

**NATIONWIDE CAPITAL, LLC  
LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

**BETWEEN:**     **Nationwide Capital, LLC, a Delaware limited liability company (hereinafter "Lender");**

**AND:**           **Clay County, Texas (hereinafter "Borrower")**

**RECITALS:**

A.     WHEREAS, Borrower desires to obtain a loan from Lender for the purpose of purchasing the Equipment (as defined below); and Lender is willing, subject to and upon the terms and conditions hereafter set forth, to provide a loan to Borrower for such purpose.

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

- Exhibit A (Equipment, Software, and Services Description & Quantities)
- Exhibit B (Promissory Note)
- Exhibit C (Address Information (Invoices and Payments))

NOW, THEREFORE, in consideration of the mutual covenants and agreements, terms and conditions hereinafter set forth, each of the parties hereto:

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

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

CLAY COUNTY, TEXAS  
P.O. Box 548 – 214 N. Main Street  
Henrietta, TX 76365  
Fax No.: (940) 264-4160

\_\_\_\_\_  
Signature

*Kenneth Liggett*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

*Kenneth Liggett*  
\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title

*Clay County Judge*  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*7-24-2017*  
\_\_\_\_\_  
Date

## GENERAL TERMS

### ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

(a) Agreement means this Agreement as hereafter amended, restated or otherwise modified from time to time.

(b) Business Day means any day other than a Saturday, Sunday or other day on which commercial banks in Nebraska are authorized or required to close under applicable law.

(c) Code means the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder.

(d) Collateral has the meaning specified in the Security Agreement.

(e) Default means any Event of Default or any condition, occurrence or event which, after a required notice, if any, or lapse of time, or both, would constitute an Event of Default.

(f) Equipment means voter tabulation equipment and any related software and services purchased by Borrower from ES&S, all as set forth on Exhibit "A" attached hereto.

(g) ES&S means Election Systems & Software, LLC, a Delaware limited liability company.

(h) Event of Default has the meaning specified in Section 8.1.

(i) Legal Opinion means an opinion of Borrower's counsel to the effect that Borrower has full power and authority to enter into this Agreement and the other Loan Documents, which have been duly authorized, executed and delivered by Borrower and as a valid and binding obligation of Borrower enforceable in accordance with their respective terms, and all requirements for execution, delivery and performance of this Agreement and the other Loan Documents have been, or will be, complied with in a timely manner.

(j) Lien means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit

arrangement, encumbrance, lien (statutory or other), or other security agreement, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

(k) Loan shall have the meaning set forth in Section 2.1.

(l) Loan Documents means this Agreement, the Note, the Security Agreement, the Legal Opinion and all other agreements, documents and instruments contemplated by, or made with reference to, this Agreement, as each may be amended, restated or otherwise modified from time to time.

(m) Material Adverse Effect means (i) a material adverse change in, or a material adverse effect upon, the financial condition, operations, assets, properties or prospects of Borrower, (ii) a material adverse effect upon the validity or enforceability of this Agreement or any of the other Loan Documents against Borrower or the rights or remedies of Lender hereunder or thereunder, or (iii) a material adverse effect upon any portion of the Collateral or the Liens in favor of Lender on such Collateral or the perfection or priority of such Liens.

(n) Note means the promissory note to be executed by Borrower and delivered to Lender pursuant to Section 2.1, in substantially the form of Exhibit "B" attached hereto, and all promissory notes given in exchange, renewal or substitution thereof.

(o) Obligations means (i) any and all sums from time to time due from Borrower to Lender arising under or in connection with the Loan and the Loan Documents, or any other instruments evidencing the indebtedness of Borrower to Lender and the full and complete performance of all agreements and documents executed or delivered pursuant to any indebtedness due from Borrower to Lender, all as same may be amended, modified or extended from time to time, (ii) all money or other credit heretofore and hereafter advanced by Lender to or for the account of Borrower, (iii) all other present or future, direct or contingent, liabilities of Borrower to Lender of any nature whatsoever, and (iv) all costs and expenses incurred in the collection of the foregoing, including attorneys fees, in each of (i) – (iv) above, howsoever created, arising or evidenced, whether

direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

(p) Person means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(q) Security Agreement means the Security Agreement to be executed by Borrower and delivered to Lender and each other Security Agreement now or hereafter executed by Borrower to secure the Obligations, as each may be amended, restated or otherwise modified from time to time.

(r) Vendor has the meaning specified in Section 9.1.

## ARTICLE 2 LOAN

2.1 Loan. Lender shall make a loan to Borrower in the amount of **\$92,470.38** (the "Loan"). The Loan shall be evidenced by a separate Promissory Note in the form attached hereto as Exhibit "B" (the "Note"), and shall be subject to the additional terms set forth in this Agreement and the other Loan Documents.

(a) Interest Rate. Interest on the Loan shall accrue on the outstanding and unpaid principal balance of the Loan at the rate set forth in the Note.

(b) Payments of Principal and Interest. Principal and interest shall be due and payable on the Loan as provided in the Note.

(c) Use of Proceeds. Borrower hereby acknowledges and agrees that it shall use the proceeds only for the purchase of Equipment and for no other purposes, and Lender may provide the loan proceeds directly to Vendor.

2.2 Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder or under any other Loan Document exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable thereto. In the event that such a court determines that Lender has charged or received interest hereunder or under any other Loan Document in excess of the highest applicable rate, Lender, in its sole discretion, shall either apply such

excess (to the extent actually received) to any other Obligations, whether principal, interest, fees or otherwise, and regardless of whether such Obligations are then due and payable, or shall refund such excess interest (or any portion thereof not so applied to other Obligations) to Borrower, and such rate shall automatically be reduced to the maximum rate permitted by such law.

2.3 Form of Payments. All payments of principal and interest under the Note shall be payable in immediately available funds and in lawful money of the United States of America to Lender at the remittance account set forth on Exhibit B or at such other account as may be designated by Lender in writing. All payments shall be applied first to accrued interest and then toward any other sums due under this Agreement and then toward principal. All payments shall be made on or before the due dates indicated in the Note, and Borrower hereby agrees to remit such payments and all other amounts when due and payable without any need for Lender to send a bill or an invoice. BORROWER'S PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL, AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER. Restrictive endorsements on checks sent by the Borrower will not change or reduce Borrower's obligations to Lender, and Lender will not lose any rights if it accepts late or partial payments or delays enforcing its rights under this Agreement.

2.4 Payment on Non-Business Days. Whenever any payment to be made under a Loan or under any Loan Document shall be stated to be due on a non-Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest due on the Loan or fees under the Loan Documents, as the case may be.

### 2.5 Appropriations.

(a) The Borrower, by entering into this Agreement, acknowledges its current intention to make all payments due during its current fiscal year on the dates such payments are then due. In the event the Borrower's governing body fails to include in its proposed budget or related documents for the ensuing fiscal year or fails to appropriate sufficient funds to fully fund all of Borrower's obligations to make payments hereunder for any future fiscal year, then the Borrower will immediately notify the Lender or its assignee of such occurrence and the Borrower's right to possession of the Equipment, and all

its interest in the Equipment, will terminate as of effective immediately within the fiscal year in which the failure to appropriate occurs. In such case, the liability and obligations of the Borrower and remedies of Lender will be limited to recovery only of funds appropriated for payments for the then current fiscal year.

(b) The Borrower agrees to use its best efforts to obtain authorization and appropriation of such funds and that the governing body of the Borrower shall, for each ensuing fiscal year in which the payments are scheduled to be made and that, to the extent funds have been appropriated for the current fiscal year, it will make all such payments; and that if sufficient funds are appropriated and budgeted by it for the next fiscal year for the purchase of the Equipment, then this Agreement will be deemed renewed for such fiscal year and will be effective for such fiscal year.

2.6 Non-appropriation. If the governing body of the Borrower fails to specifically appropriate sufficient funds to make the payments due in any fiscal year and no such appropriation is legally made within two weeks after demand by Lender, an event of non-appropriation ("Event of Non-appropriation") will have occurred, and Borrower may terminate this Agreement at the end of the then current fiscal year, whereupon Borrower will be obligated to pay those amounts then due subject to the provisions herein. At the end of such fiscal year, Lender will have the right to take possession of the Equipment. Nothing in this Section or elsewhere in this Agreement will be deemed in any way to obligate the Borrower beyond its current fiscal year. If the Borrower fails to make any payment due based upon an Event of Non-appropriation and relinquishes the Equipment (and title to the Equipment) as provided elsewhere in this Agreement, then Borrower will have no further liability under this Agreement and any prior payments made by Borrower to Lender shall be deemed to have been lease payments.

### ARTICLE 3 SECURITY

In order to secure the payment of the Loan and the Obligations of Borrower to Lender and Borrower's performance of all of the terms and conditions of this Agreement. Borrower shall execute and deliver to Lender the Security Agreement, pursuant to which Borrower shall grant to Lender security interests in such property and assets as Lender may require. Lender's security interests in the Collateral shall be continuing liens and shall include the proceeds and products of the

Collateral, including without the limitation the proceeds of any insurance.

### ARTICLE 4 CONDITIONS OF LENDING

4.1 Conditions Precedent to Disbursement Under the Loan. As conditions precedent to the disbursement under the Loan, Lender shall have received from Borrower, on or before the day of any such disbursement, all of the following, each dated (unless otherwise indicated) such day, in form and substance satisfactory to Lender:

(a) This Agreement and the other Loan Documents, each properly executed on behalf of Borrower (or by Borrower's counsel with regard to the Legal Opinion);

(b) Payment of all reasonable costs and expenses incurred by Lender in preparing the Loan Documents, securing the Obligations and making the Loan; and

(c) Such other documents, instruments or agreements for Borrower as may be reasonably requested by Lender, including copies of the purchase agreement documents between Borrower and Vendor for the Equipment.

### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

5.1. Existence. Borrower is a state, or a political subdivision thereof, within the meaning of Section 103 of the Code and shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

5.2. Authorization. Borrower is authorized under the constitution and laws of the State of Texas to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations under the Loan Documents. Borrower has been fully authorized to execute and deliver this Agreement and all other Loan Documents by proper action and approval of its governing body (if necessary) at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

5.3. Enforceability. This Agreement and all other Loan Documents, when executed and delivered by

Borrower, constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with their terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally. Borrower has complied with all public bidding requirements as may be applicable to this Agreement and the Loan Documents and the acquisition of the Equipment.

5.4 Funding. Borrower has, in accordance with all requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the payments scheduled to come due under the terms of the Note and to meet its other obligations for the current fiscal year], and such funds have not been expended for other purposes.

5.5 Use of Equipment. The use of the Equipment is essential to Borrower's proper, efficient and economic functioning or to the services that Borrower provides to its citizens. Borrower has an immediate need for and expects to make immediate use of substantially all of the Equipment, which need is not temporary or expected to diminish in the foreseeable future. Borrower shall utilize the Equipment only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority.

5.6 No Conflict as to Law or Agreements with Respect to Borrower. The execution, delivery and performance by Borrower of this Agreement and the other Loan Documents and the borrowings from time to time hereunder do not and will not (i) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected, or (ii) except for Liens created for the benefit of Lender, result in, or require, the creation or imposition of any Lien upon or with respect to any of the Equipment now owned or hereafter acquired by Borrower.

5.7 Information. All information heretofore or contemporaneously herewith furnished in writing by Borrower or any other Person to Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of Borrower or any other Person to Lender pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and none of such information is or will be incomplete by omitting to state

any material fact necessary to make such information not misleading in light of the circumstances under which made.

## ARTICLE 6 COVENANTS

Borrower covenants and agrees that, until the outstanding balance of the Loan is paid in full:

6.1 Payments. All payments required under the terms of the Loan Documents have been, and will be, duly authorized and paid when due out of funds then on hand and legally available for such purposes; Borrower will, to the extent permitted by State law and other terms and conditions of this Agreement, include in its budget for each successive fiscal period during the term of this Agreement a sufficient amount to permit Borrower to discharge all of its obligations hereunder, and Borrower has budgeted and available for the current fiscal period sufficient funds to comply with its obligations hereunder.

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

6.3 Ongoing Requirements. There are no circumstances presently affecting the Borrower that could reasonably be expected to alter its foreseeable need for the Equipment or adversely affect its ability or willingness to budget funds for the payment of sums due hereunder.

6.4 Right to Terminate. Borrower's right to terminate this Agreement as specified in Sections 2.5 and 2.6 above was not an independently bargained for consideration, but was included solely for the purpose of complying with the requirements of the laws of the State in which Borrower is located.

6.5 Use and Licenses. Borrower shall pay and discharge all operating expenses and shall cause the Equipment to be operated by competent persons only. Borrower shall use the Equipment only for its proper purposes and will not install, use, operate or maintain the Equipment improperly, carelessly, or in violation of any applicable law, ordinance, rule or regulation of any governmental authority, or in a manner contrary to the

nature of the Equipment or the use contemplated by its manufacturer. Borrower shall keep the Equipment at the location stated in the Security Agreement until Lender, in writing, permits its removal, and the Equipment shall be used solely in the conduct of the Borrower's operations. Borrower shall obtain, at its expense, all registrations, permits and licenses, if any, required by law for the installation and operation of the Equipment.

6.6 Maintenance. Lender shall not be obligated to make any repairs or replacements on or to the Equipment. At its own expense, Borrower shall arrange for the service, repair and maintenance of the Equipment in as good condition, repair, appearance and working order as when delivered to Borrower, ordinary wear and tear from proper use alone excepted, and shall replace any and all parts thereof which may from time to time become worn out, lost, stolen, destroyed, or damaged beyond repair or rendered unfit for intended use, for any reason whatsoever, all of which replacements shall be free and clear of all liens, encumbrances and claims of others and shall become part of the Equipment and subject to this Agreement. Lender may, at its option, discharge such costs, expenses and insurance premiums necessary for the repair, maintenance and preservation of the Equipment, and all sums so expended shall be due from Borrower in addition to all other payments required under the Loan Documents.

6.7 Alterations.

(a) Borrower may, at its own expense, install or place in or on, or attach or affix to, the Equipment such equipment or accessories as may be necessary or convenient to use the Equipment for its intended purposes provided that such equipment or accessories do not impair the value or utility of the Equipment.

(b) Without the written consent of Lender, Borrower shall not make any other alterations, modifications or improvements to the Equipment except as required or permitted hereunder. Any other alterations, modifications or improvements to the Equipment shall immediately become part of the Equipment, subject to the provisions hereof. Without the prior written consent of Lender, Borrower shall not affix or attach any of the Equipment to any real property. The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

6.8 Liens. Borrower shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein, except the respective rights of Lender under the terms of the Security Agreement.

6.9 Insurance: Damage to or Destruction of Equipment. Borrower shall, during the term of the Agreement and at its own cost and expense, provide, maintain, and pay for casualty insurance against the loss, theft, or damage to the Equipment for the full replacement value. Borrower shall name Lender as an additional insured under such insurance coverage and shall require the insurance company to provide thirty (30) days' written notice to Lender before cancellation of any insurance coverage required hereunder. Borrower shall bear the entire risk of loss, damage, theft or destruction of the Equipment from any and every cause whatsoever, and no loss, damage, destruction or other event shall release Borrower from the obligation to pay the full amount of the Loan or from any other obligation under this Agreement or the other Loan Documents. In the event of damage to any item of the Equipment, Borrower will immediately place the same in good repair, with the proceeds of any insurance recovery applied to the cost of such repair. If Lender determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Borrower, at the option of Lender, will either (a) replace the same with like property in good repair or (b) on the next payment date, pay Lender all amounts then owed by Borrower to Lender under this Agreement, including the payment due on such date.

\* \* \* \* \*

In addition to the covenants set forth in Section 6.1 to 6.9 above, Borrower covenants and agrees that, until the outstanding balance of the Loan is paid in full, unless specifically waived in writing by Lender, Borrower shall:

6.10 Notices. Deliver to Lender as promptly as practicable (but in any event not later than ten (10) calendar days after Borrower obtains knowledge of the occurrence of any event which constitutes a Default or an Event of Default, together with a detailed statement by an officer of Borrower of the steps being taken by Borrower to cure the situation.

6.11 Pay Indebtedness To Lender And Perform Other Covenants. (a) Make full and timely payment of the outstanding principal of and interest on the Loan and all other indebtedness of Borrower to Lender, whether now

existing or hereafter arising and whether direct, indirect, contingent, liquidated or unliquidated, and (b) duly comply with all the terms and covenants contained in each of the Loan Documents, all at the times and places and in the manner set forth therein.

6.12 Compliance With Laws. Comply with the requirements of all applicable laws and regulations necessary or proper in the opinion of Lender, to carry out the provisions and purposes of this Agreement.

6.13 Further Assurances. Borrower shall furnish such information and execute such other documents or undertake any other acts as may be reasonably requested by Lender from time to time.

#### ARTICLE 7 EXEMPT OBLIGATION.

7.1 Tax Certification, Indemnification and Arbitrage Exemptions. In the event the parties shall deem this transaction as an exempt obligation, the Borrower shall execute the rider set forth on Exhibit "C" to this Agreement.

#### ARTICLE 8 DEFAULT AND ENFORCEMENT

8.1 Default. Each of the following events shall constitute an Event of Default hereunder (an "Event of Default"), irrespective of whether such Event of Default shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(a) If default shall be made in the due and punctual payment of any principal or interest under any Note or any other fee or monetary obligation under any Loan Document when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise;

(b) If default shall be made in the performance or observance of, or shall occur under, any covenant, agreement, or provisions contained in this Agreement and not described in Section 8.1(a) above, or in any other Loan Document, and such failure continues for thirty (30) days after the earlier of the date on which (i) a responsible officer of Borrower becomes aware of such failure or (ii) notice thereof shall have been given to the Borrower by the Lender;

(c) If any representation or warranty or any other statement of fact herein or in any writing, certificate, report or statement at any time furnished to Lender pursuant to or in connection with this Agreement, or otherwise, shall be false in any material respect or misleading in any material respect;

(d) If Borrower shall admit in writing its inability to pay its debts generally as they become due; file a petition in bankruptcy or petition to take advantage of any insolvency act; make an assignment for the benefit of its creditors; commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property; file a petition or answer seeking reorganization or arrangement or similar relief under the Federal bankruptcy laws or any other applicable law or statute of the United States or any state;

(e) If Borrower shall be adjudged bankrupt; or a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver, trustee, liquidator or conservator of Borrower or of the whole or any substantial part of its properties, or approve a petition filed against Borrower seeking reorganization or similar relief under the Federal bankruptcy laws or any other applicable law or statute of the United States or any State; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Borrower or of the whole or any substantial part of its properties; or if there is commenced against Borrower any petition in bankruptcy or petition to take advantage of any insolvency act and such proceeding or petition remains undismissed for a period of thirty (30) days; or if Borrower by any act indicated its consent to, approval of or acquiescence in any such proceeding or petition; or

(f) If this Agreement or any security or any other Loan Document delivered in connection with this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability of any thereof shall be contested by Borrower or any other obligor thereunder, or the transaction completed or contemplated hereunder shall be contested by Borrower, or if Borrower shall deny that it has any or further liability or obligation hereunder.

Then, and in any such event, and at any time thereafter, if such or any other Event of Default shall then be continuing, Lender may, at its option, declare any Note then outstanding and any other indebtedness owed by

Borrower to Lender to be due and payable, whereupon the maturity of the then unpaid balance of the Note shall be accelerated and the same, and all interest accrued thereon, as well as all other liabilities and indebtedness of Borrower to Lender whether now existing or hereafter arising and whether direct, indirect, contingent, liquidated or unliquidated, shall forthwith become due and payable without presentment, demand, protest or notice of any kind, all of which is hereby expressly waived, anything contained herein or in any Note or other Loan Documents to the contrary notwithstanding. In case any one or more Events of Default shall occur and be continuing, Lender may proceed to protect and enforce its rights or remedies either by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein or in the other Loan Documents, or to enforce the payment of the Note or any other legal or equitable right or remedy.

#### **ARTICLE 9 MISCELLANEOUS**

9.1 Limitation on Warranties. Borrower has selected or shall have selected both the Equipment and the vendor from whom Borrower is to purchase the Equipment (the "Vendor"). Borrower acknowledges and agrees that the Equipment is of a size, design and capacity selected by Borrower, that Lender is not a manufacturer, vendor or distributor of such Equipment, and that Lender has not made, and does not hereby make, any representation, warranty or covenant, express or implied, with respect to the merchantability, condition, quality, durability, design, operation, fitness for use or suitability of the Equipment in any respect whatsoever or in connection with or for the purposes and uses of Borrower, or any other representation, warranty or covenant of any kind or character, express or implied, with respect thereto. Lender shall not be obligated or liable for actual, incidental, consequential or other damages of or to Borrower or any other person or entity arising out of or in connection with the Equipment, including but not limited to the use, performance or maintenance of the Equipment. Borrower may have rights under the contract evidencing the purchase of the Equipment, and Borrower is advised to contact the Vendor for a description of any such rights. Lender hereby assigns to Borrower all warranties running from Vendor to Lender (if any), and Lender hereby irrevocably appoints Borrower, its agent and attorney-in-fact during the term of the Note to assert from time to time whatever

claims and rights (including without limitation warranties) related to the Equipment that Lender may have against the Vendor. By entering into this Agreement, Borrower acknowledges and agrees that Borrower's sole remedy for the breach of any warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lender. Any such matter shall not have any effect whatsoever on the rights and obligations of Lender with respect to this Agreement, including the right to receive full and timely payments hereunder. Borrower expressly acknowledges that Lender makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties by the Vendor of the Equipment.

9.2 Power of Attorney. Borrower does hereby make, constitute, and irrevocably appoint Lender, its successors and assigns, Borrower's true and lawful attorney-in-fact coupled with an interest, in Borrower's name, place, and stead, or otherwise, to do and perform all and every act and thing whatsoever which may be necessary or proper to receive and enforce performance under this Agreement and the other Loan Documents, and to carry out and to give effect to this assignment and the powers herein granted, as fully and to all intents and purposes as Borrower might or could do in the premises, including, but not limited to:

- (a) To do all acts and to execute, acknowledge, obtain, and deliver any and all instruments, documents, items, or things necessary, proper, or required as a term, condition or provision of this Agreement and the other Loan Documents;
- (b) To give any notices, instructions, or other communications in connection with this Agreement and the other Loan Documents;
- (c) To demand and receive all performance due under or with respect to this Agreement and the other Loan Documents and to take all lawful action for the enforcement thereof and to compromise and settle any claim or cause of action of Borrower arising from or related to this Agreement and the other Loan Documents and give acquittances and other sufficient discharges relating thereto; and
- (d) To file any claim or proceeding or to take any other action, either in its own name or in that of its nominee, or in the name of Borrower, or otherwise, to enforce the performance due under or related to this Agreement and the other Loan Documents or protect



and preserve the right, title, and interest of Lender hereunder.

This power of attorney is given in fulfillment of a condition precedent to disbursement of funds under this Agreement, and is for the benefit and protection of Lender, its successors and assigns. This power of attorney shall not impose upon Lender the obligation that it is for the benefit and protection of any other persons. The power of attorney given herein, subject to the occurrence of an Event of Default, is a power coupled with an interest and shall be irrevocable until all of the Obligations are satisfied in full. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event.

9.3 Non-Waiver. Waiver of or acquiescence by Lender in any default by Borrower, or failure of Lender to insist upon strict performance by Borrower of any warranties, agreements or other obligations contained in this Agreement shall not constitute a waiver of any subsequent or other default, failure or waiver of strict performance, whether similar or dissimilar.

9.4 Modifications. No modification of any provision of this Agreement, no approvals required from Lender and no consent by Lender to any departure therefrom by Borrower shall be effective unless such modification, approval or consent shall be in writing and signed by a duly authorized officer of Lender, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

9.5 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.6 Notices. Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by commercial overnight courier (with written verification of receipt) or (c) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall

be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or email address set forth on such signature page unless other names or addresses are provided by either or both parties in accordance herewith.

All such notices and communications shall be effective (a) if personally delivered, when delivered, (b) if sent by certified mail, three days after having been deposited in the mail, postage prepaid, or (c) if sent by overnight courier, one Business Day after having been given to such courier.

9.7 Rights and Remedies Cumulative. The rights and remedies of Lender under this Agreement are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under this Agreement or any other instrument, or at law or in equity. No course of dealing between Lender and Borrower or any failure or delay on the part of Lender in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Lender and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

9.8 Costs of Enforcement. In the event that Lender shall retain or engage an attorney or attorneys to collect or enforce or protect its interests with respect to this Agreement or any other Loan Document, including the representation of Lender in connection with any bankruptcy, reorganization, receivership or any other action affecting creditor's rights, and regardless of whether a suit or action is commenced, Borrower shall pay all of the costs and expenses of such collection, enforcement or protection, including reasonable attorneys' fees, and Lender may take judgment for all such amounts.

9.9 Fees and Expenses. Borrower shall pay all out-of-pocket costs and expenses incurred by Lender (including attorney's fees and all recording and filing fees) in connection with the preparation of this Agreement and the other Loan Documents. Borrower shall also pay all like costs and expenses incurred by Lender (including reasonable attorney fees, recording and filing fees) in connection with the preparation of any amendments, waivers, renewals or modifications of or made pursuant to this Agreement or any other Loan Document.

9.10 Assignment. Borrower may not sell, assign or transfer any interest in this Agreement, or any portion thereof, including, without limitation, Borrower's rights, title, interests, remedies, powers and duties hereunder or thereunder.

9.11 Captions. The captions of the various sections and paragraphs of this Agreement have been inserted only for the purposes of convenience; such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Agreement.

9.12 Reinstatement of Obligations. If at any time any payments on any Note or any other indebtedness or liabilities owed to Lender theretofore made by Borrower or any other Person must be disgorged by Lender for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of Borrower or other Person), this Agreement and each other Loan Documents shall be reinstated as to all disgorged payments as though such payment had not been made, and Borrower shall sign and deliver to Lender all documents and things necessary to reperfect all terminated mortgages, liens, pledges and security interests.

9.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronic transmission or facsimile of this Agreement shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

9.14 Indemnification. BORROWER AGREES TO INDEMNIFY, DEFEND AND HOLD LENDER AND ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, ATTORNEYS, AFFILIATES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, OBLIGATION, DAMAGE, PENALTY, JUDGMENT, CLAIM, DEFICIENCY AND EXPENSE (INCLUDING INTEREST, PENALTIES, ATTORNEYS' FEES AND AMOUNTS PAID IN SETTLEMENT) TO WHICH THE INDEMNIFIED PARTIES MAY BECOME SUBJECT ARISING OUT OF OR BASED UPON A BREACH OR EVENT OF DEFAULT BY BORROWER HEREUNDER, OR ARISING OUT OF LENDER'S AGREEMENT TO EXTEND CREDIT TO BORROWER.

9.15 Governing Law and Consent to Forum. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE COURT LOCATED WITHIN DOUGLAS COUNTY, NEBRASKA OR FEDERAL COURT IN THE DISTRICT OF NEBRASKA. BORROWER WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED AGAINST IT AS PROVIDED HEREIN AND AGREES NOT TO ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE. BORROWER FURTHER AGREES NOT TO ASSERT AGAINST LENDER (EXCEPT BY WAY OF A DEFENSE OR COUNTERCLAIM IN A PROCEEDING INITIATED BY LENDER) ANY CLAIM OR OTHER ASSERTION OF LIABILITY WITH RESPECT TO THIS AGREEMENT, LENDER'S CONDUCT OR OTHERWISE IN ANY JURISDICTION OTHER THAN THE FOREGOING JURISDICTIONS.

9.16 Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY (WHICH LENDER ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OBLIGATIONS OF BORROWER HEREUNDER OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING.

9.17 Credit Agreement in Writing. A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

**Exhibit "A"**

**Equipment, Software, and Services**

<b>Equipment</b>	<b>Qty</b>
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
Paper Roll (Additional)	50
Tote Bin	17
4GB Jump Drive (Additional)	17
ExpressVote BMD Terminal with Internal Backup Battery, Power Supply with AC Cord, ADA Keypad, Headphones, and 4GB Flash Drive	17
Soft-Sided Carrying Case	17
ExpressLink Printer	1
<b>Software</b>	
ElectionWare Software - Reporting Only (ERM)	1
<b>Services</b>	
Model DS200 Installation	17
ExpressVote BMD Installation	17
Equipment Operations Training Day	1
Software Training Day	1
Election On-Site Support Event	1

## Exhibit "B"

### Promissory Note

U.S. \$92,470.38

July \_\_\_\_\_, 2017

For value received, Clay County, Texas (the "Borrower"), hereby unconditionally promises to pay to the order of Nationwide Capital, LLC, a Delaware limited liability company (the "Lender"), in lawful money of the United States of America, the principal sum of **\$92,470.38**, together with interest from and after the date hereof on the unpaid principal balance outstanding at the rate set forth herein.

This Promissory Note (this "Note") is the Note referred to in, and is issued subject to the terms and conditions of, that certain Loan Agreement between Borrower and Lender dated as of the date hereof (as the same may be amended, restated or otherwise modified from time to time, the "Loan Agreement"). All of the terms, covenants and conditions of the Loan Agreement are hereby made a part of this Note and are deemed incorporated herein in full. All capitalized terms used and not defined herein shall have the meanings set forth in the Loan Agreement.

Interest applicable to the principal amount of this Loan evidenced by this Note shall be an amount equal to ninety nine one-hundredths percent (0.99%) per annum. The principal sum, together with interest thereon, shall be paid to Lender at the remittance account set forth below in three annual installments after execution of that certain Sales Order Agreement with Election Systems & Software, LLC of even date herewith ("Contract Execution") in accordance with the following payment schedule. Interest hereunder shall be computed on the basis of actual days elapsed over the period of a 360-day year. For the sake of clarity, payments will be as follows:

\$31,435.77 Due on the One (1) Year Anniversary of Contract Execution.

\$31,435.77 Due on the Two (2) Year Anniversary of Contract Execution.

\$31,435.77 Due on the Three (3) Year Anniversary of Contract Execution.

Lender shall transmit courtesy invoices to Borrower at its address set forth below prior to the due dates for installment payments hereunder. In no event shall Lender's failure or delay in transmitting such courtesy invoices excuse Borrower's obligations to make timely installment payments in accordance with this Note. Absent an Event of Default, the principal amount plus accrued interest of this Note shall be due and payable on the date which is forty eight (48) months after the date hereof (the "Maturity Date"). Upon the occurrence and during the continuation of an Event of Default, the outstanding principal balance of this Note shall accrue interest at a rate per annum equal to eighteen percent (18%) until this Note is paid in full. Upon the occurrence and during the continuation of an Event of Default, Lender shall be entitled, at its option, to declare the then outstanding principal balance and accrued interest thereon to be, and the same shall thereupon become, immediately due and payable in the manner and with the effect provided in the Loan Agreement.

Borrower may prepay any principal or interest under this Note; provided, however, such prepayments will be applied to the indebtedness evidenced by this Note so as to reduce the final payment and in no event shall such prepayment eliminate or reduce subsequently scheduled annual payments.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Note, and hereby consents to any extensions of

time, renewals, waivers and any other modifications that may be granted or consented to by Lender from time to time in respect of the time of payment or any other provision of this Note.

This Note is secured by the Collateral as described in the Security Agreement.

This Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Nebraska without regard to conflict of laws principles. Borrower agrees to pay all reasonable costs and expenses, including attorneys' fees incurred by Lender in connection with the making and enforcement of this Note.

**[The Remainder of This Page Intentionally Left Blank; Signature Page Follows.]**

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized representative as of the date first above written.

**BORROWER:**

Kenneth L. Lyett  
a Clay County

By: Kenneth Lyett  
Its: \_\_\_\_\_

**All payments shall be made by Borrow to Lender via wire transfer as follows:**

Wire payments shall be remitted to:

Nationwide Capital, LLC

Bank of America

ABA#: 0260-0959-3

Account #: 8670312589

Remittance Advice: statements @essvote.com

**All invoices shall be sent by Lender to Borrower at the following Address:**

Clay County, Texas

Attn: Sasha Kelton

P.O. Box 548 – 214 N. Main Street

Henrietta, TX 76365

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is entered into as of July 24, 2017, by Clay County, Texas (hereinafter "Borrower"), to and in favor of Nationwide Capital, LLC, a Delaware limited liability company (hereinafter "Lender").

### RECITALS:

WHEREAS, Lender has committed to making a loan (the "Loan") to Borrower pursuant to the terms and conditions contained in the Loan Agreement, dated concurrently herewith, by and between Borrower and Lender (as may be amended, restated or otherwise modified from time to time, the "Loan Agreement"); and

WHEREAS, to induce Lender to make the Loan under the terms of the Loan Agreement, Borrower has agreed to grant Lender a security interest in certain of Borrower's property as herein provided.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Security Interest. Borrower hereby transfers, assigns and grants to Lender a continuing and irrevocable security interest and general lien in and to all of the following property and rights of Borrower, wherever located and whether now owned or hereafter acquired (collectively referred to herein as the "Collateral"):

(a) The equipment described on Exhibit "A" attached hereto (the "Equipment"), along with each of the following related to the Equipment: Accounts, Chattel Paper (including Tangible Chattel Paper, Electronic Chattel Paper or any hybrid thereof), Commercial Tort Claims, Contracts, Contract Rights, Deposit Accounts, Documents, Fixtures, General Intangibles, Goods, Instruments, Intellectual Property, Inventory, Investment Property (including all Securities, Securities Entitlements and Securities Accounts), Letter-of-Credit Rights, Payment Intangibles, Rights of Seller in Goods and Rights to Returned or Repossessed Goods, Software and all Supporting Obligations; and

(b) All Proceeds from the Equipment, including Proceeds and products of all of the foregoing and all additions and accessions to, replacements and substitutions of, insurance policies and payments, condemnation proceeds of, and documents covering all of the foregoing, all property received wholly or partly in trade or exchange for all of the foregoing, and all income, rents, revenues, dividends, distributions, issues, profits, cash or non-cash Proceeds and accessions arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein.

Capitalized terms used in this Agreement and not otherwise defined herein or in the Loan Agreement are used herein as defined in the Nebraska Uniform Commercial Code (as amended from time to time, the "UCC").

2. Proceeds. The security interest granted to Lender in any Proceeds or other property arising out of the disposition of the Collateral and anything contained herein or in any financing statement shall not be deemed permission or assent by Lender to any sale or disposition of the Collateral except to the extent expressly provided herein.

3. Secured Obligations. The security interest granted to Lender is to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of (a) the Obligations (as defined in the Loan Agreement), (b) any other indebtedness of Borrower, whether evidenced by instruments executed by Borrower, payable and owing to Lender as provided by the terms of any such instrument, (c) all advances made by Lender to discharge taxes or levies on, or made for repairs to, maintenance of, or insurance on, the Collateral, (d) all money or other credit heretofore or hereafter advanced by Lender to or for the account of Borrower, (e) all other present or future, direct or contingent, liabilities of Borrower to Lender of any nature whatsoever and howsoever evidenced, created, incurred or acquired, and (f) all costs and expenses (including court costs and attorney's fees) incurred by Lender in the collection of the foregoing, including representation in any bankruptcy proceedings (all of the above being referred to, collectively, as the "Secured Obligations").

It is the true, clear, and express intention of Borrower that the continuing grant of this security interest remain as security for payment and performance of the Secured Obligations, whether now existing, or which may hereinafter be incurred, or whether or not contemplated by the parties at the time of the granting of this security interest. The notice of the continuing grant of this security interest, therefore, shall not be required to be stated on the face of any document representing any Secured Obligations, nor otherwise identify it as being, secured hereby.

4. Specific Collateral. To further the attachment, perfection and first priority of, and the ability of Lender to enforce Lender's security interest in the Collateral, and without limitation on Borrower's other obligations in this Agreement, Borrower agrees, in each case at Borrower's expense, to take any actions deemed reasonably necessary by Lender to perfect a security interest with respect to the Collateral.

5. Borrower's Name, Place of Business and Location of Collateral. Borrower represents, covenants and warrants for the benefit of Lender that Borrower is a political subdivision in the **State of Texas** with statutory authority to enter into this Agreement, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body politic and corporate until such time as the Secured Obligations have been satisfied in full and its exact legal name is as set forth in the introductory paragraph of this Agreement. Borrower shall maintain the Collateral in the **State of Texas**, and within the **City of Henrietta, County of Clay**, until such time as the Secured Obligations have been satisfied in full. As of the date of this Agreement, Borrower intends to store the Collateral at the address(es) set forth on Exhibit "B" attached hereto.

6. Collateral Use. The Collateral shall be kept in good order and repair and Borrower will not permit waste or do anything to impair the value of the Collateral or any part thereof or use or permit others to use the Collateral in violation of any insurance policy covering the Collateral or any statute, ordinance or state or federal regulation. Borrower shall give Lender immediate written notice of any damage, destruction, theft, loss or the occurrence of any event which impairs the value of the Collateral.

7. Taxes and Assessments. Borrower will pay promptly when due all taxes, assessments and other charges levied or assessed upon the Collateral or for its use or



operation or upon this Agreement or upon any or other documents evidencing the Secured Obligations or other obligations of Borrower secured hereby.

8. Collateral Disposition. Until there is an Event of Default hereunder or receipt of contrary instructions from Lender, Borrower may have possession of the Collateral so long as such possession or use is in a lawful manner not inconsistent with this Agreement or with any policy of insurance thereon. Borrower may not sell, assign, sublease or otherwise transfer title to the Collateral unless or until the Secured Obligations are paid in full.

9. Inspection. Lender or its nominee shall have the privilege at any time, upon request, of inspecting during reasonable business hours any of the business properties or premises of Borrower and the books and records of Borrower relating not only to the Collateral, but also those relating to its general business affairs and financial condition of Borrower. Borrower further agrees from time to time to furnish such other reports, data and financial statements, in respect of its business and financial condition, as Lender may reasonably require.

10. Adverse Security Interests and Liens. Except for the security interest herein granted to Lender, Borrower is, or, to the extent that the Collateral will be acquired after the date hereof, will be, the owner of the Collateral free from any and all liens, security interests or encumbrances. Borrower shall not transfer or assign any interest in this Agreement or the Collateral; and Borrower, at Borrower's expense, will defend the Collateral against all claims and demands of all other persons at any time claiming the same or an interest therein. There is no financing statement now on file in any public office covering the Collateral, or intended so to be, or in which Borrower is named or signed as debtor, and Borrower will not execute and there will not be on file in any public office any financing statement or statements covering the Collateral except for the financing statements to be filed for the security interest herein granted to Lender.

11. Insurance. Borrower shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Borrower will provide Lender with such loss payable or other endorsements as Lender may require. If Borrower at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral. Borrower hereby assigns to Lender, its successors and assigns, the proceeds of all such insurance to the extent of the unpaid balance of the Secured Obligations secured hereby; and appoints Lender as its attorney-in-fact to file claims under any such insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Lender or its successors or

assigns may cancel such insurance at any time and shall receive the return premium, if any, therefor, and may apply such return premium to the purchase of similar insurance or to the balance due on the Secured Obligations secured hereby at its election. The insurance provisions herein contained are in addition to and not in limitation of any other insurance requirements contained in other agreements of Borrower to Lender.

12. Financing Statement and Others Acts. Borrower irrevocably authorizes Lender at any time and from time to time to file financing or continuation statements and/or amendments thereto and Borrower shall execute and deliver such other instruments and documents as may be requested by Lender to perfect, confirm and further evidence the security interest and assignments hereby granted and shall pay the fees incurred in filing all such financing statements or other instruments or documents. If any applicable law requires the registration of the Collateral or the issuance of a certificate of title therefor or both, Borrower agrees to promptly comply with such law(s) and shall cause notice of the security interest of Lender to be shown on any such certificate of title and will join in executing such application for the title forms as Lender shall require.

Upon request of Lender, Borrower will promptly do all other acts and things, and will execute and file all other instruments deemed necessary by Lender under applicable law to establish, maintain and continue Lender's perfected first priority security interest in the Collateral and to effectuate the intent of this Agreement and will pay all costs and expenses of filing and recording or promptly reimburse Lender if such costs and expenses are incurred by Lender, including the costs of any searches deemed necessary by Lender to establish, determine or maintain the validity and the priority of the security interest of Lender, and pay or otherwise satisfy all other claims and charges which in the opinion of Lender might prejudice, imperil or otherwise affect the Collateral or Lender's security interest therein.

13. Undertakings by Lender. Lender may from time to time, at its sole option, and without notice to Borrower, perform any undertaking of Borrower hereunder which Borrower shall fail to perform and take any other action which Lender deems necessary for the maintenance or preservation of any of the Collateral or the interest of Lender therein (including, without limitation, the discharge of taxes or liens of any kind against the Collateral or the procurement of insurance) and Borrower agrees to forthwith reimburse Lender, on demand, for all expenses of Lender in connection with the foregoing, together with interest thereon at a per annum rate equal to the highest rate of interest applicable to any of the Secured Obligations secured hereby, until reimbursed by Borrower and all amounts not so reimbursed shall be added to and become a part of the Secured Obligations secured hereby. Lender may, for the foregoing purposes, act in its own name or that of Borrower and may also act for the purpose of adjusting or settling any policy of insurance on the Collateral, or endorsing any draft received in connection therewith. For all of the foregoing purposes, Borrower hereby grants to any officer or employee of Lender its power of attorney coupled with an interest, irrevocable so long as any of the Secured Obligations secured hereby shall be outstanding.

14. Identification of Collateral. Upon request of Lender, Borrower will stamp on its records concerning the Collateral, a notation, in form satisfactory to Lender, of the security interest of Lender hereunder, and when requested by Lender, Borrower shall further affix to the Collateral such signs or labels as shall be satisfactory to Lender to indicate the security interest of Lender in the Collateral.

15. Default. Borrower shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions (each of which is an "Event of Default"):

(a) An Event of Default, as defined and described in any of the Loan Documents (as defined in the Loan Agreement), shall have occurred; or

(b) Breach or failure to perform by Borrower of any covenant, promise, condition, obligation or liability contained or referred to herein, or in any of the Loan Documents, in the Secured Obligations secured hereby or in any other agreement to which Borrower and Lender are parties.

16. Remedies. Upon the occurrence of an Event of Default under this Agreement, Lender may at its option, without notice or demand, declare the Secured Obligations secured hereby immediately due and payable and Lender, upon the occurrence of any such default, may exercise any and all of the rights and remedies of a secured party under the UCC. Lender may take immediate possession of the Collateral or any part thereof wherever the same may be found, and for said purposes may, and is hereby appointed Borrower's agent and authorized by Borrower to, enter Borrower's premises for the purpose of removing, assembling or taking possession of the Collateral without liability for trespass or any other right of action by reason of taking possession of said Collateral. Whenever the Collateral is in Lender's possession, Lender may use and operate same as appropriate for the purpose of protecting Lender's interest with respect thereto. In addition, if any Collateral shall require rebuilding, repairing, maintenance, preparation, or is in process or other unfinished state, Lender shall have the right at its option to do such rebuilding, repairing, preparation, processing or completion of manufacturing on or off Borrower's premises, for the purpose of putting the Collateral in such saleable form as Lender shall deem appropriate. Lender may require Borrower, at Borrower's expense, to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Borrower agrees to pay all costs of Lender in the collection of the Secured Obligations and enforcement of Lender's rights hereunder, including reasonable attorney's fees and legal expenses, and of any repairs to any realty or other property to which any of the Collateral may be affixed or be a part. Any notice of any sale, lease, or other disposition, or other intended action by Lender shall be deemed reasonable if it is in writing and deposited in the United States mail at least ten (10) days in advance of the intended disposition or other intended action or, with respect to a private sale, at least ten (10) days in advance of the date after which a private sale or sales shall occur, first class postage prepaid, addressed to Borrower at the address set forth in Section 20(e) hereof or to any other address of Borrower appearing on the records of Lender. At any sale, Lender may specifically disclaim any warranties including of title or the like. Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance or lack thereof will not be considered adversely to affect the commercial reasonableness of any sale or disposition of the Collateral. Borrower waives all rights to require any marshalling of assets.

Lender shall also have the right to apply for and have a receiver appointed by a court of competent jurisdiction to enforce its rights and remedies hereunder in order to manage, protect and preserve the Collateral, continue the operation of the business of Borrower, and to collect all revenues and profits thereof and apply the same to the payment of (i) all expenses and other charges of such receivership, including the compensation of the receiver, and (ii) the Secured Obligations until a sale or other disposition of such Collateral shall be finally made and consummated.

Lender may notify any and all parties obligated on any Collateral that the Collateral has been assigned to Lender and that all payments thereon are to be made directly to Lender. Lender may settle, compromise or release, on terms acceptable to Lender, in whole or in part, any amounts owing on such Collateral; sue to enforce payments and prosecute any action or

proceeding with respect to the Collateral in its own name or the name of Borrower; and extend the time of payment, make allowance and adjustments, and issue credits in its own name or the name of Borrower.

The proceeds of any sale shall be applied in the following order: first, to pay all costs and expenses of every kind for care, safekeeping, collection, sale, delivery or otherwise (including expenses incurred in the protection of Lender's title to or lien upon or right in any property, expenses for legal services of any kind in connection therewith or in making any such sale or sales, insurance, commission for sale and guaranty), then to interest on the Secured Obligations or indebtedness of Borrower to Lender; then to the principal thereof, whether or not such Secured Obligations or indebtedness are due or accrued. Any remaining surplus shall be paid to whomever shall be legally entitled thereto. Application of proceeds as between particular Secured Obligations or indebtedness to Lender shall be in the absolute and sole discretion of Lender. If the proceeds of any such sales are insufficient to pay the Secured Obligations, Borrower shall remain liable for the deficiency.

17. Waivers by Borrower. Borrower hereby waives notice of Lender's acceptance hereof and notice of the creation, existence and payment or nonpayment of the Secured Obligations. No act or thing, including, without limitation, the following acts or things (which Lender is authorized to do or not to do with or without notice to Borrower) shall in any way affect or impair the Lender's security interest in the Collateral or Borrower's liabilities and obligations hereunder: (a) any extension or renewal (whether or not for longer than the original period) of any or all of the Secured Obligations; (b) any change in the terms of payment or other terms of any or all of the Secured Obligations or any collateral therefor, or any substitution or exchange of any evidence of any or all of the Secured Obligations or collateral therefor, or any release of any collateral for any or all of the Secured Obligations; (c) any waiver or forbearance granted to any other person liable with respect to any or all of the Secured Obligations or any release of, compromise with, or failure to assert rights against any such other person; (d) the procurement or failure to procure any other collateral for or guarantors or sureties of any or all of the Secured Obligations; (e) the transfer to any person, at any time, of any interest in any of the Secured Obligations or any collateral therefor; (f) the failure or neglect to protect or preserve any Secured Obligation or any collateral therefor, or to exercise any right which may be available to Lender by law or agreement prior to or after an Event of Default or a default under any other agreement, or any delay in doing any of the foregoing; and (g) the application or failure to apply in any particular manner any payments or credits upon the Secured Obligations.

18. Other Collateral. Whether or not Borrower requests or demands that Lender do so, Lender shall not be required before exercising and enforcing its rights under this Agreement first to resort for payment of the Secured Obligations to any guarantor or surety or other person obligated with respect to any Secured Obligation, or to their properties or estates, or to any security interest or other collateral securing payment of any or all of the Secured Obligations or to any other interests, properties, liens, rights or remedies whatsoever. Borrower agrees to defer exercising, and hereby waives, any and all rights which Borrower might otherwise have to obtain reimbursement or payment from other persons obligated with respect to any or all of the Secured Obligations or out of the property of such other persons (whether such rights to obtain reimbursement or payment are rights of recourse, rights of subrogation, rights of contribution, or otherwise) until all the Secured Obligations shall have been fully paid to Lender.

19. Lender's Duties. The powers conferred on Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon Lender to exercise any such powers. Unless otherwise required by law, Borrower has the risk of loss of the Collateral,

and Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Collateral.

20. Miscellaneous. Borrower and Lender further agree as follows:

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska without regard to conflict of laws principles, except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the State of Nebraska.

(b) Non-Waiver. Waiver of or acquiescence by Lender in any default by Borrower, or failure of Lender to insist upon strict performance by Borrower of any warranties, agreements or other obligations contained in this Agreement shall not constitute a waiver of any subsequent or other default, failure or waiver of strict performance, whether similar or dissimilar.

(c) Modifications. No modification of any provision of this Agreement, no approvals required from Lender and no consent by Lender to any departure therefrom by Borrower shall be effective unless such modification, approval or consent shall be in writing and signed by a duly authorized officer of Lender, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

(d) Severability; Additional or Contrary Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In the event that there are any contrary provisions within this Agreement as compared to any other terms set forth in the other Loan Documents, the term(s) most beneficial to the Lender shall apply. Additionally, Borrower hereby reaffirms all representations, warranties and covenants set forth in the other Loan Documents for the benefit of Lender under the terms of this Agreement, and all such representations, warranties and covenants are hereby incorporated by reference.

(e) Notices. Except as otherwise provided in this Agreement, any notice, consent or other communication required or permitted under this Agreement shall be deemed given when (i) delivered personally; (ii) three (3) days after being sent by certified or registered mail; or (iii) one (1) day after being sent by nationally recognized overnight courier. Rejection or other refusal to accept or the inability to deliver because of change of address of which no notice was given shall be deemed to constitute receipt of the communication sent. Names and addresses for notices unless and until written notice of other names, addresses and facsimile numbers are provided by either or both parties are as follows:

If to Lender:

Nationwide Capital, LLC  
11128 John Galt Boulevard  
Omaha, NE 68137  
Fax: (402) 970-1291

If to Borrower:

Clay County, Texas  
P.O. Box 548 – 214 N. Main Street  
Henrietta, TX 76365  
Fax: N/A

(f) Rights and Remedies Cumulative. The rights and remedies of Lender under this Agreement are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Loan Documents or any other instrument, or at law or in equity. No course of dealing between Lender and Borrower or any failure or delay on the part of Lender in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Lender and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

(g) Costs of Enforcement. In the event that Lender shall retain or engage an attorney or attorneys to collect or enforce or protect its interests with respect to this Agreement or any instrument or document delivered pursuant to this Agreement, including the representation of Lender in connection with any bankruptcy, reorganization, receivership or any other action affecting creditor's rights, and regardless of whether a suit or action is commenced, Borrower shall pay all of the costs and expenses of such collection, enforcement or protection, including attorney fees, and Lender may take judgment for all such amounts.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender and its successors and assigns and Borrower and its heirs, successors and permitted assigns.

(i) Assignment; Sale of Interest. Borrower hereby consents to Lender's participation, sale, assignment, transfer or other disposition, at any time or times hereafter, of this Agreement, or of any portion hereof or thereof, including, without limitation, Lender's rights, title, interests, remedies, powers and duties hereunder.

(j) Fees and Expenses. Borrower shall pay all out of pocket costs and expenses, including attorney fees, incurred by Lender in connection with the preparation of this Agreement and any document or instrument delivered pursuant to or in connection with this Agreement and all related documentation, recording or filing fees. Borrower shall also pay all like costs and expenses incurred by Lender in connection with any amendments, waivers, renewals or modifications of or made pursuant to this Agreement or any document or instrument delivered pursuant to or in connection with this Agreement and all other related documentation.

(k) Reinstatement of Obligations. Borrower expressly agrees that to the extent a payment or payments to Lender, or any part thereof, are subsequently invalidated, declared to be void or voidable, set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof intended to be satisfied and any collateral given therefore including this Agreement shall be revived and continued in full force and effect as if said payment had not been made.

(l) Financing Statement. At the option of Lender, this Agreement, or a carbon, photographic or other reproduction of this Agreement or of any UCC financing statement covering the Collateral or any portion thereof, shall be sufficient as a UCC financing statement and may be filed as such.

(m) Consent to Forum. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE COURT LOCATED WITHIN DOUGLAS COUNTY, NEBRASKA OR FEDERAL COURT IN THE DISTRICT OF NEBRASKA AND CONSENTS THAT IT MAY BE SERVED WITH ANY PROCESS OR PAPER BY REGISTERED MAIL OR BY PERSONAL SERVICE WITHIN OR OUTSIDE THE STATE OF NEBRASKA IN ACCORDANCE WITH APPLICABLE LAW. FURTHERMORE, BORROWER WAIVES AND AGREES NOT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT OR RESTRICT THE RIGHT OF LENDER TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE WHERE BORROWER IS A POLITICAL SUBDIVISION, OR IN ANY OTHER STATE, TO THE EXTENT LENDER DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER THE LOAN DOCUMENTS.

(n) Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY (WHICH LENDER ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SECURED OBLIGATIONS OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING.

**[The Remainder of this Page Intentionally Left Blank. Signature Page to Follow.]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**BORROWER:**

Clay County  
a \_\_\_\_\_,

By: Kenneth Lygitt  
Its: \_\_\_\_\_

**ACKNOWLEDGED:**

**NATIONWIDE CAPITAL, LLC,**  
**a Delaware limited liability company**

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

Its: \_\_\_\_\_



**EXHIBIT "A"**

**Equipment**

<b>Equipment</b>	<b>Qty</b>
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
Paper Roll (Additional)	50
Tote Bin	17
4GB Jump Drive (Additional)	17
ExpressVote BMD Terminal with Internal Backup Battery, Power Supply with AC Cord, ADA Keypad, Headphones, and 4GB Flash Drive	17
Soft-Sided Carrying Case	17
ExpressLink Printer	1

**EXHIBIT "B"**

**Collateral Location(s)**

