
 - Risk Assessment and Issue Mitigation
 - Continued partnership and open lines of communication to ensure we achieve the State of Utah's and the County's 100% satisfaction throughout the entire implementation.
 - Closing the project
 - Review of all phases of the project
 - Lessons Learned for future elections such as any change in Election Day processes
 - Discuss additional training needs
 - Detailed follow up on any outstanding items.

- The project milestones, tasks and deliverables will be detailed in the Project Plan and include a timeline of events.
- Disposal of old equipment
 - ES&S will provide a trade-in value for the old equipment (outlined in Attachment B) and dispose of old equipment on or before delivery of the new equipment.
- Maintenance and Support Plan selected by eligible user, with pricing outlined in Attachment B.
- Sole owner and custodian
 - The State of Utah or Eligible User will be sole owner and custodian of all election-related State of Utah or Eligible User data in the system purchased and must have the unrestricted right to access and use this data without interference by or assistance from ES&S.
- Escrow
 - ES&S maintains in escrow with Iron Mountain Intellectual Property Management, Inc., a copy of all program source code developed and used for our proprietary software and firmware, as well as any changes, modifications or updates to the source code.
 - Should ES&S cease operations and become unable to maintain and support proprietary software and firmware while under an obligation to do so, the State shall have the right to obtain the source code to the extent necessary to enable the State to use ES&S' proprietary software and firmware in accordance with the terms of the final contract to be mutually agreed upon by the parties.
 - The source code will remain the property of ES&S and may not otherwise be used by the State except as set forth in the escrow agreement.

ES&S EQUIPMENT DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Three (3) 8GB Thumb Drives, Initial Annual License Fee, Shipping & Handling, and One (1) Year Warranty)	\$103,880.00 Per Unit
1	DS450 Central Scanner (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Two (2) 8GB Thumb Drives, Initial Annual License Fee, Shipping & Handling, and One (1) Year Warranty)	\$45,511.00 Per Unit
1	DS200 Tabulator (Includes Scanner, Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, 4GB Jump Drive, Shipping & Handling, and One (1) Year Warranty)	\$5,186.00 Per Unit
1	ExpressVote BMD (Includes Terminal, Soft-Sided Case, Internal Backup Battery, ADA Keypad, Headphones, 4GB Flash Drive, Shipping & Handling, and One (1) Year Warranty)	\$3,204.00 Per Unit
1	Ballot-On-Demand Compact C711 Printer	\$1,975.00 Per Unit
1	Ballot-On-Demand Laptop (Includes Initial Annual Ballot-On-Demand Software License)	\$2,820.00 Per Unit
1	Election Management Hardware (Includes One (1) Dell Optiplex 5040 MINI Desktop Workstation, Symantec Endpoint Protection, Adobe Acrobat Standard XI, One (1) Uninterruptible Power Supply (UPS) Battery Backup, One (1) OKI B432 Mono Laser Duplex Printer, One (1) Startech 6' USB Cable, One (1) Year Warranty, and Offsite Installation)	\$3,975.00 Per Unit

ES&S INITIAL ANNUAL SOFTWARE LICENSE DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	ElectionWare PYO Software License (1 – 100,000 Registered Voters in County)	\$15,395.00 Per License
1	ElectionWare PYO Software License (100,001 + Registered Voters in County)	\$24,495.00 Per License
1	Synthesized Audio Capability for PYO Customers requiring non-English languages	\$2,165.00 Per Additional Language
1	ElectionWare Reporting Software License	\$4,815.00 Per License
1	Ballot-On-Demand Software License	Included in Price of Ballot- On- Demand Laptop

ES&S IMPLEMENTATION SERVICES DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner Installation Fee (1st Unit)	\$1,925.00 Per Unit
1	DS850 Central Scanner Installation Fee (Each Additional Unit)	\$1,000.00 Per Unit
1	DS450 Central Scanner Installation Fee (1st Unit)	\$1,925.00 Per Unit

1	DS450 Central Scanner Installation Fee (Each Additional Unit)	\$1,000.00 Per Unit
1	DS200 Tabulator Installation Fee	\$115.00 Per Unit
1	ExpressVote BMD Installation Fee	\$105.00 Per Unit
1	Ballot-On-Demand Compact C711 Printer Installation Fee	\$100.00 Per Unit
1	Project Management Day	\$1,650.00 Per Day
1	Election On-Site Support Event (One (1) Person for Three (3) Days Onsite)	\$4,525.00 Per Event
1	Equipment Training Day	\$1,650.00 Per Day
1	Software Training Day	\$1,650.00 Per Day
1	Certified Technician Training	\$3,000.00 Per Technician

ES&S TRADE-IN ALLOWANCES, DISCOUNTS, AND LEASE-PURCHASE PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	TSX and OS Trade-In Allowance	(\$50.00) Per TSX Unit (Includes Trade-In Allowance for OS Units)

NOTE: Total trade-in allowance is limited to 10% of total sale before application of trade-in allowance.

Additional Discount On the condition that all Utah counties purchase new voting systems from ES&S, ES&S will provide an 8% rebate on Tabulation System Hardware and Accessible Voting System Hardware after all Utah counties purchase new voting systems from ES&S. The 8% rebate is conditioned on sales and related deliveries to all Utah counties being completed by March 31, 2021.

Lease-Purchase Pricing: ES&S's affiliate, Nationwide Capital, can provide financing to Utah counties for terms ranging from 3 to 10 years. Interest rates are dependent upon the length of the financing term and applicable rates at the time the sale transaction between ES&S and the county is consummated. Please contact your ES&S sales representative for financing options.

ES&S POST-WARRANTY MAINTENANCE AND LICENSE DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
	Gold Hardware Maintenance (Annual Onsite Maintenance)	
1	DS850 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$4,580.00 per unit, per year after 1- year warranty
1	DS450 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$3,130.00 per unit, per year after 1- year warranty

1	DS200 Gold Hardware Maintenance (Annual Onsite Maintenance)	\$210.00 per unit, per year after 1-year warranty
1	ExpressVote BMD Gold Hardware Maintenance (Annual Onsite Maintenance)	\$140.00 per unit, per year after 1-year warranty
	Silver Hardware Maintenance (Maintenance Once Every 24 Months)	
1	DS850 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$2,895.00 per unit, per year after 1- year warranty
1	DS450 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$2,170.00 per unit, per year after 1- year warranty
1	DS200 Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$170.00 per unit, per year after 1- year warranty
1	ExpressVote BMD Silver Hardware Maintenance (Maintenance Once Every 24 Months)	\$110.00 per unit, per year after 1-year warranty
	Bronze Hardware Maintenance (Depot Repair Only)	
1	DS200 Bronze Hardware Maintenance (Depot Repair Only)	\$125.00 per unit, per year after 1-year warranty
1	ExpressVote BMD Bronze Hardware Maintenance (Depot Repair Only)	\$85.00 per unit, per year after 1-year warranty
	Certified Technician Program (Subject to the standard terms and conditions of the ES&S certified technician program)	
1	DS850 Certified Technician Program	\$1,435.00 per unit, per year after 1- year warranty (Price does not include Certified Technician Training)
1	DS450 Certified Technician Program	\$980.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)

1	DS200 Certified Technician Program	\$85.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)
1	ExpressVote BMD Certified Technician Program	\$50.00 per unit, per year after 1-year warranty (Price does not include Certified Technician Training)
Annual Firmware Licenses		
1	DS850 Firmware License	\$1,805.00 per unit, per year after 1- year warranty
1	DS450 Firmware License	\$1,805.00 per unit, per year after 1- year warranty
1	DS200 Firmware License	\$90.00 per unit, per year after 1- year warranty
1	ExpressVote BMD Firmware License	\$75.00 per unit, per year after 1-year warranty
Annual Software Licenses		
1	ElectionWare PYO Software License (1 – 100,000 Registered Voters in County)	\$15,395.00 per license, per year after 1-year warranty
1	ElectionWare PYO Software License (100,001 + Registered Voters in County)	\$24,495.00 per license, per year after 1-year warranty
1	Synthesized Audio Capability for PYO Customers requiring non-English languages	\$2,165.00 per additional language, per year after 1-year warranty
1	ElectionWare Reporting Software License	\$4,815.00 per license, per year after 1-year warranty
1	Ballot-On-Demand Software License (1 – 100,000 Registered Voters in County)	\$580.00 per license, per year after 1- year warranty

1	Ballot-On-Demand Software License (100,000 – 200,000 Registered Voters in County)	\$465.00 per license, per year after 1- year warranty
1	Ballot-On-Demand Software License (200,001 + Registered Voters in County)	\$350.00 per license, per year after 1- year warranty

ES&S PER ELECTION RENTAL PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	DS850 Central Scanner (Rental Fee for One (1) Election Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Three (3) 8GB Thumb Drives, Installation, and Round-Trip Shipping)	\$20,675.00 per unit, per election
1	DS450 Central Scanner (Rental Fee for One (1) Election Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Two (2) 8GB Thumb Drives, Installation, and Round-Trip Shipping)	\$12,595.00 per unit, per election
1	DS200 Tabulator (Rental fee for One (1) Election Includes Scanner, Internal Battery Backup, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, 4GB Jump Drive, Installation, and Round-Trip Shipping)	\$1,200.00 per unit, per election
1	ExpressVote BMD (Rental Fee for One (1) Election Includes the Terminal, Internal Battery Backup, Soft-Sided Case, Detachable ADA Keypad, 4GB Flash Drive, Headphones, Installation, and Round-Trip Shipping)	\$780.00 per unit, per election
1	Ballot-On-Demand Software License (Rental Fee for One (1) Election Includes one (1) Software License)	\$1,500.00 per rented laptop, per election
1	Ballot-On-Demand Hardware (Rental Fee for One (1) Election Includes Ballot-On-Demand C711 Printer, Laptop, Installation, and Round-Trip Shipping)	\$969.00 per unit, per election

NOTE: Firmware fees are included in the price of the rental hardware. No additional rental charge for Election Management Software (ElectionWare Software) if County pays annual software license fees. Election Management Hardware rental fees are per quote and are based upon customer configuration needs.

ES&S CONSUMABLES DESCRIPTION AND PRICING

DESCRIPTION	PRICE
DS200:	
DS200 Paper Roll	\$1.75 Per Roll
DS200 Back-Up Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)

DS200 Coin Cell Motherboard Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
DS450:	
Dell Printer Toner	\$120.00 Per Cartridge
ML420 Printer Ribbon	\$14.38 Per Ribbon
1-Part Printer Paper	\$48.11 Per Box
8 1/2" x 11" Standard Printer Paper	\$3.33 Per Box (500 sheets)
UPS Battery Backup	\$410.00 Per Battery
DS450 Motherboard Battery	Per Quote
DS850:	
OkiData B430DN Toner	\$216.42 Per Cartridge
ML420 Printer Ribbon	\$14.38 Per Ribbon
1-Part Printer Paper	\$48.11 Per Box
8 1/2" x 11" Standard Printer Paper	\$3.33 Per Box (500 sheets)
UPS Battery Backup	\$410.00 Per Battery
DS850 Motherboard Battery	Per Quote
ExpressVote BMD:	
ExpressVote Thermal Activation Card - 11 inch	\$22.50 Per Package (250 cards)
ExpressVote Thermal Activation Card - 14 inch	\$23.75 Per Package (250 cards)
ExpressVote Thermal Activation Card - 17 inch	\$26.25 Per Package (250 cards)
ExpressVote Thermal Activation Card - 19 inch	\$30.00 Per Package (250 cards)
Headphone Sanitary Ear Cover	\$0.16 Per Unit

ExpressVote Back-Up Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
ExpressVote Coin Cell Battery	\$170.00 (When Installed by Trained County Personnel or ES&S Field Service Personnel During Scheduled Preventative Maintenance Visit)
Ballot-on-Demand:	
Ballot-on-Demand Paper Costs (if applicable)	All Ballot-On-Demand Supplies included in Ballot-On-Demand Click Charges
Other:	
9" Numbered Pull Tite Seal	\$0.24 Per Seal
Numbered Padlock Seal	\$0.23 Per Seal
8" Tool-less Roto Wire Seal	\$34.95 Per Package (100 seals)
Barcode 1" x 3-3/8" Non Residue Tamper Evident Labels	\$44.95 Per Package (100 seals)

NOTE: Unit costs for consumables do not include shipping & handling, which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.

ES&S ADDITIONAL SERVICE OPTIONS DESCRIPTION AND PRICING

DESCRIPTION	PRICE
Voice File Services (For ElectionWare Reporting Customers)	
Language Setup Charge - English	\$350.00 Per Setup
Language Setup Charge - Spanish	\$350.00 Per Setup
Language Setup Charge - All Other languages	\$525.00 Per Setup
Political Parties	\$5.25 Per Party

Ballot Faces	\$15.75 Per Ballot Face
Contests / Issues	\$17.00 Per Contest / Issue
Candidates / Yes-No Responses	\$10.25 Per Candidate / Yes-No Response
Propositions / Amendments / Instructions	\$21.00 Per Proposition / Amendment / Instructions
Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)	\$0.40 Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)
Resubmission	\$350.00 for English & Spanish and \$525.00 (for each additional language), plus the applicable fee for each element changed for each language
Media burn (Flash / PCMCIA Cards, Mem Packs, PEBs, and Jump Drives)	\$12.50 Per Piece of Media
Ballot Layout and Programming Services (for Electionware Reporting customers)	Pricing available upon request
Ballot-On-Demand Charges	
Ballot Processing Fee for each Black & White Ballot Sheet Printed	\$0.45 Per Sheet (Subject to a minimum 500 ballot sheet minimum per printer per election)
Ballot Processing Fee for each Ballot Sheet Printed with Color	\$0.55 Per Sheet (Subject to a minimum 500 ballot sheet minimum per printer per election)

Ballot-On-Demand Set-Up Fee Per Election Event

Remote Access: \$350.00 per election set-up + \$1.00 per unique PDF (up to 4 computers)
\$40.00 per computer over 4 units

Rework of set up due to customer changes after initial set up is complete: \$175.00 per change event
\$40.00 per computer over 4 units

\$350.00 fee for L&A Test deck creation + ballot processing fee for each printed sheet

On-Site: \$1,650.00 per day per person

NOTE: Items within additional services section do not include shipping & handling (if applicable), which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.

ES&S VALUE ADDED DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
1	COTS Soft-Sided Ballot Box	\$99.95 per ballot box
1	COTS Plastic Ballot Box	\$150.00 per ballot box
1	DS200 Tote Bin	\$225.00 Per Tote Bin
1 Package	ExpressVote Privacy Shield	\$99.95 per package of 6 privacy shields
1	ExpressVote Table	\$325.00 Per Table
1	ExpressVote Kiosk	\$935.00 Per Kiosk (Price Includes Installation and Shipping & Handling)
1	Additional 4GB Thumb Drives	\$105.00 Per Thumb Drive
1	Additional 8GB Thumb Drives	\$210.00 Per Thumb Drive
1	ExpressLink Printer	\$725.00 Per Printer
1	ExpressLink Software	\$3,580.00 Initial Annual License Fee Per County (This fee is not charged in Counties using ES&S PollBooks)

1	Client/Server Election Management System	\$13,122.00 (Includes Offsite Installation)
	E PollBook	
1	E PollBook (Cost includes Tablet with Barcode Scanning and Signature Capture Capabilities, Tablet Protector Sleeve, Back Strap, Lazy Susan Stand, Stylus with Tether, Micro-SD Card w/SD Adapter, 16GB Thumb Drive, USB Dongle, USB Power Cable, 6-ft Power Cable, Touch Screen Cleaning Kit, Carrying Case, ExpressPoll Software, One (1) Year Warranty, Shipping & Handling, Acceptance Testing and Loading of Software on the Unit)	\$935.00 Per Pollbook
	E PollBook Post-Warranty Fees	\$99.00 per PollBook For License, Maintenance, and Support Fees starting in Year 2.
	Mail Ballot Verifier	
1	MBV 1000	\$88,400.00 Per Unit (Includes Installation and Shipping & Handling)
	MBV 1000 Post-Warranty Fees and Click Charges	
<p>\$7,500.00 per unit for License, Maintenance and support fees starting in Year 2. Annual hardware and software fees include processing of 15,000 pieces per year.</p> <p>Click Charges after overage:</p> <p>15,000 - 30,000: \$0.30 per scan</p> <p>30,001 - 50,000: \$0.25 per scan</p> <p>50,001 - 100,000: \$0.20 per scan</p> <p>100,001 +: \$0.15 per scan</p>		

NOTE: Unless otherwise noted, items within the Value Added Features section do not include shipping & handling, which will be billed separately. These prices are subject to change pursuant to the terms and conditions of the agreement between the parties.

State of Utah Ballot-On-Demand Options

Option A- Balotar System with Gold Plan

Includes:

- Compact Printer
- Balotar Laptop
- Appropriate Balotar Software (Single request printing and/or batch printing)
- All ballot stock and printer consumables
- Help desk, remote and onsite maintenance support (including parts)
- Operational training for printer and software

County costs would include:

- Purchase/ lease of the hardware - **\$1,975 per printer; \$2,820 per laptop**
 - Installation and training included
- Annual Software License agreement (per laptop and commences in year 2)
 - *1-10 laptops* *\$580 year*
 - *11-50 laptops* *\$465 year*
 - *51+* *\$350 year*
- Fee for each ballot printed (replaces consumable and maintenance fees) - **\$.45 for black and white or \$.55 for color**
- Balotar per election set up fee:
 - Remote Access: **\$350.00 per election set-up + \$1.00 per unique PDF** (up to 4 computers)
 - **\$40.00 per computer over 4 units (maximum \$1,000)**

Option B- Balotar System with Silver Plan

Includes:

- Compact Printer
- Balotar Laptop
- Appropriate Balotar Software (Single request printing and/or batch printing)
- 1 Year manufacturer's warranty on hardware
- Help desk support
- Operational and technical training for printer and software (self-support)

County costs would include:

- Purchase/ lease of the hardware - **\$1,975 per printer; \$2,820 per laptop**
 - Installation included
- Onsite operational and technical training for printer and software - **\$1,650**
 - Provides more detailed training on the printers for maintenance and support
- Annual Software License agreement – Per Laptop and commences in year 2
 - 1-10 laptops \$580 year*
 - 11-50 laptops \$465 year*
 - 51+ \$350 year*
- County would be responsible for supplying consumables and service support/parts.
 - Ballot stock - **\$.12 per sheet**
- Balotar per election set up fee:
 - Remote Access: **\$350.00 per election** set-up + **\$1.00 per unique PDF** (up to 4 computers)
 - **\$40.00 per computer over 4 units (maximum \$1,000)**

Option C- Integrated Poll Book BOD

Includes:

- Compact Printer
- Single request printing software (installed on pollbook)
- 1 Year manufacturer's warranty on printer
- Help desk support
- Operational and technical training for printer (self-support)

County costs would include:

- Purchase/ lease of the hardware - **\$1,975 per printer; \$935 per pollbook**
 - Installation and training included for pollbook and printers
- Annual License, Maintenance and Support Fees per pollbook - **\$199**
- County would be responsible for pollbook election setup fees as well as supplying consumables and service support/parts. No separate, per election setup charges for Balotar when using an ES&S pollbook.
 - Ballot stock - **\$.12 per sheet**

Certified Technician Program

The Certified Technician Program is conditioned on the following:

- The Technician must be an employee of the County/Jurisdiction (or a third party approved by ES&S), and someone who is familiar with the use of a multi-meter, soldering techniques and understands electro-mechanical operation. Technicians are required to pass the tests for the different modules in order to be certified.
- The County must maintain a firmware agreement on all of their equipment.
- The County and individual technicians must sign a non-disclosure agreement and a non-compete agreement prior to training.
- Technicians may not perform work for any County/Jurisdiction other than their own without approval from ES&S.
- The County must inform ES&S when an annual preventative maintenance service has been completed.
- Technicians must attend annual refresher training.

Initial and Annual Refresher Training:

- Training classes will last 3 days to 1 week depending on the equipment mix, with a maximum of 2 pieces of equipment per week.
- Training classes are only offered in ES&S's Omaha, NE office and would be offered two times a year along with mandatory refresher classes.
- The County will be responsible for purchase of all of the technician's tools. Any specialty tools such as the interface board for the ExpressVote, card stock and test ballots can be purchased from ES&S.
- All travel expense will be the responsibility of the County.

Upon successful completion of the training the technician will receive 1 set of the following for the equipment that they were trained on.

- Documentation on the equipment, i.e. Service Manuals, Parts lists and Technical Bulletins that are available. These items remain the property of ES&S and are not to be copied or otherwise duplicated except for internal use only.
- Technical bulletins and Service Manuals will be made available through the ES&S portal.

Fee Structure:

- Training fee of \$3,000.00 per technician per week of training
- In addition to a training fee of \$3,000.00 per technician per week, the fee structure for the Trained Hardware Technician Program is as follows:
 - DS850 \$1,435.00 per unit, per year
 - DS450 \$980.00 per unit, per year
 - DS200 \$85.00 per unit, per year
 - ExpressVote BMD \$50.00 per unit, per year
- The services to be provided by ES&S, and the related cost is as presented below:

Description of Service	Fee(s)
Initial Technician Training and Certification	\$3,000.00 per technician per week
Annual Refresher Training	Included in per unit fee
Toll-free technical phone support	Included in per unit fee
Ability to access to replacement parts	Included in per unit fee
Replacement Parts	Included in per unit fee (see Notes)
Remedial Maintenance	T&M, plus T&E, plus shipping to/from depot repair location, if applicable
Emergency Remedial Maintenance	150% of the current labor rate, plus T&E and parts

Notes:

- Phone support is available through ES&S Technical Support. Calls from the trained technician are preferred.

- Parts inventory levels will be established by ES&S. Due to long lead-time on some parts, parts orders should be placed 120 days prior to a service event to avoid expedited ordering and shipping charges.
- ES&S will determine what parts are to be returned for repair or analysis and what parts will be disposed of.
- Proper ESD/handling/storage are all the responsibility of the County.
- Parts can only be ordered by the certified technician.
- Excessive parts usage: Should ES&S determine that parts usage is in excess of normal repair parts usage (based upon ES&S's experience in servicing the same type of equipment), ES&S will contact the customer to discuss implementing one or more of the following actions:
 - Additional training for County technicians.
 - Increase the per unit fee.
 - Discontinuation of the Certified Technician Program.

Certified Technician Program Outline

The objective of this program is to enable County-employee technicians to perform preventative maintenance/diagnostics coupled with limited corrective repair capabilities, including soldering and anti-static training for the following ES&S equipment:

- ExpressVote BMD
- DS200
- DS450
- DS850

ExpressVote BMD

Provide repair training & parts to enable replacement of the following component parts:

Technical Manual
Troubleshooting
Preventative Maintenance Procedures and Guidelines
Battery Replacement
Soldering Techniques
Firmware Installation

DS200

Provide process instruction and diagnostic training for the following:

Technical Manual
Troubleshooting
Preventative Maintenance Procedures and Guidelines
Battery Replacement
Soldering Techniques
Firmware Installation

DS450/DS850

Provide process instruction and diagnostic training for the following:

Technical Manual
Troubleshooting
Preventative Maintenance Procedures and Guidelines
Page Sensor Replacement/Voltage Guideline
Channel Sensor Tuning Using 3-Methods
Diagnostic Ballot Use/Understanding with Readjust Guidelines
DS850 Checklist and How-To List