

**ELECTION SYSTEMS & SOFTWARE, INC.  
VOTER TABULATION SYSTEM 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, Inc., a Delaware corporation ("ES&S")

**AND:** The County of Nassau, Florida ("Customer").

**RECITALS:**

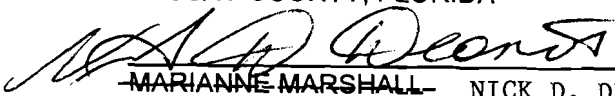
- A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in **Nassau County, FL** (the "Jurisdiction"). The terms and conditions under which the equipment, software and services shall be provided are set forth in the **GENERAL TERMS** 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):
- X Exhibit A (Pricing Summary)
  - X Exhibit B (ES&S Equipment)
  - X Exhibit C (ES&S Software)
  - X Exhibit D (Third Party Items)
  - X Exhibit E (Election Support Services)
  - Exhibit F (Hardware Maintenance Services)
  - Exhibit G (Software Maintenance and Support)
  - X Exhibit H (Definitions)

**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 applicable Exhibit.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the State of **Florida**.
- Represents and warrants to the other party that as of its signature date indicated 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.

***[Signature Page to Follow]***

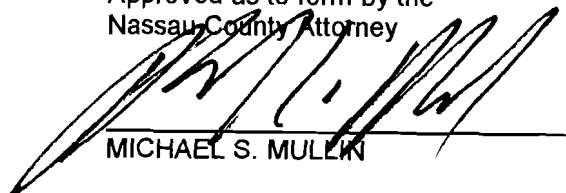
BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
~~MARIANNE MARSHALL~~ NICK D. DEONAS  
Its: Chairperson

ATTEST:

  
J.M. "CHIP" OXLEY, JR.  
Its: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney

  
MICHAEL S. MULLEN

Dated: February 25, 2002

ELECTION SYSTEMS & SOFTWARE, INC.  
11208 John Galt Boulevard  
Omaha, NE 68137  
Fax No.: (402) 970-1297

By: 

Print Name THOMAS O'BRIEN

Title CFO

Dated: February 28, 2002

**GENERAL TERMS  
ARTICLE 1  
DEFINITIONS**

All capitalized terms used, but not defined, in these General Terms or on an Exhibit are defined in Exhibit H.

**ARTICLE 2  
SALE OF ES&S EQUIPMENT AND THIRD PARTY ITEMS/LICENSE OF ES&S SOFTWARE**

2.1 **Purchase Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, a turnkey voting system which shall include the ES&S Equipment and the Third Party Items described on Exhibits B and D hereto and the ES&S Software and ES&S Firmware licensed pursuant to Section 2.2 below (hereinafter the "System"). The payment terms for the ES&S Equipment and Third Party Items are set forth on Exhibit A. Title to the Equipment shall pass to Customer as Customer pays ES&S for the ES&S Equipment, ES&S Software and Third Party Items.

2.2 **Grant of Licenses.**

a. **ES&S Software Excluding ES&S Firmware.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license to use ES&S' software, as described on Exhibit C hereto, and the related Documentation in the Jurisdiction. The license allows Customer to use and copy ES&S' software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction for the term of Customer's use of the ES&S Equipment.

b. **ES&S Firmware.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license to use ES&S' firmware, which is delivered as a part of the ES&S Equipment and is further described on Exhibit C hereto (the "ES&S Firmware") for the term of Customer's use of the ES&S Equipment. The license allows Customer to use the ES&S Firmware (in object code only) in the Jurisdiction and solely in the course of operating the ES&S Equipment as contemplated by the Documentation therefor.

c. **COLLECTIVE DEFINITION AS "ES&S SOFTWARE".** THE ES&S SOFTWARE DESCRIBED IN SECTION 2.2(a) AND THE ES&S FIRMWARE ARE ES&S' PROPRIETARY SOFTWARE PRODUCTS AND ARE HEREINAFTER COLLECTIVELY REFERRED TO AS THE "ES&S SOFTWARE".

d. **Prohibited Uses.** Customer may not take any of the following actions with respect to the ES&S Software or its 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 without ES&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.

2.3 **License Fees.** In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.2(a), Customer shall pay ES&S the onetime License Fees set forth on Exhibit A. The

consideration for ES&S' grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment.

**2.4 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(a) and continue for the term of Customer's use of the ES&S Equipment. The licenses shall survive the termination of all other obligations under this Agreement and the termination of all Exhibits; provided, however, that ES&S may terminate either 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 license for ES&S Software or Customer's discontinuance of 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.

**2.5 Source Code.** The licenses granted in Section 2.2 do not permit Customer to use the source code for the ES&S Software. ES&S shall place the source code in escrow with the Florida Department of State and its then current third party escrow agent, and will likewise place in escrow the source code for all Updates (in the form of a complete version update), Add-Ons and New Products (as defined below) provided to Customer. The source code shall be accompanied by such flowcharts and instructions in machine-readable format as shall be reasonably necessary to enable Customer to use the source code as permitted below. Should ES&S cease operations and become unable to maintain and support any of the ES&S Software while under an obligation to do so, Customer shall have the right to obtain the source code to the extent necessary to enable Customer to use such ES&S Software in accordance with this Agreement. The source code will remain the property of ES&S and may not otherwise be used by Customer. ES&S shall furnish Customer with the name and address of said third party escrow agent. ES&S agrees to immediately notify Customer of any change in escrow agent or change in address of the current escrow agent. ES&S shall at its own cost maintain source code(s) compliant with all state and federal rules, regulations and laws.

**2.6 Updates, Add-Ons and New Products.**

a. **Updates.** During the Warranty Period, ES&S shall provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate Documentation ("Updates") to Customer on a timely schedule and at no additional charge to Customer. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install Updates or (ii) provide maintenance and support on the ES&S Software which is required as a result of Customer's failure to timely install an Update which has been timely provided by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. Upon the termination of the Warranty Period, Customer shall be entitled to receive the Software Maintenance and Support (as described in Section 2.7 below) on the ES&S Software as agreed to by ES&S and the Nassau County Supervisor of Elections. The parties acknowledge that the providing of Updates is a part of the Software Maintenance and Support, and accordingly that the cost of Updates is included in the annual fee for Software Maintenance and Support.

b. **Add-Ons and New Products.** From time to time, ES&S may offer new features which can be added on to the ES&S Equipment and/or ES&S Software ("Add-Ons") and new hardware/software products ("New Products") to Customer. Customer may elect to purchase or license, as applicable, an Add-On or New Product upon the payment of a fee to ES&S. Unless any such purchase or license is effectuated pursuant to a separate agreement, the Add-On or New Product shall be deemed to be part of the ES&S Equipment or ES&S Software upon payment of such fees. Unless otherwise agreed to between the parties, each Add-On or New Product which is deemed to be

part of the ES&S Equipment and/or ES&S Software will be subject to the warranty set forth in Section 3.3(b) upon delivery, and Customer may thereafter elect to receive Hardware Maintenance Services (as described in Section 2.7 below) and/or Software Maintenance and Support upon the expiration of the Warranty Period.

**2.7 Compliance with Federal and State Law.** ES&S represents and warrants to Customer that the ES&S Equipment and ES&S Software, Updates, Add-Ons and New Products each comply with all applicable requirements of federal and state election laws and regulations. ES&S represents and warrants that the turnkey voting system comprised of ES&S Equipment, ES&S Software, and Third Party Items either provided by ES&S or meeting ES&S' specifications and which is being provided to Customer hereunder, is in full and complete compliance with all applicable federal and state election laws and regulations. ES&S further represents and warrants that the System has been certified by the Florida Secretary of State, Division of Elections, for use in the State of Florida. ES&S further represents and warrants that during the Warranty Period and thereafter so long as Customer or the Nassau County Supervisor of Elections is receiving Hardware Maintenance Services and Software Maintenance and Support (each as defined below), the System shall be maintained or upgraded by ES&S, to the extent it is technically feasible, in such a way as to remain fully and completely compliant with all federal and state election laws and regulations, including all current and future requirements necessary to remain certified for use in the State of Florida. For purposes of the immediately preceding sentence, "maintained or upgraded" shall not mean the replacement of the System. Customer shall be responsible for the cost of any Third Party Items which ES&S notifies Customer are hereafter required in order to remain compliant and certified.

As provided in Florida Statutes, Section 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, ES&S certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Florida Statutes, Section 287.133(3)(a).

For purposes of this Agreement, "Hardware Maintenance Services" are those services described on Exhibit F, and "Software Maintenance and Support" are those services described on Exhibit G. Exhibits F and G are provided for informational purposes only. The Nassau County Supervisor of Elections will execute separate standalone agreements under which ES&S will provide the Hardware Maintenance Services and Software Maintenance and Support to Customer upon the termination of the Warranty Period (as defined under Section 3.3.(b)).

**2.8 Compliance with ADA.** ES&S represents and warrants that to the best of its knowledge and belief the System and each component thereof is compliant with the Americans with Disabilities Act as said Act applies to elections and voting. Further, ES&S further represents to Customer that the System and each component thereof complies with the Americans with Disabilities Act to the extent required and stipulated by the Florida Secretary of State, Division of Elections. In the event that Customer and/or the Nassau County Supervisor of Elections is sued in a court of competent jurisdiction and said court finds that the System and/or a component(s) thereof is not compliant with the Americans with Disabilities Act, as it pertains to the ability of a voter to vote, ES&S agrees, at its sole cost, to immediately take whatever action is necessary, to the extent technically feasible, to comply with court orders and bring the System and/or a component(s) thereof into compliance.

### ARTICLE 3 MISCELLANEOUS

3.1 This section is left intentionally blank.

3.2 **Delivery; Risk of Loss.** ES&S will deliver all of the Equipment and Software identified on Exhibits B-D to Customer at Customer's designated location on a date mutually agreed upon by the parties but no later than June 15, 2002. Risk of loss with respect thereto shall pass to Customer when such items are delivered to Customer at Customer's designated location.

3.3 **Acceptance; Warranties.**

a. **Acceptance.** Customer will not accept the Equipment and Software until mutually agreeable acceptance testing is performed on the System by ES&S and the System performs in accordance with this Agreement and to the satisfaction of Customer. Installation and Integration (as set forth on Exhibit E) of the System by ES&S shall occur within 10 days, unless extended by mutual agreement of the parties hereto, of delivery pursuant to Section 3.2 and shall occur prior to said acceptance testing. Acceptance testing shall be conducted and completed on mutually agreeable dates and completed within 20 days, unless extended by mutual agreement of the parties hereto, after installation and integration. The parties hereto acknowledge and agree that a "Project Plan" not inconsistent with this Agreement will be prepared and mutually agreed upon by the parties subsequent hereto, that said plan will become an integral part of this Agreement and that the terms of which are hereby incorporated herein by this reference. The acceptance testing is to confirm that the Equipment and Software and the System as a whole performs in accordance with this Agreement. If the Equipment, Software and/or the System as a whole fails to perform in accordance with this Agreement, ES&S shall take back the failed Equipment and Software and immediately furnish Customer with new, replacement Equipment and Software and/or immediately take whatever action is necessary for the System to perform in accordance with this Agreement. In any event and notwithstanding any other provision of this Agreement, if delivery, installation and integration, and acceptance testing as set forth above have not been completed or the System fails to perform in accordance with this Agreement and to the satisfaction of Customer by a date mutually agreed to by the parties and, unless extended by mutual agreement of the parties hereto, then Customer has the right, without liability and upon notice to ES&S, (a) to immediately and unilaterally terminate this Agreement and ES&S agrees to refund all monies paid to ES&S by Customer pursuant to this Agreement within thirty (30) days of termination, or (b) to receive from ES&S the most currently certified 12-inch iVotronics (up to an amount equal to the number of iVotronics set forth on Exhibit B) for Customer to use to conduct the elections set forth in Exhibit E up through, and until such time, the System has passed all acceptance testing criteria.

b. **ES&S Equipment/ES&S Software.** ES&S warrants that for the period beginning from the date the equipment is accepted (as per Section 3.3(a)) by Customer through December 31, 2004, (the "Warranty Period"), it will repair or replace at no cost to the Customer any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in any material respect, or (ii) is defective in material or workmanship. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the original Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer, within thirty (30) days of discovery of said failure of performance or defect, notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged due to 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 and Customer, including natural disaster, fire, flood or Acts of God, and (IV) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S.

c. **System.** ES&S warrants that the System, ES&S Equipment, ES&S Software, Third Party Items, and/or other materials provided by ES&S to Customer pursuant to this Agreement will

operate as a turnkey voting system and that the ES&S Equipment and ES&S Software will operate in conjunction with the Third Party Items during the Warranty Period, provided that (i) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S, and (ii) the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. ES&S shall, at its sole expense, immediately take whatever actions are necessary so as to satisfy said warranty. Customer acknowledges that ES&S has merely purchased the Third Party Items for resale or rental to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the Third Party Items which are provided to ES&S.

d. **Services.** ES&S warrants that it shall perform all services, including Election Support Services as set forth in Exhibit E, and provide all materials under this Agreement in a professional, workmanlike manner and in strict accordance with industry standards and with the provisions of this Agreement. ES&S shall perform all services under this Agreement in a professional, workmanlike manner, with such professional care, technical skill, ability, and diligence as is required of similar companies having the level of skill, expertise, and specialized knowledge, as represented to Customer, both orally and in writing, to be possessed by ES&S. In the event of a breach of this Warranty, ES&S shall, at its sole expense, timely re-perform the services or cause the services to be timely re-performed so as to satisfy said Warranty.

e. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTIONS 3.3(b), 3.3(c) OR 3.3(d), 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 WARRANTY OF MERCHANTABILITY.

3.4 **Routine Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, Customer may request that ES&S provide the Routine Maintenance Services (as defined on Exhibit F) for (1) one or more units of ES&S Equipment, at no additional charge to Customer. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The terms and conditions of Section 3(c), of Exhibit F, shall govern the providing of the Routine Maintenance Services. ES&S shall convey to Customer in writing the proper method of storing the ES&S Equipment and Customer shall properly store the ES&S Equipment when not in use. Upon the termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance on said equipment as agreed to between ES&S and the Nassau County Supervisor of Elections.

3.5 **Timely Performance.** The parties mutually agree that time is of the essence in the performance of this Agreement. If, due to ES&S' negligence, or circumstances within the control of ES&S, (i) ES&S fails to timely perform as required by this Agreement, and (ii) such failure has or will result in a material detrimental impact on Customer's ability to define an election or tabulate or report election results in the Jurisdiction in a satisfactory manner or on a timely basis, then at the discretion of Customer, Customer may pass to ES&S the direct, reasonable, total out-of-pocket expenses incurred by Customer in curing such failure. Customer will submit to ES&S an itemized statement setting forth the charges for said expenses. Upon ES&S' request, Customer will also provide ES&S with copies of invoices and other back-up information necessary to confirm the itemized expenses. ES&S will pay all such itemized expenses in cash or by giving Customer a credit against future payments due to ES&S. Customer will take all reasonable steps to mitigate the expenses incurred by Customer hereunder, and ES&S will work with Customer to assist in such mitigation efforts and to achieve the curing of the failure as expeditiously as possible. Except as provided for in Section 3.3(a), the

remedies set forth in this section are the full extent of Customer's remedies for the performance failures described in this Section 3.5.

**3.6 Limitation Of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Except for such liability as may arise under Sections 3.5 and 3.10, ES&S' total liability to Customer arising out of or relating to this Agreement will not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S shall be commenced within the applicable statute of limitations period. By entering into this Agreement, Customer agrees to accept responsibility for (a) the use of the Equipment and Software, and (b) 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. ES&S will not be liable on this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (y) Customer's failure to install and use the most recent Update, or the second most recent Update, timely 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.

**3.7 Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status upon request. 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, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.7, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due for more than 30 days will bear interest at the rate of one percent (1%) per month (or such lesser amount as may be provided for under Florida Statutes, Sections 218.70 through 218.80 (the "Florida Prompt Payment Act")) for each month or portion thereof during which it remains unpaid.

**3.8 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 (except for Customer supplied information such as election 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 likewise 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 which are protected by law and are of substantial value to ES&S. ES&S acknowledges that Customer and Nassau County Supervisor of Elections retain all proprietary rights to all data collected by Customer and/or Nassau County Supervisor of Elections as a result of conducting elections and tabulating and reporting election results in the jurisdiction, including all voter demographic data and voting statistics.

b. Customer shall not knowingly cause or permit the adaptation, conversion, reverse engineering, disassembly or de-compilation 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 which are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots which are provided, and all permitted copies of the foregoing.

**3.9 Confidentiality.** As a political subdivision of the State of Florida, Customer agrees that any and all information and the materials provided by ES&S hereunder that are marked "confidential," "proprietary," or "trade secret" and which are not required to be made publicly available under public records laws, or any other laws of the State of Florida or the United States of America, will be kept confidential by Customer. Customer



and the Nassau County Supervisor of Elections shall not be liable for any damages suffered by ES&S as a result of any disclosure of ES&S materials pursuant to law. ES&S shall mark any materials or information that it considers to be "confidential," "proprietary," or a "trade secret." In the event that a demand is made upon Customer or the Nassau County Supervisor of Elections for disclosure of materials or information considered by ES&S to be "confidential," "proprietary," or a "trade secret," the Nassau County Supervisor of Elections or Customer shall notify ES&S as soon as possible and ES&S shall immediately take all actions it deems necessary to defend itself against such disclosure, provided that ES&S may not take action that would effect (a) the ability of Customer to operate the System; or (b) the obligations of ES&S under this agreement. In the case of any action brought against the Nassau County Supervisor of Elections and/or Customer pursuant to Florida Statutes Chapter 119 or other law, ES&S shall either (a) defend the Nassau County Supervisor of Elections and/or Customer in any such action or (b) reimburse the Nassau County Supervisor of Elections and/or Customer all fees and costs incurred in defense of such action. For the purpose of this paragraph "action" includes proceedings at the trial and the appellate levels.

### 3.10 **Indemnification by ES&S.**

a. **Intellectual Property Infringement.** ES&S will indemnify, defend and hold Customer and/or the Nassau County Supervisor of Elections harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys fees) (collectively "Adverse Consequences") arising out of or relating to a claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's United States patent existing as of the date hereof or United States copyright, trademark or trade secret (a "Third Party Infringement Claim"). Notwithstanding the foregoing, ES&S shall have no liability to Customer for any Third Party Infringement Claim resulting out of any acts, errors or omissions of Customer, resulting from (i) Customer's failure to timely install and use any Update timely provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S. ES&S represents to Customer that no Third Party Infringement Claim is outstanding against ES&S as of the Effective Date. Customer shall notify ES&S within thirty (30) days of discovery of any Third Party Infringement Claim. Customer hereby gives ES&S full and complete authority, and shall provide such information and assistance as is necessary (at ES&S' expense with respect to reasonable out-of-pocket costs), to enable ES&S to defend, compromise or settle a Third Party Infringement Claim. In addition, if Customer is prevented by a Third Party Infringement Claim from using any of the ES&S Equipment or ES&S Software in substantially the manner contemplated by this Agreement, ES&S shall, at its sole option and expense, procure for Customer the right to continue such use or replace or modify the infringing item. **THE FOREGOING STATES ES&S' ENTIRE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT ARISING UNDER THIS AGREEMENT.**

b. **Personal Injury/Property Damage.** ES&S shall indemnify, defend and hold harmless Customer and/or the Nassau County Supervisor of Elections from and against any and all Adverse Consequences arising out of or relating to personal injury (including death) or property damage which is caused by any negligent or willful act, error or omission of ES&S, its employees, subcontractors and any other persons under ES&S' authority and control. Customer shall notify ES&S within thirty (30) days of discovery of any claim for which it may be entitled to indemnification under this Section 3.10(b), and hereby gives ES&S full and complete authority, and shall provide such information and assistance as is necessary (at ES&S' expense with respect to reasonable out-of-pocket costs), to enable ES&S to defend, compromise or settle any such claim.

c. **Survival.** These indemnification provisions shall survive the termination of all other obligations under this Agreement and the termination of all exhibits herein.

**3.11 Indemnification By Customer.** Customer is a state agency or subdivision as defined in Section 768.28, Florida Statutes. In accordance with Section 768.28, Florida Statutes, Customer agrees to be fully responsible to the limits set forth in such statute for its negligent acts or omissions or tortious acts which result in claims or suits against ES&S, and agrees to be liable to the statutory limits for any damages. Nothing herein is intended to serve as a waiver of sovereign immunity by Customer for acts or omissions to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**3.12 Insurance.**

a. **Generally.** During the term of this Agreement, ES&S shall pay for and maintain insurance of the types and in the amounts described herein. Said insurance acceptable to Customer shall be provided prior to ES&S commencing any work and receiving any payment pursuant to this Agreement. All such insurance shall be provided by responsible companies authorized to transact business in the State of Florida which have an "A" policyholders' rating and a financial rating of at least Class VIII in accordance with the most current Best's Key Rating Guide and which are satisfactory to Customer.

ES&S shall provide to Customer evidence of insurance coverages of the types and in the amounts required by submitting four (4) original, executed Certificates of Insurance on the form to be provided by Customer to ES&S. Each certificate shall set forth the original, manual signatures of the authorized representative of the insurance company(ies) identified therein and shall have attached thereto proof that said representative is authorized to execute the same. In addition to the Certificates of Insurance required herein, ES&S shall provide to the Customer certified true and exact copies of all insurance policies required hereunder upon Customer's request. The required Certificates of Insurance not only shall name the types of policies provided, but also shall refer specifically to this Agreement.

All policies of insurance required by this Agreement shall require that the insurer deliver to Customer and ES&S thirty (30) days written notice prior to any cancellation, intent not to renew, or reduction in coverage and ten (10) days written notice of any nonpayment of premium. Such notice shall be delivered by certified United States mail, return receipt requested, to Customer and ES&S, addressed to the parties as described below. In the event of any reduction in the aggregate limit of any policy, ES&S shall immediately restore such limit to the amount required herein.

All insurance coverages provided by ES&S shall be primary to any insurance or self-insurance program of Customer which is applicable to the work provided for in this Agreement.

Receipt by Customer of any Certificate of Insurance or copy of any policy evidencing the insurance coverages and limits required by this Agreement does not constitute approval or agreement by Customer that the insurance requirements have been satisfied or that the insurance policies or Certificates of Insurance are in compliance with the requirements of this Agreement.

The insurance coverages and limits required under this Agreement are designed to meet the minimum requirements of Customer.

If the insurance coverage initially provided by ES&S is to expire prior to the term of this Agreement, ES&S shall provide renewal Certificates of Insurance on Customer's form thirty (30) days prior to expiration of current coverage.

All insurance policies required to be obtained pursuant to this Agreement, other than Workers' Compensation and Employer's Liability Policy, shall specifically provide that Nassau County, Florida, and the Nassau County Supervisor of Elections, shall be "additional insureds" under the policy and shall also incorporate a severability of interests provision.

b. **Coverage.** Amounts and type of insurance shall conform to the following minimum requirements and shall be listed on a current Nassau County Certificate of Insurance form.

c. **Workers' Compensation and Employer's Liability Insurance.** The amount of such insurance shall not be less than:

- i. Workers' Compensation: Florida statutory requirements.
- ii. Employer's Liability: \$1,000,000.00 each accident.

The insurance company(ies) shall waive their rights of subrogation against Customer and its agents and employees.

d. **Commercial General Liability Insurance:** Commercial general liability insurance coverage shall be maintained and which shall include, but not be limited to, personal and advertising injury; contractual, including any hold harmless and/or indemnification agreement; independent contractors; and broad form property damage. Limits of coverage shall not be less than the following for bodily injury, property damage, and personal injury, combined single limits:

- i. General aggregate: Two Million and 00/100 (\$2,000,000.00) Dollars.
- ii. Products – completed operations aggregate: Two Million and 00/100 (\$2,000,000.00) Dollars.
- iii. Bodily injury, including death (each person): One Million and 00/100 (\$1,000,000.00) Dollars.
- iv. Bodily injury, including death (each occurrence): Two Million and 00/100 (\$2,000,000.00) Dollars.
- v. Property damage (each occurrence): One Million and 00/100 (\$1,000,000.00) Dollars.
- vi. Personal and advertising injury (each occurrence): Five Hundred Thousand and 00/100 (\$500,000.00) Dollars.
- vii. Fire damage (any one (1) fire): Five Hundred Thousand and 00/100 (\$500,000.00) Dollars.

e. **Business Automobile Liability Insurance.** Coverage shall be maintained as to the ownership; maintenance; and use of all owned, nonowned, leased, or hired vehicles and employee's nonownership with limits of not less than:

- i. Bodily injury and personal injury, including death: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit.

3.13 **Excusable Nonperformance.** Except for a delay or the failure in the payment of money, if either party is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, Acts of God, labor disputes and governmental regulations, not the fault of the party failing or delaying the performance, 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 to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.14 **Term; Termination.** This Agreement shall be effective on the Effective Date and shall continue until Customer ceases to use the ES&S Equipment and ES&S Software, unless otherwise terminated as provided herein. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated at any time:

a. By either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives notification thereof from the non-breaching party; or

b. By either party 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. Customer shall notify ES&S of the termination, which may occur no later than the beginning of the subsequent fiscal period. Upon termination, ES&S shall be reimbursed for the reasonable value of the unrecovered Firmware or Software, if applicable, delivered to Customer hereunder. Customer acknowledges and agrees that its estimated requirements cover the period of this Agreement and are reasonably firm and continuing, and that sufficient funds to pay for the first twelve (12) months of this Agreement are available.

3.15 **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.

3.16 **Remedies.** Except as specifically provided herein, the remedies provided to the parties under this Agreement shall be cumulative and non-exclusive, and the parties shall be entitled to seek any other rights to which they may be entitled at law or in equity, subject to the terms of this Agreement.

3.17 **Entire Agreement.** This Agreement, including all Exhibits hereto (all of which are incorporated herein by this reference), 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.

3.18 **Severability.** If any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect. The parties agree to use their best efforts to amend the unenforceable or invalid provision so as to best accomplish the objective of such provision and the parties. Any such amendment shall be in writing and be executed with the same formality as this Agreement.

3.19 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications to Customer shall be sent to the attention of: County

Coordinator, Walter D. Gossett, Post Office Box 1010, Fernandina Beach, FL 32035. All communications to ES&S shall be sent to the attention of the person listed on the signature to this Agreement and at the address set forth on such signature page unless other names or addresses are provided by ES&S.

### 3.20 Disputes.

#### a. Payment Disputes.

i. 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 to ES&S for any product or service, or (3) the due date of any payment, Customer shall timely pay all other undisputed amounts to ES&S. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

ii. Remedies for Past Due Undisputed Payments. If any undisputed payment to ES&S is past due more than 45 days, ES&S may suspend performance under this Agreement until such amount is paid. ES&S hereby reserves a security interest in the Equipment and Third Party software which will not be satisfied until ES&S has been paid for the ES&S Equipment, ES&S Software licenses and Third Party Items. Customer shall, upon request by ES&S, execute financing statements deemed necessary or desirable by ES&S to perfect such security interest. Customer authorizes ES&S to file a copy of this Agreement or a financing statement with the appropriate authorities at any time after the Effective Date in order to perfect ES&S' security interest. A financing statement may be filed by ES&S without Customer's signature on the basis of this Agreement where permitted by law. Customer shall keep the Equipment and Third Party software in good working order and repair until it has paid for the ES&S Equipment, ES&S Software licenses and Third Party Items. If Customer's payment is past due for more than sixty (60) days, and is undisputed, ES&S may, with demand and notice to Customer, declare the total amount immediately due and payable. After ES&S notifies Customer of the occurrence of this event, Customer agrees to peacefully and immediately deliver any Equipment and Third Party Software to which ES&S is entitled, to ES&S at Nassau County, Florida. When ES&S has been paid for the ES&S Equipment, ES&S Software licenses and Third Party Items, it will release any retained security interest or financing statements that are of record.

b. Dispute Resolution Process. Time is of the essence in resolving disputes. The initiating party shall notify the responding party in writing of any dispute, including all relevant information (e.g., the nature of the dispute, dates, times, persons involved). The responding party shall respond in writing to the notification within ten (10) business days of receipt of the notice from initiating party. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. If the parties are unable to do so, either party may notify the other that it intends to submit the dispute to mediation within thirty (30) days after the notice is given. If the dispute is submitted to mediation, the mediation shall be conducted in good faith by the parties, in Nassau County, Florida by a mediator certified by the Florida Supreme Court, with at least five years of mediation experience in the commercial context, with no relationship to either party and who is otherwise acceptable to both parties, in their reasonable discretion. Each party will be represented at such mediation by a person with the requisite authority to bind his/her party to any final settlement agreement agreed to by the parties. The mediation shall be conducted in accordance with mediation rules as established by the Florida Supreme Court. The cost of the mediation services provided by the mediator shall be borne by ES&S; provided that each party shall be responsible for its own attorneys' and expert witnesses' fees, travel expenses and other expenses associated with such mediation. To the extent permitted by law, each party shall have the privilege to refuse to disclose, and to prevent any other party, mediator or person present at the proceedings from disclosing, any communications (whether written or oral) made during such mediation. Notwithstanding anything in this Section 3.20(b)

to the contrary, either party may apply to any court of competent jurisdiction located in Nassau County, Florida, for a temporary restraining order and/or preliminary injunction at any time, and ES&S expressly submits to the jurisdiction of said court and agrees to accept service of process.

3.21 **Construction.** As used in this Agreement, “including” means “including without limitation”. The singular shall include the plural and vice versa. The title of each Article, Section, Exhibit and Schedule is inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

3.22 **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall, within 5 (five) business days, exchange original versions of such signature pages.

3.23 **Affirmative Action.** ES&S represents that it has developed and implemented an Affirmative Action Plan and Equal Employment Opportunity policy in its workplace. ES&S shall provide copies of such documents to Customer upon request.

3.24 **Price Stabilization.** The Customer and/or the Nassau County Supervisor of Elections reserves the right to purchase, and ES&S agrees to sell, additional ES&S Equipment at the prevailing market price or at the same per-unit contract price, which ever is less, for a period not to exceed three (3) years from the Effective Date.

3.25 **Other.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. 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 will not be responsible for errors that arise from user errors, voter errors or problems encountered by individuals in voting that are not covered by warranty or for which ES&S is not otherwise responsible for under this Agreement. 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 3.3(d), 3.5-3.11, 3.13, 3.14(b), 3.16 and 3.20 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>	
ES&S Equipment	Exhibit B	\$931,645
ES&S Software License Fees	Exhibit C	\$25,000
Third Party Items	Exhibit D	\$10,480
Election Support Services	Exhibit E	\$52,650
Shipping & Handling		\$7,300
<b>Total Before Discounts</b>		<b>\$1,027,075</b>
FAC Central Tabulator Discount		\$(15,000)
FAC Software Discount		\$(25,000)
FAC Services Discounts		\$(19,550)
iVotronic Public Demonstration Test Discount		\$(38,100)
Shipping & Handling Discount		\$(7,300)
<b>Total Net Sale</b>		<b>\$922,125</b>
<b>Terms &amp; Conditions:</b>		
<b>Note 1:</b> Any applicable state and local taxes are not included, and are the responsibility of the Jurisdiction (see Section 3.5).		
<b>Note 2:</b> Payment terms are as follows: \$175,000 within ten (10) days of delivery of an equivalent amount of ES&S Equipment Ninety percent (90%) of Total Net Sale, less \$175,000, thirty (30) Days after delivery of all ES&S Equipment, ES&S Software and Third Party Items, installation and integration, acceptance testing and acceptance as set forth in Section 3.3. Ten percent (10%) of Total Net Sale less \$495,000.00 thirty (30) days after training as per <u>Exhibit E</u> of key election office personnel, including the Supervisor of Elections and poll workers		
<b>Note 3:</b> ES&S provides regular training sessions at ES&S's Election Management Training Center (EMTC) in Omaha, Nebraska. Customer shall be offered free training at the EMTC, as requested, for County Supervisors of Elections and staff through December 31, 2002. Customer shall be responsible for all expenses they incur in sending personnel to this training.		
<b>Note 4:</b> Election Support Services in excess of those set forth in Exhibit E shall be charged at the rate of \$900 per day, plus expenses, as allowed by Florida Statutes, Chapter 112, through December 31, 2003.		
<b>Note 5:</b> It is agreed to by ES&S and Customer that, upon successful certification, Customer may trade in its Model M150 for a Model M650 for \$35,000. The upgrade must occur within 1 year after delivery of the Model M150 if Customer chooses to upgrade to the Model M650.		
<b>Warranty:</b>		
ES&S Hardware & ES&S Software warranty period: From date of acceptance through December 31, 2004		

EXHIBIT B  
ES&S EQUIPMENT DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	Model M150, including: Note 1		
1	Scanner		
1	Ballot Boxes		
1	Cart/Table		
1	Start-up Kit		
1	Dust Cover		
1	Ballot Joggers		
	iVotronic, including:		
210	Voter Terminal (includes booth & PEB)		
46	ADA Voter Terminal (includes booth & PEB)		
5	Supervisor Terminal (includes PEB)		
25	Communication Pack w/ modem & thermal printer		
TOTAL Note 2			\$931,645

Note 1: It is agreed to by ES&S and Customer that, upon successful certification, Customer may trade in its Model M150 for a Model M650 for \$35,000. The upgrade must occur within 1 year after delivery of the Model M150 if Customer chooses to upgrade to the Model M650.

Note 2: Total price before FAC discount.



**EXHIBIT C**  
**ES&S SOFTWARE DESCRIPTION AND PRICING**

<b>NUMBER OF LICENSES</b>	<b>DESCRIPTION</b>	<b>FEE PER LICENSE</b>	<b>TOTAL LICENSE FEES</b>
<b>1</b>	<b>Unity Election System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):</b>	<b>\$25,000</b>	<b>\$25,000</b>
<b>X</b>	Data Manager		
<b>X</b>	Ballot Image Manager		
	Ballot on Demand		
<b>X</b>	Hardware Programming Manager		
<b>X</b>	Data Acquisition Manager		
<b>X</b>	Reporting Manager		
<b>1</b>	<b>ES&amp;S Firmware Version(s):</b> M150: version 1.3.3 iVotronic: version 6.1.3.1 <b>Note 1</b>	N/A; ES&S Firmware license fee included in the total cost of the ES&S Equipment	N/A
	Total License Fees (including all applicable Documentation) <b>Note 2</b>		<b>\$25,000</b>

**Note 1:** ES&S Firmware versions may change between execution of contract and first election usage due to ongoing certification of Updates.

**Note 2:** Total price before FAC discount.

### EXHIBIT D THIRD PARTY ITEMS

<b><u>WINDOWS NT 4.0 FILE SERVER:</u></b>	<b><u>QTY</u></b>	<b><u>ES&amp;S Provided</u></b>	<b><u>Customer Provided</u></b>
Dell PowerEdge 1400 - 1GHZ with 512K Cache	1		X
256MB SDRAM (2X128 SDRAM DIMMS)	1		X
Dual 330 Watt Power Supply	1		X
6 Bay Hot Pluggable Backplane	1		X
On-board PERC 2/Si w/64MB Cache Single Channel	1		X
RAID 1 Hard Drive Configuration	1		X
18GB Ultra-2/LVD SCSI 10K RPM Hard Drive - 1st	1		X
18GB Ultra-2/LVD SCSI 10K RPM Hard Drive - 2nd	1		X
17/40 SCSI CD-ROM	1		X
Windows Performance Keyboard	1		X
Dell M780 17" Monitor	1		X
Intel PRO 100+, Dual Port W/Adapter Fault Tolerance	1		X
3.5" 1.44MB Floppy Drive	1		X
Microsoft Mouse	1		X
3 Year Next Bus. Day On-site Parts & Labor	1		X
External 20/40GB DLT-4000 Tape Backup	1		X
Arcserve Professional Tape Backup Software	1		X
APC Smart UPS-1400 w/Powerchute Software	1		X
<b><u>DATA ACQUISITION SERVER:</u></b>			
Dell Optiplex GX110+ Mini-Tower /1.0 GHz with 256K Cache	1	X	
<b>Must have at least one ISA slot</b>	1	X	
256MB ECC SDRAM (2 DIMM)	1	X	
20GB EIDE Hard Drive	1	X	
8/4/32X CD-RW	1	X	
Windows Performance Keyboard	1	X	
Dell P780 17" Monitor	1	X	
Intel Pro/100+ Management Adapter	1	X	
3.5" 1.44MB Floppy Drive	1	X	
Windows 98 (2nd Edition) with CD, (FAT32)	1	X	
APC Back-UPS 500VA	1	X	
Microsoft Mouse	1	X	
3 Year Next Bus. Day On-site Parts & Labor	1	X	
PCMCIA Card	1	X	
U.S. Robotics 56K External Modem (2 Extra)	10	X	
Serial Cables (Modems)	10	X	
Isobar 4 Ultra Surge Protector (Tripp Lite)	1	X	

**DATA REPORTING/DISPLAY WORKSTATIONS:**

Dell Optiplex GX110+ Mini-Tower /1.0 GHz with 256K Cache	2	X
<b>Must have at least one ISA slot</b>	2	X
256MB ECC SDRAM (2 DIMM)	2	X
20GB EIDE Hard Drive	2	X
8/4/32X CD-RW	2	X
Windows Performance Keyboard	2	X
Dell P780 17" Monitor	2	X
Intel Pro/100+ Management Adapter	2	X
3.5" 1.44MB Floppy Drive	2	X
Windows 98 (2nd Edition) with CD, (FAT32)	2	X
APC Back-UPS 500VA	2	X
Microsoft Mouse	2	X
3-Year Next Bus. Day On-site Parts & Labor	2	X
PCMCIA Card	2	X
U.S. Robotics 56K External Modem and Modem Cable	1	X
pcAnywhere Communications Software	1	X
Isobar 4 Ultra Surge Protector (Tripp Lite)	2	X

**PRINTERS:**

Hewlett-Packard 8150N 33 PPM Laser Printer	1	X
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**INSTALLATION:**

System Integration	4	X
<b>Total Third Party Items provided by ES&amp;S</b>		<b>\$10,480</b>

**Note 1:**

The configuration and specification of Third Party Items as per this Exhibit D are subject to change by the manufacturer. Should the actual configuration and specifications as set by the manufacturer differ from those set forth herein, ES&S agrees to provide Third Party Items that are comparable to those described above and that are mutually satisfactory to both parties.

## EXHIBIT E ELECTION SUPPORT SERVICES

1. **Term.** The services described herein shall be provided for the following elections (the "Elections"):

April 2002 (1 <sup>st</sup> Election Use)
September 2002
November 2002

Provided, however, that this Exhibit E may be terminated prior to its expiration pursuant to the same provisions as are set forth in Section 3.12 of the General Terms of the Agreement.

2. **Services.** The election support services to be provided by ES&S, the concurrent obligations of Customer, key pricing assumptions, and fees are described below (*insert "N/A" if not applicable*). Customer acknowledges that ES&S' fees for election support services are based on certain key assumptions, and that a change in any key assumption may require ES&S to change the resulting fee charged to Customer. All travel expenses are subject to Florida Statutes, Chapter 112. In the event that Customer is required to conduct a run-off election during May 2002, ES&S will agree to provide election support services at a rate not to exceed \$1,100 per day.

Service	Description	Assumptions	Apr 2002 Election	Sep 2002 Election	Nov 2002 Election	Fee
Project Management	A project manager appointed by ES&S shall be responsible for the coordination of all election support services, and shall be the primary Customer contact for questions/issues.		5	5	5	\$28,050
Ballot Production	Provide sample, test and official ballots to be used during Election. Customer will provide all specifications, including election information, to ES&S. ES&S will provide Customer with a proof of each type of ballot on the date specified in a timetable supplied by Customer, and Customer will approve such proofs in writing within 3 calendar days after delivery. Following Customer's approval, ES&S will print and deliver the ballots on the date specified in Customer's timetable.	To be negotiated separately	N/A	N/A	n/a	
Ballot Layout/Coding Services	Creation of the ballot layout to be used by the ES&S Equipment. Customer will provide the election definition information to ES&S, and ES&S will process the information into a usable format. The election definition files are then defined, used to code the election and transferred to the ES&S Equipments' memory devices. All Customer-created files shall remain the property of Customer.	Customer to assume responsibility for this task	N/A	N/A	n/a	
Installation and Integration	Provided by ES&S Representative at Customer's site on a mutually agreed-upon date; includes unpacking, inspection, setting up, diagnostic testing and calibration of the ES&S Equipment. Customer will prepare its site and hardware, software and systems not provided by ES&S as per ES&S' instructions, and will make its employees available to assist ES&S as reasonably necessary.	ES&S will train and oversee Customer personnel on the unpacking, inspection, setting up, diagnostic testing and calibration of the ES&S Equipment	5	3	2	\$12,000

Training	Provide the Documentation and training. Training will include "train the trainer", pollworker and tabulation system & operator training at Customer's site. Pollworker training includes system overview, setup, operations, troubleshooting and a question/answer session. Tabulation training includes conducting or assisting in the training of Customer personnel in the operation of the ES&S Equipment and ES&S Software.		4	N/A	N/A	\$0
Supplies	ES&S will provide the following supplies to Customer: _____ _____ _____ _____	To be negotiated separately	N/A	N/A	N/A	
Election Day Support of ES&S Equipment and ES&S Software	Assistance, if necessary, in the conduct of logic and accuracy testing. On-site support of pollworkers in the use of ES&S Equipment at the polling places (includes opening polls, handling unit problems, closing of polls, etc.) and supporting the central accumulation of results by ES&S Software.	1 ES&S representatives for 3 days per election	3	3	3	\$12,600
<b>Total Fees for Election Support Services</b>			<b>13</b>	<b>11</b>	<b>10</b>	<b>\$52,650</b>

3. **Acknowledgements.** The parties acknowledge and agree as follows:

- a. Time is of the essence in performing their respective obligations hereunder. Customer's remedy for any failure by ES&S to timely provide election support services is set forth in Section 3.8 of the General Terms. Notwithstanding anything in the remainder of the Agreement to the contrary, if ES&S becomes aware of any failure by Customer to timely perform its obligations under this Exhibit E, or reasonably believes that such failure may occur, it will immediately notify Customer. ES&S may refuse to provide any services if Customer fails to timely cure such failure of performance or provide adequate assurances of performance within 3 business days after receiving such notification. Any such refusal by ES&S will not constitute a breach of this Agreement and is in addition to any other remedies that may be available to it at law, in equity or under this Agreement.
- b. The Elections will be conducted under Customer's direction and control. ES&S will provide services based on information and instructions provided to it by Customer.
- c. Unless otherwise agreed to by the parties in this Agreement or a separate written agreement, ES&S will not provide any election support services to Customer which are not specifically described in this Exhibit E or elsewhere in this Agreement.

4. **Approval of Project Manager.** The Nassau County Supervisor of Elections reserves the right to approve the appointment of the Project Manager, such approval to not be unreasonably withheld.

[END OF EXHIBIT E]

**INCLUDED FOR INFORMATIONAL PURPOSES ONLY****EXHIBIT F  
HARDWARE MAINTENANCE SERVICES  
(POST-WARRANTY PERIOD)**

1. **Term; Termination.** This Exhibit F shall be in effect from the date on which the Warranty Period expires until the first anniversary thereof (the "Exhibit F Term"). The Exhibit F Term shall automatically renew for an unlimited number of **successive one year periods** until this Exhibit F is terminated by the first to occur of (a) Customer's election to terminate it at any time, which shall be given at least 60 days prior to the termination date, (b) the date which is 30 days after either party notifies the other that it has materially breached this Exhibit F, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is 30 days after Customer fails to pay any amount due to ES&S under this Exhibit F. The termination of this Exhibit F shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

2. **Services.** Subject to the terms and conditions of this Exhibit F, ES&S shall provide the following to Customer (check all that apply):

☒ The Routine Maintenance Services and Remedial Maintenance Services described in Section 3 of this Exhibit F with respect to the products listed on Schedule F1 (the "Products") (collectively the "Hardware Maintenance Services").

☐ Product Parts Only, as described in Section 4 of this Exhibit F.

3. **Maintenance Services.** If Customer elects to receive Hardware Maintenance Services pursuant to Section 2 above, such Hardware Maintenance Services shall be subject to the following terms and conditions:

a. **Inspection.** If Customer has elected not to receive Hardware Maintenance Services under this Exhibit F for at least a 12-month period, ES&S may require Customer to allow it to inspect the Products before it provides any Hardware Maintenance Services therefore. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary purposes 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 rate and shall be due from Customer within 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 Product(s) to Normal Working Condition, at Customer's expense with respect to the cost of any parts used in such repairs or replacements and with respect to ES&S' Out-Of-Pocket Expenses, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Exhibit F, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by ES&S employees or authorized representatives ("ES&S Representatives") who are required to travel to Customer's Designated Location to provide services.

b. **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 12 months during the Exhibit F Term or any renewal thereof. Customer may request that Routine Maintenance Services be performed more than once during any such 12-month period. Any such request shall be made at least 60 days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule F1 and shall be due within 30 days after invoice. Routine Maintenance Services shall include cleaning,

lubrication and calibration services. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided either at Customer's Designated Location or at an ES&S-designated depot facility ("Depot"), as elected by Customer on Schedule F1. Customer shall pay all costs associated with shipping Product(s) to a Depot, including insurance.

c. **Remedial Maintenance 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 Product to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 3(b)(i) are referred to herein as "Remedial Maintenance Services". ES&S shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for 10 or more Products at any given time, Customer may elect to have them provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at Customer's Designated Location. Customer acknowledges that Product(s) identified on Schedule F1 as "depot repair only" may only be repaired at a Depot.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product due to (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use which 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 natural disaster, fire, flood, unusually severe weather or Acts of God, 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 Remedial Maintenance Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services which are provided within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Remedial Maintenance 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 F1.

iv. **Loaner Unit.** At Customer's request, ES&S shall use reasonable efforts to promptly make available to Customer a product which is the same as, or substantially similar to, the Product for which Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 3(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

d. **Exclusions.** ES&S has no obligation under this Exhibit F to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components which are consumed in the normal course of operating the Product, including printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens, or (iii) repair

any ES&S Equipment 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 which 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 which is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the Exhibit F Term or renewal period for which such fee was paid and the denominator of which is the total number of days in such Exhibit F Term.

e. **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 an Exhibit F Term 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.

f. **Storage.** Customer shall properly store the Products when they are not in use.

4. **Product Parts Only.** If Customer has elected in Section 2 of this Exhibit F to receive Product Parts Only and not to receive Hardware Maintenance Services, it shall notify ES&S when it needs parts. When ES&S receives such notice, it shall promptly ship such parts to Customer at its own expense and shall bear all risk of loss or damage to the parts until they are delivered to the Designated Location. Customer is responsible for installing the parts. All replaced parts are the property of ES&S, and Customer shall ship them to ES&S at its own expense and bear all risk of loss or additional damage until they are delivered to ES&S. All parts shall be supplied by ES&S to Customer subject to their availability at such time, and pursuant to the most recent list of available parts published by ES&S. All parts shall be either (a) new standard parts, or (b) certified rebuilt parts which are of a quality sufficient to enable the Products to operate, assuming they are otherwise in Normal Working Condition. At ES&S' request, Customer shall store a reasonable number of parts for the Products at its Designated Location. ES&S agrees that it shall maintain spare parts for each item of ES&S Equipment for a minimum of 3 years following the date on which ES&S ceases to manufacture such item.

5. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services or Product Parts Only under this Exhibit F, Customer shall pay to ES&S a fee for the initial Exhibit F Term and each renewal period. Such fee shall be in addition to any fees or charges separately referred to in any Section of this Exhibit F or the Agreement. The fee for the initial Exhibit F Term is set forth on Schedule F1 and Exhibit A and is due on the date of the expiration of the Warranty Period. ES&S may increase the fee for a renewal period by not more than 5% of the amount of the most recent fee paid by Customer. ES&S shall notify Customer of such increase no later than 60 days before the commencement of such renewal period. Increases in excess of 5% will be mutually agreed upon by ES&S and Customer. The fee for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period.

[END OF EXHIBIT F]



## Schedule F1

## DESCRIPTION OF PRODUCTS

Quantity	Description (Note: *** indicates Depot Repair Only Products)	Initial Maintenance Fee Per Unit	Initial Maintenance Fee In Total	Product Parts Only Fee ("N/A" if Hardware Maintenance Services Provided)
1	M150 Central Scanner	\$1,400	\$1,400	
261	iVotronics	\$70	\$18,270	
	Annual Fees		\$19,670	
	# of years in initial term		x 1	
	<b>Total Fees Due for Initial Term</b>		<b>\$19,670</b>	

Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a year:

M150: \$770 / unit

iVotronic: \$50 / unit

Surcharge for Emergency Remedial Maintenance Services:

M150: \$2,100 / unit

iVotronic: \$105 / unit

Customer's Designated Location:

Location of Services:

X Customer's Designated Location  
Depot

**Note 1:** In the event that the Model M150 is upgraded to a Model M650, the Model M150 maintenance fee per unit shall be deleted and replaced with the following:

Quantity	Description	Initial Maintenance Fee Per Unit	Initial Maintenance Fee in Total
1	M650 Scanners	\$2,600	\$2,600

**INCLUDED FOR INFORMATIONAL PURPOSES ONLY****EXHIBIT G  
SOFTWARE MAINTENANCE AND SUPPORT  
(POST-WARRANTY PERIOD)**

6. **Term; Termination.** This Exhibit G shall be in effect from the date on which the Warranty Period expires until the first anniversary thereof (the "Exhibit G Term"). The Exhibit G Term shall automatically renew for an unlimited number of **successive one year periods** until this Exhibit G is terminated by the first to occur of (a) Customer's election to terminate it at any time, which shall be given at least 60 days prior to the termination date, (b) the date which is 30 days after either party notifies the other that it has materially breached this Exhibit G, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is 30 days after Customer fails to pay any amount due to ES&S under this Exhibit G. The termination of this Exhibit G shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

7. **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.

8. **Updates.** During the Exhibit G Term and any renewals thereof, ES&S shall continue to provide Updates in the manner described in, and subject to the terms and conditions of, Section 2.6(a) of the General Terms.

9. **Reinstatement of Software Maintenance and Support.** If the Exhibit G Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees which would have been due to ES&S had the Exhibit G Term 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 Maintenance and Support.

10. **Conditions.** ES&S shall not be obligated to provide Software Maintenance and Support for any item of ES&S Software if such item requires such services due to (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use which is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including natural disaster, fire, flood, unusually severe weather or Acts of God, or (d) Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S. ES&S shall likewise not be obligated to provide Software Maintenance and Support if Customer does not notify ES&S within 24 hours after it knows of the need for such services or is otherwise not in compliance with its obligations under this Agreement.

11. **Fees.**

a. **In General.** In consideration for ES&S' agreement to provide Software Maintenance and Support under this Exhibit G, Customer shall pay to ES&S a Maintenance Fee for the initial Exhibit G Term and each renewal period. The Maintenance Fee shall be comprised of (i) a fee for the Software Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software Maintenance and Support provided for all other ES&S

Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit G or this Agreement. The Maintenance Fee for the initial Exhibit G Term is set forth on Exhibit A and is due on the first day of the Exhibit G Term. If Customer elects, pursuant to Section 2.6(b), to receive Software Maintenance and Support for an Add-On or New Product during the Exhibit G Term or any renewal thereof, ES&S will charge an incremental Maintenance Fee for such services. In its sole discretion, ES&S may increase the Maintenance Fee for a renewal period by not more than 5% of the amount of the most recent Maintenance Fee paid by Customer. ES&S shall notify Customer of such increase no later than 60 days before the commencement of such renewal period. Increases in excess of 5% will be mutually agreed upon by ES&S and Customer. The Maintenance Fee for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period.

b. **Specified.** Software Maintenance and Support Fees for years subsequent to the Warranty Period shall be as follows:

Year	First Month Applicable	Fee – ES&S Software & Firmware
1	January 1, 2005	\$9,050
2	January 1, 2006	TBD

12. **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 G, including all proprietary rights therein or based thereon. Subject to the payment of the Maintenance Fee, 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 G. 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 by this Agreement.

[END OF EXHIBIT G]

**EXHIBIT H  
DEFINITIONS**

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment and Third Party hardware or equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other equipment.
- d. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer pursuant to Section 7 of Exhibit G and, unless licensed pursuant to a separate written agreement, all Add-Ons and New Products licensed to Customer.
- e. "GAAP" means United States generally accepted accounting principles, as in effect from time to time.
- f. "Software" means ES&S Software and Third Party software.
- g. "RFP" means (i) one or more written communications from Customer (including a formal Request for Proposal) which collectively request a proposal from ES&S to provide the Equipment, Software and services described in this Agreement and generally set forth Customer's requirements, and (ii) ES&S' responses thereto.

## **ELECTION SYSTEMS & SOFTWARE**

### **POST WARRANTY**

#### **SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT**

THE SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, Inc. ("ES&S"), a Delaware corporation, whose principal address is 11208 John Galt Blvd., Omaha, NE 68137, and the Nassau County Supervisor of Elections, constitutional officer of the State of Florida ("Customer"), whose principal address is ~~1886 Lakeside Dr. South, Fernandina Beach, Florida 32034.~~ **11 North 14th Street, Box 11**

#### **RECITALS:**

**WHEREAS**, Nassau County has entered into a Voter Tabulation System and Services Agreement with ES&S, dated, February 25, 2002 (the "System and Services Agreement") for the purchase/license of voter tabulation equipment and related services from ES&S for use in Nassau County, Florida; and

**WHEREAS**, pursuant to the System and Services Agreement, ES&S provided a warranty on the ES&S Equipment and ES&S Software through December 31, 2004, which warranty included maintenance and support services; and

**WHEREAS**, Customer desired to obtain post-warranty maintenance and support services from ES&S and ES&S desires to provide such services to Customer.

**NOW, THEREFORE**, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference), and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

1. **Term; Termination.** This Agreement shall be in effect for a one-year period beginning on January 1, 2005 (the "Software Maintenance Term"). The Software Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Agreement is terminated by the first to occur of: (a) Customer's election to terminate it at any time, which shall be given at least 60 days prior to the termination date, (b) the date which is 30 days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is 30 days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

2. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software, as described on Attachment 1, incorporated herein by reference, ("Software Maintenance and Support"), to enable the software to perform in accordance with its documentation in all material respects, and to cure any defect in material or workmanship.

3. **Updates.** During the Software Maintenance Term and any renewal thereof, ES&S shall provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation (all of which shall be collectively referred to as "Updates")

**Attachment 1**

**ES&S SOFTWARE DESCRIPTION AND SOFTWARE MAINTENANCE FEES**

Please check the items of ES&S Software for which Software Maintenance and Support will be provided:

**Unity Election System:**

X Data Manager  
X Ballot Image Manager  
Ballot on Demand  
X Hardware Programming Manager  
X Data Acquisition Manager  
X Reporting Manager

ES&S TABULATOR	FIRMWARE VERSION
M150	1.3.3
M550	
M650	
M100	
IIIPE	
M2100	
Votronic	
Ivotronic	6.1.3.1
V2000	

Software Maintenance Fees for the initial Software Maintenance Term shall be as follows:

Year	First Month Applicable	Fee -- ES&S Software & Firmware
1	January 1, 2005	\$9,050
2	January 1, 2006	TBD

**ELECTION SYSTEMS & SOFTWARE  
POST WARRANTY  
SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT**

THE SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, Inc. ("ES&S"), a Delaware corporation, whose principal address is 11208 John Galt Blvd., Omaha, NE 68137, and the Nassau County Supervisor of Elections, constitutional officer of the State of Florida ("Customer"), whose principal address is ~~1886 Lakeside Dr. South~~, Fernandina Beach, FL 32034. **11 North 14th Street, Box 11**

**RECITALS:**

**WHEREAS**, Nassau County has entered into a Voter Tabulation System and Services Agreement with ES&S, dated, February 25, 2002 (the "System and Services Agreement") for the purchase/license of voter tabulation equipment and related services from ES&S for use in Nassau County, Florida; and

**WHEREAS**, pursuant to the System and Services Agreement, ES&S provided a warranty on the ES&S Equipment and ES&S Software through December 31, 2004, which warranty included maintenance and support services; and

**WHEREAS**, Customer desired to obtain post-warranty maintenance and support services from ES&S and ES&S desires to provide such services to Customer.

**NOW, THEREFORE**, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference), and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

1. **Term; Termination.** This Agreement shall be in effect for a one-year period beginning on January 1, 2005 (the "Software Maintenance Term"). The Software Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Agreement is terminated by the first to occur of: (a) Customer's election to terminate it at any time, which shall be given at least 60 days prior to the termination date, (b) the date which is 30 days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is 30 days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

2. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software, as described on Attachment 1, incorporated herein by reference, ("Software Maintenance and Support"), to enable the software to perform in accordance with its documentation in all material respects, and to cure any defect in material or workmanship.

3. **Updates.** During the Software Maintenance Term and any renewal thereof, ES&S shall provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation (all of which shall be collectively referred to as "Updates")

to Customer on a timely schedule. Customer is responsible for obtaining any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "ES&S Software", and shall be subject to all the terms and conditions of ES&S' license of the ES&S Software, upon delivery. Customer may install Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (a) install Updates or (b) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update that has been timely provided by ES&S. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not 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.

4. **Reinstatement of Software Maintenance and Support.** If the Software Maintenance Term or any renewal thereof terminates without being renewed, Customer may thereafter resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees which would have been due to ES&S had the Software Maintenance Term 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 Maintenance and Support.

5. **Conditions.** ES&S shall not be obligated to provide Software Maintenance and Support for any item of ES&S Software if such item requires such services due to (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use which is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including natural disaster, fire, flood, or Acts of God, or (d) Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S. ES&S shall likewise not be obligated to provide Software Maintenance and Support if Customer does not notify ES&S within 24 hours after it knows of the need for such services or is otherwise not in compliance with its obligations under this Agreement.

6. **Fees.** In consideration for ES&S's agreement to provide Software Maintenance and Support under this Agreement, Customer shall pay to ES&S a Software Maintenance Fee for the initial Software Maintenance Term and each renewal period. The Software Maintenance Fee shall be in addition to any fees or charges separately referred to in any Section of this Agreement. The Software Maintenance Fee for the initial Software Maintenance Term is set forth on Attachment 1 and is due on January 1, 2005. If Customer subsequently elects to receive Software Maintenance and Support for additional ES&S Software and such election is made during the initial Software Maintenance Term or any renewal thereof, ES&S will charge an incremental Software Maintenance Fee for such services. In its sole discretion, ES&S may increase the Software Maintenance Fee for a renewal period by not more than 5% of the amount of the most recent Software Maintenance Fee paid by Customer. ES&S shall notify



Customer of such increase no later than 60 days before the commencement of such renewal period. Increases in excess of 5% will be mutually agreed upon by ES&S and Customer. The Software Maintenance Fee for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period.

7. **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 Agreement, including all proprietary rights therein or based thereon. Subject to the payment of the Software Maintenance Fee, 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 Agreement. All licensed items shall be deemed to be "ES&S Software" and shall be subject to the terms and conditions of ES&S' license of the ES&S Software, upon delivery. Except as, 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 Agreement.

8. **Non-Appropriation of Funds.** Customer's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners of Nassau County. In the event that no funds or insufficient funds are appropriated and budgeted for the initial Software Maintenance Term to commence January 1, 2005, then Customer shall, not less than 60 days prior to the commencement of the Software Maintenance Term, notify ES&S in writing of such occurrence. This Agreement shall thereafter terminate without penalty, liability or expense to Customer.

9. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status upon request. 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, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one percent per month (or such lesser amount as may be permitted for under Section 218.70, *et seq.*, Florida Statutes, the "Florida Prompt Payment Act") for each month or portion thereof during which it remains unpaid.

10. **Limitation of Liability.** ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate Software Maintenance and Support. Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Any action by Customer against ES&S shall be commenced within the applicable statute of limitations period.

11. **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, Acts of God, labor disputes and governmental regulations, 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.

12. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by commercial overnight courier (with written verification of receipt) or 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 set forth on the first page of this Agreement unless other names or addresses are provided by either or both parties.

13. **Successors or Assigns.** The terms of this Agreement shall be binding on all successors and assigns of the parties hereto.

14. **Entire Agreement.** This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supercedes and replaces 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. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflicts of laws principles. 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 without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. ES&S may engage duly qualified subcontractors to perform certain of the Software Maintenance and Support Services, but shall remain fully responsible for such performance.


15. **Counterparts; Execution by Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

16. **Effective Date.** This Agreement shall take effect on January 1, 2005 ("Effective Date").

IN WITNESS WHEREOF, this Agreement has been executed as of the date it is signed by the last of the parties hereto.

ATTEST:

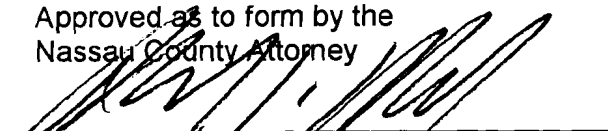
SUPERVISOR OF ELECTIONS  
OF NASSAU COUNTY, FLORIDA

  
J. M. "Chip" Oxley, Jr.  
Ex-Officio Clerk

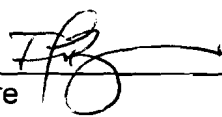
  
Vicki Peterson Cannon

Date: February 27, 2002

Approved as to form by the  
Nassau County Attorney

  
Michael S. Mullin

ELECTION SYSTEMS & SOFTWARE, INC.

By:   
Signature

Tom O'Brien  
Name (Printed or Typed)

CFO  
Title

Date: February 28, 2002

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
Nick D. Deonas

**ELECTION SYSTEMS & SOFTWARE  
POST WARRANTY  
HARDWARE MAINTENANCE SERVICE AGREEMENT**

THIS HARDWARE MAINTENANCE SERVICE AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, Inc., a Delaware corporation ("ES&S"), whose principal address is 11208 John Galt Blvd., Omaha, NE 68137, and the Nassau County Supervisor of Elections, constitutional officer of the State of Florida ("Customer"), whose principal address is ~~1886 Lakeside Dr. South~~, Fernandina Beach, FL 32034.

**11 North 14th Street, Box 11**

**RECITALS:**

**WHEREAS**, Nassau County has entered into a Voter Tabulation System and Services Agreement with ES&S, dated, February 25, 2002 (the "System and Services Agreement") for the purchase/license of voter tabulation equipment and related services from ES&S for use in Nassau County, Florida; and

**WHEREAS**, pursuant to the System and Services Agreement, ES&S provided a warranty on the ES&S Equipment and ES&S Software through December 31, 2004, which warranty included maintenance and support services; and

**WHEREAS**, Customer desired to obtain post-warranty maintenance and support services from ES&S for the voter tabulation equipment described on Attachment 1 (the "Products") and ES&S desires to provides such services to Customer.

**NOW, THEREFORE**, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

1. **Term; Termination.** This Agreement shall be in effect for a one-year period beginning on January 1, 2005 (the "Hardware Maintenance Term"). The Hardware Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Agreement is terminated by the first to occur of: (a) Customer's election to terminate it at any time, which shall be given at least 60 days prior to the termination date, (b) the date which is 30 days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is 30 days after Customer fails to pay any amount due to ES&S under this Agreement. Subject to the next succeeding paragraph of this Section 1, the termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S.

If this Agreement terminates on a date other than an anniversary of its Effective Date, and Customer has already received Routine Maintenance Services (as defined in Section 3(b) below) for the year in which termination occurs, ES&S shall not refund the fee paid for such year pursuant to Section 5. If, on the other hand, Customer has not received Routine Maintenance Services for such year but has received Remedial Maintenance Services (as defined in Section 3(c)(i) below), ES&S shall refund to Customer an amount equal to (i) the fee paid pursuant to Section 5 for such year, less (ii) the per-unit maintenance fee for such year for the Products receiving Remedial Maintenance Services, multiplied by the number of Products receiving such Remedial Maintenance Services.

2. **Services.** Subject to the terms and conditions of this Agreement, ES&S shall provide the following to Customer (check all that apply):

X        The Routine Maintenance Services and Remedial Maintenance Services described in Section 3 with respect to the Products (collectively the "Hardware Maintenance Services").

\_\_\_\_\_ Product Parts Only, as described in Section 4.

3. **Maintenance Services.** If Customer elects to receive Hardware Maintenance Services pursuant to Section 2 above, such Hardware Maintenance Services shall be subject to the following terms and conditions:

a. **Inspection.** If Customer has not received maintenance services from ES&S for any Product during the 12 months immediately preceding the Effective Date, ES&S may require Customer to allow it to inspect the Products before it provides any Hardware Maintenance Services therefore. 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 rate and shall be due from Customer within 30 days of its receipt of ES&S' invoice therefore. If such item 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 Product(s) to Normal Working Condition, at Customer's expense with respect to the cost of any parts used in such repairs or replacements and with respect to ES&S' Out-Of-Pocket Expenses, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Agreement, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by ES&S employees or authorized representatives ("ES&S Representatives") who are required to travel to Customer's Designated Location to provide services.

b. **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 12 months during the Hardware Maintenance Term or any renewal thereof. Customer may request that Routine Maintenance Services be performed more than once during any such 12-month period. Any such request shall be made at least 60 days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within 30 days after invoice date. Routine Maintenance Services shall include cleaning, lubrication and calibration services. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided either at Customer's Designated Location or at an ES&S-designated depot facility ("Depot"), as elected by Customer on Attachment 1. Customer shall pay all costs associated with shipping Product(s) to a Depot, including insurance.

c. **Remedial Maintenance 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 3(c)(i) are referred to herein as "Remedial Maintenance Services". ES&S shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for 10 or more Products at any given time, Customer may elect to have them provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at Customer's Designated Location. Customer acknowledges that the Products identified on Attachment 1 as "depot repair only" may only be repaired at a Depot.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product due to (1) repairs, changes, modifications or alterations to such Product that are not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use which 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 natural disaster, fire, flood, unusually severe weather or Acts of God, 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 Remedial Maintenance Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services which are provided within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Remedial Maintenance Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay an additional per-unit fee, as set forth on Attachment 1.

iv. **Loaner Unit.** At Customer's request, 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 Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 3(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.

d. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for third party hardware or software, (ii) repair or replace Product components that are consumed in the normal course of operating the Products, including printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens, or (iii) repair any ES&S Equipment 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 which is less than the then-current value of such item. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for the 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 Hardware Maintenance Term or renewal period for which such fee was paid and the denominator of which is the total number of days in such Hardware Maintenance Term.

e. **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 Hardware Maintenance Term 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.

f. **Storage.** Customer shall properly store the Products when they not in use.

4. **Product Parts Only.** If Customer has elected in Section 2 to receive Product Parts Only and not to receive Hardware Maintenance Services, it shall notify ES&S when it needs parts. When ES&S receives such notice, it shall promptly ship such parts to Customer at its own expense and shall bear all risk of loss or damage to the parts until they are delivered to the Designated Location. Customer is responsible for installing the parts. All replaced parts are the property of ES&S, and Customer shall ship them to ES&S at its own expense and bear all risk of loss or additional damage until they are delivered to ES&S. All parts shall be supplied by ES&S to Customer subject to their availability at such time, and pursuant to the most recent list of available parts published by ES&S. All parts shall be either (a) new standard parts, or (b) certified rebuilt parts which are of a quality sufficient to enable the Products to operate, assuming it is otherwise in Normal Working Condition. At ES&S' request, Customer shall store a reasonable number of parts for the Products at its Designated Location. ES&S agrees that it shall maintain spare parts for the Products for a minimum of 3 years following the date on which ES&S ceases to manufacture such item.

5. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services or Product Parts Only under this Agreement, Customer shall pay to ES&S a fee for the initial Hardware Maintenance Term and each renewal period. Such fee shall be in addition to any fees or charges separately referred to in any Section of this Agreement. The fee for the initial Hardware Maintenance Term is set forth on Attachment 1 and is due on January 1, 2005. ES&S may increase the fee for a renewal period by not more than 5% of the amount of the most recent fee paid by Customer. ES&S shall notify Customer of such increase no later than 60 days before the commencement of such renewal period. Increases in excess of 5% will be mutually agreed upon by ES&S and Customer. The fee for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period.

6. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status upon request. 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, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 6, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one percent per month (or such lesser amount as may be permitted for under Section 218.70 *et seq.*, Florida Statutes, the "Florida Prompt Payment Act") for each month or portion thereof during which it remains unpaid.

7. **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Any action by Customer against ES&S shall be commenced within the applicable statute of limitations period. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate the Hardware Maintenance Services.

8. **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, Acts of God, labor disputes and governmental regulations, 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.

9. **Non-Appropriation of Funds.** Customer's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners of Nassau County. In the event that no funds or insufficient funds are appropriated and budgeted for the initial Hardware Maintenance Term to commence January 1, 2005, then Customer shall, not less than sixty (60) days prior to the commencement of the Hardware Maintenance Term, in writing, notify ES&S of such occurrence. This Agreement shall thereafter terminate and be rendered null and void without penalty, liability or expense to Customer of any kind.

10. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by commercial overnight courier (with written verification of receipt) or 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 set forth on the first page to this Agreement unless other names or addresses are provided by either or both parties.

11. **Entire Agreement.** This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supercedes and replaces 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. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflicts of laws principles. 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 without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. ES&S may engage duly qualified subcontractors to perform certain of the Hardware Maintenance Services, but shall remain fully responsible for such performance.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.


13. **Successors or Assigns.** The terms of this Agreement shall be binding on all successors and assigns.

14. **Effective Date.** This Agreement shall take effect on January 1, 2005 ("Effective Date").

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement has been executed as of the date it is signed by the last of the parties hereto.

ATTEST:

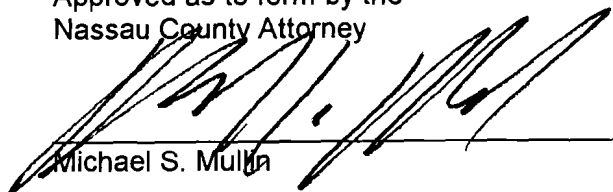
  
J. M. "Chip" Oxley, Jr.  
Ex-Officio Clerk

SUPERVISOR OF ELECTIONS  
OF NASSAU COUNTY, FLORIDA


  
Vicki Peterson Cannon

Date: February 27, 2002

Approved as to form by the  
Nassau County Attorney


  
Michael S. Mullin

ELECTION SYSTEMS & SOFTWARE, INC.

By:   
Its CFO

Date: February 28, 2002

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
Nick D. Deonas  
Its: Chairman

**Attachment 1**

**DESCRIPTION OF PRODUCTS**

<b>Quantity</b>	<b>Description (Note: *** indicates Depot Repair Only Products)</b>	<b>Initial Maintenance Fee Per Unit</b>	<b>Initial Maintenance Fee In Total</b>
1	M150 Central Scanners	\$1,400	\$1,400
261	iVotronics	\$70	\$18,270
	Annual Fees		\$19,670

**Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a year:**

**M150:           \$770 / unit**

**iVotronic:     \$50 / unit**

**Surcharge for Emergency Remedial Maintenance Services:**

**M150:           \$2,100 / unit**

**iVotronic:     \$105 / unit**

**Customer's Designated Location:** \_\_\_\_\_

**Location of Services:**

**X       Customer's Designated Location**

**—       Depot**

**Note 1:** In the event that the Model M150 is upgraded to a Model M650, the Model M150 maintenance fee per unit shall be deleted and replaced with the following:

<b>Quantity</b>	<b>Description</b>	<b>Initial Maintenance Fee Per Unit</b>	<b>Initial Maintenance Fee in Total</b>
1	M650 Scanners	\$2,600	\$2,600