



11208 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 593-0101

Rental Agreement

Sales Quotation #: N/A

Covered Election: All Elections During the
Term of the Agreement

Estimated Delivery Date: March 2022

Customer Contact, Title: Chad Gray - Administrator of Elections

Phone Number: 615-790-5711

Customer Name: Williamson County, Tennessee

Fax Number: N/A

Type of Rental Equip: ☒ NEW ☐ REFURBISHED

Rental Term: March 1, 2022 through February 28, 2023

Bill To:

Williamson County, Tennessee

Chad Gray - Administrator of Elections

405 Downs Blvd.

Franklin, TN 37064

Ship To:

Williamson County, Tennessee

Chad Gray - Administrator of Elections

405 Downs Blvd.

Franklin, TN 37064

Item	Description	Qty	Price	Total
1 DS200	Model DS200 Scanner with Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, and One (1) Standard 4GB Memory Device,	70	\$2,186.00	\$153,020.00
2 DS200	Tote Bin	70	\$80.00	\$5,600.00
3 ExpressVote BMD	ExpressVote BMD Terminal with Internal Backup Battery, ADA Keypad, Headphones, Power Supply with AC Cord, and One (1) Standard 4GB Memory Device	200	\$1,060.00	\$212,000.00
4 ExpressVote BMD	Soft-Sided Carrying Case	200	\$50.00	\$10,000.00
5 Software	ElectionWare Software - Reporting Only	1	\$6,200.00	\$6,200.00
6 Third Party Items	EMS 3rd Party Hardware	1	\$500.00	\$500.00
7 DS200	Equipment Installation	70	\$115.00	\$8,050.00
8 ExpressVote BMD	Equipment Installation	200	\$105.00	\$21,000.00
9 Services	Project Management Day	45	\$1,795.00	\$80,775.00
10 Services	Equipment Operations Training Day	1	\$1,795.00	\$1,795.00
11 Services	Software Training Day	1	\$1,795.00	\$1,795.00
12 Services	Election On-Site Support Event	6	\$4,975.00	\$29,850.00
13 Shipping	Roundtrip Shipping & Handling	1	\$19,600.00	\$19,600.00
Rental Order Total			\$	550,185.00

Freight Billable: yes ☒ no ☐

Cam Wilson
Regional Sales Manager

V.P. of Finance

Date

Customer Signature

Date

Title

Payment Terms

\$55,019.00 of Order Total will be invoiced upon Contract Execution.

\$495,166.00 of Order Total will be invoiced as Tabulation, BMD Equipment and Software are provided to Customer.

Delays in payment due to no fault of ES&S will be subject to interest charges in the maximum amount permitted by applicable law.

Invoices are due net 30 from invoice date.

In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Any applicable state and local taxes are not included, and are the responsibility of Customer.

A Rental Cancellation Fee of 10% of the Rental Order Total shall apply in the event the Customer does not provide written notification to ES&S of its intent to cancel an Election at least forty-five (45) days prior to the scheduled Election covered under this Agreement.

Return of Rental Equipment

ES&S shall provide the Customer with a Return Materials Authorization ("RMA") form which shall set forth all of the equipment and software to be returned upon the expiration or earlier termination of the Agreement. The Customer shall use this form when returning the equipment and software and label all boxes with the RMA number provided.

Customer shall be responsible for packaging and readying the equipment and software for return to ES&S by utilizing the original boxes and packing materials to return the equipment and software to ES&S. In the event the Customer requires ES&S to provide new boxes and packing material for return of the equipment and software, such items will be invoiced to Customer separately and shall be due and payable upon receipt of ES&S' invoice by Customer.

Customer is responsible for returning all equipment and other non-consumable items set forth above to ES&S upon the expiration or earlier termination of the Agreement. In the event the Customer fails to return any such equipment and/or non-consumable items upon the expiration or earlier termination of the Agreement, Customer shall pay ES&S at ES&S' then current rates for such equipment and/or non-consumable items which have not been returned to ES&S less any rental fees previously paid by Customer for such equipment and/or non-consumable items which have not been returned. ES&S shall invoice the Customer separately for any unreturned items and such invoice shall be due and payable upon receipt of ES&S' invoice by Customer.

SEE GENERAL TERMS AND CONDITIONS

GENERAL TERMS

1. **Rental/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to rent and/or license, and Customer agrees to rent and/or license, the ES&S Equipment, ES&S Software and ES&S Firmware described on the front side of this Agreement during the Rental Term as defined in Section 10 below. The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The rental payment terms for the ES&S Equipment and ES&S Software shall, at all times, remain with ES&S. The consideration for ES&S' grant of the license during the Rental Term for the ES&S Firmware is included in the cost of the ES&S Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the ES&S Software and related Documentation in the Jurisdiction during the Rental Term. The licenses allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction during the Rental Term.

3. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

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 ES&S Software or Documentation, in whole or in part, to or by any third party 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; or

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) 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.

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue during the Rental Term. ES&S may terminate either license if Customer fails to pay the rental fees when due, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon the expiration of the Rental Term, 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.

5. **Delivery; Risk of Loss.** The Estimated Delivery Dates and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S 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 ES&S Equipment and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S. Customer shall not use the ES&S Equipment for any purpose other than those for which it was designed and shall not, without the prior written consent of ES&S, alter the ES&S Equipment or affix to or install on the ES&S Equipment any accessory, equipment or device which was not supplied to it by ES&S. Customer shall not move the ES&S Equipment from the place where it was originally installed, unless such ES&S Equipment is to be used at various polling places throughout the Jurisdiction, without ES&S' prior written consent. Customer shall make the ES&S Equipment and any records pertaining thereto available to ES&S during regular business hours for inspection. Customer will not, without the prior written consent of ES&S and subject to such conditions as ES&S may impose for its protection, affix any item of ES&S Equipment to any real property if, as a result thereof, such item of ES&S Equipment will become a fixture under applicable state law.

6. **Installation.** The front side of this Agreement specifies the items of ES&S Equipment or ES&S Software, if any, which ES&S' employees, agents or authorized representatives ("Representatives") will install at Customer's designated site. Customer shall pay ES&S a fee for such installation services, as set forth on the front side of this Agreement. Customer will provide, at its own expense, a site adequate in space and design for installation and operation of the ES&S Equipment and ES&S Software. Customer shall be responsible for providing a site that is temperature and humidity controlled, has all necessary electric current outlets, circuits, and wiring for the ES&S Equipment and ES&S Software, and has electric current of sufficient quality and quantity to operate the ES&S Equipment and ES&S Software. ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any ES&S Equipment or ES&S Software is installed. Customer shall be responsible for installing all items of equipment or software not installed by ES&S, in accordance with the instructions furnished in the Documentation. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any ES&S Equipment or ES&S Software by Customer.

7. **Warranty.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that during the Rental Term (the "Warranty Period"), it will repair or replace, at Customer's designated location or at ES&S' designated location, as determined by ES&S in its sole discretion, 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 ES&S Equipment, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. 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 notifies ES&S within three (3) business days of the discovery of the failure of performance or defect, (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 acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, 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 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 ES&S has merely purchased the third-party items for resale or rental to Customer, and that the proprietary and intellectual property rights to the third-party items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the rental payments to ES&S for the third-party items, all of its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the third-party items which are provided to ES&S.

c. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a) or 7(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 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 RESPECT TO THE SYSTEM RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

8. **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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; or (b) 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.

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

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 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. 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.

10. **Rental Term.** The period during which Customer shall rent the ES&S Equipment and license the ES&S Software from ES&S shall be in effect from March 1, 2022 through February 28, 2023, unless earlier terminated pursuant to this Agreement (the "Rental Term").

11. **Termination.** The Rental Term shall terminate upon the first to occur of the following (i) a breach of any material provision herein which has not been cured by the breaching party within thirty (30) days after it receives written notice of the breach from the non-breaching party (except a breach as provided in (iii) below which will require no notice); (ii) either party's providing thirty (30) days' prior written notice to the other party hereto of its desire to terminate the Rental Term; or (iii) Customer's failure to make any rental payment due hereunder within sixty (60) days after it is due. In the event of a termination by the Customer in accordance with Section 11(ii) above, Customer hereby agrees to promptly pay ES&S for all costs incurred and deliverables provided by ES&S through the effective date of such termination, including, but not limited to, any equipment and software delivered, shipping costs incurred, and services performed. No later than ten (10) calendar days following the termination of the Rental Term, Customer shall release the ES&S Equipment and ES&S Software to ES&S at its own expense and in the same operation, order, repair, condition and appearance as when received, subject to normal wear and tear. In the event Customer fails to release the ES&S Equipment and ES&S Software to ES&S no later than ten (10) calendar days following the termination or expiration of the Rental Term, Customer shall pay to ES&S a late return charge in the amount of \$500.00 per calendar day until the ES&S Equipment and ES&S Software is returned to ES&S in accordance herewith.

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 30 days, ES&S may suspend performance under this Agreement until such amount is paid. 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 per month or

the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

13. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the 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.

14. **Export.** Customer acknowledges that the laws and regulations of the United States may restrict the export of certain commodities and technical data of United States origin, including the Software, in any medium. Customer agrees that it shall not export the Software or the Documentation in any form without the appropriate United States and foreign government licenses.

15. **Entire Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement 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. 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. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. 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 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 Sections 1-5, 7(c), 8-11, 12(b), 13, 14 and 15 of these General Terms shall survive the termination of this Agreement, to the extent applicable.



11206 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 693-0101

Rental Agreement

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Covered Election: All Elections During the
Term of the Agreement

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Customer Contact, Title: Chad Gray - Administrator of Elections

Phone Number: 615-790-5711

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Bm		Description	Qty	Price	Total
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Rental Order Total				\$	550,185.00

Freight Billable: yes ☒ no ☐

Carm Wilson
Regional Sales Manager

V.P. of Finance

Date

Customer Signature

Date

County Mayor

Title

GENERAL TERMS

1. **Rental/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to rent and/or license, and Customer agrees to rent and/or license, the ES&S Equipment, ES&S Software and ES&S Firmware described on the front side of this Agreement during the Rental Term as defined in Section 10 below. The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The rental payment terms for the ES&S Equipment and ES&S Software are set forth on the front side of this Agreement. Title to the ES&S Equipment and ES&S Software shall, at all times, remain with ES&S. The consideration for ES&S' grant of the license during the Rental Term for the ES&S Firmware is included in the cost of the ES&S Equipment.
2. **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable license for its bona fide full time, part time or temporary employees to use the ES&S Software and related Documentation in the Jurisdiction during the Rental Term. The licensees allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purpose of defining and conducting elections and tabulating and reporting election results in the Jurisdiction during the Rental Term.
3. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:
 - 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 ES&S Software or Documentation, in whole or in part, to or by any third party 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; or
 - d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) 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.
4. **Term of License.** The license granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue during the Rental Term. ES&S may terminate either license if Customer fails to pay the rental fees when due, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon the expiration of the Rental Term, 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.
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7. **Warranty.**
 - a. **ES&S Equipment/ES&S Software.** ES&S warrants that during the Rental Term (the "Warranty Period"), it will repair or replace, at Customer's designated location or at ES&S' designated location, as determined by ES&S in its sole discretion, 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 ES&S Equipment, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. 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 notifies ES&S within three (3) business days of the discovery of the failure of performance or defect, (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 acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, 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 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 ES&S has merely purchased the third-party items for resale or rental to Customer, and that the proprietary and intellectual property rights to the third-party items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the rental payments to ES&S for the third-party items, all of its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the third-party items which are provided to ES&S.
 - c. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a) OR 7(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 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 RESPECT TO THE SYSTEM RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.
 - d. **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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; or (b) 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.
 - e. **Proprietary Rights.** Customer acknowledges and agrees as follows:

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 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. 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.
8. **Rental Term.** The period during which Customer shall rent the ES&S Equipment and license the ES&S Software from ES&S shall be in effect from March 1, 2022 through February 28, 2023, unless earlier terminated pursuant to this Agreement (the "Rental Term").
9. **Termination.** The Rental Term shall terminate upon the first to occur of the following (i) a breach of any material provision herein which has not been cured by the breaching party within thirty (30) days after it receives written notice of the breach from the non-breaching party (except a breach as provided in (iii) below which will require no notice); (ii) either party's providing thirty (30) days' prior written notice to the other party hereto of its desire to terminate the Rental Term; or (iii) Customer's failure to make any rental payment due hereunder within sixty (60) days after it is due. In the event of a termination by the Customer in accordance with Section 11(i) above, Customer hereby agrees to promptly pay ES&S for all costs incurred and deliverables provided by ES&S through the effective date of such termination, including, but not limited to, any equipment and software delivered, shipping costs incurred, and services performed. No later than ten (10) calendar days following the termination of the Rental Term, Customer shall release the ES&S Equipment and ES&S Software to ES&S at its own expense and in the same operation, order, repair, condition and appearance as when received, subject to normal wear and tear. In the event Customer fails to release the ES&S Equipment and ES&S Software to ES&S no later than ten (10) calendar days following the termination or expiration of the Rental Term, Customer shall pay to ES&S a late return charge in the amount of \$600.00 per calendar day until the ES&S Equipment and ES&S Software is returned to ES&S in accordance herewith.
10. **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 30 days, ES&S may suspend performance under this Agreement until such amount is paid. 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 per month or

the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

13. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the 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.

14. **Export.** Customer acknowledges that the laws and regulations of the United States may restrict the export of certain commodities and technical data of United States origin, including the Software, in any medium. Customer agrees that it shall not export the Software or the Documentation in any form without the appropriate United States and foreign government licenses.

15. **Entire Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement 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. 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. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. 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 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 Sections 1-5, 7(c), 8-11, 12(b), 13, 14 and 15 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

Payment Terms

\$55,019.00 of Order Total will be invoiced upon Contract Execution.

\$495,166.00 of Order Total will be invoiced as Tabulation, BMD Equipment and Software are provided to Customer.

Delays in payment due to no fault of ES&S will be subject to interest charges in the maximum amount permitted by applicable law.

Invoices are due net 30 from invoice date.

In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Any applicable state and local taxes are not included, and are the responsibility of Customer.

A Rental Cancellation Fee of 10% of the Rental Order Total shall apply in the event the Customer does not provide written notification to ES&S of its intent to cancel an Election at least forty-five (45) days prior to the scheduled Election covered under this Agreement.

Return of Rental Equipment

ES&S shall provide the Customer with a Return Materials Authorization ("RMA") form which shall set forth all of the equipment and software to be returned upon the expiration or earlier termination of the Agreement. The Customer shall use this form when returning the equipment and software and label all boxes with the RMA number provided.

Customer shall be responsible for packaging and reedying the equipment and software for return to ES&S by utilizing the original boxes and packing materials to return the equipment and software to ES&S. In the event the Customer requires ES&S to provide new boxes and packing material for return of the equipment and software, such items will be invoiced to Customer separately and shall be due and payable upon receipt of ES&S' invoice by Customer.

Customer is responsible for returning all equipment and other non-consumable items set forth above to ES&S upon the expiration or earlier termination of the Agreement. In the event the Customer fails to return any such equipment and/or non-consumable items upon the expiration or earlier termination of the Agreement, Customer shall pay ES&S at ES&S' then current rates for such equipment and/or non-consumable items which have not been returned to ES&S less any rental fees previously paid by Customer for such equipment and/or non-consumable items which have not been returned. ES&S shall invoice the Customer separately for any unreturned items and such invoice shall be due and payable upon receipt of ES&S' invoice by Customer.

SEE GENERAL TERMS AND CONDITIONS