

Exhibit B

ES&S TERMS AND CONDITIONS

The following terms and conditions shall govern the license of ES&S' Software, the warranty to be provided by the ES&S for its equipment and software, the performance of post warranty hardware maintenance and software license, maintenance and support services and the installation testing procedures for the ES&S' equipment and software. ES&S' license and warranty terms are set forth on Attachment 1, attached hereto and fully incorporated herein by this reference; the ES&S's performance of post warranty hardware maintenance and software license, maintenance and support services is set forth on Attachment 2, attached hereto and fully incorporated herein by this reference; and the Installation Procedures are set forth on Attachment 3, attached hereto and fully incorporated herein by this reference.

ATTACHMENT 1 TO EXHIBIT B

ES&S LICENSE AND WARRANTY TERMS AND CONDITIONS

GENERAL TERMS

ARTICLE 1 DEFINITIONS

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

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment.
- c. "ES&S Equipment" means ES&S's proprietary hardware or other ES&S proprietary equipment.
- d. "ES&S Firmware" means ES&S's proprietary software which is included on ES&S's Equipment.
- e. "ES&S Hardware Maintenance Services" and "ES&S Software License, Maintenance and Support Services" means those services described on Attachment 2 to this Exhibit B.
- f. "ES&S Software" means ES&S's proprietary election software (including the ES&S Firmware), all Updates delivered to County hereunder, unless licensed pursuant to a separate written agreement.
- g. "Software" means ES&S Software and Third Party software.
- h. "Third Party Items" means hardware, equipment and software manufactured and developed by parties other than ES&S.

ARTICLE 2

SALE OF ES&S EQUIPMENT AND LICENSE OF ES&S SOFTWARE

2.1 **Purchase Terms.** Subject to the terms and conditions of this Contract, ES&S agrees to sell, and County agrees to purchase, the ES&S Equipment described on Exhibit A. The payment terms for the ES&S Equipment is set forth on Exhibit A. Title to each Unit of the Equipment shall pass to County when County has paid ES&S the total amount set forth on Exhibit A for each Unit of the ES&S Equipment and ES&S Software.

2.2 **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to County a nonexclusive, nontransferable license for its bona fide full time, part time and temporary employees to use the ES&S Software described on Exhibit A and Documentation supplied

by ES&S. The license allows such bona fide full time, part time and temporary employees of the County to use and copy the 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 Dallas County, Texas (the "Jurisdiction"). The license does not permit County to take any of the following actions:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for County (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or
- c. Cause or permit any change to be made to the ES&S Software without ES&S's prior written consent.
- d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software (except finished ballots by ballot printers selected by County) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.
- e. Notwithstanding the foregoing and after title to Units of the ES&S Equipment has transferred to the County, County may sell any quantity of Units of the ES&S Equipment to another governmental entity, provided that the County (i) notifies ES&S in writing at least thirty (30) calendar days prior to the consummation of such sale, and (ii) the acquiring governmental entity enters into, and pays the applicable fees for a software license with ES&S for the licensure and use of the ES&S firmware which is resident on the Units of the ES&S Equipment, if any.

2.3 **License Fees**. In consideration for ES&S's grant of the license for the ES&S Software described in Section 2.2, County shall pay ES&S the ES&S Software License Fees set forth on Exhibit A. The consideration for ES&S'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 and shall continue for a two-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for successive one-year periods (each a "License Renewal Term") upon the payment by County of the annual software license and software maintenance and support fee as set forth on Exhibit A. ES&S may terminate either license if County fails to pay the consideration due for, or breaches Sections 2.2, 2.3, or 3.5 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon County's discontinuance of the use of any ES&S Software, County 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 **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. County is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the ES&S Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Contract upon delivery. County may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge County at its then-current rates to (i) install the Updates; (ii) train County on Updates, if such training is requested by County or (iii) provide maintenance and support on the ES&S Software that is required as a result of County's inability to timely or properly install an Update. County shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by County's inability to install and use the most recent Update provided to it by ES&S. If County 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 County or any third party. ES&S represents to County that the Updates will comply with all applicable state law requirements at the time of delivery. County shall be responsible to ensure that it has installed, or has attempted to install, and is using, or is attempting to use, only certified versions of ES&S Software in accordance with applicable law. ES&S shall be responsible to ensure that it delivers to County only versions of ES&S Software that are in compliance with applicable law. In the event that any Updates to the ES&S Equipment and/or Licensed Software sold and/or licensed to County are required due to changes in state or local law, ES&S shall prepare and submit a written estimate of the following to County:

- (i) the total cost of any third-party items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and
- (iii) County's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

County's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in County's jurisdiction by the total number of registered voters in all counties in County's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by County under this Contract. After County has had an opportunity to review ES&S' written estimate of the foregoing costs, the parties shall negotiate and agree upon the responsibility between the parties for the payment of such costs. To the extent that any of the foregoing costs are to be paid by County, prior to the incurrence of any such costs: (i) County shall obtain any necessary funding appropriations, and (ii) the parties shall execute an appropriate amendment to this this Contract. In no event shall County ever be requested or required to pay ES&S for any of the costs incurred for design, development and certification of any Updates which are required due to a change in Federal law.

ARTICLE 3 DELIVERY AND WARRANTY

3.1 **Delivery; Risk of Loss.** The Delivery Dates and First Election Use shall be mutually agreed upon by the parties and may only be established or revised, as applicable, by the parties, in a written amendment to this Contract, because of delays in executing this Contract, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Contract have been paid by County. The parties shall conduct and complete, within thirty (30) days after delivery, the Installation procedures outlined on Attachment 3 to Exhibit B to confirm that the ES&S Equipment and ES&S Software are installed and performing in accordance with the warranties set forth in Sections 3.2(a) and 3.2(b) below (the "ES&S Equipment and ES&S Software Installation"). Upon completion of the ES&S Equipment and ES&S Software Installation, representatives of both parties will execute the "Certificate of Completed ES&S Equipment and ES&S Software Installation" included at Attachment 3 to Exhibit B.

3.2 Warranties.

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a 2-year period (the "Warranty Period"), it will repair or replace 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 all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. The Warranty Period will commence upon completion of the Acceptance Testing. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the 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) County notifies ES&S within fifteen (15) calendar days of the discovery 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 as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or County, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) County has installed and is using, or has attempted to install or has attempted to use, the most recent Update provided to it by ES&S. In the event that County is not able to successfully install or use an Update, it shall promptly notify ES&S in writing in order to allow ES&S to provide appropriate agreed upon assistance with installation of such Update. This warranty is void for any units of equipment which: (i) have not been stored or operated in environmental conditions in accordance

with their written specifications, or (ii) have been stored, operated or handled in a manner so as to cause material mechanical damage to the unit.

b. **System.** ES&S warrants that the ES&S Equipment and ES&S Software will operate in conjunction with the third party products specified by ES&S and as set forth in Exhibit A during the Warranty Period, provided that (i) County has installed, or has attempted to install, and is using, or is attempting to use, the most recent Update, provided to it by ES&S, and (ii) the third party products are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will repair or replace the item of ES&S Equipment or ES&S Software that is causing such breach to occur. County acknowledges that ES&S has merely purchased the third party products for resale or rental to County, and that the proprietary and intellectual property rights to the third party products are owned by parties other than ES&S ("Third Parties"). County further acknowledges that except for the payment to ES&S for the third party products, all of its rights and obligations with respect thereto flow from and to the Third Parties.

c. **Exclusive Remedies. IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE COUNTY'S SOLE AND EXCLUSIVE REMEDIES. FURTHER, IN THE EVENT COUNTY DECLINES ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES PROVIDED HEREUNDER WITH REPECT TO THE AFFECTED COMPONENTS OF THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS CONTRACT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT. NOTWITHSTANDING THE FOREGOING, NO WARRANTIES PROVIDED UNDER THIS AGREEMENT SHALL BE VOIDED AS A RESULT OF ANY TESTING OR REVIEW TO BE CONDUCTED BY THE TEXAS SECRETARY OF STATE OR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, PROVIDED ES&S IS NOTIFIED IN ADVANCE, IN WRITING, BY THE COUNTY OF ANY PROPOSED CHANGES TO BE MADE TO ANY COMPONENT OF THE SYSTEM AS A RESULT OF SUCH TESTING.**

3.3 **Routine Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, County may request that ES&S provide the Routine Maintenance Services described in Article II, Subsection 1(a) of Attachment 2 of Exhibit B for one or more units of ES&S Equipment. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such Routine Maintenance Services is set forth on Attachment 2 of Exhibit B and shall be due within thirty (30) days after County's receipt of ES&S's invoice. The terms and conditions of Article II, Subsection 1(b) of Attachment 2 of Exhibit B shall govern the providing of the Routine Maintenance Services. When the ES&S Equipment is not in use, County shall use commercially reasonable efforts to properly store the ES&S Equipment in accordance with the storage requirements established in the Documentation. Upon termination of the Warranty Period, County shall be entitled to receive the Hardware Maintenance Services described on Attachment 2 of Exhibit B upon the payment of the applicable fees set forth in Exhibit A.

3.4 **Equipment and Software Compliance with Laws.** ES&S warrants to County that, at the time of delivery, the ES&S Equipment and ES&S Software sold and licensed under this Contract will comply with all applicable requirements of federal and state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in County's state. The ES&S Equipment and ES&S Software, including all components will be provided to County with a hardened network for the election management software ("EMS"), in accordance with the guidelines of the United States Election Assistance Commission ("EAC"). ES&S shall not be responsible for those claims, damages, losses, judgments, penalties, costs, amounts paid in settlement or fees, which are directly related to County personnel's alteration of the network on which the EMS is installed from the hardened configuration in which it was installed by ES&S.

3.5 **Proprietary Rights.** County 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 County supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. County has the right to use the aforementioned items to the extent specified in this Contract. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

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

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

ATTACHMENT 2 TO EXHIBIT B

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

ARTICLE I GENERAL

1. **Term; Termination.** This Attachment 2 to Exhibit B for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule 2-1 (the "Initial Term"). Upon expiration of the Initial Term, this Attachment 2 to Exhibit B shall automatically renew for an unlimited number of successive One-Year Periods (each a "Renewal Period") until this Attachment 2 to Exhibit B is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Attachment 2 to Exhibit B, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies County that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in County's jurisdiction, or (e) the date which is thirty (30) days after County fails to pay any amount due to ES&S under this Attachment 2 to Exhibit B. The termination of this Attachment 2 to Exhibit B shall not relieve County of its liability to pay any amounts due to ES&S hereunder and shall only entitle County to a prorated refund of any fees already paid to ES&S in the event that this is Attachment 2 to Exhibit B is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Attachment 2 to Exhibit B, County shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule 2-1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule 2-1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 3% of the amount of the most recent Fees paid by County. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, 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 Attachment 2 to Exhibit B. If County elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services.

ARTICLE II **HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to County under this Attachment 2 to Exhibit B for the ES&S equipment set forth on Schedule 2-1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each Twelve (12) Months during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. County may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule 2-1 and shall be due within thirty (30) days after invoice date. ES&S will schedule the Routine Maintenance Services with County. The Routine Maintenance Services will be provided at County's Designated Location. County's "Designated Location" shall mean County's owned or leased facility at which County desires ES&S to perform the Hardware Maintenance Services.

b. **Repair Services.**

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

ii. **Defects Due to County Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or County, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if County does not notify ES&S within fifteen (15) calendar days after it knows of the defect or malfunction, County shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and County. If County requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after County notifies ES&S of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, County shall pay a surcharge, as set forth on Schedule 2-1. Repair Services that County and ES&S agree need to be performed within the seven (7) calendar day period prior to, or on the day of, any election conducted by County shall not be subject to the surcharge normally assessed for the provision of "emergency" Repair Services.

iv. **Loaner Unit.** At County's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to County a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, County shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

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

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

e. **Environmental Conditions.** Products should be stored in a clean, dry and secure environment. During the storage and operation of the Products, the temperature and moisture ranges should be maintained in accordance with the Products Documentation.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, County may thereafter

resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires County to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from County within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of County, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at County's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

ARTICLE III **SOFTWARE**

1. **Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to allow County to continue to license and use the software in accordance with the license terms set forth in Sections 2.2-2.4 of Attachment 1 to Exhibit B as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule 2-1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 2.5 of Attachment 1 to Exhibit B.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or County, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) County's inability to timely and properly install and use, or attempt to install or attempt to use, the most recent Update provided to it by ES&S (provided that County notifies ES&S in writing within fifteen (15) calendar days of its inability to successfully install or use such Update in order to allow ES&S to provide appropriate agreed upon assistance with installation of such Update), or (e) County's failure to notify ES&S within fifteen (15) calendar days after County knows of the need for such services. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by County as a result of items set forth in this Section 3 or as a result of County's actions or inactions shall be billable to County at ES&S' then current rates.

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

5. **Reinstatement of Software License and Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, County may thereafter receive a Software License and 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 Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

Schedule 2-1

Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$2,018,970.00
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$177,900.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$1,029,450.00
Total Maintenance Fees for the Initial Term:		\$3,226,320.00
<u>Payment Terms:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Term. Payment is due before the start of each period within the Initial Term.		
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the **third** anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
1,000	Model DS200 Scanner	Year 1	\$185.00	\$185,000.00
2	Model DS850 Scanner	Year 1	\$3,995.00	\$7,990.00
4,000	ExpressVote Ballot Marking Device ("BMD") Terminal	Year 1	\$120.00	\$480,000.00
Total Maintenance Fees for Year 1				\$672,990.00
1,000	Model DS200 Scanner	Year 2	\$185.00	\$185,000.00
2	Model DS850 Scanner	Year 2	\$3,995.00	\$7,990.00
4,000	ExpressVote BMD Terminal	Year 2	\$120.00	\$480,000.00
Total Maintenance Fees for Year 2				\$672,990.00
1,000	Model DS200 Scanner	Year 3	\$185.00	\$185,000.00
2	Model DS850 Scanner	Year 3	\$3,995.00	\$7,990.00
4,000	ExpressVote BMD Terminal	Year 3	\$120.00	\$480,000.00
Total Maintenance Fees for Year 3				\$672,990.00
Total Hardware Maintenance Fees for the Initial Term				\$2,018,970.00

1. The Per-Unit Fees if County requests more than one Routine Maintenance visit in a 12-month period shall be 55% of the then current maintenance fee per unit.
2. Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Calendar Year	Daily Rate – 1 st Day	Daily Rate – Each Day Thereafter
2019	\$2,475	\$1,800
2020	\$2,549	\$1,854
2021	\$2,625	\$1,910
2022	\$2,705	\$1,967

The rate in effect following calendar year 2022 shall be subject to an annual increase of no more than three percent (3%) per year over the immediately preceding rate in effect. ES&S shall provide County written notice of any annual rate increases at least thirty (30) calendar days before the effective date of such increased rate.

3. County's Designated Location: Dallas County, Texas

The County may change the designated location for hardware delivery or service by notifying ES&S prior to shipment of hardware or prior to service being provided.

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

Hardware Maintenance Services Provided by ES&S Under this Schedule 2-1

1. Telephone Support.

2. Issue Resolution.

3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

4. Routine Maintenance Services.

- Onsite scheduled maintenance inspection per Article II, Section 1(a). The Inspection includes:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective parts with new or remanufactured federally and state certified parts.
 - Conducting a final test to verify that the unit is working according to manufacturer's specifications.
 - Use of a checklist tailored for each piece of ES&S Equipment.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.

- A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

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

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

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

Initial Term: Expiration of the Warranty Period through the **third** anniversary thereof

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

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
1	ElectionWare Software – Program Your Own (“PYO”) Standard	Year 1	\$49,500.00
1	Regional Transmission Software	Year 1	\$6,040.00
1	Synthesized Audio Capability Spanish Language	Year 1	\$2,310.00
1	Balotar Software	Year 1	\$1,450.00
Total License, Maintenance and Support Fees for Year 1			\$59,300.00
1	ElectionWare Software – PYO Standard	Year 2	\$49,500.00
1	Regional Transmission Software	Year 2	\$6,040.00
1	Synthesized Audio Capability Spanish Language	Year 2	\$2,310.00
1	Balotar Software	Year 2	\$1,450.00
Total License, Maintenance and Support Fees for Year 2			\$59,300.00
1	ElectionWare Software – PYO Standard	Year 3	\$49,500.00
1	Regional Transmission Software	Year 3	\$6,040.00
1	Synthesized Audio Capability Spanish Language	Year 3	\$2,310.00
1	Balotar Software	Year 3	\$1,450.00
Total License, Maintenance and Support Fees for Year 3			\$59,300.00
Total Software License, Maintenance and Support Fees for the Initial Term			\$177,900.00

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

Initial Term: Expiration of the Warranty Period through the **third** anniversary thereof

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

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
1,000	Model DS200 Scanner	Year 1	\$80.00	\$80,000.00
2	Model DS850 Scanner	Year 1	\$1,575.00	\$3,150.00
4,000	ExpressVote BMD Terminal	Year 1	\$65.00	\$260,000.00
Total License, Maintenance and Support Fees for Year 1				\$343,150.00
1,000	Model DS200 Scanner	Year 2	\$80.00	\$80,000.00
2	Model DS850 Scanner	Year 2	\$1,575.00	\$3,150.00
4,000	ExpressVote BMD Terminal	Year2	\$65.00	\$260,000.00
Total License, Maintenance and Support Fees for Year 2				\$343,150.00
1,000	Model DS200 Scanner	Year 3	\$80.00	\$80,000.00
2	Model DS850 Scanner	Year 3	\$1,575.00	\$3,150.00
4,000	ExpressVote BMD Terminal	Year 3	\$65.00	\$260,000.00
Total License, Maintenance and Support Fees for Year 3				\$343,150.00
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$1,029,450.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

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

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

County's failure to perform any of the following shall not terminate ES&S' obligation to provide the software license, maintenance and support services and/or hardware maintenance and support services hereunder.

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall be responsible for the installation and integration of any third-party hardware or software application or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
4. Customer shall be responsible for data extraction from Customer voter registration system.
5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
6. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
7. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
8. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
9. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.

10. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

ATTACHMENT 3 TO EXHIBIT B

INSTALLATION PROCEDURES

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

DS200

Date: _____ **Machine SN:** _____ **Certified Firmware:** _____

Visual Inspection:

- ☐ Ensure that there are no scratches or gouges on any part of the unit
- ☐ Verify that all labels are placed in their appropriate place and in their correct orientation
- ☐ Ensure the Printer paper roll is installed in the Printer.

Physical Inspection:

- ☐ Apply AC to Wall Power Adapter. Connect Wall Power Adapter to the back of the unit and press the "POWER" button.
- ☐ Observe the rear LED, located next to the Wall Power Adapter Cord Connector, if the LED is amber and blinking slowly this indicates that the Battery Pack is charging. If the LED is a solid green, the Battery Pack is completely charged.
 - Verify AC Plug Icon is present and does not have an "X" located in upper right corner of the screen.
- ☐ Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
 - Touch the two circles (one in the Upper Left Corner and one in the Lower Right Corner of the screen) and then touch the "Save & Exit" button.
- ☐ Verify the **DS200 Firmware Version** is _____; **PMB** is _____; **Scanner** is _____ on Startup Printout.
- ☐ Insert the ____MB Flash Drive containing the BMW Demo Election in USB port B.
 - When the unit recognizes the ____MB Flash Drive w/ Demo Election, the Election Icon will go from having an "X" to a green ✓ mark on it.
- ☐ Check the date and time on the top portion of the display to ensure the date and time is correct.
 - If a change is needed, press the lower right arrow on the display screen then press the "go to admin button" and on the next screen enter the password.
 - Go to "systems settings", "date and time" and then press date or time and a keyboard will come up so you can make changes. Press the "enter key". You will go back to the original screen where you will press previous and here you will "accept new time."
- ☐ Press the "OPEN POLLS" button on the screen to scan the BMW Demo Ballots.
- ☐ Ensure that the test ballots scan in all four orientations.
- ☐ Insert the 2 Demo Ballots to check the Multi-Sheet Sensor. Two sheets should be rejected.

- ☐ Press and hold the "CLOSE POLLS" button for two seconds to close the polls.
- ☐ Verify that the Precinct Report Printout should read 4 ballots cast.

- ☐ Disconnect the Wall Power Adapter cord from unit.
 - Unit should continue to operate, and the X should appear over the AC icon.
- ☐ Re-connect Wall Power Supply cord
 - The X should disappear from the AC icon.
- ☐ Check Modem Operation. (If Unit is equipped with a Modem)
- ☐ Power down the unit by touching the "Shutdown" button on the Touch Screen.
- ☐ Verify that the Display switch operates correctly by completing the following:
 - With the Wall Power Adapter still connected to the unit, lower the Display to the closed position.
 - Raise the Display back to the opened position.
 - The unit should power back up.

Note: The Display switch will not operate if the Wall Power Supply cord has been removed.

- ☐ Verify all Locks and Doors have a smooth function and are locked.
- ☐ A Logic and Accuracy Test jointly completed by representatives of both parties with each piece of hardware received and tested to verify that the votes counted reflect the votes cast.

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION
DS850

Date: _____ **Machine SN:** _____ **Location:** _____

Visual Inspection:

- ☐ Insure that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Printer paper roll installed

Physical Inspection:

- ☐ Power up on D/C
- ☐ **Firmware Version** _____ **Power Management** _____ **Scanner** _____
- ☐ Rear LED and Power Icon check when A/C applied
- ☐ Display switch operation
- ☐ Date and time
- ☐ Touch Screen Calibration
- ☐ Election Icon
- ☐ OPEN POLLS
- ☐ Ballots scan in all four orientations (DAC and All-Fill)
- ☐ Multi-Sheet Sensor.
- ☐ CLOSE POLLS
- ☐ Precinct Report Printout, verify results
- ☐ Power down by Shutdown button on screen
- ☐ Locks and Doors have a smooth function and are locked.

Inspector: _____

**ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION
EXPRESSVOTE**

Date: _____ (Format: mm/dd/yy) **Machine SN:** _____ **Location:**

Visual Inspection:

- ☐ Confirm that there are no scratches, or gouges on any part of the unit
- ☐ Labels in correct location and orientation
- ☐ Verify that the battery is installed
- ☐ Inspect all fasteners and plastic parts

Setup:

- ☐ Place the ExpressVote on level surface.
- ☐ Connect to A/C power
- ☐ Unlock left side access door, flip power switch to ON position
- ☐ Connect navigation keypad to RJ port near power switch
- ☐ Insert USB stick containing the EQC data and enter code when prompted
- ☐ Insert USB stick containing sample Election Data and enter code when prompted.

Print Testing:

- ☐ Insert a ballot activation card and begin voting following instructions on screen
- ☐ Insert additional activation cards to test each ballot configuration in the election.
- ☐ Review printed card for complete, dark print
- ☐ Reinsert voted card and review summary to confirm scanner is working properly

Audio Testing:

- ☐ Plug in audio headset to listen to audio
- ☐ Verify audio can be heard throughout the voting process
- ☐ Use the triangular navigation buttons to navigate the ballot
- ☐ Press the Repeat key, Tempo and volume buttons to confirm all operations.

☐ Activate all buttons to confirm navigation keypad is fully operational

Attach printed paper records from ExpressVote to this checklist.

ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

CERTIFICATE OF COMPLETED ES&S EQUIPMENT AND ES&S SOFTWARE INSTALLATION

The undersigned do hereby certify that the ES&S Equipment listed below has been installed under the criteria specified in the Agreement. Serial Numbers of respective Equipment are attached.

DS200 Units	DS850 Units	ExpressVote Units
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>
<u>Units Installed</u>	<u>Units Installed</u>	<u>Units Installed</u>

Firmware Version:_____

County:_____

Representative:_____
(Printed Name & Title)

(Signature)

ES&S
Representative:_____
(Printed Name)

(Signature)

Date: _____