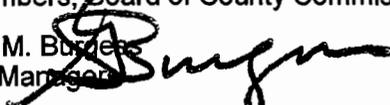


Date: November 6, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Resolution Awarding a Contract to Election Systems & Software, Inc. for the Purchase
of Optical Scan Voting Equipment R-1232-07

Agenda Item No. 8(O)(1)(F)

RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of a contract to Election Systems & Software, Inc. (ES&S), for the purchase of optical scan voting equipment, software licensing rights, parts, technical and maintenance support for the Miami-Dade Elections Department. On July 26, 2007, the Board adopted Resolution R-917-07 waiving formal bid procedures and bid protest procedures on this contract, authorizing a recommendation for the purchase of such optical scan voting equipment to be presented directly to the Board upon completion of negotiations with the current vendor.

Contract No.: BW8488-5/17

Contract Title: Miami-Dade Voting Systems

Description: This contract will provide equipment and software upgrades, technical support, and maintenance for the existing elections system required to convert to an optical scan voting method by July1, 2008 as required by Florida State statutes.

Term: Five years, with five, one-year options-to-renew.

Contract Amount: \$16,232,020 for the initial five-year term.

- Purchase of the DS200's in the amount of \$9,719,325
- On-site post warranty maintenance and support for the initial term in the amount up to \$2,180,228
- Professional and technical service for the initial term in the amount up to \$2,933,000
- Purchase of supplies and parts for the initial term in the amount up to \$1,399,467

**Using/Managing Agency
and Funding Source:**

<u>Department</u>	<u>Allocation</u>	<u>Funding Source</u>
Elections	\$16,232,020	General Funds

Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners
Page 2

Previous Contract Allocation: \$29,299,222

Method of Award: Bid Waiver

Vendor: Election Systems and Software, Inc.
(Non-Local Vendor)

<u>Address</u>	<u>Principal</u>
11208 John Galt Boulevard Omaha, Nebraska, 68137	Aldo Tessi, President & Chief Executive Officer

Contract Measure: This is a non-competitive contract and no measures apply.

Review Committee Date: August 8, 2007, Item 2-11.

Local Preference: Not applicable.

Living Wage: The Living Wage Ordinance does not apply.

User Access Program (UAP): This contract includes the User Access Program (UAP) provision. The 2% program discount will be collected.

Compliance Data: This contract does not have participation measures. There are no compliance issues.

Performance Data: There are no current performance issues.

Contract Managers: Adil Khan, Department of Procurement Management
Linda Leasburg-Kramer, Department of Procurement Management
Michael Johnson, Elections Department.

Contract Effective Date: Upon approval by the Board of County Commissioners and expiration of the mayoral veto period.

JUSTIFICATION

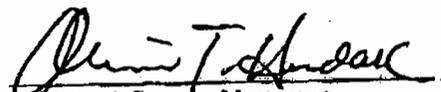
As approved by the Board on July 26, 2007, staff entered into negotiations with Election Systems and Software, Inc. (ES&S) for the purchase of 1,650 DS200 Optical Scan units. The scanners are required to implement a paper-based voting method no later than July 1, 2008, consistent with passage of House Bill 537. The State of Florida is providing Miami-Dade County with approximately \$4.6 million to assist with the initial hardware and warranty costs which total \$11.9 million. Annual recurring costs in the amount up to \$4.3 million for the initial five-year term will be budgeted in the Elections Department's operating budget.

The County's current election software was acquired in 2002 through a competitive Request For Proposals process (RFP326). Since then, the County has invested approximately \$29 million in ES&S elections equipment, software, support and training. The DS200 scanners offered by ES&S have been certified by the State of Florida.

Staff held several negotiation sessions with the vendor and as requested by the Board, included the Commission Auditor in all communications and meetings with ES&S. The resultant contract provides the optical scan voter interfaces that will provide the voter with a paper-based ballot as required by the state. A payment schedule has been developed that is tied to completion of identified deliverables by the vendor including:

- o Delivery of the DS200 optical scan units to the Elections Department.
- o Submission of the software version which includes multiple language screen messages, keyed precinct entry for early voting and ballot image capturing for write-in votes to of the Division of Elections, Florida Department of State, for acceptance testing.
- o Completion of DS200 acceptance testing which includes both hardware testing and a full mock election at Miami-Dade Elections Department.
- o Performance assurances including a performance bond in the amount of \$9,528,750 to be in place through the November 2008 Presidential election. Additional remedies are in place that will allow the County to recoup costs associated with any documented failures during an election, and to mitigate any out-of-pocket costs such as overtime charges associated with a hand ballot count.
- o The purchase of the DS200 optical scan units includes a warranty effective through December 31, 2008. Post warranty maintenance and support are provided and include routine preventive and remedial maintenance services. Costs negotiated for the post-warranty maintenance and support are firm for years one through four, and future increases are capped.
- o On-site Technical and Project Management Support provisions to support countywide elections and other needs as may be required by the Elections Department
- o Should another jurisdiction secure more favorable pricing for purchases of the same quantity of similar equipment and purchases during the term of this agreement, the County will be afforded that pricing for future purchases.

The contract value of \$16,232,020 provides for the purchase of the DS200 optical scan units, supplies, software upgrades, technical support, and maintenance for the initial term of five years. Performance measures tying payments to deliverables, along with the performance bond, provide the Department with assurances that the vendor must perform prior to payments being issued.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: November 6, 2007

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)(F)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(O)(1)(F)
11-06-07

RESOLUTION NO. R-1232-07

RESOLUTION AUTHORIZING AWARD OF CONTRACT NO. BW8488-5/17 TO ELECTION SYSTEMS & SOFTWARE, INC. TO OBTAIN VOTING EQUIPMENT, LICENSING RIGHTS, TECHNICAL AND MAINTENANCE SUPPORT, AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE SAME

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, this Board adopted Resolution R-917-07 on July 26, 2007 waiving formal bid procedures and bid protest procedures on this contract,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes award of the contract with Election Systems & Software, Inc., for voting equipment, licensing rights, technical and maintenance support in substantially the form attached hereto and authorizes the County Mayor or his designee to execute the contract and exercise options-to-renew or any other right contained therein.

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The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

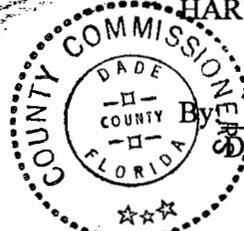
	Bruno A. Barreiro, Chairman	absent	
	Barbara J. Jordan, Vice-Chairwoman	absent	
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of November, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal

THIS AGREEMENT made and entered into as of this _____ day of _____, 2007 by and between Election Systems & Software, Inc; a corporation organized and existing under the laws of the State of Delaware, having its principal office at 11208 John Galt Boulevard, Omaha, Nebraska, 68137 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to furnish, install, store, train staff and maintain system software and hardware to provide voting systems for the Miami-Dade County Elections Department which shall conform to the Statement of Work as outlined in Appendix C and the requirements of this Agreement; and

WHEREAS, the County desires to procure such a software system(s), hardware, maintenance services and certain other services performed in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Acceptance Criteria" to mean the criteria for Equipment Acceptance set forth in Appendix D.
- b) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively this and all Contract terms and conditions, the Statement of Work, all Appendixes, Exhibits and all other attachments hereto and all amendments issued hereto.
- c) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.
- d) The words "Contract Manager" to mean the County's Director, Department of Procurement Management or duly authorized representative.
- e) The word "Contractor" to mean Election Systems & Software and its permitted successors and assigns.

- f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the reasonable opinion of the County's Project Manager.
- g) The word "Days" to mean Calendar Days.
- h) The word "Deliverables" to mean the Voting Tabulation System, which includes , Equipment, Software, Firmware, Warranties, Maintenance and Support Services, and all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- i) The words "Extra Work" shall mean changes resulting in additions or deletions to the amount, type or value of the work shown in this Agreement as directed by the County.
- j) The words "Hardware" or "Equipment" as an all-inclusive term to mean the equipment, hardware, associated peripherals, associated firmware, electrical and other materials and supplies furnished to the County as required by the Contract, and particularly the DS200 Digital Ballot Scanner.
- k) The words "Implementation Schedule" and "Delivery Schedule" to mean the schedules set forth in the Statement of Work; that lists the scheduled completion dates for specific tasks and the performance of the Work.
- l) The words "installation" or "install" or "installed" or "installing" to mean completely assembling and connecting all material, parts, software, components, appliances, supplies and related equipment necessary to satisfy the requirements of the Statement of Work, Appendix C, and the Contract.
- m) The words "Installation Date" to mean the date that the Equipment and Software is installed at a specific Site in accordance with the Statement of Work.
- n) The words "Licensed Software" to mean programs or modules and related documentation for certain Contractor developed operating and application software and firmware for operating the Voting Tabulation System as set forth in Appendix A attached hereto (Software License Agreement).
- o) The words "Maintenance and Support Services" to mean the Hardware and Software maintenance and support services to be performed under the terms of this Agreement, including Appendix E.
- p) The words "Notice to Proceed" to mean the written authorization by the County designating the date and time for the Contractor to commence work.
- q) The "Pricing Schedule" means the document appended hereto as Appendix B which, details the prices which will be charged by Contractor to the County for all Equipment, Software, Services or other Deliverables under this Agreement.
- r) The words "Project Manager" to mean the County's Director, Elections Department or duly authorized representative designated to manage the Contract.
- s) The words "Statement of Work" to mean the document appended hereto as Appendix C, which details the work to be performed by the Contractor including but not limited to the

design, furnishing, integration, installation and maintenance of the System.

- t) The word "Site(s)" to mean any one or more County facilities where the System(s) covered under the Contract will be designed, furnished, integrated, installed and maintained.
- u) The word "Software" to mean the Licensed Software and Third Party Software.
- v) The word "Subcontractor" or subconsultant to mean any person, firm or corporation, other than the employees of the Contractor, who contracts to furnish labor, or labor and materials, in connection with the Work, whether directly or indirectly, on behalf of the Contractor and whether or not in privity of Contract with the Contractor.
- w) The word "System(s)" to mean the Voting Tabulation System that includes composite of all items intended to be furnished, installed and integrated to fulfill the requirements of the Contract including, but not limited to (i) items of all Equipment, machines, features, cable, wire, documentation and procedures and (ii) Licensed Software, and (iii) Third Party Software.
- x) The words "System Acceptance" to mean the County's certification that the entire System(s) at a specific Site(s) has satisfied the election readiness acceptance criteria set forth in Appendix D and the requirements of the Statement of Work, Appendix C.
- y) The words "System Acceptance Date" to mean the date on which the entire System installed at a specific Site(s) has satisfied the final election readiness acceptance criteria set forth in Appendix D and the requirements of the Statement of Work, Appendix C.
- z) The words "Third Party Software" to mean the software, if applicable, as identified in the Appendix B, which is deemed to be "off the shelf" software. There is no additional third party software included nor anticipated to be included in the Deliverables.
- aa) The words "Work", "Services" or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

This Agreement, including all Appendices, Exhibits and other documents attached hereto that are referenced herein (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 other agreement that conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. 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

If there is a conflict between or among the provisions of this Agreement including all Appendices, Exhibits and other documents attached hereto that are referenced herein (all of which are incorporated herein by this reference), the order of precedence is as follows: 1) these Terms and Conditions, 2) The Pricing Schedule (Appendix B), 3) the Statement of Work (Appendix C) 4) the Software License Agreement (Appendix A), (5) all other Appendices and any associated addenda and attachments thereof.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. GRANT OF RIGHTS

- a) License Software. Subject to Article 1 of Appendix A, the License granted for Licensed Software under this Agreement authorizes the County perpetual, non-exclusive, irrevocable use of the Licensed Software on the number of primary systems of Equipment identified on Appendix A hereto for the license term set forth on Appendix A. The Licensed Software shall be used only on such primary systems if they are operating properly. If any primary system is down, the Licensed Software may be used on a backup system for that primary system.
- b) Additional Licenses. During the term of the Agreement, should the County wish to purchase additional licenses from the Contractor, the fees shall be according to the pricing schedule set forth on Appendix B as may be amended from time to time in accordance with this Agreement. All additional licenses purchased shall be documented in writing by the Contractor and amended in Appendix A.

ARTICLE 5. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the Services as set forth on Appendix C, the Statement of Work, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the reasonable satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Services provided hereunder. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all reasonable changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the

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time and cost to implement said changes and in executing the activities required to implement said changes. Changes which may result in additional cost or liability to the County require the prior written consent and written approval by the County for such changes. The County shall not be liable for any expenses that have not been approved in advance, in writing, by the County.

ARTICLE 6. CONTRACT TERM

The Contract shall become effective on the Contract Date and shall continue for a period of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of five (5) additional one-year periods. The County will provide notice to Contractor of its intent to renew the Agreement ninety (90) calendar days prior to the end to the initial five (5) year term or any renewal thereof. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 7. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) To the County:

Elections Department
111 NW 1st Street, Suite 1900
Miami, FL 33128
Attention: Director

and;

Department of Procurement Management
111 NW 1st Street, Suite 2350
Miami, FL 33128
Attention: Director

(2) To the Contractor:

Election System & Software
11208 John Galt Boulevard
Omaha, NE 68137
Attention: Office of General Counsel

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 8. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to

determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall not exceed the total amount of sixteen million two hundred thirty two thousand twenty dollars (\$16,232,020). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

The County agrees to compensate Contractor for Equipment, Software and the performance of Work and Services in accordance with the terms of this Agreement and the terms of Appendix B (Pricing Schedule) attached hereto. The County shall not pay the Contractor any amount for Equipment, Software or Work additional to those set forth in the Appendix B (Pricing Schedule) unless agreed upon in writing by the parties.

ARTICLE 9. PRICING

Prices set forth on Schedule 1 of Appendix B (Pricing Schedule), to the Agreement shall remain firm and fixed for the first three (3) years of the Agreement, thereafter, the parties will negotiate pricing, for the remaining two years of the initial contract term, and any renewal periods; however, annual price increases will not exceed the then current CPI or 7%, whichever is lower, at the time of review. Prices set forth on Schedule 2 and 3 of Appendix B (Pricing Schedule), shall remain firm and fixed for the first five (5) years of the Agreement thereafter, the parties will negotiate pricing, for any renewal periods; however, annual price increases will not exceed the then current CPI or 7%, whichever is lower, at the time of review. The Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

If during the term of this Agreement the Contractor enters into an agreement with any other customer for substantially the same amount and combination of equipment, software, and services and provides such customer with more favorable prices, then this Agreement will be deemed appropriately amended to provide such pricing to the County for future Deliverables.

ARTICLE 10. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to the Price Schedule set forth on Appendix B. All proper invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time

specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust. If any undisputed payment to Contractor is past due more than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust, ES&S may suspend performance under this Agreement until such amount is paid. Notwithstanding the foregoing, in no event shall ES&S suspend performance during an election critical time period which shall be defined as thirty (30) calendar days prior to and twenty (20) calendar days after a scheduled County election.

Times of Payments

ES&S agrees that County shall release payments for the initial purchase of 1650 DS200's based upon completion of Payment Schedule Tasks as detailed in Appendix B, the Pricing Schedule, attached hereto.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Elections Department
2700 NW 87 Avenue
Miami., Florida 33172
Attention: Maria Saboya

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 11. DELIVERY; ACCEPTANCE

- a) All Software and Equipment ordered by the County shall be delivered on or before the delivery dates set forth on Appendix B. The delivery dates may be revised upon mutual written agreement between the parties.
- b) Risk of Loss with respect to the Equipment delivered to the County shall pass to the County upon delivery to the County's designated site. Upon transfer of risk of loss to County, County shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment until all amounts payable to Contractor under this Agreement have been paid by the County. Title to the Equipment shall pass to the County upon final payment by the County for such Equipment.
- c) The County and Contractor shall conduct and complete, within fifteen (15) calendar days or within such other timeframe as may be agreed upon by the parties after delivery, the election readiness acceptance procedures outlined on Appendix D to confirm that the Equipment performs in accordance its documentation as provided by the Contractor.
- d) The County shall conduct and complete the election readiness acceptance procedures outlined on Appendix D on a date and within a specific timeframe as may be agreed upon in writing by the parties to confirm that the System performs in accordance with its documentation as provided to the County .
- e) The Contractor will repair or replace equipment which does not meet the election readiness acceptance procedures outlined on Appendix D within twenty (20) days or as mutually agreed to between the parties.

ARTICLE 12 EQUIPMENT AND SOFTWARE WARRANTIES

Equipment Warranty

- a) Contractor warrants that any Equipment and Hardware provided by the Contractor shall:
- (i) be free from defects in material and workmanship under normal use and remain in good working order, wear and tear excepted; and
 - (ii) function properly and in conformity with its documentation as provided by the Contractor.
- b) Contractor further warrants that for a period beginning on delivery of the Equipment through December 31, 2008 (the "Warranty Period"), Contractor agrees that it will repair or replace any component of the Equipment or Hardware 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 and workmanship. The Warranty shall not include the repair or replacement of any Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, cancellation stamps, ink pads or marking devices. The Warranty Period will commence upon Equipment delivery. Any repaired or replaced item of Equipment shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Equipment will become the property of Contractor.
- c) The warranty provided by the Contractor is effective provided that (I) County promptly notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the Equipment to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the Equipment 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 Contractor or causes beyond the reasonable control of Contractor or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) County has installed and is using the most recent update provided to it by Contractor.
- d) This warranty is void for any units of Equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

Licensed Software Warranty

- a) The Contractor warrants that:
- (i) all Licensed Software provided by the Contractor will be of a compiled high level language that is commercially available and for which software tools are available;
 - (ii) the Licensed Software shall be capable of being copied by the County in object code only;
 - (iii) the Licensed Software shall not contain viruses or pre-programmed devices which will cause any software utilized by the County to be erased or become inoperable of processing accurately and in accordance with the warranties specified herein and the Statement of Work; and

- (iv) the Licensed Software and each module and function thereof shall be capable of operating fully and correctly on Equipment meeting the Contractor's specifications, made known to the County by the Contractor, which specifically includes the Hardware.
- b) The Contractor warrants that during the Warranty Period the Licensed Software provided by Contractor shall:
 - (i) be free from defects in material and workmanship under normal use and remain in good working order;
 - (ii) function properly and in conformity with the warranties in this Agreement,
 - (iii) meet all of the performance standards set forth in the Statement of Work, Appendix C, and Contractor's documentation.
- c) In the event the Licensed Software does not satisfy the conditions of performance set forth in the Contractor's documentation as updated from time to time, the Contractor's obligation is to provide a fix or a work around at the Contractor's cost and expense, or to provide different equipment, software and services required to attain the performance requirements set forth in the Contractor's documentation as updated from time to time, in the reasonable discretion of the County. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof. The Contractor shall promptly repair or replace any defective Licensed Software. The warranty provided by the Contractor is effective provided that (I) County promptly notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the Licensed Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the Licensed 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 Contractor or causes beyond the reasonable control of Contractor or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) County has installed and is using the most recent update provided to it by Contractor.
- d) Ownership. The Contractor represents that it is the owner of the entire right, title, and interest in and to Licensed Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.
- e) Limitations. Notwithstanding the warranty provisions set forth in this Article 12, all of Contractor's obligations with respect to such warranties shall be contingent on County's use of the Licensed Software in accordance with this Agreement and in accordance with Contractor's instructions as provided to the County in the documentation, as such instructions may be amended, supplemented, or modified by the Contractor from time to time. The Contractor shall have no warranty obligations with respect to any failures of the Licensed Software which are the result of accident, abuse, misapplication, or extreme power surge.
- f) Contractor's Sole Remedy. The Contractor's entire liability and the County's exclusive remedy shall be, at the County's option, either (a) return of the price paid for the Licensed Software (b) repair or replacement of the Licensed Software; provided the

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Contractor receives written notice from the County during the Warranty Period of a breach of warranty. Any replacement Licensed Software will be warranted for the remainder of the original Warranty Period or ninety (90) days, whichever is longer.

- g) Any provision herein to the contrary notwithstanding, the maximum liability of Contractor to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Licensed Software delivered to the County hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid to the Contractor by the County for the Licensed Software whose license, use, or other employment gives rise to the liability.

ARTICLE 13. MAINTENANCE SERVICES

- a) During the Warranty Period, Contractor shall provide the Equipment and Licensed Software maintenance and support services, as described on Appendix E attached hereto. Upon termination of the Warranty Period, County shall be entitled to receive the Equipment and Licensed Software maintenance and support services set forth on Appendix E provided the County pays the fees associated with such maintenance and support services as set forth on Appendix B, Pricing Schedule, attached hereto.
- b) The term for post warranty maintenance and support services as set forth on Appendix E shall be in effect from the date on which the Warranty Period expires until the expiration of this agreement or any Options-to Renew periods provided County pays all applicable post warranty maintenance and support service fees.

ARTICLE 14. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management,**

as the certificate holder, must appear on the certificate of insurance.

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$250,000 with a deductible per claim not to exceed ten per cent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the

County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 15. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 16. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each

employee shall have and wear proper identification.

Contractor will be required to perform background checks on all employees utilized in performance of this contract. Pre-employment background checks shall include fingerprint searches of criminal record databases maintained by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigations (FBI). Contractor agrees to bear any and all costs associated with the required background screening.

ARTICLE 17. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 18. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable. Notwithstanding its compliance with the Project Manager's order the Contractor may fully reserve its rights by making its disagreement known to the Project Manager in writing within three (3) business days of the order.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement (including any disputed order given pursuant to Section 18(a)) with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) Time is of the essence in resolving disputes. In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's

purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within five (5) business days or, as may be agreed to by the parties, of the occurrence, event or act out of which the dispute arises.

- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing within five (5) business days of his or her notification of a dispute or, as may be agreed to by the parties, and deliver a copy of the same to the Contractor. Except as such remedies as may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any and all remedies available under law after exhausting the provisions of this Article.

ARTICLE 19. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 20. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 21. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers

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which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 22. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. Such approval by the County shall not be unreasonably withheld

ARTICLE 23. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

Except in the case of a sale, transfer or assignment of all or substantially all of the assets of Contractor to a successor and who has agreed to be bound by the terms and conditions of this contract and is a responsible vendor in accordance with applicable law, The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 24. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and

confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 25. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 26. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 27. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");

- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
- i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 28. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with

respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data which have been paid for by the County.

ARTICLE 29. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured within a thirty (30) day cure period unless such default will result in a material detrimental impact on the County's ability to define and conduct elections, tabulate or report election results in the County. In the event of such a default, the parties shall mutually agree on a shorter time period to cure such a default. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 30. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the reasonable amount actually expended by the County for procurement of Services, including procurement and administrative costs; and,
- b) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

Notwithstanding the foregoing, in no event shall Contractor be liable for any punitive, exemplary, or special damages of any kind whatsoever arising out of or relating to this Agreement. Further, Contractor shall not be liable for the County's negligent or willful misconduct. Except for such liability as may arise from personal injury, property damage or intellectual property indemnification as set forth under Article 31, Contractor's total liability to County arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to Contractor under this Agreement.

ARTICLE 31. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable, Software or anything provided to the County hereunder, or portion thereof is held to constitute an infringement or in Contractor's opinion is likely to become the subject of such a claim and its use is or may be enjoined, the Contractor and County upon mutual agreement shall either: (i) procure for the County the right to continue using the Software or other infringing item(s) (ii) modify or replace the Software or infringing item(s) to make it non-infringing, or (iii) refund the fees paid, upon return of the Software or infringing items. Contractor shall have no liability regarding any claim arising out of: (i) use of the Software or infringing item(s) in combination with non-County software, data or equipment if the infringement was caused by such use or combination, (ii) any modification or derivation of the Software or infringing item(s) not specifically authorized in writing by the Contractor or (iii) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF CONTRACTOR AND THE EXCLUSIVE REMEDY FOR THE COUNTY RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE OR OTHER INFRINGING ITEM(S).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 32. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In

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addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.
- d) Contractor believes that certain information and materials provided by Contractor may not be required to be made publicly available under public records laws, or any other laws of the State of Florida and should be kept confidential by County. Contractor 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 County for disclosure of Contractor's confidential, proprietary or trade secret information, the County shall notify Contractor as soon as reasonably possible and Contractor shall immediately take all actions it deems necessary to defend itself against such disclosure, provided that Contractor may not take action that would affect (a) the ability of the County to use the System; or (b) the obligations of Contractor under this Agreement.

The Contractor acknowledges that the County is subject to Florida's Public Records Law and any compliance with, or good faith attempt to comply with shall not constitute a breach by the County.

ARTICLE 33. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 34. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or created as a result of the Work the Contractor performs in connection with the Statement of Work, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the Contractor.
- c) All patent, copyright, trade secret and other proprietary rights to such Developed Works shall become the property of the Contractor but shall be covered by the Software License rights of the County under this Agreement. Any portion of the Developed Works that constitutes proprietary or confidential information of the County may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may

hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 35. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 36. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts,

except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award**

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 37. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Administration Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

In addition, Contractor warrants to County that, at the time of delivery, the Equipment and Licensed Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the date hereof and will have been certified by the appropriate state authorities for use in the State of Florida. Contractor further warrants that during the Warranty Period and thereafter so long as County is receiving Maintenance and Support Services, the Equipment and Licensed Software shall be maintained or upgraded by Contractor in such a way as to remain compliant with all applicable state election laws and regulations, including all current and future requirements necessary to remain certified for use in the State of Florida. "Maintained or upgraded" shall mean only such changes to individual items of the Licensed Software (but not Equipment) as are technologically feasible and commercially reasonable.

County shall be responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein. County shall also be responsible for (i) the cost of any third party items that Contractor notifies County are hereinafter required in order for the Equipment and Licensed Software to remain compliant and certified, and (ii) County's pro-rata share of the costs of any future state certifications or recertifications that are not otherwise required as a result of any changes or modifications voluntarily made by Contractor to the Licensed Software or Equipment licensed and sold hereunder. Contractor shall also provide to County a statement of work and cost proposal detailing any Work to be performed and the costs associated with any such changes resulting from the certification or recertification exercise. County's pro-rata share of such certification or recertification costs shall be determined at the time by dividing the number of registered voters in the County by the total number of registered voters in all Florida counties to which Contractor has sold and/or licensed the Equipment and Licensed Software purchased and licensed by County under this Agreement.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 38. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 39. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in

the County's best interest to consent to such relationship.

- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 40. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 41. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 42. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 43. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the County;
6. Making PHI available to the County for review and amendment; and incorporating any amendments requested by the County;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its Countys written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 44. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back"

basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 45. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof .

ARTICLE 46. ADDITIONAL REMEDIES

In the event that documented failures as confirmed by Contractor occur with 10% (i.e. 165) or more of the DS200 scanners purchased hereunder in the County's August 7, 2008 or November 6, 2008 elections (the "Elections") and such failures result in a material detrimental impact on County's ability to conduct the Election or to tabulate or report election results in the County in a satisfactory manner or on a timely basis for the Election, Contractor shall reimburse County for its documented and reasonable out-of-pocket expenses actually incurred in working with Contractor to cure such failure (e.g. overtime charges incurred to hand count ballots). County shall submit to Contractor an itemized statement and all invoices and other relevant documentation substantiating the charges for said expenses. County may, at its option, either accept a credit against future payments to Contractor or accept a cash payment as payment by Contractor under this Section. County shall take all reasonable steps to mitigate any expenses that may be incurred by County hereunder.

For the purposes of this Section a documented DS200 failure shall be defined as the functionality of the DS200 not meeting its specifications as set forth in its documentation and not otherwise caused by (i) the actions or inactions of the County or its personnel, including County staff, poll workers or other individuals assisting the County in the conduct of the Election, or (ii) any cause beyond Contractor's reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions.

ARTICLE 47. PERFORMANCE BOND

The Contractor shall duly execute and deliver to the County a Performance Bond in the amount of \$9,528,750.00 ("Face Amount"). The Face Amount shall be reduced to \$4,765,375 (50% of the Face Amount) upon completion of the Election Readiness Acceptance Testing Criteria set forth on Appendix D. The Face Amount shall be reduced to \$2,382,187.50 (25% of the Face Amount) upon successful certification of the results of the primary election to be held on August 7, 2008, and the Performance Bond shall expire upon successful certification of the general election to be held on November 6, 2008. The completed performance bond shall be delivered to the County within twenty (20) calendar days after the Contract Date. If the Contractor fails to

deliver the Performance Bond with in the specified time, including granted extensions, if any, the County shall declare the Contractor in default of the contractual terms and conditions and the County shall not accept any proposal from the Proposer for a twelve (12) month period following such default.

The following specifications shall apply to the Performance Bond required above:

1. The Performance Bond shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	Best Ratings
\$500,001 to \$1,500,000	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,001 to \$10,000,000	A VIII
\$Over \$10,000,000	A IX

2. On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Status (1985) shall be in effect and surety companies not otherwise qualified with this paragraph may optionally qualify by:

- a. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued;
- b. Certify that the surety is otherwise in compliance with the Florida Insurance Code; and
- c. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S. C. 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds," published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

3. For contracts in excess of \$500,000 the provisions of Section b will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.

4. Surety Bonds guaranteed through the U.S. Government Small Business Administration or Contractors Training and Development, Inc., will also be accepted.

5. The attorney-in-fact or other officer who signs a contract bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so. The contract bond must be countersigned by the surety's resident Florida agent.

ARTICLE 48. FORCE MAJEURE

Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control

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of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war. Notwithstanding the foregoing, the failures of any of the Contractor's suppliers, subcontractors, or the like shall not excuse the Contractor's performance except to the extent that such failures are due to any cause without the fault and reasonable control of such suppliers, subcontractors, or the like including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: 

By: _____

Name: THOMAS C. BRIEN

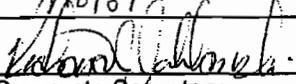
Name: _____

Title: CFO

Title: _____

Date: 10/18/07

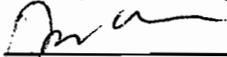
Date: _____

Attest: 
Corporate Secretary

Attest: _____
Clerk of the Board

Corporate Seal

Approved as to form
and legal sufficiency


Assistant County Attorney

Appendix A
Software License Agreement

MIAMI-DADE COUNTY SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO THIS ___ DAY OF _____, 200_ (THE "EFFECTIVE DATE") BY AND BETWEEN THE MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY"), AND ELECTION SYSTEMS & SOFTWARE, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, HAVING ITS PRINCIPAL OFFICE AT 11208 JOHN GALT BOULEVARD, OMAHA, NEBRASKA 68137 (HEREINAFTER REFERRED TO AS THE "LICENSOR").

RECITALS

A. Licensor is the owner of, or has acquired rights to, the Licensed Software and Documentation (as defined herein).

B. Licensor desires to grant to the County and the County desires to obtain from the Licensor a(n) nonexclusive license to use the Licensed Software and Documentation solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. SOFTWARE LICENSE

1.1 Subject to Section 1.2 below, the Licensor hereby grants to the County, a perpetual, non-exclusive, irrevocable license to use, the Licensor's Licensed Software, in object code for the purposes stated herein by the terms hereof. This license shall be in addition to, and supplemental to the perpetual license in CONTRACT 326 on the 4th day of February, 2002.

1.2 Subject to the Third Party Software vendor's licensed restrictions, the Licensor shall secure for the County any and all necessary licenses for the Third Party Software which shall provide the County with a perpetual, non-exclusive, irrevocable licenses to use the Third Party Software, in object code form for use as part of the system. The County may not take any of the following actions with respect to the Licensed Software:

(i) Reverse engineer, decompile, disassemble, re-engineer, adapt, correct 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 Licensed Software;

(ii) Cause or permit any use, display, loan, publication, transfer of possession, sub-licensing or other dissemination of the Licensed Software, in whole or in part, to or by any third party with the Licensor's prior written consent; or

(iii) Cause or permit any change to the Licensed Software without the Licensor's prior written consent; or

(iv) Cause or permit any copying, reproduction or printing by, for on behalf of a third party of any output generated by the Licensor Software in which Licensor

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owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending), including, but not limited to, any ballot shells or ballot code stock. For the avoidance of doubt, this provision shall not prohibit the County from printing its own ballots for use in its elections.

Notwithstanding the foregoing, the County may take one or more of the prohibited actions described above solely in order to obtain the source code for the Licensed Software in the event the Licensor fails to provide maintenance and support as required in this Agreement or any extension and County is unable to obtain the source code for the escrow agent or the Florida Division of Elections. In any such event, the source code shall only be used by the County as to enable it to use, maintain and support the Licensed Software for the uses permitted under this Agreement. The source code shall remain the property of the Licensor. As used above, "irrevocable" shall include, but not limited to, the right of the County to continue using the Licensor's Licensed Software or third party software irrespective of any breach or default pursuant to the terms hereof, other than a breach by the County of the terms of this Article 1.

1.3 Additional Licenses. During the term of the Agreement, should the County wish to purchase additional licenses from the Licensor, the fees shall be as set forth on the Pricing Schedule, Appendix B. All additional licenses purchased shall be documented in writing by the Licensor and amended in this Appendix A.

ARTICLE 2. SCOPE OF LICENSE

2.1 The County may use the Licensed Software on any and all equipment configurations of whatever make, manufacture and/or model, (provided only that such equipment is compatible with the Licensed Software) owned, controlled or contracted for, by the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County or which may assume the responsibilities of the County or any successors of the County. Use of the Licensed Software with equipment configurations that are not compatible with the Licensed Software shall not be covered by the Licensor's warranties hereunder. Irrespective of the number of equipment configuration(s) controlled by the County upon which the Licensed Software is used, the County shall pay only one license fee for each applicable license purchased by the County hereunder, which license fee is set forth herein.

ARTICLE 3. SOFTWARE RELATED DOCUMENTATION

The Licensed Software-related Documentation ("Documentation") will consist of any and all operator's and user's manuals, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the system; control file and scripts used to compile, link, load and/or make the applications and systems; test scripts, test plans and test data and other materials for use in conjunction with the applicable software. The Documentation will in all cases be fully applicable to the use of the Programs with the Equipment, and will identify and reflect any particular features of the Equipment which may affect the normal use and operation of the Programs. The Licensor shall deliver to the County three copies of said Documentation. The County will have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary solely for the purposes of defining and conducting elections and tabulating and reporting election results in the County.

ARTICLE 4. OPERATING ENVIRONMENT FOR INFORMATION SYSTEMS

The Programs, and each module or component and function thereof, will be capable of

operating fully and correctly in the operating environment identified in the Statement of Work. The Licensor hereby warrants and represents that each Program will be fully compatible and will interface completely with each other Program provided hereunder with the Licensed Software, and with the County's equipment meeting ES&S' specifications, such that the Equipment, Software, Licensed Software and Deliverables combined will perform and continuously attain the standards identified in the applicable section of this Agreement, including but not limited to the performance standards set forth in the Statement of Work and will create input and output files with the current rates registration software and internet reporting software.

ARTICLE 5. SOFTWARE REVISIONS

The County will have the right, in its own discretion, to request the Licensor to modify any Licensed Software. The Licensor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to the County or any third party except in the case of changes required by law, in which case the Licensor shall make such changes to the extent set forth in Article 37 of the General Terms of the Main Agreement. Such modifications once certified in Florida shall promptly be made available to the County but shall become the property of the Licensor. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Licensor's warranty obligations as set forth in Article 12 of the General Terms of the Main Agreement.

ARTICLE 6. SOFTWARE ENHANCEMENTS/MODIFICATIONS

6.1 Error Corrections and Updates. During the Warranty Period and thereafter, so long as the County is receiving Maintenance and Support Services from the Licensor pursuant to Appendix E, the Licensor will provide the County with error corrections, bug fixes, patches or other updates to the Licensed Software licensed hereunder in object code form to the extent available in accordance with the Licensor's release schedule for a the term of this Agreement.

6.2 Software Enhancements or Modifications. During the Warranty Period and thereafter, so long as the County is receiving Maintenance and Support Services from the Licensor pursuant to Appendix E, the County may, from time to time, request that the Licensor incorporate certain features, enhancements or modifications into the Licensed Software. When requested by the County, the Licensor shall provide the requested system enhancements/modifications including all relevant Documentation. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. The Licensor shall determine, with the County, if such requested enhancement/modification is technologically feasible and if Licensor so determines that such requested enhancement/modification is technologically feasible, then Licensor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

- a) After the SOW has been accepted by Licensor, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Such enhancements or modifications shall become the property of the Licensor. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Licensor's warranty obligations.

Thereafter the County and the Licensor shall agree to a not-to-exceed number of hours for the requested modification/enhancement. In no event shall the Licensor perform any Services on the task unless the County issues a written notice to the Licensor to

proceed with the task. The Licensor shall not be reimbursed for the preparation of proposals.

- b) Once the enhancement/modification is completed, tested, certified (if necessary) and accepted by the County, the Licensor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto.

The Licensor shall, upon the County's request, install the enhancement/modification and shall provide the County with such services as required, at no additional cost, to enable the County to continue the County's intended use of the Licensed Software. Following the County's enhancements/modification acceptance of all enhancements/modification, such enhancements/modification shall thereafter be considered a part of the Licensed Software for all purposes under this Agreement. The Licensor shall be obligated to inform the County of and the County shall be responsible for obtaining any upgrades or purchases of added features to the equipment or any third party items from the Licensor or third parties, at the County's cost, necessitated by any enhancements/modifications. The Licensor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto.

If any such enhancements/modifications are not acceptable to the County, the County may refuse to accept same, and, in such event, the Licensor agrees to maintain the Licensed Software in the form in effect on the date the Licensor requested the County to accept such update.

6.3 Title to Modifications. All such error corrections, bug fixes, patches, updates or new releases shall be the sole property of the Licensor.

ARTICLE 7. OWNERSHIP OF LICENSED SOFTWARE

7.1 The Licensor hereby warrants and represents that the Licensor possesses all rights to and interests in the Licensed Software, and all portions thereof, or otherwise have the right to grant to the County the licenses provided herein, "Software License", "Scope of License", and "Software Related Documentation" hereof, without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Licensor. The Licensor shall require that all suppliers of Third Party Software hereunder furnish to the County their standard warranties of ownership with respect to the Third Party Software.

7.2 The Licensor shall provide the County with documentation, satisfactory to the County, confirming that the Licensor has acquired on the County's behalf all software licenses required hereunder.

- a. In the event the County purchases a license for Licensed Software, the Licensor shall provide to the County the computer programs (the "Programs") and other materials related thereto (the "Documentation") with the Programs.
- b. The Licensor shall, at its own expense, secure and administer for the County, in the County's name, any and all necessary licenses for the Third Party Software, which shall be perpetual and irrevocable. Other than the Third Party Software identified by the Licensor, which is deemed to be "off-the-shelf" software, there is no other Third Party Software included nor anticipated to be included in the Software. The Licensor shall provide the County copies of all documentation and warranties for the Third Party

Software that are provided to the Licensor by the vendor of such Third Party Software.

- c. The Licensor shall place the source code for the Licensed Software in escrow in accordance with the Escrow Agreement attached hereto as Appendix F with its then current third party escrow agent, the cost of which shall be borne by the Licensor. The Licensor shall have the obligation of keeping this source code for the Licensed Software in escrow throughout the period of performance established herein, including any extensions. Should the Licensor cease operations and become unable to maintain and support any Licensed Software during the period required under this Agreement and any extension, the County shall have the right to obtain the source code to the extent necessary to enable the County to use such Licensed Software in accordance with this Agreement. The Source Code shall remain the property of the Licensor and may not otherwise be used by the County.

ARTICLE 8. PROTECTION OF SOFTWARE

8.1 Proprietary Information. As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law. The Licensor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

8.2 Proprietary Rights. The Licensor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Licensor hereunder or created as a result of the Work the Licensor performs in connection with the Statement of Work, including all copyright and other proprietary rights therein, which the Licensor as well as its employees, agents, subconsultants and suppliers may use only in connection of the performance of Services under this Agreement.

- a) All rights, title and interest in and to certain ideas, designs and methods, specifications and other documentation related thereto developed by the Licensor and its subconsultants specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the Licensor.
- b) All patent, copyright, trade secret and other proprietary rights to such Developed Works shall become the property of the Licensor but shall be covered by the Software License rights of the County under this Agreement. Any portion of the Developed Works that constitutes proprietary or confidential information of the County may not be utilized, reproduced or distributed by or on behalf of the Licensor, or any employee, agent, subconsultants or supplier thereof, without the prior written consent of the County, except as required for the Licensor's performance hereunder.
- c) Except as otherwise provided in subsections a and b above, or elsewhere herein, the Licensor hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth by the County in a defined SOW.

8.3 No Reverse Engineering. The County agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

8.4 Ownership. County further acknowledges that all copies of the Software in any form provided by the Licensor are the sole property of the Licensor. The County shall not have any right, title, or interest to any such Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of Licensor's proprietary rights therein.

ARTICLE 9. DEFINITIONS

9.1 "Designated Equipment" shall mean the hardware products identified on Exhibit "A" with which the Software is licensed for use by the County.

9.2 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County by the Contractor in connection with the Software.

9.3 "License Fee" shall mean the annual fee associated to granting the County use of the Software.

9.4 "Software" shall mean the computer programs in machine readable object code form listed in Exhibit "A" attached hereto and any subsequent error corrections or updates supplied to the County by the Licensor pursuant to this Agreement. Exhibit "A" may be amended from time to time by the parties in writing.

9.5 "Projects" and "Services" shall mean enhancements or modifications to the licensed Software in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities.

ARTICLE 10. LICENSED SOFTWARE

County agrees to License the Licensed Software as set forth on Appendix B, Pricing Schedule, attached hereto.

**Appendix B
Pricing Schedule**

Sale Summary:		
Description	Refer to	Amount
Contractor Equipment	Schedule 1	\$9,528,750.00
Election Support Services	Schedule 2	\$TBD
Performance Bond		\$190,575.00
Shipping and Handling	Note 1	Included
Total Net Sale		\$9,719,325.00
Terms & Conditions:		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of County. The cost of Shipping and Handling is included in Total Net Sale. Premium or rush transportation services incurred at County's request in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.		
Note 2: Payment terms are set forth in Article 10 of the Agreement		
Note 3: County's obligation to take delivery of the deliverables set forth above is contingent upon Contractor obtaining any requisite certification(s) of equipment and associated software/firmware from the Florida Division of Elections. Contractor shall notify County in writing promptly upon obtaining any requisite certification(s).		
Note 4: Election Readiness Acceptance Testing of the deliverables hereunder shall be completed by Contractor at the time of installation in accordance with Appendix D.		
Warranty:		
Contractor Equipment and Licensed Software – Warranty Period: Expires December 31, 2008.		
Ongoing Services:		
Description	Refer to	
Post Warranty Hardware Maintenance Services	Schedule 3	
Services commence upon expiration of the warranty period. Payment terms are defined in Schedule 3		
Post Warranty Software Maintenance & Support Services		
- Contractor Firmware	Schedule 3	
- All Other Contractor Software	Schedule 3	
Services commence upon expiration of the warranty period. Payment terms are defined in Schedule 3		

Schedule 1

TABLE 1 - CONTRACTOR EQUIPMENT DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	Unit Price	TOTAL PRICE
1,650	DS200 Scanner, Thumb Drive, Start-Up Kit, Shipping and Handling, Installation, and Regional Training	\$5,350.00	\$8,827,500.00
1,650	DS200 Plastic Ballot Box with Diverter	\$425.00	\$701,250.00
	TOTAL		\$9,528,750.00

TABLE 2 - SUPPLY ITEMS

Description	UOM	2008	2009	2010
iVotronic				
Accessibility Headset	each	\$16.00	\$17.60	\$19.35
iVotronic™ Power Cord	each	\$5.00	\$5.50	\$6.05
iVotronic™ Power Supply	each	\$25.00	\$27.50	\$30.25
iVotronic™ Rechargeable Ni-Cad Battery Stick	each	\$163.00	\$179.30	\$197.25
iVotronic™ Battery Conditioner / Gang Charger	each	\$1,275.00	\$1,402.50	\$1,542.75
iVotronic™ Power Tester	each	\$3.00	\$3.30	\$3.65
Gripper Stylus	each	\$6.15	\$6.75	\$7.45
Accessible iVotronic™ Headset Ear covers	each	\$0.15	\$0.15	\$0.15
iVotronic™ Screen Cleaning Cloth	each	\$2.00	\$2.20	\$2.40
Touch Screen Cleaning Kit	each	\$13.80	\$15.20	\$16.70
Stylus for iVotronic™	each	\$12.00	\$13.20	\$14.50
Easy Twist Wire Seal - 8"	each	\$0.45	\$0.50	\$0.55
Voter Personalized Electronic Ballot (PEB)	each	\$75.00	\$82.50	\$90.75
Supervisor Personalized Electronic Ballot (PEB)	each	\$75.00	\$82.50	\$90.75
PEB Color Bands	each	\$2.25	\$2.50	\$2.75
Null Modem Cable	each	\$7.00	\$7.70	\$8.45
Programming / Reader Interface for PEBs	each	\$350.00	\$385.00	\$423.50
256 MB Flashcard Memory	each	\$75.00	\$82.50	\$90.75
DB9 Cable Connection Adapter (Male Gender Changer)	each	\$4.00	\$4.40	\$4.85
Communication Pack Battery, D-Cell Alkaline	pkg of 6	\$9.00	\$9.90	\$10.90
Replacement Thermal Paper Roll for Communication Pack	each	\$3.50	\$3.85	\$4.25
Thermal Paper Holder for Communication Pack	each	\$38.70	\$42.55	\$46.80
Null Modem Cable	each	\$7.00	\$7.70	\$8.45

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Description	UOM	2008	2009	2010
Model 100				
M100 Power Cord	each	\$15.00	\$16.50	\$18.15
Model 100 PCMCIA Card	each	\$90.00	\$99.00	\$108.90
M100 Thermal Paper Roll	each	\$3.50	\$3.85	\$4.25
T100 Key for the M100	each	\$5.00	\$5.50	\$6.05
M100 Ballot Box Key	each	\$5.00	\$5.50	\$6.05
PCMCIA Card 3V Lithium Power Cell	each	\$5.00	\$5.50	\$6.05
Easy Twist Wire Seal - 8"	each	\$0.45	\$0.50	\$0.55
"T" Secrecy Sleeve - 14" or 17" Ballot (Cardboard)	each	\$3.00	\$3.30	\$3.65
Secrecy Ballot Sleeves - Plastic	each	\$8.00	\$8.80	\$9.70
M100 Precinct Pens	each	\$1.45	\$1.60	\$1.75
Model 650				
Pick Belt	each	\$3.00	\$3.30	\$3.65
Air Can	each	\$10.00	\$11.00	\$12.10
Retard Pad	each	\$4.00	\$4.40	\$4.85
Rubbing Alcohol	each	\$1.00	\$1.10	\$1.20
Zip-Disk	each	\$15.00	\$16.50	\$18.15
Absentee/Precinct Headers for Central Counters	each	\$1.25	\$1.40	\$1.55
Printer Paper 3-Part	per box	\$70.00	\$77.00	\$84.70
Printer Paper 1-Part	per box	\$55.00	\$60.50	\$66.55
Absentee Voting Pencils (package of 100)	pkg	\$8.00	\$8.80	\$9.70
Ballot Jogger	each	\$550.00	\$605.00	\$665.50
Okidata® 520 Printer Ribbon	each	\$12.00	\$13.20	\$14.50
DS200				
Cancellation Stamp	each	\$14.25	\$15.70	\$17.25
DS200 Key	each	\$7.25	\$8.00	\$8.80
Power Cord	each	\$4.60	\$5.05	\$5.55
Power Supply	each	\$52.00	\$57.20	\$62.90
Generic Code Stock	per/1000	\$80.00	\$88.00	\$96.80
Lithium Ion Battery	each	\$89.95	\$98.95	\$108.85
Coin Cell Mother Board Battery	each	\$4.50	\$4.95	\$5.45
512MB USB Thumb Drive	each	\$25.00	\$27.50	\$30.25
4GB USB Thumb Drive (Available for Delivery Upon Florida Certification)	each	\$95.00	\$104.50	\$114.95
56K Landline Modem	each	\$200.00	\$220.00	\$242.00
3.13" x 80' Thermal Paper	each	\$1.75	\$1.95	\$2.15
.005" Oval Test Ballot	each	\$0.25	\$0.30	\$0.35

Note 1: Prices do not include shipping and handling unless otherwise stated. All shipping and handling shall be paid for by the Customer.

Note 2: Please refer to Article 9, Pricing, for more information regarding pricing.

Note 3: ES&S is in the process of submitting the DS200 Ballot Boxes and the 4GB USB Thumb Drive to the State of Florida for review and certification. ES&S anticipates that such certification will be completed
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by March 31, 2008. Upon certification of the 4GB USB Thumb Drive ES&S will exchange the 512 MB USB Thumb Drive for the 4GB USB Thumb Drive at no additional cost.

Payment Schedule

Total Net Sale		\$9,719,325.00
Payment Task	Percentage	Dollar Value
Delivery of the Performance Bond	100%	\$190,575.00
Payable in accordance with Article 8 upon receipt of goods.	60% of \$9,528,750.00	\$5,717,250.00
Payable in accordance with Article 8 upon submission of the Florida version of Unity as defined in Appendix G by the target date of January 8, 2008. In the event the target is not met, payment will not occur until submission to the State is made.	20% of \$9,528,750.00	\$1,905,750.00
Payable in accordance with Article 8 upon successful completion of Acceptance Testing for Unity Version 3.0.1.3, to be completed no later than March 31, 2008	10% of \$9,528,750.00	\$952,875.00
Payable in accordance with Article 8 upon completion of Acceptance Testing for Florida version of Unity as defined in Appendix G, to be completed no later than 30 days after receipt of certified version	10% of \$9,528,750.00	\$952,875.00

Note: In the event the Florida version of Unity is available prior to initiation of acceptance testing the final two payments of 10% each will be combined into one final payment of the remaining 20%.

Schedule 2
Election Support Services

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

2. **Project Management.** Subject to the terms and conditions set forth below, the County shall compensate the Contractor for the services of a Project Manager, as defined in Exhibit E, at the flat rates of \$1,500 per day, (including travel expenses) for the first three (3) consecutive days (accounting for weekends and holidays) during Contractor's provision of project management and \$1,300 per day (including travel expenses) for each consecutive day thereafter for services in support of elections for the first 220 days of services performed by such Project Manager during the Contract term. For purposes of clarification, the first three (3) consecutive days of each instance of Contractor's provision of project management during the first 220 days of services performed shall be at the flat rate of \$1,500 per day (including travel expenses). Any services performed by a Project Manager during the Contract term after the initial 220 days in support of County elections shall be provided at the rate of \$1,800 per day (including travel expenses). Wherever possible, the Project Manager shall perform other election support services for the County in addition to the project management services described in Schedule 4 at the same rates as stated above (including travel expenses) as applicable during the term of this agreement. A Project Manager shall be available to County for up to 220 days but no less than 100 days in accordance with the normal service and support needs under the Elections Calendar for 2008 ("Elections Calendar") attached hereto and fully incorporated herein by this reference for the support of the elections set forth on the Elections Calendar. The County agrees under all circumstances to utilize and purchase a minimum of 100 days of project management days during the term of this agreement. For each and every change in project management days requested by the County, the Elections Calendar may be separately amended by the County upon delivery of twenty-one (21) days prior written notice from the County's Supervisor of Elections or authorized designee to the Contractor. Any requested increase, decrease or schedule modification of any project management days that in any way modifies such days as already set forth in the Elections Calendar or any previously timely delivered written amendment thereto shall require timely delivery of twenty-one (21) days prior written notice of such additional amendments, as applicable. Any project management services provided by the Project Manager or any other Contractor representative outside of Contractor's normal schedule for the provision of services in support of the elections as set forth on the Election Calendar shall be provided at the rate of \$2,000 per day (including travel expenses) for the first 3 consecutive days (accounting for weekends and holidays), and \$1,700 per day (including travel expenses) for each day thereafter unless the County's Supervisor of Elections or authorized designee has timely provided twenty-one (21) days prior written to the Contractor of such specific change(s) to the Elections Calendar. Payments to the Contractor for services provided in support of any election shall be paid in accordance with the payment terms hereunder and shall not be dependent or conditional upon the County's reimbursement thereof by any such municipalities. Contractor's obligation to provide any project management services hereunder is subject to and shall require a minimum of twenty-one (21) days prior written request from the County in order to guarantee Contractor's ability to provide the number of requested days and personnel to perform such services, as applicable. In the event that the County provides Contractor with less than the requisite twenty-one (21) days prior written request for project management, Contractor will exercise good faith efforts to fulfill such request, but shall in no event be obligated to fulfill such request nor shall it be a breach or default hereunder in the event that Contractor is unable to fulfill such a request.

3. **Other Election Support Services.** Subject to the terms and conditions set forth below, the County shall compensate the Contractor for Other Election Support Services, as defined in Schedule 4, at the flat rates of \$1,800 per day, (including travel expenses) for the first three (3) consecutive days

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(accounting for weekends and holidays) during Contractor's provision of Other Election Support and \$1,500 per day (including travel expenses) for each consecutive day thereafter for services in support of elections for the first 100 days of services performed by such Project Manager during the Contract term. For purposes of clarification, the first three (3) consecutive days of each instance of Contractor's provision of Other Election Support Services during the first 100 days of services performed during this agreement shall be at the flat rate of \$1,800 per day (including travel expenses). Any services performed during the Contract term after the initial 100 days in support of elections shall be provided at the rate of \$2,000 per day (including travel expenses). Wherever possible, the Project Manager shall perform Other Election Support Services for the County in addition to the project management services described in Schedule 4 at the same rates as stated above (including travel expenses) as applicable during the term of this agreement. A Project Manager shall be available to County for up to 100 days, but no less than 30 days, in accordance with the normal service and support needs under the Elections Calendar for 2008 ("Elections Calendar") attached hereto and fully incorporated herein by this reference for the support of the elections as set forth on the Elections Calendar. The County agrees under all circumstances to utilize and purchase a minimum of 100 days of Other Election Support Services during the term of this agreement. For each and every change in Other Election Support Service days requested by the County, the Elections Calendar may be separately amended by the County upon delivery of thirty (30) days prior written days from the County's Supervisor of Elections or authorized designee to the Contractor. Any requested increase, decrease or schedule modification of Other Election Support Service days that in any way modifies such days as already set forth in the Elections Calendar or any previously timely delivered written amendment thereto shall require timely delivery of thirty (30) days prior written notice for such modification to other election support service days of such additional amendments, as applicable. Any Other Election Support Services provided by the Project Manager or any other Contractor representative outside of Contractor's normal schedule for the provision of services in support of the elections as set forth on the Election Calendar shall be provided at the rate of \$2,300 per day (including travel expenses) for the first three (3) consecutive days (accounting for weekends and holidays), and \$2,000 per day (including travel expenses) for each day thereafter unless the County's Supervisor of Elections or authorized designee has timely provided thirty (30) days prior written notice. Payments to the Contractor for services provided in support of any elections shall be paid in accordance with the payment terms hereunder and shall not be dependent or conditional upon the County's reimbursement thereof by any such municipalities. Contractor's obligation to provide election support services is subject to and shall require a minimum of thirty (30) days prior written notice from the County in order to guarantee Contractor's ability to provide the number of requested days and personnel to perform such services, as applicable. In the event that the County provides Contractor with less than the requisite thirty (30) days prior written notice, Contractor will exercise good faith efforts to fulfill such request, but shall in no event be obligated to fulfill such request nor shall it be a breach or default hereunder in the event that Contractor is unable to fulfill such a request.

4. The County shall compensate the Contractor for other off-site election support services, as defined in Schedule 4, at the rate of \$900 per day. Off-site election support services may include follow-up and research on administrative and/or technical issue. For purposes of this paragraph, services shall be tracked on a per-hour basis and the County will be invoiced for a day upon completion of eight (8) hours of other off-site election support services have been performed or monthly if total hours of service is less than eight (8) hours. These days shall be in addition to any days for which elections are conducted. If the off-site election support services to be performed on behalf of the County are as a result of a performance issue of the Contractor hardware or software, the County shall not be liable for any charges incurred. Payments to the Contractor for services provided in support of any municipal elections shall be paid in accordance with the payment terms hereunder and shall not be dependent or conditional upon the County's reimbursement therefore by any such municipalities.

Role/ Function	Description	Contractor Service Days	Bill Rate
Project Manager	A Project Manager appointed by Contractor shall be responsible for the overall planning, communication, management and coordination of Contractor services and shall include, but not be limited to, the following: provide documentation of all phases of system testing; provide oversight of technical election procedures, results reporting and post election activities; provide ballot design requirements, creation and oversight, for the County's Contractor equipment and software.	Up to 220 Non-Consecutive Days but no less than 100 Non-Consecutive Days in support of Countywide Elections. These days include support provided on-site in Miami-Dade County. There is a 3 Consecutive Day minimum per on-site visit, per individual.	<u>21-day advance notice</u> \$1,500 per calendar day/per person for the first 3 consecutive days. \$1,300 per calendar day/per person for each day thereafter <u>Less than 21-day advance notice</u> \$2,000 per calendar day/per person for the first 3 consecutive days. \$1,700 per calendar day/per person for each day thereafter (above includes travel expenses)
Other Election Support Services	Includes providing technical systems training for elections staff; assisting with ballot creation, coding and proofing; and providing Election Day and Election Central technical support.	Up to 100 Non-Consecutive Days but no less than 30 Non-Consecutive Days in support of Municipal Elections. These days include support provided on-site in Miami-Dade County. There is a 3 Consecutive Day minimum per on-site visit, per individual.	<u>30-day advance notice</u> \$1,800 per calendar day/per person for the first 3 consecutive days. \$1,500 per calendar day/per person for each day thereafter <u>Less than 30-day advance notice</u> \$2,300 per calendar day/per person for the first 3 consecutive days. \$2,000 per calendar day/per person for each day thereafter (above includes travel expenses)
Other Election Support Services	Off-site Miami-Dade specific follow up and research on administrative and/or technical issues as needed. Time shall be tracked in 1-Hour increments and billed as 1 day to the County once a total of 8 Hours has been accrued. A log of such time shall be made available to the County upon request. Network installation charges and integration services charges are in addition to the charges set out in this contract and shall be billed at Contractor's then current rate.	There is no maximum or minimum to off-site assistance.	\$900.00 Per 8-Hours (tracked in 1-hour increments) County will be billed upon completion of 8 hours of services or monthly if total hours of service is less than 8 hours.

Note 1: The terms, conditions, and applicable per day bill rates are valid through December 31, 2009. The number of service days for calendar year 2009 will be determined once the County's 2009 election calendar has been completed

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ELECTION CALENDAR FOR 2008

January

01/22/2008	Florida City General Election (Registration Closing - Dec. 24) <i>Candidate Qualifying Dates: November 28, 2007 - December 7, 2007</i>
01/29/2008	Miami-Dade County Presidential Preference Primary (Registration Closing - Dec. 31)

February

02/05/2008	Florida City Run-Off Election (Registration Closing - Jan. 26)
02/12/2008	South Miami General Election (Registration Closing - Jan. 7) <i>Candidate Qualifying Dates: January 2, 2008 - January 9, 2008</i>
02/15/2008	Indian Creek Village General Election (Registration Closing - Jan. 17) <i>Candidate Qualifying Dates: December 29, 2007 - January 12, 2008</i>

March

03/11/2008	Cutler Bay General Election (Registration Closing - Feb. 11) <i>Candidate Qualifying Dates: January 2, 2008 - January 15, 2008</i>
03/11/2008	South Miami Run-Off Election (Registration Closing - Feb. 11)
03/18/2008	Surfside General Election (Registration Closing - Feb. 18) <i>Candidate Qualifying Dates: January 23, 2008 - February 12, 2008</i>

April

04/01/2008	Medley General Election (Registration Closing - Mar. 3) <i>Candidate Qualifying Dates: February 16, 2008 - March 7, 2008</i>
04/08/2008	Bay Harbor Islands General Election (Registration Closing - Mar. 10) <i>Candidate Qualifying Dates: February 28, 2008 - March 19, 2008</i>
04/08/2008	Cutler Bay Run-Off Election (Registration Closing - Mar. 10)
04/08/2008	West Miami Municipal Election (Registration Closing - Mar. 10) <i>Candidate Qualifying Dates: February 18, 2008 - February 22, 2008</i>
04/29/2008	Bay Harbor Islands Run-Off Election (Registration Closing - Mar. 31)

May

No elections scheduled

June

No elections scheduled

July

No elections scheduled

August

08/26/2008	Miami Gardens Primary Election (Registration Closing - July 28) <i>Candidate Qualifying Dates: June 16, 2008 - June 20, 2008</i>
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September

No elections scheduled

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October

10/07/2008	Key Biscayne Primary Election - if needed (Registration Closing - Sept. 8) <i>Candidate Qualifying Dates: August 6, 2008 - August 16, 2008</i>
10/07/2008	Miami Lakes General Election (Registration Closing - Sept. 8) <i>Candidate Qualifying Dates: August 5, 2008 - August 19, 2008</i>
10/21/2008	Miami Lakes Run-Off Election (Registration Closing - Sept. 22)

November

11/04/2008	Miami-Dade County General Election (Registration Closing - Oct. 6) <i>For Candidate Qualifying Dates, please click here</i>
11/04/2008	Doral General Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: September 2, 2008 - September 16, 2008</i>
11/04/2008	El Portal General Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: Pending</i>
11/04/2008	Key Biscayne Municipal Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: August 6, 2008 - August 16, 2008</i>
11/04/2008	Miami Gardens Run-Off Election (Registration Closing - Oct. 6)
11/04/2008	North Bay Village General Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: August 20, 2008 - September 19, 2008</i>
11/04/2008	Palmetto Bay General Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: September 2, 2008 - September 16, 2008</i>
11/04/2008	Pinecrest General Election (Registration Closing - Oct. 6) <i>Candidate Qualifying Dates: September 2, 2008 - September 16, 2008</i>
11/18/2008	El Portal Run-Off Election (Registration Closing - Oct. 20)
11/18/2008	North Bay Village Run-Off Election (Registration Closing - Oct. 20)
11/18/2008	Palmetto Bay Run-Off Election (Registration Closing - Oct. 20)
11/18/2008	Pinecrest Run-Off Election (Registration Closing - Oct. 20)

December

No elections scheduled

Note: Above dates are subject to change

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**Schedule 3
Maintenance and Support Services**

In consideration for Contractor's agreement to provide Hardware Maintenance Services and Software Maintenance and Support (collectively "Post-Warranty Services") as set forth on Appendix E, County shall pay for such services in accordance with the payment terms set forth in Notes 6, 7, 8 and 9 below. The Software Maintenance Fee shall be comprised of (i) a fee for the Software Maintenance and Support provided for the Contractor Firmware, and (ii) a fee for the Software Maintenance and Support provided for all other Contractor Software, and shall be in addition to any fees or charges separately referred to in any Section of Schedule 3 or the Agreement. If County elects to receive Hardware and/or Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, Contractor will charge an additional Maintenance Fee for such item.

HARDWARE & SOFTWARE – DS200

Post-Warranty Year	Quantity	Description (Note: *** indicates Depot Repair Only Products)	Initial Maintenance Fee Per Unit	Initial Maintenance Fee In Total
Hardware:				
1	1,650	DS200 Scanner	\$175.00	\$288,750.00
2	1,650	DS200 Scanner	\$175.00	\$288,750.00
3	1,650	DS200 Scanner	\$175.00	\$288,750.00
4	1,650	DS200 Scanner	\$175.00	\$288,750.00
Total Hardware Maintenance and Support Fees				\$1,155,000.00
Software (Firmware):				
1	1,650	DS200 Scanner	\$75.00	\$123,750.00
2	1,650	DS200 Scanner	\$75.00	\$123,750.00
3	1,650	DS200 Scanner	\$75.00	\$123,750.00
4	1,650	DS200 Scanner	\$75.00	\$123,750.00
Total Software Maintenance and Support Fees				\$495,000.00
Total Hardware and Software Maintenance and Support Fees				\$1,650,000.00
Large Volume Multi-Year Maintenance Fee Pre-Payment Discount (see Note 6)				(\$349,800.00)
Net Hardware and Software Maintenance and Support Fees				\$1,300,200.00

HARDWARE– ALL OTHER EQUIPMENT

Post-Warranty Year	Period	Quantity	Description (Note: *** indicates Depot Repair Only Products)	Annual Maintenance Fee Per Unit	Annual Maintenance Fee In Total
Hardware:					
2008	01/01/08 – 12/31/08	4	Model 650 Scanner	\$2,881.25	\$11,525.00
2008	08/01/08 – 12/31/08	2	Model 650 Scanner	\$1,083.00	\$2,166.00
2008	01/01/08 – 01/31/08	5,250	iVotronic Terminal	\$3.23	\$16,957.50
2008	01/01/08 – 12/31/08	2,000	iVotronic Terminal	\$38.79	\$77,580.00
2008	01/01/08 – 12/31/08	10	Model 100 Scanner	\$166.20	\$1,662.00

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Post-Warranty Year	Period	Quantity	Description (Note: *** indicates Depot Repair Only Products)	Annual Maintenance Fee Per Unit	Annual Maintenance Fee In Total
2009	01/01/09 – 12/31/09	6	Model 650 Scanner	\$2,926.88	\$17,561.28
2009	01/01/09 – 12/31/09	2,000	iVotronic Terminal	\$40.73	\$81,460.00
2009	01/01/09 – 12/31/09	10	Model 100 Scanner	\$174.51	\$1,745.10
2010	01/01/10 – 12/31/10	6	Model 650 Scanner	\$3,073.22	\$18,439.32
2010	01/01/10 – 12/31/10	2,000	iVotronic Terminal	\$42.77	\$85,540.00
2010	01/01/10 – 12/31/10	10	Model 100 Scanner	\$183.24	\$1,832.40
2011	01/01/11 – 12/31/11	6	Model 650 Scanner	\$3,226.88	\$19,361.28
2011	01/01/11 – 12/31/11	2,000	iVotronic Terminal	\$44.91	\$89,820.00
2011	01/01/11 – 12/31/11	10	Model 100 Scanner	\$192.40	\$1,924.00
2012	01/01/12 – 12/31/12	6	Model 650 Scanner	\$3,388.22	\$20,329.32
2012	01/01/12 – 12/31/12	2,000	iVotronic Terminal	\$47.16	\$94,320.00
2012	01/01/12 – 12/31/12	10	Model 100 Scanner	\$202.02	\$2,020.20
Total Hardware Maintenance and Support Fees					\$544,243.40
Large Volume Multi-Year Maintenance Fee Pre-Payment Discount (see Note 7)					(\$26,064.00)
Net Hardware Maintenance and Support Fees					\$518,179.40

FIRMWARE – ALL OTHER EQUIPMENT

Post-Warranty Year	Period	Quantity	Description (Note: *** indicates Depot Repair Only Products)	Annual Maintenance Fee Per Unit	Annual Maintenance Fee In Total
Firmware:					
2008	01/01/08 – 12/31/08	4	Model 650 Scanner	\$249.38	Pricing Schedule \$997.52
2008	08/01/08 – 12/31/08	2	Model 650 Scanner	\$122.92	\$245.84
2008	01/01/08 – 01/31/08	5,250	iVotronic Terminal	\$0.92	\$4,830.00
2008	01/01/08 – 12/31/09	2,000	iVotronic Terminal	\$11.08	\$22,160.00
2008	01/01/08 – 12/31/08	10	Model 100 Scanner	\$138.60	\$1,386.00

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Post-Warranty Year	Period	Quantity	Description (Note: *** indicates Depot Repair Only Products)	Annual Maintenance Fee Per Unit	Annual Maintenance Fee In Total
2009	01/01/09 – 12/31/09	6	Model 650 Scanner	\$277.82	\$1,666.92
2009	01/01/09 – 12/31/09	2,000	iVotronic Terminal	\$11.63	\$23,260.00
2009	01/01/09 – 12/31/09	10	Model 100 Scanner	\$145.53	\$1,455.30
2010	01/01/10 – 12/31/10	6	Model 650 Scanner	\$291.71	\$1,750.26
2010	01/01/10 – 12/31/10	2,000	iVotronic Terminal	\$12.21	\$24,420.00
2010	01/01/10 – 12/31/10	10	Model 100 Scanner	\$152.81	\$1,528.10
2011	01/01/11 – 12/31/11	6	Model 650 Scanner	\$306.30	\$1,837.80
2011	01/01/11 – 12/31/11	2,000	iVotronic Terminal	\$12.82	\$25,640.00
2011	01/01/11 – 12/31/11	10	Model 100 Scanner	\$160.45	\$1,604.50
2012	01/01/12 – 12/31/12	6	Model 650 Scanner	\$321.61	\$1,929.66
2012	01/01/12 – 12/31/12	2,000	iVotronic Terminal	\$13.46	\$26,920.00
2012	01/01/12 – 12/31/12	10	Model 100 Scanner	\$168.47	\$1,684.70
Total Firmware Maintenance and Support Fees					\$143,316.60
Large Volume Multi-Year Maintenance Fee Pre-Payment Discount (see Note 8)					(\$6,353.00)
Net Firmware Maintenance and Support Fees					\$136,963.60

UNITY SOFTWARE

Year	First Month Applicable	ES&S Unity Software
2008	January	\$44,548.50
2009	January	\$46,775.93
2010	January	\$49,114.73
2011	January	\$51,570.47
2012	January	\$54,149.00
Total Unity Software Maintenance and Support Fees		\$246,158.63
Large Volume Multi-Year Maintenance Fee Pre-Payment Discount (see Note 9)		(\$21,274.36)
Net Unity Maintenance and Support Fees		\$224,884.27

Note 1: Per-Unit Fees if County requests more than one Routine Maintenance visit in a 12-month period: County shall pay 90% of the then current maintenance fee per unit.

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Note 2: Surcharge for Emergency Remedial Maintenance Services: 150% of the then current maintenance fee per unit.

Note 3: County's Designated Location: Miami-Dade County, Florida

Note 4: Location of Services Shall Be County's Designated Location

Note 5: Per Unit Surcharge for performance of Routine Maintenance visit at more than one County Designated Location: \$25.00 per unit for all units located at second or more locations.

Note 6: The Large Volume Multi-Year Maintenance Fee Pre-Payment Discount shall be provided to County in the event that County pays the Net Hardware and Software Maintenance and Support Fees ("Net Fees") in the amount of \$1,300,200.00 by no later than December 31, 2008 ("Maintenance Fee Due Date"). In the event that County fails to timely pay the Net Fees or otherwise elects to pay for anything less than the full initial four (4) years of Post Warranty Services on the Maintenance Fee Due Date, County hereby agrees to pay for Post Warranty Services at the rate of \$238 per unit per year for Post Warranty Services for each of the initial four (4) years of Post Warranty Services.

Note 7: The Large Volume Multi-Year Maintenance Fee Pre-Payment Discount shall be provided to County in the event that County pays the Net Hardware Maintenance and Support Fees For All Other Equipment ("Net Fees") in the amount of \$518,179.40 by no later than December 31, 2007 ("Maintenance Fee Due Date"). In the event that County fails to timely pay the Net Fees or otherwise elects to pay for anything less than the full initial five (5) years of Post Warranty Services on the Maintenance Fee Due Date, County hereby agrees to pay for Post Warranty Services at the per unit rate set forth in the table above.

Note 8: The Large Volume Multi-Year Maintenance Fee Pre-Payment Discount shall be provided to County in the event that County pays the Net Software Maintenance and Support Fees For All Other Equipment ("Net Fees") in the amount of \$136,963.60 by no later than December 31, 2007 ("Maintenance Fee Due Date"). In the event that County fails to timely pay the Net Fees or otherwise elects to pay for anything less than the full initial five (5) years of Post Warranty Services on the Maintenance Fee Due Date, County hereby agrees to pay for Post Warranty Services at the per unit rate set forth in the table above.

Note 9: The Large Volume Multi-Year Maintenance Fee Pre-Payment Discount shall be provided to County in the event that County pays the Net Unity Maintenance and Support Fees ("Net Fees") in the amount of \$224,884.27 by no later than December 31, 2007 ("Maintenance Fee Due Date"). In the event that County fails to timely pay the Net Fees or otherwise elects to pay for anything less than the full initial five (5) years of Post Warranty Services on the Maintenance Fee Due Date, County hereby agrees to pay for Post Warranty Services at the per unit rate set forth in the table above.

**Appendix C
Statement of Work**

This Statement of Work (SOW) spells out in general terms the nature and extent of work to be performed by Contractor contemplated under the Agreement. Provision for added services will be available to the County under the terms of the Agreement. Upon the execution of the Agreement between Contractor and the County, additional detailed project planning will be completed. Nothing in this SOW shall be deemed to extend or otherwise alter the amount of service days, change the warranty or liability assumed by Contractor as specified in the Agreement.

All work shall be performed using the certified versions of Contractor voting equipment and software. Subsequent changes in certified versions of Contractor voting equipment and software shall be considered and incorporated into the work plan where and when applicable. Any changes in the SOW as a result of these changes shall be mutually agreed between the parties. The estimated Contractor service days are an approximation of how these days are allocated to the areas of work that are the responsibility of Contractor under this Agreement. The allocation of Days between areas of work may be subject to revision. Any and all revisions will be mutually agreed to by both parties in writing.

The following tasks are relevant to both the initial 3.0.1.3 release and the next Florida version of Unity as defined in Appendix G since both are considered a major release and not an incremental release.

Contractor Responsibility Areas of Work
1) Project Management. Includes overall project management of Contractor services, initial meetings with County staff to establish a mutual project calendar, ensure mutual expectations, and establish project communication plan.
2) System Delivery, Installation, and Acceptance Testing.
a) Deliver all Contractor tabulation system equipment and third party equipment to Supervisor's Office
b) Set up all hardware and install all software and firmware included in the system.
c) Perform hardware acceptance testing on DS200s and assist with Mock Election.
d) Provide repair or replacement on any necessary units to complete acceptance
e) Configure and Install tabulation network and related software including interface between VR and Unity

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Contractor Responsibility Areas of Work
f) Provide operational training to County Staff for Unity Software and precinct/central count tabulation hardware.
g) Provide training to County Staff for maintenance and hardware election preparation tasks.
3) General Preparation Activities
a) Assist in development overview of election procedures including preparation, absentee voting, election day, results reporting, and post election activities
b) Assist in development and provide DS200 Election Day Procedures Manual for use by precinct officials
c) Conduct "Train the Trainer" sessions for poll worker / precinct official training
d) Assist in development of all Election Day procedures for communications with polling places, technical support staff, supervisors, regional sites, and election central staff
e) Assist in development of all Election Day procedures for election equipment troubleshooting and support
f) Assist in development of the necessary Communication Program materials for Voter Outreach, Voter Education, Candidates / Party Education, and Media Coordination
g) Conduct and/or setup up all meetings between County and Contractor for general communication and status updates.
4) Primary and General Election Production
a) Review and approve initial election master data files
b) Assist in development of plan for election day technical support, back up equipment, central hot-line support,
c) Assist in development of plan for election day site support by Contractor staff
d) Assist in development of plan for election night results reporting
e) Assist in development of plan for post-election canvassing and tabulation statistics
f) Assist in preparation of precinct materials
g) Assist in procedures to prepare all tabulators for election day usage
h) Assist in review and verification of operation of accumulation and regional site operation
i) Provide on-site support to County during pre-election activities

Contractor Responsibility Areas of Work
5) Primary and General Election Day
a) Provide staff for Command Center and Hot-Line providing troubleshooting support and problem resolution to precinct officials, technical staff, County staff
b) Assist with Poll opening procedures
c) Assist with Voting process procedures
d) Assist with Tabulation of absentee ballots and load results into election reporting database
e) Assist with Poll closing procedures
f) Assist with Election night reporting transmission procedures
g) Assist with Regional Site operation
h) Assist with Command Center election results accumulation
i) Assist with Election night reporting procedures
j) Assist with Archive and secure election data
k) Support County during election day and results accumulation and reporting
6) Primary and General Post-Election
a) Assist in Identifying / investigate any election day problems with voting equipment

Appendix D
DS200 Acceptance Testing Criteria

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.
Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
Verify the DS200 Firmware Version is 1.1.0.0; PMB is 0.8.0.0; Scanner is 2.6.0.0.0 on Startup Printout.
Insert the 512MB Flash Drive containing the BMW Demo Election in USB port B.
Check the date and time on the top portion of the display to ensure the date and time is correct.
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.
Re-connect Wall Power Supply cord
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:

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.

Inspector:

**Appendix D
Election Readiness Acceptance Testing**

Version 3.01.3 - Two Part Election Readiness Acceptance Testing

Full Election Readiness testing for Version 3.01.3 will be conducted in 2 tests. The first test will be a standalone test of the DS200 hardware and basic functions of the firmware. The second test will be a full systems test designed to test all hardware and software components of the voting system.

Acceptance Test 1 – Hardware / Firmware

The steps outlined in Appendix D are sufficient for the Phase 1 Acceptance Test.

Election Readiness Test 2 – Mock Election

A complete end to end system test in the form of a mock election will be conducted using a predefined result. The test will consist of multiple page ballot styles. The test shall be conducted by processing a group of ballots, causing the device to output results for the ballots processed, and comparing the output of the results to the expected results for the ballots processed. The group of ballots shall be produced so as to record a predetermined number of valid votes for each candidate and on each measure and to include for each office one or more ballots which have activated voting positions in excess of the number allowed by law in order to test the ability of the tabulating device to reject such votes. This test will include all 1,650 DS200 units and all software modules of the Unity System / ERM System, and Data Acquisition Manager. The tasks listed below may be adjusted or added to as necessary to fully test the system.

Description	Y/N	Verified By
Create an election in Unity with a multiple page ballot styles.		
Verify all ballot contents for accuracy.		
Identify all ballots styles.		
Prepare and proof PDF files for paper ballots.		
ES&S Prints test ballots (Absentee and Precinct)		
Prepare and proof iVotronic screen files.		
Record audio files.		
Generate election media ie: Pebs, flash cards, thumb drives etc.		
Identify all participating equipment (Precinct, Early Voting, Absentee)		
Prepare a structured voting pattern and code pattern to ballots.		
Print zero reports from all voting equipment and tabulation equipment.		
Verify that transmission station (DAM) is operational.		
Vote the structured test voting pattern on all equipment (early voting optical scanner, precinct optical scanner, centralized scanner, and early voting and precinct ADA iVotronic		
Close and print results from voting equipment		
Transmit results from precinct level voting equipment (collection center) to tabulation room (DS200 & ADA iVos)		
Upload results from transmission station to tabulation system(Unity ERM)		
Upload results from Early Voting equipment (DS200 & ADA iVos)		
Produce results report from tabulation system.		
Produce results files for SOE test of ENR.		
Compare results against the structured test voting pattern on all equipment (optical scan, centralize scanner and ADA		
Make notes and take any corrective steps necessary		
Conduct post election audit process.		

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Florida version of Unity as defined in Appendix G Election Readiness Acceptance Testing

Election Readiness testing for Florida version of Unity as defined in Appendix G will similar to the full mock election perform for Version 3.0.1.3. The primary differences being that a randomly selected sample of DS200 units will be tested and testing will place an emphasis on the new functionality added to the DS200 firmware.

Election Readiness Acceptance Test – Mock Election

A complete end to end system test in the form of a mock election will be conducted using a predefined result. The test will consist of multiple page ballot styles. The test shall be conducted by processing a group of ballots, causing the device to output results for the ballots processed, and comparing the output of the results to the expected results for the ballots processed. The group of ballots shall be produced so as to record a predetermined number of valid votes for each candidate and on each measure and to include for each office one or more ballots which have activated voting positions in excess of the number allowed by law in order to test the ability of the tabulating device to reject such votes. This test will include a randomly selected number of DS200 units and all software modules of the Unity System / ERM System, and Data Acquisition Manager. The tasks listed below may be adjusted or added to as necessary to fully test the system.

Description	Y/N	Verified By
Create an election in Unity with a multiple page ballot styles.		
Verify all ballot contents for accuracy.		
Identify all ballots styles.		
Prepare and proof PDF files for paper ballots.		
ES&S Prints test ballots (Absentee and Precinct)		
Prepare and proof iVotronic screen files.		
Record audio files.		
Generate election media ie: Pebs, flash cards, thumb drives etc.		
Identify all participating equipment (Precinct, Early Voting, Absentee)		
Prepare a structured voting pattern and code pattern to ballots.		
Prepare voting scripts that include all new functions added to DS200 firmware.		
Print zero reports from all voting equipment and tabulation equipment.		
Verify that transmission station (DAM) is operational.		
Vote the structured test voting pattern on all equipment (early voting optical scanner, precinct optical scanner, centralized scanner, and early voting and precinct ADA iVotronic		
Close and print results from voting equipment		
Transmit results from precinct level voting equipment (collection center) to tabulation room (DS200 & ADA iVos)		
Upload results from transmission station to tabulation system(Unity ERM)		
Upload results from Early Voting equipment (DS200 & ADA iVos)		
Produce results report from tabulation system.		
Produce results files for SOE test of ENR.		
Compare results against the structured test voting pattern on all equipment (optical scan, centralize scanner and ADA		
Make notes and take any corrective steps necessary		
Conduct post election audit process.		

Appendix E
Post Warranty Gold Hardware Maintenance and Software Maintenance and Agreement

ARTICLE I
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to County under this Appendix E for the Contractor Equipment listed on Schedule 3 of Appendix B (the "Products") shall be subject to the following terms and conditions:

a. **Inspection.** If County has elected not to receive Hardware Maintenance Services under this Appendix E for a period of twelve (12) months or more, Contractor may require County to allow it to inspect the Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary 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 Contractor rate and shall be due from County within thirty (30) days of its receipt of Contractor's invoice therefore. If any of the Products is not in Normal Working Condition, Contractor, at the option of County, (i) shall provide such repairs and replacements as Contractor deems reasonable and necessary to restore such Product(s) to Normal Working Condition, at County's expense with respect to the cost of any parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Appendix E, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by Contractor employees or authorized representatives ("Contractor Representatives") who are required to travel to County's Designated Location to provide services. County's "Designated Location" shall mean County's owned or leased facility at which County desires Contractor to perform the Hardware Maintenance Services. County's Designated Location is specified on Schedule 3 of Appendix B.

b. **Routine Maintenance Services.** A Contractor Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each twelve (12) months during the Hardware Maintenance Term or any renewal thereof. County 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 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 3 of Appendix B and shall be due within thirty (30) days after invoice. Routine Maintenance Services shall include cleaning, lubrication and calibration services. At the request of County, Contractor shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. The Routine Maintenance Services will be provided either at County's Designated Location or at an Contractor-designated depot facility ("Depot"), as elected by County on Schedule 3 of Appendix B. County 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, County shall promptly notify Contractor, and Contractor shall use reasonable

efforts to restore the Product to Normal Working Condition as soon as practicable. The services provided by Contractor pursuant to this Subsection 1(c)(i) are referred to herein as "Remedial Maintenance Services". Contractor shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for ten (10) or more Products at any given time, County 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 County's Designated Location. County acknowledges that Product(s) identified on Schedule 3 of Appendix B as "depot repair only" may only be repaired at a Depot.

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 Contractor, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by Contractor or (3) causes beyond the reasonable control of Contractor or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, or if County does not notify Contractor within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, County shall pay Contractor for the Remedial Maintenance Services at Contractor'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 Contractor and County. If County requires Contractor to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services that are provided within 48 hours after County notifies Contractor of the need therefor), and such emergency Remedial Maintenance Services are not needed as a result of an action, error or omission by Contractor, County shall pay a surcharge, as set forth on Schedule 3 of Appendix B.

iv. **Loaner Unit.** At County's request, Contractor 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 Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 1(c)(ii) above, County shall pay Contractor for the use of the Loaner Unit at Contractor's then-current rates including the cost of shipping.

d. **Exclusions.** Contractor has no obligation under this Appendix E 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 printer ribbons, paper rolls, batteries, removable memory devices, cancellation stamps, ink pads or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, Contractor 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, Contractor shall no longer be required to provide

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Hardware Maintenance Services for such Product. Contractor 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 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.** County shall not permit any individual other than an Contractor Representative to provide maintenance or repairs with respect to the Products for so long as a Hardware Maintenance Term is in effect. County shall provide Contractor Representatives with all information 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.

f. **Storage.** When not in use, County shall properly store the Products in accordance with the storage requirements established in the Documentation.

ARTICLE II **SOFTWARE**

1. **Services Provided.** Contractor shall provide maintenance and support services for the Contractor Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, Contractor shall continue to provide updates in accordance with any update schedule determined by Contractor. County shall be responsible for all shipping and handling charges incurred in order to deliver any Updates to County.

3. **Reinstatement of Software Maintenance and Support.** If the Software Maintenance Term or any renewal thereof expires without being renewed, County may thereafter resume receiving Software Maintenance and Support upon (a) notification to Contractor, (b) payment of all fees which would have been due to Contractor had the Software Maintenance Term not expired, and (c) the granting to Contractor of access to the Contractor Software, so that Contractor may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

4. **Conditions.** Contractor shall not provide Software Maintenance and Support for any item of Contractor Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by Contractor, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by Contractor, (c) causes beyond the reasonable control of Contractor or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) County's failure to timely and properly install and use the most recent Update provided to it by Contractor, (e) County's failure to notify Contractor within 24 hours after County knows of the need for such services, or (f) if County is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **Proprietary Rights.** Contractor 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 Appendix E, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, Contractor hereby grants to County a non-exclusive license to use that portion of such corrections, programs, information and work product that Contractor actually delivers to County pursuant to this Appendix E. All licensed items shall be deemed to be Contractor Software for purposes of this Agreement. Except and to the extent expressly provided herein, Contractor 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 Agreement.

**Appendix F
Escrow Agreement**

MASTER PREFERRED ESCROW AGREEMENT

Master Number 9111

This agreement "Agreement" is effective August 16, 2002 among DSI Technology Escrow Services, Inc. ("DSI"), Election Systems & Software, Inc. ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

- A. Depositor and Preferred Beneficiary have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as "the License Agreement").
- B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.
- C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of its business and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.
- D. Depositor and Preferred Beneficiary desire to establish an escrow with DSI to provide for the retention, administration and controlled access of certain proprietary technology materials of Depositor.
- E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, including the signing of the Acceptance Form, and Exhibit D naming the Deposit Account, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement or, if the License Agreement does not identify the materials to be deposited with DSI, then such materials will be identified on Exhibit A. If Exhibit A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. DSI shall have no obligation with respect to the preparation, signing or delivery of Exhibit A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3. Escrow Account Name Identification. Subject to this Section 1, and at the time Depositor makes the initial deposit with DSI in accordance with Section 1.2 above, Depositor shall complete and sign Exhibit D naming the initial account upon which the Deposit Materials are written or stored. Any new deposits referencing new account names made subsequent to the signing of this Agreement, intended by the Depositor to be held in a separate account and maintained separately from the initial account, but made a part of this Agreement, shall be provided for by the Depositor on Exhibit E, and Exhibit E shall be signed by the Depositor and DSI.

1.4 Acceptance of Deposit. When DSI receives the Deposit Materials, DSI will conduct a deposit inspection. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor and Preferred Beneficiary. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor and Preferred Beneficiary. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. Delivery of the signed Exhibit B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by DSI. Other than DSI's inspection of the Deposit Materials, DSI shall have no obligation to the accuracy, completeness, functionality, performance or non-performance of the Deposit Materials.

1.5 Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to DSI and Preferred Beneficiary the rights as provided in this Agreement;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of a lien or encumbrances, however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of DSI under this Agreement;
- d. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement or Exhibit A, as the case may be; and
- e. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. Upon receipt of a written request from Preferred Beneficiary, DSI and Preferred Beneficiary may enter into a separate proposal agreement pursuant to which DSI will agree, upon certain terms and conditions, to inspect the Deposit Materials for the purpose of verifying its accuracy, completeness, sufficiency and quality ("Verification Proposal Agreement"). Depositor shall reasonably cooperate with DSI by providing its facilities, computer software systems, and technical and support personnel for verification whenever reasonably necessary. If a verification is elected after the Deposit Materials have been delivered to DSI, then only DSI, or at

DSI's election, an independent contractor or company selected by DSI, may perform the verification.

1.7 Deposit Updates. Unless otherwise provided by the License Agreement, Depositor shall update the Deposit Materials within sixty (60) days of each release of a new version of the product, which is subject to the License Agreement. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and the new Exhibit B shall be signed by Depositor. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.6 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.8 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, DSI shall not disclose, transfer, make available, or use the Deposit Materials. DSI shall not disclose the terms of this Agreement to any third party. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a court or other judicial tribunal including, but not limited to, notices delivered pursuant to 7.6 below.

2.2 Status Reports. DSI will issue to Depositor and Preferred Beneficiary a report profiling the account history semi-annually.

ARTICLE 3 -- RIGHT TO MAKE COPIES

3.1 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including but not limited to the hardware and/or software needed. Any copying expenses incurred by DSI as a result of a request to copy will be borne by the party requesting the copies. Alternatively, DSI may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for DSI to perform this Agreement.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the following:

- a. Depositor's failure to carry out obligations imposed on it pursuant to the License Agreement; or
- b. Depositor's failure to continue to do business in the ordinary course.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Within five (5) business days of receipt of a written notice, DSI shall provide a copy of the notice to Depositor. DSI will promptly notify the Parties unless DSI acknowledges or discovers independently, or through the Parties, its need for additional documentation or information in order to comply with this section. Such need for additional documentation or information may extend the time period for DSI's performance under this section.

4.3 Contrary Instructions. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have ten (10) business days to deliver to DSI contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Upon receipt of Contrary Instructions, DSI shall send a copy to Preferred Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to the Section 7.4. Subject to Section 5.2 of this Agreement, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 7.4; or (c) order from a court of competent jurisdiction.

4.4 Release of Deposit. If DSI does not receive Contrary Instructions from the Depositor, DSI is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expenses will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement. Preferred Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor and Preferred Beneficiary jointly instruct DSI in writing that the Agreement is terminated; (b) DSI instructs Depositor and Preferred Beneficiary in writing ninety (90) days after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2; or (c) DSI reserves the right to terminate this Agreement, for any reason, other than nonpayment, by providing Depositor and Preferred Beneficiary sixty (60) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of the Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to the parties to this Agreement affected by such delinquency. Any such party shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one (1) month of the date of such notice, then at any time thereafter DSI shall have the right to terminate this Agreement to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's Representations (Section 1.5);
- b. The obligations of confidentiality with respect to the Deposit Materials;
- c. The obligation to pay DSI any fees and expenses due;
- d. The provisions of Article 7; and
- e. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- DSI'S FEES

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least sixty (60) days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service, including release of any Deposit Materials under Article 4, unless the payment for such service and any outstanding balances owed to DSI are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement except where it is adjudged that DSI acted with gross negligence or willful misconduct.

7.3 Limitation of Liability. In no event will DSI be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits) costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of DSI exceed ten times the fees paid under this Agreement. The foregoing limitation of liability does not apply with respect to any acts of gross negligence, personal injury claims, property damage claims (excluding the Deposit), or intellectual property infringement ("Exclusions"). With the exception of the Exclusions, DSI shall in no event be liable for any incidental, punitive, special, indirect or consequential damages.

7.4 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by a single arbitrator chosen by the San Diego Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply California law. Unless otherwise agreed by Depositor and Preferred Beneficiary, arbitration will take place in San Diego, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If, however, Depositor and/or Preferred Beneficiary refuses to submit to arbitration, the matter shall not be submitted to arbitration and DSI may submit the matter to any

court of competent jurisdiction. Any costs of arbitration incurred by DSI, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Preferred Beneficiary.

7.5 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

7.6 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other escrow duties.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and Exhibits A, B, C, D and E described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Exhibit A need not be signed by DSI, Exhibit B need not be signed by Preferred Beneficiary, Exhibit C need not be signed by any party, Exhibit D need not be signed by Preferred Beneficiary or DSI and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

8.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the

validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

8.6 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

8.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement, the prevailing party who has proven in court by court decree, judgment or arbitrator's decision that the other party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgement.

8.8 No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

8.9 Authority to Sign. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement.

8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

Election Systems & Software, Inc.
Depositor

By: [Signature]

Name: THOMAS O'Brien

Title: CEO

Date: 8/9/02

DSI Technology Escrow Services, Inc.

By: [Signature]

Name: Richard Sheffield

Title: VP, Operations

Date: 15 August 02

Appendix G
Unity Release Functionalities

The ES&S Unity Licensed Software release will include the following functionalities as described in this Appendix G.

- **Keyed Precinct Entry for Early Voting Sessions using Ballots by style printing.** For early voting precincts where ballots by style have been created and both flags are created in the election, the DS200 will require the poll worker to select a precinct and confirm the name selected in order for the voter to insert the ballot(s). This will allow the proper precinct to receive the votes for the ballot being scanned. The DS200 will be able to print daily a cumulative ballot status accounting report that can be used for balancing during the early voting period.
- **Multiple Language Screen Messages.** For multi-language support, the Welcome and Thank You Screens will be presented in all 3 languages required in Florida (Creole, Spanish, English) simultaneously. If an error occurs, the voter will be prompted for a language selection and will then be displayed the error message in the language they have chosen; all ballot data referenced will still be in English within the translated message.
- **Ballot Image Capture for Processing of Write-ins by precinct.** All ballot images scanned and saved will be collected on poll close and will be identified in the file names as to what precinct they are from and whether write-ins are present on that ballot for easy review within Windows.