



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

Sales Order Agreement

Customer P.O. #: _____

1st Election Date: 11/7/2017

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (940) 538-4631

Fax Number: (940) 264-4160

Customer Contact, Title: Sasha Kelton - County Clerk

Customer Name: Clay County, Texas

Type of Sale: NEW

Type of Equip: NEW REFURBISHED

Bill To: _____

Clay County, Texas

Sasha Kelton - County Clerk

P.O. Box 548

Henrietta, TX 76365

Ship To: _____

Clay County, Texas

Sasha Kelton - County Clerk

214 N. Main Street

Henrietta, TX 76365

Item	Description	Qty	Price	Total
1	DS200 Model DS200 Digital Image Scanner with Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, and 4GB Jump Drive	17	\$5,750.00	\$97,750.00
2	Other Paper Roll (Additional)	50	\$1.75	\$87.50
3	Other Tote Bin	17	\$225.00	\$3,825.00
4	Other 4GB Jump Drive (Additional)	17	\$105.00	\$1,785.00
5	ExpressVote ExpressVote BMD Terminal with Internal Backup Battery, Power Supply with AC Cord, ADA Keypad, Headphones, and 4GB Flash Drive	17	\$3,325.00	\$56,525.00
6	Other Soft-Sided Carrying Case	17	\$175.00	\$2,975.00
7	Other ExpressLink Printer	1	\$725.00	\$725.00
8	Software ElectionWare Software - Reporting Only (ERM)	1	\$3,675.00	\$3,675.00
9	Third Party Items 3rd Party Items as set forth on Exhibit B	1	\$1,813.34	\$1,813.34
10	Network Installation 3rd Party Configuration and Installation - ES&S In-House	1	\$1,300.00	\$1,300.00
11	Equipment Installation Model DS200 Scanners	17	Included	Included
12	Equipment Installation ExpressVote BMD Terminals	17	Included	Included
13	Services Equipment Operations Training Day	1	Included	Included
14	Services Software Training Day	1	Included	Included
15	Services Election On-Site Support Event	1	Included	Included
16	Discount Customer Discount	1	(\$21,439.21)	(\$21,439.21)
17	Trade-in Allowance Equipment Being Traded-In by Customer Includes: 25 - Model 100 Scanner 25 - Model 100 Ballot Box 23 - AutoMARK	1	(\$15,829.75)	(\$15,902.25)
17	Shipping Shipping & Handling	1	\$2,671.00	\$2,671.00
			Order Total	\$ 135,790.38

Freight Billable: yes no

Sales Order Agreement

Chris Moody
Regional Sales Manager

Kenneth Liggett 7-24-2017
Customer Signature Date

V.P. of Finance Date

Clay County Judge
Title

Trade-in Equipment: ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. ES&S is responsible for preparing, packaging and palletizing the trade-in equipment for shipment.	
Special Notes:	
Payment Terms	\$43,320.00 due on or before October 1, 2017.
	The balance of \$92,470.38 will be paid pursuant to the accompanying Nationwide Capital, LLC Loan Agreement.
	Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.
Warranty Period (Years):	One (1) Year After Equipment Delivery
Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.	
SEE GENERAL TERMS AND CONDITIONS	

GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Equipment, ES&S Software and ES&S Firmware described on the reverse side. The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the ES&S Equipment and ES&S Software are set forth on the reverse side. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the reverse side for the ES&S Equipment. The consideration for ES&S' grant of the license under the Initial 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 employees to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on Schedule A1. 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 Customer's jurisdiction. The licenses granted in this Section 2 do not permit Customer to access or in any way use the source code for the ES&S Software.

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 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 block.

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 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 the reverse side. ES&S may terminate either license if Customer fails to pay the consideration due for, 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 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.

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.

6. **Delivery/Risk of Loss.** The Estimated Delivery Dates set forth on the reverse side are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer 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 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 until all amounts payable to ES&S under this Agreement have been paid by Customer.

7. **Warranty.**

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 Period will commence upon delivery. 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 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 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, or the second 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. The terms of post-warranty license, maintenance and support are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), 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' INSTALLATION AND ACCEPTANCE TESTING 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 RESPECT TO THE SYSTEM PURCHASED, LEASED, 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 the ES&S Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S 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 ES&S Equipment or ES&S 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 ES&S Software Maintenance and Support.

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. **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, Hardware Maintenance Services or ES&S Software 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 10, 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.

11. **Termination.** 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 30 days after it receives written notification thereof from the non-breaching party.

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. If Customer's payment is past due for more than 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 where the ES&S Equipment is located and remove it. 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 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.

14. **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 ES&S Equipment and ES&S 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 Customer's state.

15. **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 ES&S Software and/or ES&S 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 ES&S Equipment and/or ES&S 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 ES&S Equipment and/or ES&S Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 15(ii) and 15(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 ES&S Equipment and/or ES&S Software purchased and licensed by Customer under this Agreement.

16. **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. 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(b), 8-10, 12(b), 13-18 these General Terms shall survive the termination of this Agreement, to the extent applicable.

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

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A is 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 thirty (30) 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 A, 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 Exhibit A. The termination of this Exhibit A 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 is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. 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 A. 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 A 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 Agreement for the ES&S equipment set forth on Schedule A1 (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 (12) 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 A1 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.

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 therefore), 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 A1.

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).

ARTICLE III SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **License and 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 Sections 2-4 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 A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 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 A. 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 Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support 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 Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. 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 Exhibit A.

5. **Reinstatement of Software License, 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 A1
Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$5,185.00
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$3,675.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$2,465.00
Total Maintenance Fees for the Initial Term:		\$11,325.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the first anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
17	Model DS200 Scanner	Year 1	\$185.00	\$3,145.00
17	ExpressVote BMD Terminal	Year 1	\$120.00	\$2,040.00
Total Hardware Maintenance Fees for the Initial Term				\$5,185.00

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month 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: Clay County, Texas

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 Schedule A1 shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under this Schedule A1

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
ELECTIONWARE SOFTWARE**

Initial Term: Expiration of the Warranty Period through the first anniversary thereof

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

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
1	ElectionWare Software – Reporting Only (ERM)	Year 1	\$3,675.00
Total Software License, Maintenance and Support Fees for the Initial Term			\$3,675.00

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

Initial Term: Expiration of the Warranty Period through the first anniversary thereof

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
17	Model DS200 Scanner	Year 1	\$80.00	\$1,360.00
17	ExpressVote BMD Terminal	Year 1	\$65.00	\$1,105.00
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$2,465.00

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.
 11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

EXHIBIT B
THIRD PARTY ITEMS

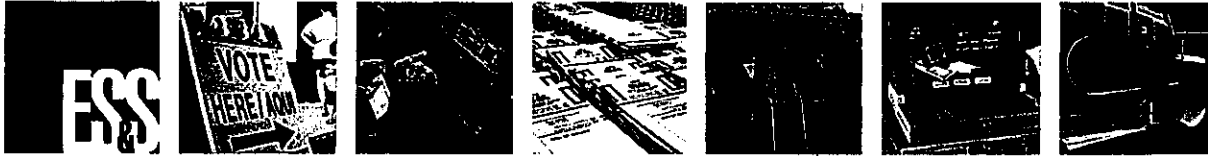
Customer acknowledges that ES&S is purchasing the third party items set forth herein ("Third Party Items") for resale to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment 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.

Qty Ord.	Description	Price	Ext. Price
	EMS WORKSTATION		
1	DELL OPTIPLEX 5040 MINI (DESKTOP)	\$1,620.00	\$1,620.00
	<ul style="list-style-type: none"> • OptiPlex 5040 Mini Tower XCTO • Intel Core i5-6500 Processor (Quad Core, 6MB, 4T, 3.2GHz, 65W) • Mini Tower Processor Heatsink 65 Watt • 8GB Single Channel DDR3L 1600MHz (8GBX1) • 3.5 inch 500GB 7200rpm Hard Disk Drive • AMD Radeon R5 340X, 2GB (DP, SL-DVI-I) • DVD+/-RW Bezel • PCIe card with serial and parallel port, Full Height • Optiplex 5040 MT with 240W up to 85% efficient Power Supply (80Plus Bronze) • Dell KB216 Wired Multi-Media Keyboard English Black • Dell MS116 Wired Mouse, Black • Adobe Reader 11 • Waves MaxxAudio • Windows 10 OS Professional Recovery 64bit - DVD, Downgraded to Windows 7 • Intel Core i5 Processor Label • Kace K1000 Express • Dell Limited Hardware Warranty Plus Service • ProSupport: Next Business Day Onsite 5 Years • ProSupport: 7x24 Technical Support, 5 Years • Dell 22 Monitor P2214H 		
1	UNINTERRUPTIBLE POWER SUPPLY (UPS) BATTERY BACKUP, 850VA (WORKSTATIONS) - <i>Optional</i>	\$146.67	\$146.67
1	*SYMANTEC ENDPOINT PROTECTION 12.1.6	\$46.67	\$46.67

	Order Total:		\$1,813.34
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Note 1:

The configuration and specification of third party items as set forth here 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.



**Clay County, Texas
Electronic Pollbook Sales Order Agreement**

Description	UOM	Qty	Unit Price	Total Price
ExpressPoll with Lazy Susan Stand:				
ExpressPoll Tablet with Barcode Scanning and Signature Capture Capabilities. Includes 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, and Loading of Software on the Unit.	Each	1	\$865.00	\$865.00
4-Port USB Hub (Includes 6-ft Power Cable; Required if using more than one peripheral item with the tablet)	Each	1	\$21.00	\$21.00
Mag-Stripe Reader	Each	1	\$58.00	\$58.00
SmartCard Reader/Writer	Each	1	\$15.00	\$15.00
ExpressPoll External Printer Options:				
DYMO 450 Turbo Printer with Power Supply/Cord and USB Cable	Each	1	\$131.00	\$131.00
DYMO White Labels (2.125" x 4") - 1 Roll of 220 Labels	Each	5	\$9.95	\$49.75
Implementation Services:				
Acceptance Testing (per Unit)	Per Unit	1	\$50.00	\$50.00
Shipping (ExpressPoll Hardware & Software)	Per Unit	1	\$20.00	\$20.00
One-Year Hardware and Software Warranty	N/A			Included
Discount:				(\$1,139.75)
Order Total				\$70.00

Payment Terms:

\$70.00 Due within thirty (30) calendar days of delivery of ExpressPoll Hardware and/or ExpressPoll Software.

Estimated Data Conversion Fees (Per Election If ES&S is Performing the Data Conversion):

Set-Up/Configuration Fee	Per Election	1	\$750.00	\$750.00
Includes Data Analysis, Delivery of Sample Data, and Delivery of Final Data				
Processing Fee Per Registered Voter	Per RV	8,000	\$0.0250	\$200.00
Signature File Processing	Per RV	0	\$0.0050	TBD
Voter Images Processing	Per RV	0	\$0.0050	TBD
Pollbook Database Update (fee per update)	Per Update	0	\$225.00	TBD
Voter History Update (fee per update)	Per Update	0	\$225.00	TBD
Custom Report Generation	N/A	0	Per Quote	Per Quote
Custom VR Voter History Import File Creation	Each	0	\$300.00	TBD
Reconversion Fee	Each	0	\$250.00	TBD
Pollbook Screen Revision	Each	0	\$125.00	TBD
Poll Location Map Display	Each	0	\$150.00	TBD
Custom Conversion per Hour	Hour	0	\$250.00	TBD
Estimated Data Conversion Fees				\$950.00

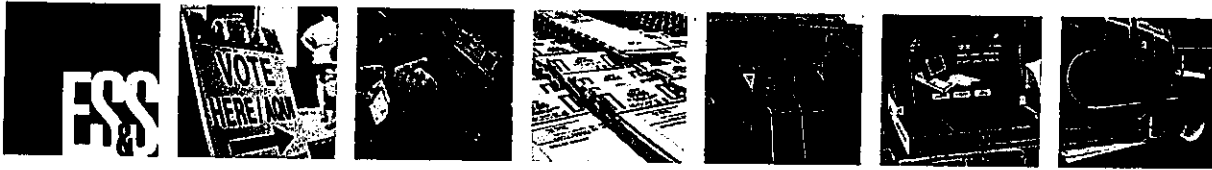
Note: Data Conversion Services will be invoiced as Services are provided and total fees will be based upon actual work performed. 100% of invoice total due within 30 calendar days of invoice date.

**Annual Post-Warranty Maintenance and Support Fees
(Fees are Based Upon a 1-Year Customer Commitment to Subscribe to the Following Services)**

PollBook Software:

ExpressPoll Software License and Maintenance and Support Fee - Year 1	Per Unit	1	\$99.00	\$99.00
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Note: Annual Software License, Hosting, and Maintenance and Support fees of \$99.00 will be invoiced 90-days prior to beginning of the post-warranty period. 100% of invoice total due within 30 calendar days of invoice date.



Clay County, Texas
Electronic Pollbook Sales Order Agreement

Print Name	ES&S Product Description	Part Number	Quantity	UOM	Unit Price	Total Price
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The parties hereby agree that this Sales Order and the ExpressPoll Sales Order Agreement General Terms, attached hereto and fully incorporated herein by this reference, (collectively, the "Agreement") represents a binding agreement between ES&S and Customer for the purchase of ExpressPoll System products and services. Further, the undersigned Customer hereby agrees to purchase such ExpressPoll products and services from ES&S as set forth herein. The undersigned Customer hereby agrees to the ExpressPoll System Sales Order Agreement General Terms and acknowledges that he or she has read the entire Agreement, understands it and fully intends to be bound by it. The undersigned Customer hereby certifies that: 1) sufficient funds are available for any of this purchase that exceeds my allocation of state and/or federal funding; and 2) any amount not funded by state and/or federal funds has been authorized and appropriated for this purchase. As of the date of the signature below, the undersigned Customer has full power and authority to enter into and perform this Agreement, and has been properly authorized to execute and deliver this Agreement on behalf of the Customer as set forth above.

ES&S Signature _____ Date _____

Kenneth Liggett _____ 7-24-2017
 Customer Signature Date

Print Name _____

Kenneth Liggett
 Print Name

Title _____

Clay County Judge
 Title

Contact Person	Clay County, Texas
Address (no PO box)	214 N. Main Street
City	Henrietta
State/Province	Texas
Zip	76385
Phone Number	(940) 538-4631

ELECTRONIC POLLBOOK GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license to Customer and Customer agrees to purchase and/or license from ES&S, the Equipment, ES&S Firmware and ES&S Software described on the attached Electronic Pollbook Sales Order ("Sales Order"). The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the Equipment and ES&S Software are set forth on the attached Sales Order. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the Sales Order for the Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the Equipment.

2. **Grant of Licenses.** 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 the Sales Order, and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software during the Initial License Term or any License Renewal Term as defined in Section 4 below. The ES&S Software described in this Section 2 are ES&S proprietary software products. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's jurisdiction. The license granted in this Section 2 does not permit Customer to use or access the source code for the ES&S Software.

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; or

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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).

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 for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the license 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 the Sales Order. The license terms for any License Renewal Term shall be 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 or 3 with respect to, such license. Upon the termination of the license granted in Section 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.

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 solely 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) train Customer on Updates, if such training is requested by Customer; (ii) install the Updates; or (iii) 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 pay ES&S for any Update which is specific to Customer or required due to a change in state or local law.

6. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the Equipment and ES&S 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 set forth on the Sales Order and, if required, will have been certified by the appropriate state authorities for use in the Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for ES&S Software License, Maintenance and Support Services, the ES&S Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the

Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations. Customer shall also be solely responsible for the cost of any third party items that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations.

7. **Delivery; Risk of Loss.** The Estimated Delivery Dates set forth on the Sales Order are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer 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.

8. **Warranty.**

a. **Equipment/ Software.** ES&S warrants that for a 1 year period (the "Warranty Period"), it will repair or replace any component of the 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 Period will commence upon delivery. Any repaired or replaced item of Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Equipment or ES&S Software will become the property of ES&S. ES&S shall not be responsible for the repair or replacement of (i) consumable parts, such as batteries or protective coatings that are designed to diminish over time, (ii) cosmetic damage, including, but not limited to, screen cracks, scratches, dents and broken plastic or (iii) defects caused by normal wear and tear. All Equipment warranty services shall be provided at ES&S' designated location. 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 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 Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact or 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, 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, or the second 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. Upon the expiration of the Warranty Period, the Customer shall be entitled to receive the Software Maintenance and Support Services described on Exhibit A, upon the payment of the applicable fees for such service.

b. **System.** ES&S warrants that the Equipment and ES&S Software will operate in conjunction with the third party items during the Warranty Period, provided that (i) Customer is using third party items which have been approved by ES&S in writing for use with the Equipment and ES&S Software, (ii) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S, and (iii) 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 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 payment 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.** IN THE EVENT OF A BREACH OF SUBSECTIONS 8(a) or 8(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTIONS, 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.

9. **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 the Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the Equipment and ES&S Software; (c) the results obtained from the use of the Equipment and ES&S 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 ES&S 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 Software Maintenance and Support Services.

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

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S. 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 not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Software. Further, 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 Equipment, the Software, the Documentation and training materials that are provided, and all permitted copies of the foregoing.

11. **Indemnification.** Customer shall indemnify and hold harmless ES&S from and against any and all adverse consequences arising out of or relating to the following:

a. Any 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 Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of 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, Software 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 12, 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.

12. **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

13. **Term; Termination.** This Agreement is made as of the date it is executed by the last of the parties named on the Sales Order (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 30 calendar days after it receives written notification thereof from the non-breaching party.

14. **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.

15. **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 fax, (c) sent by commercial overnight courier (with written verification of receipt) or (d) 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 of the Sales Order which is attached to this Agreement and at the addresses 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.

16. **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 calendar days, ES&S may suspend performance under this Agreement until

such amount is paid. If Customer's payment is past due for more than 60 calendar 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 where the Equipment is located and remove it. Any 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.

17. **Additional Services; Changes.** Unless otherwise stated on the Sales Order, Customer shall be responsible for all costs related to services entered into in separate agreements such as, but not limited to, election coding, data conversion costs and network set up and communication. Further, Customer is responsible for equipment and setup, and the costs associated with setup, of the network infrastructure for data transfer and application communication unless specified in separate agreements. In addition, in the event the Customer changes, makes updates, enhances or otherwise modifies the Customer's currently existing voter registration system and such changes, updates, enhancements or modifications results in ES&S having to re-perform any services provided under this Agreement, the Customer shall be responsible for any such additional charges; which shall be invoiced at ES&S' then current rates. Likewise, any Customer requested enhancements, modifications or changes to the Equipment or ES&S Software which ES&S agrees to provide, in its sole discretion, shall be set forth in separate change orders to the Agreement. Customer shall be responsible for the payment of all fees associated with such enhancements, modifications or changes made by ES&S.

18. **Other.** 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 - 6, 8(c), 9 - 12, 15, 16(b) and this section 18 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

EXHIBIT A
ES&S SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SERVICES

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A shall be in effect from the date on which the Initial License Term expires until the first anniversary thereof (the "License Renewal Term"). The License Renewal Term shall automatically renew for an unlimited number of successive one year periods until this Exhibit A is terminated by the first to occur of (a) either party's election to terminate it upon expiration of the License Renewal Term or any renewal thereof, written notice of which election shall be given to the other party at least sixty (60) calendar days prior to such annual expiration date, (b) the date that is thirty (30) calendar days after either party notifies the other that the other has materially breached this Exhibit A, and the breaching party fails to cure such breach within such 30-day period, or (c) the date that is 30 days after Customer fails to pay any amount due ES&S under this Exhibit A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due ES&S hereunder.

2. **Fees.** In consideration for ES&S' agreement to provide the ES&S Software License and Software Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Software License and Software Maintenance and Support Fees set forth on Electronic Pollbook Sales Order. The ES&S Software license and Software Maintenance and Support Fees for the License Renewal Term are due on the date of the expiration of the Initial License Term. The ES&S Software license and Software Maintenance and Support Fees for any renewal period shall be at the then current rates in effect and are due and payable no later than thirty (30) days prior to the beginning of such renewal period. The ES&S Software license and Software Maintenance and Support Fee shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A or the Agreement. If Customer elects to license and receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, ES&S will charge an incremental license and Software Maintenance and Support Fee for such license and services.

ARTICLE II
License of ES&S Software

1. **Grant of License.** During the License Renewal Term or any renewal thereof, ES&S shall grant to Customer a nonexclusive, nontransferable license to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's jurisdiction. The license granted in this does not permit Customer to use or access the source code for the ES&S Software.

2. **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; or

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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).

3. **Term of License.** The license granted in Article II, Section 1 shall commence upon the expiration of the Initial License Term and receipt of payment by ES&S in accordance with Article I, Section 2 of this Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 1 or 2 of this Article II with respect to, such license. Upon the termination of the license granted in Section 1 of Article II 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.

ARTICLE III
ES&S SOFTWARE MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, ES&S shall continue to provide updates in accordance with any update schedule determined by ES&S.

3. **Reinstatement of ES&S License and Software Maintenance and Support Services.** If the License Renewal Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving ES&S' license and Software Maintenance and Support Services upon (a) notification to ES&S, and (b) payment of all fees which would have been due to ES&S had the ES&S' License Renewal Term not expired, plus a reinstatement charge.

4. **Conditions.** ES&S shall provide Software Maintenance and Support Services 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, or the second most recent Update, provided to it by ES&S, (e) Customer's failure to notify ES&S within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. However, such Software Maintenance and Support Services shall not be provided at the Software Maintenance and Support Services Fees outlined in the Sales Order, but shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **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 Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all ES&S License and Software Maintenance and Services 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 Exhibit A. 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.