

**ELECTION SYSTEMS & SOFTWARE, LLC  
MAIL BALLOT VERIFIER, PROCESSING AND SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below on the signature page (the "Effective Date"),

**BETWEEN:** ELECTION SYSTEMS & SOFTWARE, LLC, a Delaware Limited Liability Company ("ES&S")

**AND:** NEVADA COUNTY, CALIFORNIA ("Customer").

**RECITALS:**

- A. ES&S is the owner of certain ballot printing equipment and software as set forth herein and Customer has agreed to purchase and license the ballot printing equipment and related software and services from ES&S for use in **Nevada County** (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto and incorporated herein by reference.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
  - Exhibit A (Pricing Summary)
  - Exhibit B (ES&S Equipment, ES&S Software, Third Party Items Description, Pricing and Fees)
  - Exhibit C (ES&S Support Services)

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 California**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as 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, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC  
11208 John Galt Blvd.  
Omaha, NE 68137  
Fax No.: (402) 970-1291

NEVADA COUNTY, CALIFORNIA  
950 Maidu Ave. – Ste. 250.  
Nevada City, CA 95959  
Fax No.: (530) 265-9829

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

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Title

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Date

\_\_\_\_\_  
Date

**GENERAL TERMS  
ARTICLE 1  
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the ES&S Equipment and ES&S Software.
- b. "ES&S Equipment" means ES&S' hardware or other ES&S proprietary equipment.
- c. "ES&S Software" means ES&S' proprietary Balotar software and all Updates delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.

**ARTICLE 2  
SALE OF ES&S EQUIPMENT AND LICENSE OF ES&S SOFTWARE AND PAYMENT OF FEES**

2.1 **Purchase Terms; Use.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment described on Exhibit B. The payment terms for the ES&S Equipment are set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment.

2.2 a. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses to use the ES&S Software described on Exhibit B and related Documentation supplied by ES&S. The licenses allow Customer to use (but not copy) the ES&S Software and the Documentation in the course of operating the ES&S Equipment and solely for the purposes of managing the printing of ballots in the Jurisdiction. The licenses granted in this Section 2.2 do not permit Customer to use the source code for the ES&S Software.

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

i. 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;

ii. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any ballot printing, coding, programming or ballot layout services) without ES&S's prior written consent; or

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

iv. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.3 **Term of Licenses.** The licenses granted in Section 2.2 shall commence upon the delivery of the ES&S Software described in Section 2.2 and shall continue for the Initial Term of the Agreement (the "Initial License Term"). Upon expiration of the Initial License Term, the parties may, upon mutual written agreement between the parties, renew this Agreement 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 Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.5, or 3.8 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.4 **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches or third party software required for the continued use of the ES&S Software at ES&S' expense, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in local law.

2.5 **Fees**

a. **Equipment Sale and License Fees.** The fees for the purchase of ES&S' Equipment and License of ES&S Software during Term of the Agreement are set forth on Exhibit A.

b. **Processing Fee.** In addition to the payment of the fees set forth above and in partial consideration for the use of the ES&S Equipment and ES&S Software in order to to scan, sort and process ballots in the Jurisdiction, Customer shall pay ES&S the Processing Fees set forth on Exhibit A.

**ARTICLE 3  
MISCELLANEOUS**

3.1 **Delivery; Risk of Loss; Insurance.** ES&S anticipates shipping the ES&S Equipment and ES&S Software identified on Exhibit B to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification and other events outside of ES&S's control. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software until all amounts payable to ES&S under this Agreement for ES&S Equipment and Software have been paid by Customer.

3.2 **Installation of ES&S Equipment and ES&S Software.** Customer acknowledges and agrees that the ES&S Equipment and ES&S Software provided by ES&S hereunder shall only be used by the Customer to perform the services contemplated under this Agreement and not for any other purpose. Customer will provide, at its own expense, a site adequate in space and design for installation, operation and storage of the ES&S Equipment, ES&S Software and consumable items. Customer shall be responsible for providing a site that is temperature and humidity controlled, has all necessary electric

current outlets, circuits, and wiring for the ES&S Equipment. ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any ES&S Equipment or ES&S Software is installed. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any ES&S Equipment or ES&S Software at a site not meeting ES&S' specifications.

### 3.3 **Warranty; Maintenance; Support**

a. **Warranty.** ES&S warrants the ES&S Software will operate in all material respects as specified in the Documentation. If ES&S makes or has made claims in response to specifications listed in a Customer solicitation, then ES&S warrants the ES&S Software to operate in all material respects as claimed in response to the solicitation. ES&S warrants that the ES&S Software does not contain any disabling devices that would allow ES&S to terminate operation of the ES&S Software. ES&S further warrants that, to the best of its knowledge, the ES&S Software does not contain any viruses. In the event ES&S makes specific customizations to the ES&S for the Customer, ES&S warrants as follows for all software customization made by ES&S for the Customer: (1) All software customization will continue to be supported by ES&S as set forth herein; (2) All software customizations will be preserved and will remain functional in any future software versions, revisions, or updates provided by ES&S to the Customer; (3) All future software versions, revision, or updates provided by ES&S will not cause the Customer to incur any additional cost as a result of the software customizations. These provisions shall apply for as long as the Customer is covered by an ES&S maintenance agreement.

b. **ES&S Equipment and ES&S Software** ES&S agrees that during the Term of the Agreement, ES&S shall maintain the ES&S Equipment and ES&S Software in good working condition in order to allow the Customer to use the ES&S Equipment and ES&S Software in accordance with its Documentation, wear and tear excepted ("Normal Working Condition"). If a defect or malfunction occurs in any ES&S Equipment and/or ES&S Software 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. ES&S shall repair or replace any item of ES&S Equipment and ES&S Software at ES&S' or the Customer's designated location as determined by ES&S in its sole discretion. If a defect or malfunction occurs in any ES&S Equipment and ES&S Software 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, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, rodent infestation, and utility or communication interruptions, Customer shall pay ES&S for any maintenance services at ES&S' then-current rates, as well as for the cost of all parts used in connection with the performance of such maintenance services.

c. **Technical Support.** In addition to providing those services set forth in Section 3.3 (a), ES&S shall provide the Customer with technical help desk support. Such support shall be provided during the hours of 7:00 a.m. (CST) to 7:00 p.m. (CST) Monday through Friday. 24 hour support coverage on Election Day. ES&S' help desk support number is 1-877-ESS-VOTE, Option 4 for Technical Support.

d. **Disclaimer of Warranties.** **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF CONDITIONS, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. ES&S DOES NOT REPRESENT OR WARRANT THAT THE ES&S EQUIPMENT AND ES&S SOFTWARE WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND THAT ALL PROGRAM ERRORS IN THE ES&S EQUIPMENT AND ES&S SOFTWARE CAN BE FOUND IN ORDER TO BE CORRECTED. NOR DOES CONTRACTOR MAKE ANY WARRANTIES**

**REGARDING THE ACCURACY, RELIABILITY OR CURRENCY OF ANY INFORMATION CONTENT. EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF ES&S ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, AND/OR PERFORMANCE OF THE ES&S EQUIPMENT AND ES&S SOFTWARE.** Unless otherwise stated herein, ES&S shall not be liable for, and Customer hereby assumes the risk of and shall indemnify and hold harmless ES&S against, any claim, injury, loss, damage, or expense (including attorneys' fees), either direct or indirect, incurred, made, or suffered by Customer in connection with or in any way arising out of the furnishing, performance, or use of services provided by any third party contracted by Customer to perform services in connection with the ES&S Equipment and ES&S Software.

3.4 **Insurance.** During the performance of this Agreement, ES&S shall maintain in full force and effect the following insurance coverages:

a. **Commercial General Liability Insurance:** (Customer Resolution No. 90674) Customer shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- i. Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of \$1,000,000.
- ii. An endorsement naming Customer as an additional insured under said policy, with respect to claims or suits arising from ES&S' product(s) and/or the services provided under this Agreement;
- iii. A provision that said insurance shall be primary and other insurance maintained by the Customer shall be excess only and not contributing with ES&S' insurance; and
- iv. A provision that said insurance shall provide for thirty (30) days written notice to Customer of any termination or change in coverage.

3.5 **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. Except for claims associated with intellectual property infringement, personal injury and property damage (personal injury and property damage are covered under the insurance requirements set forth in Section 3.4 above), ES&S' total liability to Customer arising out of or relating to this Agreement for any indemnification claim or breach of contract claim shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the ES&S Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; (e) errors that arise from mechanical or electronic component failures that are not covered under warranty or not subject to maintenance efforts or cure under this Agreement; or (f) 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 its obligations under this Agreement.

3.6 **Taxes; Interest.** Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. 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 (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

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

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.8 **Indemnification.**

a. **General.** ES&S shall defend, indemnify and save harmless the Customer, its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, judgments damages, losses or expenses (including, without limitation, defense costs and attorney fees of litigation) arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the ES&S or his agents or employees or other independent contractors directly responsible to him; except those liabilities, claims, demands, judgments damages, losses or expenses to the extent resulting from the negligence or willful misconduct of the Customer. With respect to any and all liabilities, claims, demands, judgments damages, losses or expenses arising from the joint or concurrent negligence of ES&S and the Customer, each party shall assume responsibility in proportion to the degree of its respective fault as determined by a court of competent jurisdiction. ES&S' obligation to indemnify Customer is contingent upon the Customer giving prompt notice to ES&S of any claims, permitting ES&S to defend, compromise, or settle any claim, and cooperate with the defense of any such claim. ES&S shall notify the Customer immediately in the event of any accident or injury arising out of or in connection with this Agreement.

b. **Intellectual Property.**

i. Notwithstanding any language contained herein to the contrary, ES&S warrants that the ES&S Software does not infringe upon or violate any patent, copyright, trade secret, contract right, or any other proprietary right of any third party within the United States. Except as otherwise provided, ES&S, at its own expense, will defend, indemnify and hold Customer harmless from any claim made or threatened or any suit or proceeding brought against Customer insofar as it is based on an allegation that the ES&S Software furnished by ES&S under this Agreement infringes any copyright or patent in existence on the date the ES&S Software was initially provided to Customer, but only if Customer does all of the following:

- (1) notifies ES&S of that action in writing within a reasonable period of time (such that ES&S suffers no prejudice to its rights);
- (2) gives ES&S the right to control and direct the defense and settlement of that action;
- (3) makes no compromise, settlement, or admission of liability; and
- (4) provides reasonable assistance and cooperates in the defense of that action at ES&S' reasonable expense.

ii. Subject to the limitations set forth in this Agreement, ES&S shall pay any resulting damages, costs and expenses finally awarded to a third party, including, but not limited to, reasonable legal fees, incurred as a result of the ES&S Software's infringement of a copyright or patent right. ES&S will have no responsibility for the settlement of any claim, suit, or proceeding made by Customer without ES&S's prior written approval.

iii. If the ES&S Software is held to infringe, and the use of the ES&S Software is enjoined, ES&S, at its expense, will do one of the following:

- (1) procure for Customer the right to continue using the infringing or potentially infringing ES&S Software;
- (2) replace the infringing or potentially infringing ES&S Software with non-infringing software; or
- (3) modify the infringing or potentially infringing ES&S Software so that it becomes non-infringing.
- (4) If none of the foregoing remedies are commercially feasible, ES&S will return to Customer the initial license fee actually paid by Customer to ES&S under this agreement, and upon such a return, any licenses granted to Customer for the ES&S Software shall terminate immediately.

3.9 **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.10 **Term; Termination.** This Agreement shall be effective for a **five (5) year period** beginning on the Effective Date and continuing through September 30, 2021 (the "Initial Term"). Upon expiration of the Initial Term, the parties may, upon mutual written agreement between the parties, renew this Agreement for an unlimited number of successive one-year periods (each a "Renewal Period"). The Initial Term and all Renewal Periods shall be collectively referred to herein as the "Term". The Term shall continue until this Agreement is terminated by the first to occur of (i) the date that is thirty (30) days after either party notifies the other that the other has materially breached this Agreement, and the breaching party fails to cure such breach within such thirty (30) day period; or (ii) Customer's failure to make any payment due hereunder within thirty (30) days after it is due. In the event of early termination by ES&S due to (a) a breach of this Agreement by Customer, (b) Customer's failure to pay any amounts owed under this Agreement or (c) the failure of Customer to appropriate funds to make the payments due under

this Agreement, Customer shall pay ES&S for all services performed and all ballot processing fees earned up through the date of termination as well as the present value of the remaining amounts owing hereunder for the ES&S Equipment, discounted at the rate of 6.5% per annum. Upon termination of this Agreement, Customer shall immediately return all ES&S Software and Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred. In addition, Customer shall return all unused and unopened consumable items, including ballot paper, to ES&S within thirty (30) days following the termination of the Agreement. Customer shall provide ES&S with a written certification from an authorized representative of Customer stating that Customer has returned all items, in its possession, associated with this Agreement. Such written certification shall be included with the return of the aforementioned items. .

3.11 **Non-Appropriation of Funds.** Customer represents, warrants, and covenants that it has appropriated, and will have appropriated, funds available necessary to pay the amounts due herein through the end of the Customer's current fiscal year, and that Customer shall use its best efforts to obtain and appropriate funds in order to pay all payments which shall be due in each year of this Agreement. In the event that funds are not appropriated or otherwise made available to support the continuation of performance by Customer hereunder in any subsequent fiscal period, this Agreement may be terminated by either party. Either party may notify the other of the termination, which may occur no later than the beginning of the subsequent fiscal period. Upon termination, Customer shall pay ES&S for all services performed pursuant to this Agreement up to the date of termination and reasonable exit costs incurred by ES&S. The amount of such payment may be paid from any appropriations available for such purposes, and Customer shall use his/her best efforts to timely and sufficiently request the appropriation necessary to pay such amount.

3.12 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

3.13 **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) within five (5) days if 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, email address 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.

3.14 **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 thirty (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 sixty (60) days and is undisputed, ES&S may terminate the Agreement. ES&S shall notify Customer in writing, of such intent to terminate with sixty (60) days advanced written notice.



3.15 **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. ES&S is providing Equipment, Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Article 2 and Sections 3.4-3.15 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

**[END OF GENERAL TERMS]**

**EXHIBIT A  
PRICING SUMMARY**

<b>Sale Summary:</b>						
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>				
ES&S Equipment and Software	Exhibit B	\$55,830.00				
Support Services	Exhibit C	Included				
Shipping, installation and training		\$8,755.00				
Trade in of 1 AVES Scanner		(\$7,500.00)				
<b>Total Net Sale:</b>		<b>\$57,085.00</b>				
Processing Fees are not included in Total Net Sale. Please see Note 2 below for payment terms and Exhibit B for Processing Fees and payment terms.						
<b>Terms &amp; Conditions:</b>						
<p><b>Note 1:</b> Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.6. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.</p>						
<p><b>Note 2: <u>Invoicing and Payment Terms are as Follows:</u></b></p> <p>\$57,085.00 due Thirty (30) Calendar Days after the later of (a) Delivery of the Mail Ballot Verifier System, or (b) Receipt of Corresponding ES&amp;S Invoice.</p> <p>Processing fees are set forth on Exhibit B and shall be due within thirty (30) days of receipt of ES&amp;S invoice.</p> <p>Customer is responsible for preparing and packaging the trade-in equipment for shipment. ES&amp;S will coordinate and pay for the pickup of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties.</p>						
<p><b>Note 3:</b> Services in excess of those set forth in <u>Exhibit C</u> shall be charged at the rate of \$1,575 per day, including expenses.</p>						
<p><b>Note 4:</b> ES&amp;S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:</p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">Equipment/Software</td> <td style="text-align: center;">Estimated Delivery Date</td> </tr> <tr> <td style="text-align: center;">Mail Ballot Verifier System</td> <td style="text-align: center;">To Be Agreed To By The Parties</td> </tr> </table>			Equipment/Software	Estimated Delivery Date	Mail Ballot Verifier System	To Be Agreed To By The Parties
Equipment/Software	Estimated Delivery Date					
Mail Ballot Verifier System	To Be Agreed To By The Parties					
<b>License, Maintenance and Support – Initial Term:</b>						
ES&S Equipment and ES&S Software – Initial Term: Anticipated Initial Term: 10/1/2016 through 9/31/2017						
Hardware Maintenance and Support Services – Renewal Period		The Then Current Fee In Effect				
Services commence at the end of the Initial Term. Fees reflect a one-year term. Payment is due at the start of the maintenance period						
Software License, Maintenance & Support Services – Renewal Period						
- Mail Ballot Verifier Software		The Then Current Fee In Effect				
Services commence at the end of the Initial Term. Fees reflect a one-year term. Payment is due at the start of the maintenance period.						

**EXHIBIT B  
EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS DESCRIPTION,  
PRICING AND FEES**

QUANTITY	DESCRIPTION	TOTAL PRICE
<b>Mail Ballot Verifier System Includes the Following:</b>		
1	MBV 1000Transport	Included
1	High Capacity Envelope Feeder	Included
1	Adjustable, In Line Ink Jet Printer (1/2" High)	Included
1	Line Scan Image Camera	Included
1	Thickness Detector	Included
1	Divert Bin	Included
1	MBV Computer	Included
1	Envelope Catch Tray	Included
	Hardware Sub Total	\$44,000
1	MBV Software with imaging adjustable signature block and barcode scanning	Included
		Included
1	"No Signature" Detection	Included
1	Automated Signature Recognition Software	Included
1	DIMS Interface	Included
	Software Sub Total	\$11,830
	Purchase Cost	\$55,830.00
	Shipping and Installation	\$5,605.00
	Election setup support and training- 2016 General Election	\$3,150.00
	<b>PURCHASE PRICE:</b>	<b>\$64,585.00</b>
	Trade in of Existing AVES Scanner	(\$7,500.00)
	<b>TOTAL PURCHASE PRICE</b>	<b>\$57,085.00</b>

**EXHIBIT C  
SUPPORT SERVICES**

The support services to be provided by ES&S during the Initial Term, a description of such services and total fees are described below. Customer acknowledges that ES&S's fees for support services are based on the descriptions listed in the table below, and that a change in the descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S's provision of Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

<b>Role/Function</b>	<b>Area of Work or Description</b>	<b>Primary Responsibility</b>	<b>Fee</b>
<b>Training</b>	<p>Training will be provided on a pre-scheduled basis. Number and length of training sessions will be mutually agreed upon in advanced. Customer agrees to provide a facility to hold training sessions. Levels of training include:</p> <p><b>1st level (operator) training</b></p> <ul style="list-style-type: none"> <li>- Provides sufficient skills to operate the system, replace consumables, clear jams.</li> </ul> <p><b>2nd level (lead) training</b></p> <ul style="list-style-type: none"> <li>- Involves more in depth troubleshooting knowledge including aligning feeder, understanding communication issues with VR systems, and production of reports.</li> </ul> <p><b>Technical training to IT or operations staff</b></p> <ul style="list-style-type: none"> <li>- Involves a complete understanding of system architecture and operations.</li> </ul> <p>Refresher training can be provided in advance of each election on a mutually agreeable timeframe at the then current rate per day (currently \$1,575.00 per day).</p>	ES&S	Included
<b>Hardware and Software Maintenance</b>	<p><b>Software Maintenance</b></p> <ul style="list-style-type: none"> <li>• Technical software support hotline</li> <li>• Installation of any new Updates</li> <li>• Testing and validation of all Updates</li> </ul> <p><b>Hardware Maintenance</b></p> <ul style="list-style-type: none"> <li>• Technical support and repair of all hardware components</li> <li>• Break/Fix maintenance on the Mail Ballot Verifier system</li> <li>• All labor</li> </ul>	ES&S	Included
	<b>Total Support Service Fees</b>		<b>Included</b>

Role/Function	Area of Work or Description	Primary Responsibility
<b>Installation – Mail Ballot Verifier System</b>	ES&S will inspect and install the Mail Ballot Verifier System at Customer’s designated location to ensure it is operating properly and within specifications.	ES&S
	<b>Total Installation Fees: Included</b>	