

ATTACHMENT I

SPECIAL TERMS AND CONDITIONS FOR SECTION I

Contractor requests that certain of its terms and condition be included in the final Contract as may be mutually agreed upon by the parties. Those provisions are set forth below and include Contractor's licensing terms for use by the customer of Contractor' software:

1. Purchase/License Terms. Subject to the terms and conditions of this Contract, Contractor agrees to sell and/or license to Customer and Customer agrees to purchase and/or license form Contract, the equipment, Contractor firmware and Contractor software described on the Electronic Pollbook Purchase Order submitted by the Customer ("Purchase Order"). The payment terms for the equipment, Contractor firmware and Contractor software are set forth herein and on the Purchase Order. Title to the equipment shall pass to Customer when Customer has paid Contractor the total amount set forth on the Purchase Order for the equipment.

2. Grant of Licenses. Subject to the terms and conditions of this Agreement, Contractor hereby grants to Customer a nonexclusive, nontransferable license to use the Contractor software and Contractor firmware, described on the Purchase Order, and related documentation in the Customer's jurisdiction while Customer is using the equipment, Contractor firmware and Contractor software during the Initial License Term or any License Renewal Term as defined in Section 4 below. The Contractor software and the Contractor firmware described in this Section 2 are Contractor proprietary software products and are hereinafter collectively referred to as the "Contractor Software." The license allows Customer to use the Contractor 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 Contractor Software.

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

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 Contractor Software; or

Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Contractor 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 Contractor Software or documentation by any third party to perform any services for Customer without Contractor' prior written consent; or

Cause or permit any change to be made to the Contractor Software without Contractor' prior written consent; or

Cause or permit any copying, reproduction or printing of any output generated by the Contractor Software in which Contractor 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 Contractor Software described in Section 2 and shall continue for the period set forth on the Purchase Order (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 Purchase Order. Contractor may increase the Software License, Maintenance and Support Fees for a License Renewal Term by not more than 5% of the amount of the most recent Fees paid by Customer. Contractor 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 Contractor Software or upon Customer's discontinuance of the use of any Contractor Software, Customer shall immediately return such Contractor Software and the related documentation (including any and all copies thereof) to Contractor, or (if requested by Contractor) destroy such Contractor Software and Documentation and certify in writing to Contractor that such destruction has occurred.

5. Updates. During the Initial License Term or any License Renewal Term, Contractor may provide new releases, upgrades or maintenance patches to the Contractor Software, together with appropriate Documentation ("Updates"), on a schedule solely defined by Contractor. 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 Contractor Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with Contractor's recommended instructions or may request that Contractor install the Updates. Contractor 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 Contractor Software that is required as a result of Customer's failure to timely or properly install an Update.

6. Delivery; Risk of Loss. The Estimated Delivery Dates set forth on the Purchase Order are merely estimates and may be revised by Contractor because of delays in executing the Purchase Order, changes requested by Customer and other events. Contractor will notify Customer of revisions to the Estimated Delivery Dates as soon as Contractor 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 Contractor as an additional insured thereunder until all amounts payable to Contractor under the Purchase Order have been paid by Customer.

7. 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 Contract or Purchase Order. Neither party shall be liable for the other party's negligent or willful misconduct. Contractor's total liability to Customer arising out of or relating to Purchase Order shall not exceed the aggregate amount to be paid to Contractor under such Purchase Order. By entering into the Purchase Order, Customer agrees to accept responsibility for (a) the selection of the equipment and Contractor Software to achieve Customer's intended results; (b) the use of the equipment and Contractor Software; (c) the results obtained from the use of the equipment and Contractor Software; (d) the selection of, use of and results obtained from any equipment,

software or services not provided by Contractor and used with the equipment or Contractor 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 Contractor to perform. Contractor shall not be liable under the Purchase Order 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 Contractor or (z) Customer's election not to receive, or to terminate, the Software License, Maintenance and Support Services.

8. Proprietary Rights. Customer acknowledges and agrees as follows:

Contractor owns the Contractor Software, all documentation and training materials provided by Contractor. Customer has the right to use the aforementioned items to the extent specified in this Contract. Contractor 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 Contractor that are protected by law and are of substantial value to Contractor. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the Contractor Software. Further, Customer shall keep the Contractor 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 Contractor Software, the documentation and training materials that are provided, and all permitted copies of the foregoing.

ATTACHMENT 2

SPECIAL TERMS AND CONDITIONS FOR SECTION 4

Extended Warranties

Software License Maintenance and Support Services – In order for the Customer to continue to license and use the ES&S Software, Customer shall subscribe to and maintain with ES&S a Software License, Maintenance and Support Services Agreement. The terms and conditions associated with such Software License and Maintenance and Support Services Agreement are set forth on Attachment 3. ES&S proposes the following be included as an Attachment to ES&S' Contract with the State.

ATTACHMENT 3

ES&S SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SERVICES

ARTICLE I GENERAL

1. **Term; Termination.** This Attachment I 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 Attachment I 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 Attachment I, and the breaching party fails to cure such breach within such thirty (30) day period, or (c) the date that is thirty (30) days after Customer fails to pay any amount due ES&S under this Attachment I. The termination of this Attachment I 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 Attachment I, Customer shall pay to ES&S the Software License and Software Maintenance and Support Fees set forth on Purchase 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. ES&S may increase the Software License, Maintenance and Support Fees for a License Renewal Term by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any License Renewal Term shall be due and payable no later than thirty (30) days prior to the beginning of such License Renewal Term. 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 Attachment I 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. **License of Software.** During the License Renewal Term, or any renewal thereof ES&S shall continue to grant to Customer the license to the ES&S Software in accordance with the license terms set forth in the Contract upon the payment of the applicable ES&S Software License, Maintenance and Support Fees set forth herein.

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 License Renewal Term or any renewal thereof, ES&S shall continue to provide Updates in accordance with the terms of the Contract as well as in accordance with any Update schedule determined by ES&S.

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 Attachment I, 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 Attachment I. 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.