



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

# Sales Order Agreement

Customer P.O. #:

1st Election Date: To be Agreed Upon by the Parties

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (850) 595-3900

Fax Number: (850) 595-3914

Customer Contact Title: David Stafford - Supervisor of Elections

County Name: Escambia County, Florida

Type of Sale: ☒ NEW

Type of Equip: ☒ NEW ☐ REFURBISHED

Bill To:

Escambia County, Florida

David Stafford - Supervisor of Elections

P.O. Box 12601

Pensacola, FL 32591

Ship To:

Escambia County, Florida

David Stafford - Supervisor of Elections

Voting Equipment Warehouse - 100 E. Blount Street

Pensacola, FL 32591

Item	Description	Qty	Price	Total
1	DS200 Model DS200 Digital Scanner with Wireless Modem, Plastic Ballot Box with Steel Door and e-Bin, Reverse Wound Paper Roll, and 4GB Thumb Drive	20	\$6,325.00	\$126,500.00
2	DS850 Model DS850 High Speed Digital Image Scanner with Steel Table, Report Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Three (3) 8GB Thumb Drives, Start-Up Kit, and Dust Cover (Includes: DS850 Initial Annual License Fee)	2	\$111,500.00	\$223,000.00
3	Service Days Project Management/Service Day	12	\$1,575.00	\$18,900.00
4	Installation and Training Installation and Training Fee (1st Model DS850)	1	\$3,500.00	\$3,500.00
5	Installation and Training Installation and Training Fee (Additional Model DS850)	1	\$1,000.00	\$1,000.00
6	Services Model DS200 Training	1	\$1,575.00	\$1,575.00
7	Services Electionware Training	5	\$1,575.00	\$7,875.00
8	Software UNITY Software Upgrade - Includes: PYO Standard (Base Package)	1		N/C (See Special Notes)
9	Other Model DS200 Wireless Modems (Price does not include data transmission fees)	116	\$575.00	\$66,700.00
10	Network DELL POWEREDGE T620 (ElectionWare Server)	1	\$13,233.00	\$13,233.00
11	Network DELL POWEREDGE T420 (Communications Server)	1	\$4,620.00	\$4,620.00
12	Network DELL OPTIPLEX 7010 (ElectionWare Client)	2	\$1,440.00	\$2,880.00
13	Network APC BACK-UPS ES 750 VA BATTERY BACKUP USB BLACK (For Clients)	2	\$200.00	\$400.00
14	Network DIGI ACCELEPORT RAS 4PORT PCI (Communications Server Wired)	1	\$1,307.00	\$1,307.00
15	Network CISCO ASA 5505 10U BDL CHAS S/W 10U 3DES/AES (Firewall)	1	\$490.00	\$490.00
16	Network OKI B411DN MONO LASER DUPLEX PRINTER USB PAR ENET (Report Printer)	1	\$336.00	\$336.00
17	Network APC SMART-UPS 1500 VA LCD BATTERY BACKUP BLACK (For Servers)	2	\$700.00	\$1,400.00
18	Network OKI BLK TONER CART F/B411 B431 SERIES 4K	1	\$92.00	\$92.00
19	Network OKI B400 SERIES 5 YEAR EXCHANGE VIRTUAL	1	\$340.00	\$340.00
20	Network SWITCH PORT 10/100/1000Mbps	1	\$200.00	\$200.00
21	Network AVG 2013 ANTI VIRUS 1U (1 per PC/Server)	4	\$36.00	\$144.00
22	Network CERBERUS FTP PRO (Communications Server 1 per)	1	\$655.00	\$655.00
23	Network WS FTP PRO SGL USR EN ELECTRONIC (sttp Client 1 per)	1	\$68.00	\$68.00
24	Network ADOBE ACROBAT STANDARD (Electionware Clients 1 per)	2	\$402.00	\$804.00
25	Network MS EXCEL (ElectionWare Clients 1 per)	2	\$158.00	\$316.00
26	Network Microsoft Windows Server External Connector 2012 (Communication Server 1 per)	1	\$2,580.00	\$2,580.00
27	Trade-In Allowance Customer Loyalty Discount			(\$10,000.00)
28	Shipping 3rd Party Network Items			\$800.00
29	Shipping Model DS200 Digital Scanners	20	\$95.00	\$1,900.00
30	Shipping Model DS850 High Speed Digital Image Scanners	2	\$500.00	\$1,000.00
Order Total				\$464,615.00
Trade-In Allowance for 2 Model 650's (Applicable should Customer Trade-In Units to ES&S)				(\$15,000.00)
Order Total Less Trade-In Allowance				\$449,615.00

Freight Billable: yes ☒ no ☐

Gene Seets  
Regional Sales Manager Date

V.P. of Finance Date

Customer Signature  
Gene M. Valentino  
Chairman  
Title

<b>Special Notes:</b> No Charge for Unity Upgrade as Customer has a current Unity Software Maintenance and Support Agreement. Notwithstanding the foregoing, the Unity Upgrade shall require changes to the Customer's Results Accumulation Network; any such changes and associated cost to the Customer's current network shall be the responsibility of the Customer.	
<b>Payment Terms</b>	100% of Order Total or, Order Total Less Trade-In Allowance (as applicable), Due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice. Note: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.
<b>Warranty Period (Years):</b>	One (1) Year After Equipment Delivery
<b>Hardware, Maintenance and Software Maintenance and Support Services (Post-Warranty Period)</b> The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.	
SEE GENERAL TERMS AND CONDITIONS	

ATTEST: PAM CHILDERS  
CLERK OF THE CIRCUIT COURT

BY: DEPUTY CLERK

Approved as to form and legal  
sufficiency.

By Title: Asst. County Attorney  
Date: July 12, 2013

## GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Equipment and ES&S Software described on the reverse side. The payment terms for the ES&S Equipment and ES&S Software are set forth on the reverse side. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the reverse side for the ES&S Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the ES&S Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time employees to use the ES&S Software, described on the reverse side, and ES&S' firmware, which is delivered as part of the ES&S Equipment ("ES&S Firmware"), and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual Software and Firmware License and Maintenance Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the ES&S Software and ES&S Firmware (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in Customer's jurisdiction. The licenses granted in this Section 2 do not permit Customer to access or in any way use the source code for the ES&S Software or ES&S Firmware.

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

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software or ES&S Firmware;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software, ES&S Firmware or Documentation, in whole or in part, to or by any third party without ES&S' prior written consent; or

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

d. Cause or permit any copying, reproduction or printing (subject to any applicable requirements under the Florida Public Records Law) of any output generated by the ES&S Software or ES&S Firmware in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent), including, but not limited to, any ballots, ballot shells or code stock.

4. **Term of Licenses.** The initial licenses granted in Section 2 shall commence upon the delivery of the ES&S Software and ES&S Firmware, as applicable, as described in Section 2, and expire one year thereafter (the "Initial Term"). The licenses shall automatically renew for successive one-year periods upon Customer's timely payment of the annual Software and Firmware License and Maintenance Fees set forth on Schedule A1 (each, a "Renewal Term"). The Initial Term and each Renewal Term are collectively referred to herein as the "Term". ES&S may terminate either 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 either of the licenses granted in Section 2 for ES&S Software or ES&S Firmware or upon Customer's discontinuance of the use of any ES&S Software or ES&S Firmware, Customer shall immediately return such ES&S Software and ES&S Firmware and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software, ES&S Firmware and Documentation and certify in writing to ES&S that such destruction has occurred.

5. **Delivery; Risk of Loss.** The Estimated Delivery Dates set forth on the reverse side are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer.

### 6. **Warranty.**

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

b. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTION 6(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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 Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended

results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update, or the second most recent update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.

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

ES&S owns the Software, all Documentation and training materials provided by ES&S, the design and configuration of the Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the Equipment, the Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

9. **Indemnification.** To the extent permitted by Florida law, Customer shall indemnify and hold harmless ES&S from and against any and all adverse consequences arising out of or relating to the following:

a. Any Third Party Infringement Claim resulting from (i) Customer's failure to timely or properly install and use any update provided to it by ES&S; (ii) the use of any Equipment or Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such Equipment or Software; or (iii) Customer's modification or alteration of any item of Equipment or Software without the prior written consent of ES&S;

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

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

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

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 10, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

10. **Termination.** This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

### 11. **Disputes.**

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

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than 60 days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter the premises where the Equipment is located and remove it. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

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

13. **Compliance with Laws.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the Equipment and Licensed Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for Maintenance and Support Services, the Equipment and Licensed Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the Licensed Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations. Customer shall also be solely responsible for the cost of any third party items that are required in order for the Equipment and/or Licensed Software to remain compliant with applicable laws and regulations.

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

(i) the total cost of any third party items that are required in order for the Equipment and/or Licensed Software to remain certified;

(ii) Customer's pro-rata share of such future state certification or recertification costs; and

(iii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Equipment and/or Licensed Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 14(ii) and 14(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement.

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

**ARTICLE I**  
**GENERAL**

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

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for any Renewal Periods shall be as agreed to by the parties and such fees will not exceed ES&S' list prices which are in effect at the time of commencement of any Renewal Period. The Renewal Period fees are due and payable no later than thirty (30) days prior to the beginning of such renewal period. The Software License, Maintenance and Support Fees shall be comprised of (i) a fee for the Software License, Maintenance and Support of the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Hardware Maintenance or Software License, Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, ES&S will charge an incremental fee for such services. In the event Customer terminates this Exhibit A through no fault of ES&S and later desires to subscribe to a Hardware Maintenance or Software License, Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software License, Maintenance and Support Plan with ES&S during the Initial Term or any renewal thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance or Software License, Maintenance and Support Coverage.

**ARTICLE II**  
**HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Exhibit A for the ES&S equipment listed on Schedule A1 is set forth on Schedule A1 (the "Products") and shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each **Twelve (12) Months** during the Initial Term or any renewal thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule A1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule A1 as "repair only" shall only be provided pursuant to Section 1(b) below.

b. **Repair Services.**

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

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule A1.

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

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

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

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

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

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

### **ARTICLE III**

#### **SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. **License and Services Provided.** ES&S shall provide Software License, Maintenance and Support Services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), in order for the Customer to continue to license the ES&S Software in accordance with the license terms set forth in this Exhibit A as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or

workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "Software", and shall be subject to all the terms and conditions of ES&S' license of the Software, upon delivery. Customer shall install Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. In the event Customer requests ES&S to install an ES&S Firmware Update, ES&S shall install such Update only in connection with the Routine Maintenance Services provided herein. ES&S may charge Customer at its then-current rates to (a) ship the Updates, (b) install the Updates (c) provide maintenance and support on the Software which is required as a result of Customer's failure to timely install an Update or (d) train the Customer on the Updates. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in federal or state law.

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

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

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

**Schedule A1**

**ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES**  
(Expiration of Warranty Period through the first anniversary thereof)

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
20	Model DS200 Digital Image Scanner	TBD	\$175.00	\$3,500.00
2	Model DS850 High Speed Digital Image Scanner	TBD	\$3,900.00	\$7,800.00
<b>Total Hardware Maintenance Fees for the Initial Term</b>				<b>\$11,300.00</b>

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

**Note 2: Surcharge for Emergency Repair Services shall be 150% of the then current maintenance fee per unit.**

**Note 3: Customer's Designated Location: Escambia County, Florida**

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

**Note 5: Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period") until this Exhibit A is terminated according to Article I, Section 1.**

**Hardware Maintenance Services Provided by ES&S Under this Exhibit A**

1. Telephone support.
  - ES&S will provide Hardware support on procedural questions of a specific nature not covered in ES&S' Hardware User Manuals;
  - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution. (to be provided on a limited basis)
  - ES&S will provide Hardware issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Equipment User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
3. ES&S posts Technical Bulletins available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.



- Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
  - Service performed by an ES&S trained and certified technician.
  - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
  - Replacement of worn or defective with new or remanufactured federally and state certified parts.
  - Conducting a final test to verify that the unit is working according to manufacturer's specifications.
  - Use of a checklist tailored for each piece of equipment.
  - Update of maintenance records which are kept by serial number and available to you through your ES&S Web-based portal.

**5. Repair Services.**

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

**6. Priority Services.**

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

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

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

(Expiration of Warranty Period through the first anniversary thereof)

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

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
N/A	AutoMARK Information Management System (AIMS)	N/A	N/A
N/A	Ballot Image Manager (BIM)	N/A	N/A
N/A	Ballot on Demand (BOD)	N/A	N/A
N/A	Data Acquisition Manager (DAM)	N/A	N/A
N/A	Election Data Manager (EDM)	N/A	N/A
N/A	Election Reporting Manager (ERM)	N/A	N/A
N/A	Hardware Programming Manager (HPM)	N/A	N/A
N/A	iVotronic Image Manager (IVIM)	N/A	N/A
<b>Total Software License, Maintenance and Support Fees for the Initial Term</b>			<b>N/A</b>

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

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
20	Model DS200 Digital Image Scanner	TBD	\$75.00	\$1,500.00
2	Model DS850 High Speed Digital Image Scanner	TBD	\$1,500.00	\$3,000.00
<b>Total Firmware License, Maintenance and Support Fees for the Initial Term</b>				<b>\$4,500.00</b>

### Software License, Maintenance and Support Services Provided by ES&S under this Exhibit A

1. Telephone support.

- ES&S will provide Software support on procedural questions of a specific nature not covered in ES&S' Software User Manuals;
- ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.

2. Issue Resolution. (to be provided on a limited basis)

- ES&S will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be

advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.

- ES&S will provide Technical Bulletins available on the ES&S Customer Portal on a schedule to be determined by ES&S regarding specific issues the Customer may be experiencing.

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

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

1. Customer's current software and hardware operator shall have completed a full software training session for each product selected.
  - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
  - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
  - Customer shall have the ability to change the stick batteries on the iVotronic system and the pick belts on the Model 650. Any other changes made by the customer must be pre-approved in writing by ES&S.
  - Customer shall have the ability to store equipment in accordance with ES&S requirements.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. Customer shall be responsible for integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer VR system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise.
7. Customer shall be responsible for Customer Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of the software or hardware.
9. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.