



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Election Systems & Software, LLC  
11208 John Galt Boulevard  
Omaha, NE 68137

JUN 11 2014

Attention: Thomas Burt, President and COO

Reference: 4400005097, Voting Machine Equipment and Services

Dear Mr. Burt:

## Acceptance Agreement


**Contract Number: 4400005097**

This acceptance agreement signifies a contract award to Election Systems & Software, LLC for Voting Machine Equipment and Services. The period of this contract shall be from June 11, 2014 through June 11, 2021, and thereafter renewable annually by mutual agreement of both parties.

The contract award shall be in accordance with the attached fully executed Voter Tabulation System and Services Agreement.

Please note that this is not an order to proceed. A Purchase Order, which constitutes your notice to proceed, will be issued to your firm. Please provide your Insurance Certificate in accordance with Section 17 of Exhibit G within ten (10) days after receipt of this letter. All questions in regards to this contract shall be directed to the Contract Specialist, Mary McMahon, at 703-324-3280 or via e-mail at [mary.mcmahon@fairfaxcounty.gov](mailto:mary.mcmahon@fairfaxcounty.gov).

Sincerely,

  
Cathy A. Muse/CPPO  
Director/County Purchasing Agent

**Department of Purchasing & Supply Management**  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035-0013

Website: [www.fairfaxcounty.gov/dpsm](http://www.fairfaxcounty.gov/dpsm)

Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

**ELECTION SYSTEMS & SOFTWARE, LLC  
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

This Election Systems & Software Voter Tabulation System and Services Agreement ("the Agreement") is made as of \_\_\_\_\_ (the "Effective Date"),

**BETWEEN:** Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S" or "Contractor");

**AND:** Fairfax County ("Customer" or "County").


**RECITALS:**

- A. Customer has agreed to purchase/license the System (as defined below) and related services from ES&S for use in Fairfax County, Virginia (the "Jurisdiction") and ES&S has agreed to provide the System and related services to Customer. The terms and conditions under which such system, equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
- Exhibit A (Pricing Summary) and Schedule A-1 (ES&S Voter Tabulation System Implementation, Major Deliverables, Milestones and Payment Schedule)
  - Exhibit B (ES&S System and Other Services Description and Pricing)
  - Exhibit C (ES&S Software Description and Pricing)
  - Exhibit D (Election Support Services)
  - Exhibit E (Maintenance Services - Warranty and Post Warranty Period) and Schedule E-1(ES&S Hardware and Software Maintenance Description and Fees During the Warranty Period)
  - Exhibit F (Acceptance Criteria, Mock Election Outline and Certificates of Interim and Final Acceptance)
  - Exhibit G (Fairfax County Contract Terms and Conditions)
  - Exhibit H (List of Third Party Software and Third Party Equipment) and Schedule H-1 (Optional Configuration: Upgrade to Ten (10) Regional Sending Sites)
  - Exhibit I (Attachment 1, ES&S Response to CNI, dated November 18, 2013; Attachment 2 Responses SAC Negotiation Questions, dated April 7, 2014; and Attachment 3 Responses to Negotiation Questions and Project Manager Biography dated April 22, 2014. The order of precedence for this Exhibit I in the event of any conflict between the provisions of Attachments 1, 2 and 3 is set forth in Paragraph 3.14 of this Agreement)
  - Exhibit J (ES&S Service Level Requirements)

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein as if fully set forth herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the State of **Virginia**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

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

  
\_\_\_\_\_  
Signature

Thomas O'Brien  
\_\_\_\_\_  
Name (Printed or Typed)

CFO  
\_\_\_\_\_  
Title

6/10/14  
\_\_\_\_\_  
Date

COUNTY OF FAIRFAX, VIRGINIA  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035  
Fax No.: (703) 324-3228

  
\_\_\_\_\_  
Signature

Cathy A. Muse  
\_\_\_\_\_  
Name (Printed or Typed)

Purchasing Agent  
\_\_\_\_\_  
Title

6/11/2014  
\_\_\_\_\_  
Date

**GENERAL TERMS  
ARTICLE 1  
DEFINITIONS**

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

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means the ES&S Equipment and Third Party Equipment (as defined below) as well as all other equipment and hardware provided by third party manufacturers or distributors required to run the System (as defined below).
- c. "ES&S Equipment" means ES&S' proprietary hardware or other equipment as well as all other equipment and hardware provided by third parties manufacturers or distributors required to run the System. Notwithstanding the foregoing, ES&S Equipment shall not include Third Party Equipment (defined below) listed in Exhibit H.
- d. "ES&S Hardware Maintenance Services" and "ES&S Software Maintenance and Support" means those services described on Exhibit E.
- e. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement, and any third party software required to run the System (as defined below) which shall include all software and other items provided by third party manufacturers or distributors and used with any component of the System running in the voting precincts and any component of the System running on the central server. Notwithstanding the foregoing, ES&S Software shall not include Third Party Software (defined below) listed in Exhibit H.
- f. "Software" means collectively ES&S Software and Third Party Software as well as any additional software subsequently required for operation of the System or provided by ES&S under this Agreement.
- g. "Third Party Equipment" means the hardware provided by third party manufacturers or distributors as identified in Exhibit H which shall be integrated into the System.
- h. "Third Party Software" means, collectively, the software identified in Exhibit H, which shall be integrated into the System during implementation as further described in Section 2.1(b) of this Agreement.
- i. "System" means, collectively, the Software, Equipment, Third Party Equipment and Third Party Software, and any other components listed in the accompanying exhibits or required for operation of System including the running of the System in the voting precincts, and the System running on the central server.
- j. "Specifications" means descriptions and data regarding the features, functions and performance of the System, as set forth in this Agreement including but not limited to Exhibit I.

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

**2.1 Purchase Terms.**

a. Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase the Equipment, consisting of the ES&S Equipment and the Third Party Equipment described on Exhibits B and H. The payment terms for the ES&S Equipment and Third Party Items are set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment, ES&S Software and Third Party Software. This is a firm, fixed price contract, subject to the exercise of any options provided in the Agreement upon written amendment signed by Customer and ES&S. The total contract price is \$6,412,493.67 ("Contract Price"), payable subject to the terms and conditions of this Agreement and consists of \$5,131,255.00 for the delivery and implementation of the System and related equipment, software and services and pre-payment of one (1) year of Maintenance Services under Exhibit E during the Warranty Period (as defined in Section 3.2(a) below) and \$1,281,238.67 for pre-payment of five (5) years of Maintenance Services under Exhibit E during the Warranty Period. No further amounts or additional costs beyond the Contract Price shall be payable by the Customer and ES&S agrees to complete all services and provide all licenses, equipment and deliverables described in the Agreement for the Contract Price.

b. ES&S and the Customer will provide technical resources to properly integrate the Third Party Software and Third Party Equipment during implementation of the System. If there are subsequent integration or operational issues with any Third Party Software and/or Third Party Equipment, and any portion of the System, then technical resources from both ES&S and the Customer will work together to resolve the issues.

**2.2 Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable, perpetual license for the Customer and its employees, designated election workers, third party contractors and other authorized representatives working on-site at the Customer's designated locations to use the Software and all related operating instructions, user manuals and training materials supplied by ES&S (collectively the "Documentation"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of preparing for and conducting an election and tabulating and reporting election results in the Jurisdiction. The license does not permit Customer to take any of the following actions:

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

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

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

d. Cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock, except that Customer may cause and permit copying, reproduction or printing

of any output generated by the Software in compliance with Virginia Code 24.2-642 and necessary reports or other transparency necessary in the conduct of elections..

2.3 **License Fees.** In consideration for ES&S' grant of the license for the Software described in Section 2.2, Customer shall pay ES&S the Software License Fees set forth on Exhibit A. The consideration for ES&S' grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment. Any license fees payable to any Third Parties for the use of any Third Party Software listed in Exhibit H are the sole responsibility of Customer.

2.4 **Term of Licenses.** The licenses for the Software granted in Section 2.2 shall commence upon the delivery of the Software described in Section 2.2. The licenses shall survive the termination of all other obligations of the parties under this Agreement and the termination of all Exhibits; provided, however, that ES&S may, subject to the termination provisions set forth in Exhibit G, terminate either license if Customer fails to pay the consideration when due in accordance with Schedule A-1 of Exhibit A for such license, or breaches Sections 2.2, 2.3, or 3.6 with respect to such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.5 **Updates.** During the Warranty Period (as defined in Section 3.2(a) below), ES&S shall provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party software or third party equipment required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or, upon Customer's request, ES&S shall install the Updates. If Customer elects to install Updates, but fails to do so, or if Customer requests ES&S to install the Updates, ES&S may charge Customer at its then-current rates, subject to Customer's prior written approval of such charge and rates, to install the Updates. Likewise, upon request by Customer, ES&S may charge Customer at its then current rates, subject to Customer's prior written approval of such charge and rates, to (i) deliver the Updates to the Customer, (ii) train Customer on Updates or (iii) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software Maintenance and Support described on Exhibit E of this Agreement upon the payment of the applicable fees set forth herein.

2.6 **Compliance with Laws.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of successful completion of Milestone 8, Production Major Election 1 of 2, the System will comply with all applicable requirements of election laws of the Commonwealth of Virginia and regulations that are mandatory and effective at the time of successful completion of Milestone 8 and will have been certified by the appropriate authorities as required by the Commonwealth of Virginia for use in the Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for Maintenance and Support Services, the System shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the ES&S Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations after the successful completion of Milestone 8, Production Major Election 1 of 2. Customer shall also be solely responsible for the cost of any third party software and third party equipment that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations after the successful completion of Milestone 8, Production Major Election 1 of 2.

2.7 Acceptance Testing. The parties shall conduct and complete both Interim and Final Acceptance Testing in accordance with following terms.

a. Within five (5) business days after issuance of a purchase order by Customer, the parties shall conduct an initial project kick-off meeting which shall include a discussion on the plans for the commencement, implementation and acceptance testing of the System.

b. The Interim and Final Acceptance Testing process shall be conducted in accordance with the procedures outlined in Exhibit F. The Acceptance Testing shall include interim and final testing of all Equipment and Software products and testing of the System, and any other methods, as mutually agreed to by the parties, considered necessary to assure that the System operates in accordance with its Specifications. Such acceptance testing shall be completed in order for the Customer to accept the System and for the payment of the milestones and other deliverables associated with Interim and Final Acceptance Testing all as outlined in Schedule A-1 and Exhibit F.

c. In addition to the testing procedures set forth in the Agreement, Final Acceptance shall include a testing period lasting through two consecutive November elections ("Stability Period"), in which the System shall perform in a live environment. Any non-conformity in the System or System Acceptance testing or unfinished ES&S task, milestone or deliverable non-conformity encountered during the Stability Testing Period will be resolved at no additional cost to the Customer.

d. Upon completion of each Interim Acceptance Testing step and upon completion of the Final Acceptance Testing process, ES&S shall deliver to the Customer the Certificates of Interim Acceptance and a Certificate of Final Acceptance, as applicable, as set forth in Exhibit F. Upon receipt of either a Certificate of Interim Acceptance or a Certificate of Final Acceptance by ES&S confirming to the Customer that the System has successfully completed an Interim or Final System Acceptance Testing milestone, the Customer shall, within seven (7) business days of receipt of a Certificate of Interim Acceptance or the Certificate of Final Acceptance, sign the applicable Certificate of Acceptance or detail in writing any nonconformity in the System or System Acceptance Testing or unfinished ES&S task or milestone or deliverable, provided, however, that no Customer response shall be required earlier than two (2) weeks following a November general election including the time period required for the Canvass plus any subsequent recount and the seven (7) business day period for Customer to sign the applicable Certificate of Acceptance or detail any non-conformity shall not commence until after the results of such election is final. Contractor will correct any such non-conformance within five (5) business days, unless otherwise agreed upon, in writing, by the parties. Upon completion of these corrections, Acceptance Testing shall resume in accordance with the previously described procedures. Notwithstanding any other provision of this Agreement, in no event shall Final Acceptance be deemed to have occurred until execution of a Certificate of Final Acceptance on behalf of the Customer stating that all (i) acceptance testing of the System and the Stability Testing Period have been successfully completed and (ii) that all tasks, Milestones, and deliverables are complete and accepted by the County in conformance with the acceptance testing procedures outlined in this Section 2.7, Exhibit F and the milestones set forth in Schedule A-1.

### ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss.** ES&S shall deliver the Equipment and Software identified on Exhibits B-C and H to Customer no later than the "Delivery Dates" listed on Exhibit A. Time is of the essence in this Agreement regarding delivery. The Delivery Dates may be revised by the parties upon mutual written agreement because of changes requested by Customer, delays in certification or other events as may be mutually agreed upon by the parties. ES&S will notify Customer of request for revisions to the Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and Software shall pass to Customer after Customer's written acknowledgement of receipt at Customer's designated location by staff designated as the proper signatory. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment and Software and shall provide ES&S with evidence of such applicable insurance coverage policies upon request.

3.2 **Warranties.**

a. **ES&S Equipment and ES&S Software.** ES&S warrants that for a six-year period commencing upon execution of the Certificate of Final Acceptance by the Customer (the "Warranty Period"), the ES&S Equipment and ES&S Software will be free of defects and shall operate in conformity, in all material respects, with the Specifications. During the Warranty Period, ES&S will remedy any defect identified by the County and repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform, in all material respects, in accordance with the Specifications and this Agreement, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any Third Party Equipment or Third Party Software nor any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, batteries, removable media storage devices, cancellation stamps, ink pads, PCMCIA cards or marking devices. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that Customer notifies ES&S of the failure of performance or defect prior to the expiration of the Warranty Period. ES&S shall have no responsibility under this Agreement for the cost of repair or replacement for (I) the ES&S Equipment or ES&S Software which is to be repaired or replaced as a result of any repairs, changes, modifications or alterations made by Customer, its employees or contractors, except as authorized or approved by ES&S, (II) the ES&S Equipment or ES&S Software that is to be repaired or replaced as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance the Agreement or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, and utility or communication interruptions, and (III) any ES&S Equipment or ES&S Software which is to be repaired or replaced as a result of the Customer not installing and using the most recent Update, or the second most recent Update, provided to it by ES&S. In addition, ES&S shall not be responsible for the cost for any units of equipment which: (i) have not been stored or operated in a temperature range according to this Agreement, (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 the Specifications or the terms of the Agreement. Any such repair or replacement for which ES&S is not responsible for the cost as set forth in this Section 3.2 shall be provided by ES&S at a cost not to exceed ES&S' then-current rates, subject to prior written approval of such costs by the Customer's Purchasing Agent.

b. **System.** ES&S warrants that during the Warranty Period the System and all of its components will operate free of defects and function in accordance with its Specifications as stated in this Agreement and will operate and function in accordance with the federal and state certifications that were in effect at the time of successful completion of Milestone 8, Production Major Election 1 of 2. ES&S further warrants that the ES&S Equipment and ES&S Software will

operate in conjunction with the Third Party Equipment and Third Party Software during the Warranty Period, provided that (i) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S, and (ii) the Third Party Equipment and Third Party Software are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will remedy the defect and repair or replace the item of ES&S Equipment or ES&S Software that is causing such breach to occur. Customer acknowledges that ES&S has merely purchased the Third Party Items for resale or rental to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third Party Software and Third Party Equipment as stated in this Agreement, all of its rights and obligations with respect to the Third Party Software and Third Party Equipment listed in Exhibit H flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for such Third Party Software and Third Party Equipment which are provided to ES&S.

**c. DISCLAIMER OF WARRANTIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,**

**3.3 Routine Maintenance For ES&S Equipment During Warranty Period.** During the initial year of the Warranty Period, Customer may request that ES&S provide the Routine Maintenance Services described in Article II, Subsection 1(b) of Exhibit E for one or more units of ES&S Equipment. Any such request shall be made at least 60 days before the Routine Maintenance Services are desired. The per-unit fee for such Routine Maintenance Services is set forth on Schedule E1 of Exhibit E and shall be due within thirty (30) days after receipt of a properly submitted invoice. The terms and conditions of Section 1(a) of Exhibit E shall govern the providing of the Routine Maintenance Services. In years two (2) through year six (6) of the Warranty Period, Routine Maintenance Services will be provided in accordance with the terms set forth in Exhibit E to the Agreement. When the ES&S Equipment is not in use, Customer shall properly store the ES&S Equipment in accordance with the storage requirements set forth in Exhibit E. Upon termination of the Warranty Period, Customer shall be entitled to continue to receive the Hardware Maintenance Services described on Exhibit E of this Agreement upon the payment of the then current fees in effect at the time of the termination of the Warranty Period, subject to mutual written agreement by the parties.

**3.4 Limitation Of Liability.** Neither party shall be liable to the other party for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable to the other party for liability arising solely out of the other party's negligent or willful misconduct. With the exception of liability for personal injury, death, property damage or intellectual property infringement, ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be payable under this Agreement. ES&S shall have no responsibility to Customer for (a) the selection of, use of and results obtained from any equipment, software or services not provided by or with the approval of ES&S and used with the Equipment or Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform or defects with the System. ES&S shall not be liable to Customer under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid by Customer in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

**3.5 Taxes; Interest.** Customer is a political subdivision of the Commonwealth of Virginia and is therefore exempt from taxation. Any undisputed payment which is past due thirty (30) days after its payment due date shall accrue interest at the rate of one percent (1%) per month.

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

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

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

c. Customer shall not take any action to cause any liens and encumbrances to attach to the ES&S Software and related Documentation and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

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

3.8 **Term; Termination.** This Agreement shall be effective on the Effective Date and continue through the same month and date in calendar year 2021. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, as provided in Exhibit G.

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

For Customer:

Secretary of the Electoral Board  
12000 Government Center Parkway, Suite 323  
Fairfax, VA 22035  
Fax No.: (703) 324-2205

With a copy to:

General Register  
Fairfax County  
12000 Government Center Parkway, Suite 323  
Fairfax, VA 22035  
Fax No.: (703) 324-2205

County Election Manager  
Fairfax County  
12000 Government Center Parkway, Suite 323  
Fairfax, VA 22035  
Fax No.: (703) 324-2205

County Purchasing Agent  
Department of Purchasing and Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035  
Fax No.: (703) 324-3228

For ES&S:

Election Systems & Software, LLC  
Attention: Office of General Counsel  
11208 John Galt Boulevard  
Omaha, Nebraska 68137  
Fax No: (402) 970-1291

3.10 **Disputes.** Disputes shall be addressed as set forth in the Fairfax County Terms and Conditions in Exhibit G.

3.11 **Other.** ES&S is providing Equipment, Software and services to Customer as an independent contractor , and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Article 2 and Sections 3.2(c), 3.4-3.9, 3.11 and 3.12 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

3.12. **Confidential Information.** Information provided by Customer to ES&S shall be treated as confidential information by ES&S and shall only be used for performance of services under this agreement. ES&S acknowledges that any information that ES&S submits to Customer pursuant to the terms of this Agreement shall be subject to Virginia Freedom of Information Act ("VFOIA"); therefore, such information may be excluded from the mandatory disclosure provisions of VFOIA if ES&S identifies and properly invokes a VFOIA exclusion in writing. The obligations under this Section shall survive termination or expiration of this Agreement.

3.13 **Source Code Escrow.** ES&S has placed the source code for the Software in escrow with its third party escrow agent, Iron Mountain Intellectual Property Management Inc. under an existing escrow agreement ("Escrow Agreement"), and will likewise place in escrow the source code for all Updates provided to Customer. ES&S agrees to maintain a copy of the source code as provided herein and shall provide Customer with a copy of the Escrow Agreement and make Customer a beneficiary under the Escrow Agreement. Upon the occurrence of any of the events described below, the Escrow Agreement shall authorize the escrow agent to release the source code to Customer so that Customer may continue operation and maintenance of the Software using Fairfax County employees, volunteers, and contractors.

Should ES&S (i) cease operations for any reason, (ii) discontinue offering maintenance and support for the Software when the County desires continuance of Software maintenance and support services under this Agreement, (iii) become unable to maintain and support any of the Software or Updates provided to Customer while under an obligation to do so under this Agreement, or (iv) institute or has instituted against it insolvency, receivership or bankruptcy proceedings, Customer may obtain the source code for the Software, except for such Third Party Software in which ES&S is not authorized to obtain, for the sole purpose of enabling the continued use of such item(s) in accordance with this Agreement. The source code shall remain at all times the property of ES&S and may not otherwise be used by Customer except for the purposes of preparing for and conducting an election and tabulating and reporting election results in the Jurisdiction.

In no event shall the Escrow Agreement alter the terms of this Agreement. ES&S shall provide Customer with a copy of shall promptly provide Customer with a copy of each new escrow contract established with an escrow agent for access to the source code.

**3.14 Order of Precedence.** In the event of conflict among any provisions set forth herein, the conflict shall be resolved in the following order: The provisions of Exhibit G shall be first in the order of precedence; the provisions of these General Terms of the Agreement and the provisions of Exhibits A-F, H and J shall be collectively second in the order of precedence; and the provisions of Exhibit I shall be last in the order of precedence. In the event of a conflict among the provisions of Attachments 1, 2 and 3 of Exhibit I the provisions of Attachment 3 shall be first in the order of precedence, the provisions of Attachment 2 shall be second in the order of precedence and the provisions of Attachment 1 shall be last in the order of precedence.

**[END OF GENERAL TERMS]**

**EXHIBIT A  
PRICING SUMMARY**

<b>Sale Summary:</b>		
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>
Equipment	Exhibit B	\$5,574,451.00
Software License Fees	Exhibit C	\$161,525.00
Election Support Services	Exhibit D	\$156,450.00
Prepaid Warranty Fees	Schedule E1	\$1,281,238.67
Shipping and Handling	Note 1	\$23,200.00
<b>Total Purchase Solution before Allowances and Discounts</b>		<b>\$7,196,864.67</b>
<b>Trade-In Allowance:</b>		
315-AccuVote OS Scanner		(\$31,500.00)
400-AccuVote OS Ballot Box		(\$20,000.00)
1,000-WINvote DRE		(\$250,000.00)
Premier County and First In State Discount		(\$482,871.00)
<b>Contract Price</b>		<b>\$6,412,493.67</b>
<b>Terms &amp; Conditions:</b>		
<b>Note 1:</b> Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred, subject to prior written approval of the Customer's Purchasing Agent.		
<b>Note 2:</b> The Milestone Payment Schedule is set forth on <u>Schedule A-1</u> to this <u>Exhibit A</u>		
<b>Note 3:</b> Additional services requested, in writing, by the Customer in excess of those set forth in <u>Exhibit D</u> shall be charged at the rate of \$1,575.00 per day, including expenses.		
<b>Note 4:</b> ES&S shall deliver the Equipment and Software in accordance with the delivery dates set forth in <u>Schedule A-1</u> to <u>Exhibit A</u> unless otherwise mutually agreed upon, in writing, by the parties.		

Schedule A-1  
**ES&S Vote Tabulation System Implementation**  
**Major Deliverables, Milestones, and Payments Schedule**

Number	Summary Description	Milestone Description	Scheduled Date of Completion*	Amount to be invoiced upon successful completion of the Milestone
1	Kick off Meeting	Kick off Meeting	06/16/14	\$0.00
2	Delivery of Initial Order Quantities	Deliver Initial Order Quantities (estimated to be 25 DS200s with carrying cases, 25 ExpressVotes, 1 Balotar Flex Printer, 1 Balotar Compact Printer; the quantities of which will be finalized by the County upon completion of Milestone 1), successfully complete Acceptance Tests per Section 2.7 of the Agreement and Exhibit F, Train designated County personnel and provide User Manuals.	06/23/14	\$200,000.00
3	Deliver Promotional Materials	Work with County to co-develop and deliver promotional, educational, and public service announcement materials related to the DS200 and ExpressVote suitable for the public in both English and Spanish (includes MS Word versions when available).	06/23/14	\$100,000.00
4	Training Development & Delivery (everything except EMS training)	Deliver all training and user manuals for all DS200's, ExpressVotes and DS850 for employees, rovers, and those appointed by the Registrar/Office of Elections. The materials should include the procedures for ballot handling, L&A testing, Security, Backup, Storage and Transportation (includes Word versions of training documentation and training aids)	06/23/14	\$200,000.00
5	Election Management System (EMS)	Deliver the Results Accumulation Network hardware as set forth in the design documents provided to the County. Load the EMS Software, configure as needed, and debug operational and technical issues working with Fairfax County Elections and Technology staff to fully implement the election management system software (EMS) with ballot development and election results reporting. Provide required User Manuals. Payment of this milestone includes payment of the Software License Fees set forth on Exhibit A	07/14/14	\$200,000.00
6	Delivery of Remaining Units & Acceptance Testing	Deliver all remaining quantities as set forth in Exhibit B and complete Acceptance Testing per Exhibit F. The start and end dates for the deliveries and associated acceptance testing to be agreed upon by the County and ES&S. All associated documentation will be delivered as well.	07/28/14 or 08/04/14	\$2,924,805.00

7	Mock Election	Conduct a "Mock Election" of the System to ensure the System is functioning in accordance with the Specifications of the Agreement in all material respects. ES&S will prepare the design of the Mock Election, which will be subject to mutual agreement by the parties. The Mock Election exercise may be extended or repeated as necessary to ensure the System is functioning in accordance with the Specifications of the Agreement.	TBD after Milestones 1-6 are complete	\$750,000.00
8	Production Major Election Acceptance 1 of 2	For the November 2014 General Election, the System performs in a manner that complies with the Specifications of the Agreement in all material respects, and there are no major outages or issues or errors which significantly disrupt election preparation, election day, election night reporting, Canvass, and any Recount activities and periods. In the event the System does not function in a manner that constitutes successful completion of this milestone as described above, the parties may agree in writing to defer completion of this milestone and all or a portion of this payment to a subsequent election.	11/04/14	\$250,000.00
9	Election Services as set forth on Exhibit D	Services will be invoiced for payment upon satisfactory completion of each Area of Work or Description as set forth on Exhibit D and Customer's written approval of such services.	Various	\$156,450.00
10	Extended Warranty Coverage	Initial Year incorporated into payments. The payment for the remaining years within the Warranty Period will be paid on the one year anniversary date of the successful completion of Milestone 6.	08/01/15	\$1,281,238.67
11	Production Major Election Acceptance 2 of 2	For the November 2015 General Election, the System performs in a manner that complies with the Specifications of the Agreement in all material respects, and there are no major outages or issues or errors which significantly disrupt election preparation, election day, election night reporting, Canvass, and any Recount activities and periods. In the event the System does not function in a manner that constitutes successful completion of this milestone as described above, the parties may agree in writing to defer completion of this milestone and all or a portion of this payment to a subsequent election.	11/03/15	\$350,000.00
				<b>\$6,412,493.67</b>

\* The stated dates are subject to change upon mutual agreement by the parties in writing based upon the detailed workplan to be agreed upon by the parties at or before the kickoff meeting. For the Customer any of the following are authorized to agree in writing for the Customer for purposes of changing the dates in the detailed workplan: Electoral Board Secretary, General Registrar or the Chief Operating Officer for the Office of Elections. The amounts set forth in this Schedule A-1 shall be payable after successful completion of acceptance testing as outlined in Exhibit F, as applicable, and as provided in Section 2.7 of the Agreement and execution of an Acceptance Certificate by the County for each Milestone Payment. Payment will be made net thirty (30) days after receipt of a properly submitted invoice subsequent to written acceptance of a Milestone by the County as provided in the Agreement.

Note 1: Milestones 1-9 represent Interim Acceptance Testing steps. Milestone 11 represents Final Acceptance Testing steps for the System.

**EXHIBIT B**  
**ES&S SYSTEM AND OTHER SERVICES DESCRIPTION AND PRICING**

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<b>Model DS200 Precinct Scanner:</b>			
525	Model DS200 (Includes Scanner, Plastic Ballot Box with Steel Door and e-Bin, Reverse Wound Paper Roll and 4GB Jump Drive)	\$5,635.00	\$2,958,375.00
25	DS200 Hard-Sided Carrying Case	\$225.00	\$5,625.00
505	DS200 Soft-Sided Carrying Case	\$105.00	\$53,025.00
750	Tote Bin	\$150.00	\$112,500.00
500	4GB Jump Drive (Additional)	\$90.00	\$45,000.00
<b>Model DS850 High Speed Digital Scanner:</b>			
1	Model DS850 (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Three (3) 8GB Thumbdrives)	\$110,000.00	\$110,000.00
1	DS850 Perpetual License Fee	\$3,875.00	\$3,875.00
1	Installation/Training Fee (1 <sup>st</sup> Unit)	\$3,500.00	\$3,500.00
<b>ADA Ballot Marking Device:</b>			
600	ExpressVote Unit Including Soft-Sided Case, 4GB Flash Drive, and Headphones	\$3,430.00	\$2,058,000.00
600	ADA Keypad	\$50.00	\$30,000.00
<b>Ballot On Demand Systems:</b>			
2	Balotar Flex Printer BOD Solution, consisting of:	\$20,055.00	\$40,110.00
	- Flex Printer with Firmware		
	- J-Series Printer Cart		
	- Laptop Computer		
	- Laptop Tray		
	- Precision Input Feed Tray		
	- Printer & Software Training and Installation		
	- Balotar Software License & Support:		
	· Single Request Software (SRS)		
	· Multiple Request Software (MRS)		
	- Shipping and Handling		

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
	Balotar Compact Printer BOD Solution, consisting of:	\$7,682.50	\$107,555.00
14	- Compact Printer with Firmware		
8	- D-Series Printer Cart		
8	- Laptop Computer		
14	- Internal Precision Input Feed Tray		
X	- Printer & Software Training and Installation		
8	- Single Request Software (SRS)		
X	- Shipping and Handling		
300	DS200 Demo Ballots for Testing	Included	Included
700	ExpressVote Blank Ballot Cards for Testing - 11"	Included	Included
500	Blank Ballot Stock for Testing Balotar Printers	Included	Included
1	Network Solution Without Regional Sending Sites (Third Party Equipment) – See detailed listing in <u>Exhibit H</u> .	\$46,886.00	\$46,886.00
<b>Total Equipment</b>			<b>\$5,574,451.00</b>

**Note:** In the event the Customer purchases additional items beyond the quantities set forth above, the unit pricing set forth above shall remain fixed for such additional items through December 31, 2016. Thereafter, unit pricing for such additional quantities shall be subject to price increases as set forth in Section 2.1 of Exhibit G.

**Balotar Usage Fees, Ballots, Consumables, and Other Optional Items:**

<b>Balotar Ballot On Demand Usage Fees:</b>
Election Set-Up per Election Event
<ul style="list-style-type: none"> <li>• Remote Access: \$250.00 base fee + \$1.00 per each Unique .pdf (Style or Precinct)</li> <li>• On-Site: \$1,575.00 per day per person, including expenses</li> </ul>
Ballot Processing Fee (Black Ink Only) \$0.45 Each Ballot Sheet Printed. Price Includes:
<ul style="list-style-type: none"> <li>o Black Toner</li> <li>o Waste Toner Boxes</li> <li>o Black Image Drum</li> <li>o Transfer Belts</li> <li>o Fusers</li> <li>o Blank Ballot Stock Required Over Term of Deal</li> <li>o Consumables and Blank Ballot Stock Shipping and Handling</li> <li>o Hardware Break/Fix Maintenance</li> </ul>

For purposes of calculating the Ballot Sheet Processing Fees, a ballot sheet is defined as a sheet of paper up to a total length of 19", regardless of whether printed on 1 or 2 sides.

Training and test ballots will not be subject to the Ballot Processing Fee. Election related ballots and test ballots printed for Logic and Accuracy testing will be invoiced under the Ballot Processing Fee.

Ballot On Demand Systems Fees will be invoiced following each election. 100% of invoice total due, for such fees, within thirty (30) calendar days of receipt of a properly submitted invoice.

DESCRIPTION	UNIT PRICE
<b>Printed Ballots:</b>	
11" 2-Sided Ballot with Black Ink	\$0.18
14" 2-Sided Ballot with Black Ink	\$0.25
Folding	\$0.06
Stub	\$0.03
Numbering	\$0.03
Corner Cut	\$0.02
Price does not included shipping and handling which will be invoiced separately.	
<b>DS200 Scanner:</b>	
DS200 Hard-Sided Carrying Case	\$225.00
DS200 Wireless Modem (Price does not include data transmission fees)	\$565.00
DS200 Landline Modem (Price does not include data transmission fees)	\$195.00
DS200 Paper Roll <b>Note: Recommend One (1) per Unit per Election</b>	\$1.75
DS200 Back-Up Battery (Installed by Trained ES&S Personnel Only)- Price if Performed During a Scheduled Preventative Maintenance Visit <b>Note: Average Battery Life of Five (5) Years</b>	\$130.00
DS200 Coin Cell Motherboard Battery (Installed by Trained ES&S Personnel Only)-Price if Performed During a Scheduled Preventative Maintenance Visit <b>Note: Average Battery Life of Five (5) Years</b>	\$10.00
<b>DS850 Scanner:</b>	
Report Printer Toner Cartridge	\$102.00
Log Printer Printer Ribbon	\$16.00

DESCRIPTION	UNIT PRICE
DS850 Coin Cell Motherboard Battery (Installed by Trained ES&S Personnel Only)-Price if Performed During a Scheduled Preventative Maintenance Visit <b>Note: Average Battery Life of Five (5) Years</b>	\$10.00
<b>ExpressVote Ballot Marking Device:</b>	
ExpressVote Ballot Card:	
- 11 inch	\$0.075
- 14 inch	\$0.100
ExpressVote Back-Up Battery (Installed by Trained ES&S Personnel Only)-Price if Performed During a Scheduled Preventative Maintenance Visit <b>Note: Average Battery Life of Five (5) Years</b>	\$112.90
ExpressVote Coin Cell Battery (Installed by Trained ES&S Personnel Only)-Price if Performed During a Scheduled Preventative Maintenance Visit <b>Note: Average Battery Life of Five (5) Years</b>	\$10.10
ExpressVote Booth	\$425.00
Upgrade Network Solution to Include Ten (10) Regional Sending Sites (Please refer to Schedule H-1 to Exhibit H for details)	\$30,879.37

**Note:** All unit pricing for Balotar Usage Fees, Ballots, Consumables, and Other Optional Items ("optional items") set forth above is valid through December 31, 2016. Thereafter, such unit pricing shall be subject to price increases as set forth in Section 2.1 of Exhibit G.

The Fees for such optional items purchased by Customer will be invoiced upon delivery. 100% of invoice total due, for such fees, within thirty (30) calendar days of receipt of a properly submitted invoice.

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

DESCRIPTION	NUMBER OF LICENSES
EMS Software with Voice File Capability for English and One Additional Language	1
PYO Customer Migration Templates (last two election cycles, up to six years total)	N/A
<b>Total License Fees (including all applicable Documentation)</b>	<b>\$161,525.00</b>

**Note 1:** Additional Languages for Synthesized Audio Capability can be licensed at the fee of \$4,700.00 per language and shall be subject to an initial annual maintenance and support fee of \$1,410.00 per additional language, subject to the annual price increases as set forth in Section 2.1 of Exhibit G.

**Note 2:** ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates, provided that the ES&S Firmware provided to the Customer must conform with federal and state certification in effect at the time of successful completion of Milestone 8, Production Major Election 1 of 2.

**EXHIBIT D  
ELECTION SUPPORT SERVICES**

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

**All elections handled by Customer until termination of the Agreement.**

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the Elections set forth above, and the descriptions listed in the table below, and a change in the scope of work may require ES&S to change the fees charged to Customer, provided that no additional fees shall be payable by the County unless ES&S provides prior written notice of the additional charges and upon written amendment to the Agreement to include such costs. For purposes of ES&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 Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

<b>Role/Function</b>	<b>Area of Work or Description</b>	<b>Primary Responsibility</b>	<b>Days/Events To Be Provided and Rate</b>	<b>Additional Day Bill Rate</b>
<b>Project Management</b>	A project manager appointed by ES&S shall be responsible for the overall planning, communication, management and coordination of ES&S Services. This person shall be the liaison for Customer with ES&S as it pertains to all products, services and obligations set forth in the contract.	ES&S	50 Days @ \$1,500.00 per day.  Total of \$75,000.00	\$1,575.00
<b>Training – DS200 Scanner and ExpressVote Terminal</b>	ES&S will provide classroom-style training with hands-on practice using the DS200 Scanner and ExpressVote Terminal. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	ES&S	4 Days @ \$1,575.00 per day.  Total of \$6,300.00	\$1,575.00
<b>Training – Poll Worker Train – The-Trainer</b>	ES&S agrees to conduct Poll Worker "Train the Trainer" classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	ES&S	6 Days @ \$1,575.00 per day.  Total of \$9,450.00	\$1,575.00
<b>Installation/ Acceptance Testing</b>	ES&S will inspect the Equipment at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S	21 days @ \$1,575.00 per day.  Total of \$33,075.00	\$1,575.00
<b>Software Training</b>	A system overview that covers the modules licensed by Customer. Class size is limited to 10 and course participant manuals are included. (Customer will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	ES&S	5 Days @ \$1,575.00 per day.  Total of \$7,875.00	\$1,575.00

Role/Function	Area of Work or Description	Primary Responsibility	Days/Events To Be Provided and Rate	Additional Day Bill Rate
<b>Election Day Support</b>	For each site support event, ES&S provides one trained representative who is available to the customer the day immediately prior to the election, Election Day and until noon on the day immediately after Election Day ("Site Support Event"). Site Support Event representatives are not technicians. Although needs vary by customer, depending upon the customer's needs and the customer's scheduling of support staff for an election, Site Support Event representatives may assist with election administration, procedural guidance, hardware and software operation, Election Day call center staffing, as a roving troubleshooter during Election Day, and election night accumulation of results. They also will liaison with ES&S support desks if necessary. Note: It is not the responsibility of the Site Support Event representatives to repair tabulation or results reporting equipment. If you have a technical issue, the Site Support Event representative will assist in contacting the technicians in the appropriate support office. Site Support Events are billed per person, per Site Support Event.	ES&S	6 Events @ \$4,125.00 per Event.  Total of \$24,750.00	\$4,125.00 per Event
<b>Integration and Interface</b>	ES&S will develop, test, and implement, automated interfaces between its system and the Virginia SBE VERIS election results reporting system, the Customer's public access channel and the Customer's election results reporting system subject to ES&S review and approval of the County's interface requirements.	ES&S	Included	\$1,575.00
<b>Shipping Material</b>	Dispose of shipping materials (boxes, packaging, etc.)	Customer	N/A	N/A
<b>Total Election Support Services</b>			<b>\$156,450.00</b>	

**Notes:**

1. The hourly rate for project management and training services is \$197.00 per hour and is subject to a minimum of four (4) consecutive hours per day.
2. All daily and hourly service rates include travel and per diems.
3. Customer shall receive a credit on account for each Election Support Service day not utilized by Customer. Customer may use the foregoing credit on account towards the purchase of ES&S products and services during the Term of the Agreement.
4. In the event ES&S fails to perform its obligations with respect to providing the Election Support Services in accordance with the descriptions set forth herein, Customer may request that additional Election Support Service days be provided to the Customer, at no cost, in order for ES&S to perform the Election Support Services in accordance with the descriptions set forth herein.

5. In the event ES&S has personnel within two (2) hours of the Customer's Jurisdiction and such ES&S personnel is available to provide four (4) hours of Election Support Services to the Customer, ES&S and the County may mutually agree, in writing, to have such ES&S personnel perform such four (4) hour Election Support Services at a price of one-half the Additional Daily Bill Rate as set forth above.
6. Services may be invoiced for payment upon satisfactory completion of each Area of Work or Description and Customer's written approval of such services, with payment due within thirty (30) days of a properly submitted invoice for services.

**[END OF EXHIBIT D]**

**EXHIBIT E  
MAINTENANCE SERVICES  
(WARRANTY AND POST WARRANTY PERIOD)**

**ARTICLE I  
GENERAL**

1. **Term; Termination.** This Exhibit E for Hardware Maintenance and Software Maintenance and Support Services shall be in effect for the Warranty Period. Upon expiration of the Warranty Period, this Exhibit E shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit E is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Warranty Period or any Renewal Period, as applicable, (b) a termination as set forth in Exhibit G, (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by applicable federal and/or state authorities for use in Customer's jurisdiction. If the Agreement or this Exhibit E is terminated for any reason prior to the end of the term of the Warranty Period, Renewal Period or other coverage term for which maintenance and support services fees are prepaid by Customer, in addition to any other remedies under the Agreement and other rights available at law or in equity, Customer shall be entitled to immediate refund of such fees already paid to ES&S for such unexpired term at one-fifth of the prepaid amount for Maintenance Services for each unexpired year. Termination of the Agreement or this Exhibit E shall not relieve ES&S of liability to Customer for refund of amounts paid to ES&S for unsatisfactorily performed services during the Warranty Period or any Renewal Period or limit Customer's other remedies as further provided in Exhibit G. In addition to the provisions set forth herein, ES&S warrants that during the Warranty Period and any Renewal Period the System and all of its components will operate free of defects and function in accordance with its Specifications as stated in this Agreement and will operate and function in accordance with the federal and state certifications that were in effect at the time of successful completion of Milestone 8, Production Major Election 1 of 2 all in accordance with the terms set forth in Section 3.2(b) of the Agreement.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software Maintenance and Support Services under this Exhibit E, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance and Support Fees set forth on Schedule E1 for the Warranty Period, subject to the terms and conditions of the Agreement. The Hardware Maintenance and Software Maintenance and Support Fees for any Renewal Periods shall be as agreed to by the parties and such fees will not exceed ES&S' list prices which are in effect at the time of commencement of any Renewal Period. The Renewal Period fees are due and payable no later than thirty (30) days prior to the beginning of such renewal period which shall be January 1 of each such Renewal Period. The Software Maintenance and Support Fees shall be comprised of (i) a fee for the Software Maintenance and Support of the ES&S Firmware, and (ii) a fee for the Software Maintenance and Support for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit E. If Customer elects to receive Hardware Maintenance or Software Maintenance and Support for an Add-On License or New Product during the Warranty Period or any renewal thereof, ES&S will charge an incremental fee for such license and/or services. In such case the incremental fee shall be computed based on an amount equal to (1) the most recent fee paid or the applicable fee, as the case may be, for Hardware Maintenance Services or Software Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Warranty Period or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Warranty Period or Renewal Period. In the event Customer terminates this Exhibit E through no fault of ES&S and later desires to subscribe to a Hardware Maintenance or Software Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software Maintenance and Support Plan with ES&S during the Warranty Period or any renewal thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance or Software Maintenance and Support Coverage, subject to prior written approval of such fee by the Customer's Purchasing Agent.

**ARTICLE II**  
**HARDWARE MAINTENANCE AND SUPPORT SERVICES**

1. **Maintenance Services**. The Hardware Maintenance Services to be provided to Customer under this Agreement shall be for the ES&S Equipment listed on Schedule E1 (the "Products"). ES&S shall maintain the Products and remedy any defect so that they operate in conformity with the warranties set forth in Section 3.2 of the Election Systems & Software Voter Tabulation System and Services Agreement ("Agreement") to which this Exhibit is attached. The Hardware Maintenance Services shall be subject to the following terms and conditions:

a. **Routine Maintenance Services**. An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Specifications ("Normal Working Condition") (the, "Routine Maintenance Services") once each **Twelve (12) Months** beginning upon the expiration of the initial year of the Warranty Period, and annually thereafter during any renewal thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the ES&S Equipment, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices. Customer may request that Routine Maintenance Services be performed more than once during any year of the Warranty Period or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule E1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule E1 as "repair only" shall only be provided pursuant to Section 1(b) below.

b. **Repair Services**.

i. **Defects Under Normal Use and Service**. If a defect or malfunction occurs in any Product while being used in accordance with the Specifications and the terms of this Agreement, Customer shall promptly notify ES&S, and ES&S shall investigate and correct any error or defect in order to restore the item to Normal Working Condition, in accordance with the Service Level Requirements and timeframes set forth in Exhibit J. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a preventative maintenance event as follows: Repair Services for Products covered under this Agreement will be performed at Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions**. After delivery and acceptance of the Products by the parties, if a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse unless caused by ES&S, its employees or contractors or use that is not in accordance with the Agreement or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, and utility or communication interruptions, rodent infestation at Customer facilities, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services, subject to prior written approval of such costs by the Customer's Purchasing Agent. Customer shall promptly notify ES&S of any defect or malfunction which may occur as a result of any of the items set forth in this Section.

iii. **Timing**. Unless otherwise mutually agreed upon, in writing by the parties, the date(s) on which the Repair Services shall be provided shall be in accordance with Service Level Requirements and timeframes set forth in Exhibit J. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided within shorter time periods than the time periods set forth in Exhibit J.), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule E1.

iv. **Loaner Unit.** If ES&S fails to complete repairs in accordance with the Service Level Requirements and timeframes set forth in Exhibit J and such repairs are not being performed pursuant to Section 1(b)(ii), ES&S shall promptly make available to Customer a product that is the same as, or substantially similar to, Product for which Repair Services are being performed (a "Loaner Unit") at no cost to Customer. If Customer requests a Loaner Unit and such Loaner Unit is being requested as a result of Repair Services being performed pursuant to Subsection 1(b)(ii) above and provided such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed and Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping, subject to Customer's prior written approval of such costs and rates.

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

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative, contractor, agent or third party authorized, in writing, by ES&S and the Customer to provide maintenance or repairs with respect to the Products for so long as the Warranty Period or any Renewal Period is in effect. Any third party providing maintenance to the System or Products shall be subject to approval by Customer. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets, subject to County security requirements.

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

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

**ARTICLE III**  
**SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

1. **Services Provided.** ES&S shall maintain the ES&S Software and remedy any defect so that it operates in conformity with the warranties set forth in Section 3.2 of the Agreement. ES&S shall provide software, maintenance and support services ("Software Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software") to enable it to perform in accordance with its Specifications in all material respects, and to cure any defect in material or workmanship. ES&S shall investigate and correct any defect or error affecting the ES&S Software within the timeframes set forth in Exhibit J. The specific Software Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are further set forth on Schedule E1.

2. **Updates.** During the Warranty Period and any Renewal Period thereof, ES&S shall continue to provide Updates in accordance with the terms of Section 2.5 of the General Terms of the Agreement.

3. **Conditions.** ES&S shall not be responsible for the cost of services for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse, unless caused by ES&S, its employees or contractors or use that is not in accordance with this Agreement, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S. 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. Replacement versions of ES&S Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates, subject to prior written approval of such costs by the Customer's Purchasing Agent. Customer shall promptly notify ES&S of any defect or error which may occur as a result of any of the items set forth in this Section.

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

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

## Schedule E1

**ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES DURING THE WARRANTY PERIOD**

Listed below are the Hardware Products for which "Gold" Hardware Maintenance and Support services will be provided during the Warranty Period:

Description	Number of Units	Total Fees for the Warranty Period
DS200 Hardware	525	\$459,375.00
DS850 Hardware	1	\$19,500.00
ExpressVote Hardware	600	\$345,000.00

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

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

**Note 3: Customer's Designated Location: Fairfax County, Virginia or such other Customer designated location as may be required in the event of any emergency.**

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

**Note 5: The Ballot On Demand Balotar printers set forth in Exhibit B are subject to break/fix maintenance, the payment for which is included in the Ballot Processing Fees set forth in Exhibit B.**

**Note 6: In the event the Customer subsequently acquires any ES&S Equipment, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform to a calendar year.**

**Hardware Maintenance Services Provided by ES&S Under the Agreement**

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

5. Repair Services.

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

6. Priority Services.

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

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

**ES&S SOFTWARE MAINTENANCE AND SUPPORT DESCRIPTION AND FEES DURING THE WARRANTY PERIOD**

Listed below are the Election Management Software Modules for which Software Maintenance and Support will be provided:

<b>Description</b>	<b>Number of Licenses</b>	<b>Total Fees for the Warranty Period</b>
ElectionWare EMS Software with Voice File Capability for English and One Additional Language	1	\$242,290.00

Listed below are the Hardware Products for which Software (Firmware) Maintenance and Support will be provided:

<b>Description</b>	<b>Number of Units/Licenses</b>	<b>Total Fees for the Warranty Period</b>
DS200 Firmware	525	\$196,875.00
DS850 Firmware	1	\$5,812.50
ExpressVote Firmware	600	\$150,000.00

**Note 1:** In the event the Customer subsequently acquires any ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform to a calendar year

**Software Maintenance and Support Services Provided by ES&S Under the Agreement**

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

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

**Software Maintenance and Support and Hardware Maintenance and Support Services – Customer and ES&S Responsibilities**

1. Customer's current software and hardware operators shall have completed a full EMS Software training session for each product selected.
  - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products General/Primary and/or Special elections.
  - Customer shall have the ability to install firmware and application software and make changes to date and time settings. This will be performed in accordance with ES&S instructions or documentation. ES&S shall provide access to its technical guidance and expertise to assist the Customer with firmware, application software, date, time, or other setting issues that arise during implementation or operation.
  - Customer shall have the ability to store equipment in accordance with ES&S requirements.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.

4. ES&S shall be responsible for procurement and availability of the Third Party Software and Third Party Equipment, or their equivalents, identified by ES&S in Exhibit H. ES&S and Customer shall be jointly responsible for resolving any implementation and integration issues regarding the Third Party Software and Third Party Equipment, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer VR system. ES&S shall provide access to its technical guidance and expertise to assist the Customer with data extraction issues during implementation or operation.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise. ES&S shall provide access to its technical guidance and expertise to assist the Customer with any security or networking implementation or operational issues.
7. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of ES&S software or hardware. ES&S shall provide access to its technical guidance and expertise to assist the Customer with any error or exception handling implementation or operational issues.
8. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity. ES&S shall provide access to its technical guidance and expertise to assist the Customer with any networking implementation or operational issues.
9. In the event the Customer engages a non-ES&S ballot printer to print its ballots for use with the System to be provided by ES&S hereunder, Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.

**Summary  
Prepaid Hardware, Firmware, and Software Maintenance and Support Fees  
for the Warranty Period:**

<b>Description</b>	<b>Total Fees For The Warranty Period</b>
Gold Hardware Maintenance and Support Services	\$823,875.00
(1) Election Management Software Maintenance and Support Services	\$242,290.00
(2) Firmware Maintenance and Support Services	\$352,687.50
<b>Total Hardware, Software, and Firmware Maintenance and Support Fees for the Warranty Period</b>	<b>\$1,418,852.50</b>
(3) Less: Prepayment Discount	(\$137,613.83)
<b>Net Hardware, Software, and Firmware Maintenance and Support Fees for the Warranty Period</b>	<b>\$1,281,238.67</b>

**EXHIBIT F**  
**ACCEPTANCE CRITERIA**  
**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. If the LED is a solid green, the Battery Pack is completely charged.
  - o Verify AC Plug Icon is present and does not have an "X" located in upper right corner of the screen.
- Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
  - o Touch the two circles (one in the Upper Left Corner and one in the Lower Right Corner of the screen) and then touch the "Save & Exit" button.
- Verify the DS200 Firmware Version on Startup Printout.
- Insert the Flash Drive containing the BMW Demo Election in USB port B.
  - o When the unit recognizes the Flash Drive w/ Demo Election, the Election Icon will go from having an "X" to a green ✓ mark on it.
- Check the date and time on the top portion of the display to ensure the date and time is correct.
  - o If a change is needed, press the lower right arrow on the display screen then press the "go to admin button" and on the next screen enter the password.
  - o Go to "systems settings", "date and time" and then press date or time and a keyboard will come up so you can make changes. Press the "enter key". You will go back to the original screen where you will press previous and here you will "accept new time."
- Press the "OPEN POLLS" button on the screen to scan the BMW Demo Ballots.
- Ensure that the test ballots scan in all four orientations.
- Insert the 2 Demo Ballots to check the Multi-Sheet Sensor. Two sheets should be rejected.
- Press and hold the "CLOSE POLLS" button for two seconds to close the polls.
- Verify that the Precinct Report Printout should read 4 ballots cast.
- Disconnect the Wall Power Adapter cord from unit.
  - o Unit should continue to operate, and the X should appear over the AC icon.
- Re-connect Wall Power Supply cord
  - o The X should disappear from the AC icon.
- Check Modem Operation. (If Unit is equipped with a Modem)
- Power down the unit by touching the "Shutdown" button on the Touch Screen.
- Verify that the Display switch operates correctly by completing the following:
  - o With the Wall Power Adapter still connected to the unit, lower the Display to the closed position.
  - o Raise the Display back to the opened position.
  - o The unit should power back up.

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

- Verify all Locks and Doors have a smooth function and are locked.

**ACCEPTANCE CRITERIA**  
**DS850 Acceptance Testing Criteria**

**Date:** \_\_\_\_\_ **Machine SN:** \_\_\_\_\_ **Location:** \_\_\_\_\_

Visual Inspection:

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

Physical Inspection:

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

Inspector: \_\_\_\_\_

**ACCEPTANCE CRITERIA**  
**ExpressVote Acceptance Testing Criteria**

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

Visual Inspection:

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

Setup:

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

Print Testing:

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

Audio Testing:

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

Inspector: \_\_\_\_\_

Attach printed paper records from ExpressVote to this checklist.

**ACCEPTANCE CRITERIA**  
**Balotar Compact Printer Acceptance Testing Criteria**

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

Visual Inspection:

- Confirm that there are no scratches, or gouges on any part of the unit printer or laptop
- Verify all printer consumables have been unpacked and installed in system
- Confirm that precision alignment tray is installed
- Confirm laptop is installed

Setup:

- Ensure printer and laptop are connected to A/C power
- Turn power switch on OKI to ON position
- After 60 seconds, validate that the LCD panel on the printer reads "Ready to Print" and no error messages are present
- Turn laptop power on and log into laptop using provided password
- Open the Balotar application and log into the system using provided password

Print Testing:

- Confirm appropriate sized ballot stock is loaded into the precision alignment tray
- Double click on "Test" job, then right click to run the "Test" job
- Enter ballot style from list provided and generate ballots as indicated in operating guide
- Visually inspect the printed ballot ensure accurate alignment and print quality

Inspector: \_\_\_\_\_

**ACCEPTANCE CRITERIA**  
**Balotar Flex Printer Acceptance Testing Criteria**

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

Visual Inspection:

- Confirm that there are no scratches, or gouges on any part of the unit printer or laptop
- Verify all printer consumables have been unpacked and installed in system
- Confirm that precision alignment tray is installed
- Confirm laptop is installed

Setup:

- Ensure printer and laptop are connected to A/C power
- Turn power switch on OKI to ON position
- After 60 seconds, validate that the LCD panel on the printer reads "Ready to Print" and no error messages are present
- Turn laptop power on and log into laptop using provided password
- Open the Balotar application and log into the system using provided password

Print Testing:

- Confirm appropriate sized ballot stock is loaded into the precision alignment tray
- Double click on "Test" job, then right click to run the "Test" job
- Select "Test" File for import and follow operator instructions to generate the 5 ballot print file
- Visually inspect the printed ballot ensure accurate alignment and print quality

Inspector: \_\_\_\_\_

## Fairfax County, VA Mock Election

Below is an outline of the basic tasks for a Mock Election. This includes election programming, ballot layout, test deck creation, equipment scanning, accumulation of results, results reporting and post-election duties.

**Note: It is ES&S' recommended best practice to conduct the Mock Election as a separate event to be scheduled after both the Acceptance Testing and the Hardware and Training Events have been completed. This approach ensures the Mock Election exercise will be a success. Please note the defined Mock Election information below is subject to change to mutually agreeable terms and conditions by both Fairfax County and ES&S.**

### Set up and Preparation:

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- Software/Equipment:
  - ElectionWare
  - Balotar Compact and Balotar Flex
  - DS200
  - ExpressVote
  - DS850
- Fairfax County to program election and layout ballots in ElectionWare
  - English/Spanish
  - 10 precincts
  - 2 ballot styles
    - 4 precincts in the 8<sup>th</sup> Congressional District
    - 4 precincts in the 11<sup>th</sup> Congressional District
    - 2 precincts split between the 8<sup>th</sup> and 11<sup>th</sup> Congressional Districts
    - Ballot Style 1 - an 8<sup>th</sup> Congressional contest with 4 candidates (vote for 1 with write-in)
    - Ballot Style 2 – an 11<sup>th</sup> Congressional contest with 3 candidates (vote for 1 with write-in)
    - Both Ballot Styles - 1 School Board contest with 8 candidates (vote for 3 with write-ins)
    - Both Ballot Styles - 1 Bond Issue question (vote yes or no)
  - Election will be set to reject overvoted and blank ballots.
- Fairfax County to prepare ERM and set up reports
- Fairfax County to provide all ballots and expected results (quantity to be mutually determined between County and ES&S)
  - Pre-printed test deck ballots
    - Folded ballots for DS850
    - Flat ballots for DS200
  - Blank ballots for handmarked ballots to be generated from Balotar
  - Blank ExpressVote Cards
- Fairfax County to prepare election media and equipment
  - Create/Load Election Qualification Code
  - Create/Load Election Definition
- ES&S to prepare Balotar Election Set Up from County provided pdfs and files

### Mock Election Overview:

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#### **Simulate 1 In-Person Absentee Site – all 10 precincts**

- 1 laptop with 2 Balotar Compact printers
- 2 DS200s with all 10 precincts
- 1 or 2 ExpressVotes (Qty TBD) with all 10 precincts
- Feed all ballots/ExpressVote Cards (Qty TBD) through DS200
- Review ballot accounting procedures/public count
- Verify Report Tape against expected results

#### **Simulate Absentee Ballot Count – 10 precincts**

- 1 DS850
- Prep all pre-printed folded ballots/ExpressVote Cards (Qty TBD) and feed through DS850
- Verify Report against expected results

**Simulate Election Day – 10 precincts**

- 2 DS200s per Precinct
- 1 or 2 ExpressVotes per Precinct (Qty TBD)
- Review ballot accounting procedures/public count
- Feed ballots/ExpressVote Cards (Qty TBD) through each DS200
- Verify Report Tapes against expected results

**Accumulation of Totals**

- Manually update DS200 results into ERM for In-Person Absentee from 10 precincts
- Transmit via network into ERM DS850 Absentee results for 10 precincts (Qty of ERM reads TBD)
- Manually update DS200 results into ERM or transmit via 1 Regional Sending Site for Election Day
- Generate ERM Reports and verify against expected results

**Post Election Canvassing**

- Archive data in ERM
- Load images into ElectionWare>Acquire Module
- Review write-in images in ElectionWare>Produce Module
- Backup election data

**Simulate Recount Election**

- Code Recount Election in ElectionWare
- Create media
- Set up ERM
- Process ballots on equipment
  - 50% on DS200s
  - 50% on DS850
- Accumulate Totals in to ERM
- Generate ERM Reports and verify results

**EXHIBIT F  
ACCEPTANCE CRITERIA**

**CERTIFICATE OF INTERIM ACCEPTANCE**

ES&S shall submit a Certificate of Acceptance in the form of this Exhibit F for each interim acceptance Milestone or other request for payment.

This Acceptance Certificate memorializes the occurrence of Interim Acceptance for payment as set forth below.

**CERTIFICATION BY ES&S of Interim Acceptance Testing:**

ES&S hereby represents and acknowledges that:

1. ES&S has in all material respects complied with, satisfied and performed the following deliverables and services under the Election Systems & Software Voter Tabulation System and Services Agreement:

Reference Payment Milestone or satisfaction of other requirement for payment identified in Schedule A-1.

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<b>DS200 Units</b>	<b>DS850 Units</b>	<b>ExpressVote Units</b>	<b>Balotar Compact Printer</b>	<b>Balotar Flex Printer</b>
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>
<u>Units Accepted</u>	<u>Units Accepted</u>	<u>Units Accepted</u>	<u>Units Accepted</u>	<u>Units Accepted</u>

Serial Numbers of respective Equipment are attached.

2. ES&S has completed all necessary work contemplated by the Agreement to satisfy conditions for this payment milestone.

**ES&S Representative:**

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Customer Representative:**

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**CERTIFICATE OF FINAL ACCEPTANCE**

ES&S shall submit a Certificate of Final Acceptance in the form of this Exhibit F upon successful completion of Final Acceptance Testing.

This Acceptance Certificate memorializes the occurrence of Final Acceptance Testing in accordance with Section 2.7 of the Agreement (entitled "Interim and Final Acceptance Testing/Kick-off Meeting) for payment as set forth below.

ES&S hereby certifies that the Final System Acceptance Tests as outlined in Section 2.7 of the Agreement, Exhibit F and Schedule A-1 have been successfully completed.

**FINAL SYSTEM ACCEPTANCE:**

1. The Final System Acceptance Tests as outlined in Section 2.7 of the Agreement, Exhibit F and Schedule A-1 have been successfully completed.
2. The System is accepted as of the date upon which Customer and ES&S have executed this Final System Acceptance Certificate below.
3. ES&S has provided and Customer has received all deliverables required for payment for Final Acceptance, and Customer has accepted all other work required for payment for Final System Acceptance.

ES&S Representative:

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Customer Representative:

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**[END OF EXHIBIT F]**

**EXHIBIT G**  
**Customer Standard Terms and Conditions**

The parties acknowledge and agree that the following Customer Standard Terms and Conditions shall be deemed a part of the Election Systems & Software Voter Tabulation System and Services ("Agreement") and incorporated as if fully set forth in the Agreement. As such, the parties hereby agree to the following:

1. County engages the Contractor to provide the following goods and/or services:
  - 1.1. Delivery and implementation of the System and related software and services from Contractor for use in Fairfax County, Virginia as described in this Agreement, including its Exhibits.
2. PERIOD OF CONTRACT:
  - 2.1. The period of this Agreement shall be from the Effective Date through that same month and date in calendar year 2021. This Agreement may be renewed for additional one-year periods, as mutually agreed upon by the parties. Customer has the option to purchase additional items beyond the quantities set forth in Exhibit B as well as the option to purchase the optional items as set forth in Exhibit B. In the event the Customer exercises the option to purchase such additional or optional items, the unit pricing set forth in Exhibit B shall remain fixed for such additional or optional items through December 31, 2016. Thereafter, Contractor may increase the unit pricing for such additional quantities or optional items by no more than five percent (5%) per year for any subsequent year during the remaining term of the Agreement. Contractor shall provide Customer with no less than six (6) months prior written notice of any change in pricing for such additional quantities or optional items.
3. COMPENSATION:
  - 3.1. County agrees to milestone and final payments to the Contractor for the System and related services provided as described in Exhibit A, subject to the terms and conditions of the Agreement. As the Contractor is not a bonafide County employee, the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the Contractor.
4. AUTHORITY:
  - 4.1. The County Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by Fairfax County. In the discharge of these responsibilities, the County Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of Fairfax County for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and shall not be binding on the County.
  - 4.2. The obligation of the County to pay compensation due the Contractor under the Agreement or any other payment obligations under any contract awarded pursuant to this Agreement is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the Agreement shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the Agreement beyond the amount appropriated for payment obligations under the Agreement. Notwithstanding the foregoing, the County shall pay for all goods and services for which funds have been appropriated that have been satisfactorily performed and accepted by the County in writing as set forth in the Agreement up through the effective date of termination. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the Agreement into a fiscal year in which sufficient funds have not been appropriated.
5. DEFINITIONS:
  - 5.1. Except as otherwise specifically defined in the Agreement, all terms used in this Exhibit G are defined in the Fairfax County Purchasing Resolution, Article 1, Section 6 and shall be used in accordance with such definitions.

**6. INTERPRETATION OF CONTRACT:**

- 6.1. Any questions pertaining to this Agreement shall be directed to:

Mary McMahon, Contract Specialist  
Department of Purchasing & Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, Virginia 22035-0014  
Telephone Number: (703) 324-3280  
E-mail: [mary.mcmahon@fairfaxcounty.gov](mailto:mary.mcmahon@fairfaxcounty.gov)

**7. METHOD OF ORDERING:**

- 7.1. As requirements arise, authorized individuals will place orders for specific quantities of items covered herein. Regardless of the method of ordering used, the Agreement and any subsequent modifications determine performance time and dates. Performance under this Agreement is not to begin until receipt of the purchase order or other notification to proceed by the County Purchasing Agent and/or County agency to proceed.
- 7.2. The County shall place orders from the Agreement through Purchase Orders (PO).
- 7.3. A Purchase Order may be issued to the Contractor on behalf of the County agency ordering the items/services covered under this Agreement. An issued PO will become a part of the resulting Agreement.

**8. CANCELLATION OF ORDERS:**

- 8.1. Purchases made under this Agreement are for readily available services and supplies; time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this Agreement subject to any cure periods set forth in the Agreement. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

**9. NEW GOODS, FRESH STOCK:**

- 9.1. All contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

**10. INSPECTION AND ACCEPTANCE:**

- 10.1. Acceptance Testing shall proceed as set forth in Section 2.7 of the Agreement.
- 10.2. The County shall have the right to inspect goods and services in order to assess whether goods are damaged or non-conforming. The County shall have no duty to accept any goods or services that do not satisfy requirements of the Agreement and acceptance test criteria. For determining acceptance of supplies or services for the purpose of eligibility for a prompt payment discount, inspection and acceptance shall be accomplished only after examination (including testing) to determine conformance with the requirements of the Agreement. Inspection, as appropriate, shall be accomplished within a reasonable time.
- 10.3. Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. Inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

**11. PACKING LIST/DELIVERY TICKETS:**

- 11.1. A packing list or delivery ticket must be furnished with each shipment indicating the Purchase Order number, vendor name, item description, quantity ordered, and quantity shipped.

**12. INVOICING PROCEDURE:**

- 12.1. The Contractor shall submit invoices for each Purchase Order and submit to the BILL TO address shown on the order. The invoices shall contain the applicable Purchase Order number and the name of the department receiving the services.

**13. PAYMENT:**

- 13.1 Contractor shall prepare and submit invoices upon the County's written approval of the successful completion of milestones and Interim or Final System Acceptance Testing for amounts payable in compliance with Exhibit A. The invoices for completion of milestones will be paid contingent upon satisfactory completion of milestones and successful completion of Interim or Final System Acceptance Testing, in accordance with the terms of the Agreement and in accordance with milestone payments set forth in Schedule A-1 to Exhibit A. Payment shall be made after satisfactory performance of work required for each milestone payment set forth in Schedule A-1 to Exhibit A of the contract, in accordance with all of the provisions thereof and upon receipt of a properly completed invoice. The County shall pay Contractor within thirty (30) days of its receipt of a properly submitted invoice by Contractor subject to the terms and conditions of the Agreement. The County reserves the right to withhold payments or portions of such payments for those goods or services which Contractor has failed to perform in accordance with the terms of the Agreement, including failure of goods delivered to satisfactorily pass inspection or acceptance testing.

**14. SHIPPING:**

- 14.1. All materials shipped to the County must be shipped F.O.B. destination unless otherwise stated in a subsequent purchase order. The materials must be delivered to the "ship to" address indicated on the purchase order. The County shall not pay transportation charges unless the Contractor received prior approval from the Purchasing Agent.

**15. AUDIT RECORDS:**

- 15.1. The Contractor shall maintain adequate copies of books, records, vouchers, and records of treatment in such a manner that they may be audited in progress and upon three years following completion of the Agreement. The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make such records available to the County for a period of three (3) years thereafter.

**16. TAX EXEMPTION:**

- 16.1. The County is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. The Federal Excise Tax Number is 54-74-012K. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling (703) 324-3206.

**17. CONTRACT INSURANCE PROVISIONS:**

- 17.1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Agreement.
- 17.2. The Contractor shall, during the continuance of all work under the Agreement provide the following:
- a. Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
  - b. The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Agreement or in connection with the contracted work.

The General Liability insurance shall include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the Agreement.

- c. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- d. Contractor agrees to maintain Contractors Liability insurance in the amount of \$1,000,000.00 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- e. Liability Insurance "Claims Made" basis:
 

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

  - 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the Agreement. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or sub-contractor's work under this Agreement, or
  - 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Agreement and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- f. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- g. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- h. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
- i. The Contractor will provide an original, signed Certificate of Insurance citing the Agreement number and such endorsements as prescribed herein.
- j. The Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.
- k. The Contractor will provide on demand certified copies of all insurance policies related to the Agreement within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.

- 17.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
  - 17.4. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the Agreement.
  - 17.5. Contractual and other liability insurance provided under this Agreement shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
  - 17.6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
  - 17.7. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
  - 17.8. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this Agreement.
  - 17.9. The County, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."
18. INDEMNIFICATION:
- 18.1. The Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all reasonable charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. The Contractor expressly understands and agrees that any performance bond or 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 as herein provided.
19. CONTRACT ALTERATIONS:
- 19.1. No alterations in the terms of the Agreement shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent. Should it become proper or necessary in the execution of this Agreement to make any change in design or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.
  - 19.2. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the Agreement, unless some changes in or additions to the Agreement requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
  - 19.3. The County reserves the right to add similar items/services or delete items/services specified in the resultant Agreement as requirements change during the period of the Agreement. Fairfax County and the Contractor will mutually agree to prices for items/services to be added to the Agreement. Agreement amendments will be issued for all additions or deletions.

**20. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:**

- 20.1. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the Agreement, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Agreement relieve the Contractor from his or her obligations or change the terms of the Agreement.

**21. TERMINATION FOR CONVENIENCE:**

- 21.1. The Agreement will remain in force for the full period specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries and payments of entire Agreement requirements, or upon termination by the County for Convenience or by either the County or Contractor for Cause as set forth in Section 22 herein.
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at Agreement prices and in accordance with the terms of the Agreement.

- 21.2. The Agreement may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery of a Notice of Termination to the Contractor at least five working days prior to the termination date specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Agreement price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

**22. TERMINATION OF CONTRACT FOR CAUSE:**

- 22.1. If, through any cause, the Contractor fails to fulfill in a timely and proper manner his or her obligations under this Agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this Agreement and Contractor fails to cure any breach or default hereunder within thirty (30) days of Contractor's receipt of written notice of such breach or default, in addition to the County's remedies under the Agreement and all other rights available at law or in equity, the County shall have the right to immediately terminate this Agreement, provided that if a breach or default occurs within sixty (60) days prior to the date of any election in Fairfax County or a breach or default occurs and is not cured within sixty (60) days prior to the date of any election in Fairfax County, the County may at its option, provide Contractor with a shorter period in which Contractor shall cure any breach or default and, in addition to the County's remedies under the Agreement and all other rights available at law or in equity, the County shall have the right to immediately terminate this Agreement upon written notice at any time. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Agreement shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

- 22.2. If, through any cause, the County fails to fulfill in a timely and proper manner his or her obligations under this Agreement, or if the County violates any of the covenants, agreements, or stipulations of this Agreement and County fails to cure any breach or default hereunder within thirty (30) days of County's receipt of written notice of such breach or default, in addition to the Contractor's remedies under the Agreement and all other rights available at law or in equity, the Contractor shall have the right to immediately terminate this Agreement, provided that so long as the County has paid Contractor for all undisputed amounts due and payable up through sixty (60) days prior to an election, the Contractor shall not terminate the Agreement within sixty (60) days of any election and prior to the date that the results of such election are certified, the time for a recount or contest has passed and any such recount or contest, or any other challenge to the results of the election is final. Subject to the foregoing, a termination shall be effected by delivering a notice of termination to the County at any time specifying the effective date of such termination.

- 22.3. Notwithstanding the above, the breaching party shall not be relieved of liability to the non-breaching party for damages sustained by the non-breaching party by virtue of any breach of Agreement by the breaching party for

the purpose of set off until such time as the exact amount of damages due to the non-breaching party from the breaching party is determined.

- 22.4. In addition to the remedies described above, in the event of breach or default, the County shall be entitled to refund of pre-paid fees for Warranty Period, Renewal Period or other coverage term for which maintenance and support services fees are prepaid by Customer and may recover fees paid for unsatisfactorily performed services.

23. GENERAL GUARANTY:

23.1. Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner. Damages for intellectual property infringement shall not be considered indirect, incidental, punitive, exemplary, special or consequential damages under Section 3.4 of the Agreement (entitled "Limitation of Liability").
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County. This includes, but is not limited to meeting all applicable federal and state certification standards, all applicable voting system performance and test standards developed by the Virginia State Board of Elections and to protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

24. SERVICE CONTRACT GUARANTY:

24.1. Contractor agrees to:

- a. Furnish services described in the Agreement at the times and places and in the manner and subject to conditions set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents, and including applicable federal and state certification standards.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the Agreement.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the Agreement requirements, or be deemed a defense on the part of the Contractor for infraction. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the Agreement documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

## 25. OFFICIALS NOT TO BENEFIT:

- 25.1. Upon acceptance of this Agreement, the Contractor certifies that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Agreement in accordance with the Fairfax County Purchasing Resolution Article 2, Section 4.A.3.

## 26. LICENSE REQUIREMENT:

- 26.1. All firms doing business in Fairfax County shall obtain a license as required by Chapter 4, Article 7.2, of The Code of the Fairfax County, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm).

## 27. REGISTERING OF CORPORATIONS:

- 27.1. In accordance with Virginia Code Section 13.1-758, any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, as amended, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209.

## 28. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:

- 28.1. A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

## 29. COVENANT AGAINST CONTINGENT FEES:

- 29.1. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this Agreement without liability to the County or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## 30. VENDOR RELATIONS DIVISION:

- 30.1. In connection with the performance of this Agreement, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this Agreement consistent with the efficient performance of this Agreement. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation. PLEASE COMPLETE THE ATTACHED BUSINESS CLASSIFICATION SCHEDULE.
- 30.2. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

**31. INELIGIBILITY:**

- 31.1. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 4, Section 1 of the Fairfax County Purchasing Resolution.

**32. ORDER OF PRECEDENCE:**

- 32.1. In the event of conflict, the provisions of this Exhibit G shall take precedence over the any other Agreement document.

**33. DELAYS AND SUSPENSIONS:**

- 33.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of the Agreement. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

- 33.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the Agreement, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for Agreement completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the County Purchasing Agent is reasonably suited for completion of work. The County may further amend the Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of the Agreement. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

- 33.3. The Contractor shall continue its work on other phases of the project or Agreement, if in the sole discretion of the County Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a Agreement amendment.

**34. CONTRACTUAL DISPUTES:**

- 34.1. The parties will attempt to resolve by agreement any dispute arising from this Agreement as quickly as possible. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within ninety (90) days, in accordance with Article 4, Section 5 of the Fairfax County Purchasing Resolution, as amended.

**35. COMPLIANCE WITH FEDERAL, STATE, AND COUNTY LAWS:**

- 35.1. The Contractor will comply with all applicable federal and state laws and with all County ordinances and requirements, including but not limited to federal and state certification standards.

**36. NON-DISCRIMINATION:**

- 36.1. During the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, in accordance with Article 2, Section 4.C of the Fairfax County Purchasing Resolution, as amended.

**37. DRUG FREE WORKPLACE:**

- 37.1. During the performance of this Agreement, the Contractor agrees to provide a drug-free workplace for the Contractor's employees in accordance with Article 2, Section 4, B.6 of the Fairfax County Purchasing Resolution, as amended.

**38. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:**

- 38.1. Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government Contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Acceptance of this Agreement by the Contractor acknowledges the Contractor's commitment and compliance with ADA.

**39. VENUE:**

- 39.1. This Agreement and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement or any performance hereunder, shall be brought in the state courts of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.

**40. IMMIGRATION REFORM AND CONTROL ACT:**

- 40.1. Contractor agrees that it does not, and shall not during the performance of the Agreement for goods and services in the Commonwealth; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**41. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

- 41.1 Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

SCC Identification Number: T0513590

## BUSINESS CLASSIFICATION SCHEDULE

## DEFINITIONS

**Small Business/Organization** – is an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

**Minority Business** – is a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native America, Eskimo or Aleut.

**Woman-Owned Business** – A business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

**YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING ONE (1) OF THE SIX (6) BOXES IN THE CHART BELOW.** This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.

**Examples:**

A small business, Asian woman owned, would mark box C on line 2.

A large business, African-American owned, would mark box V on line 3.

A small non-profit would mark box B on line 1.

A large business, publicly traded on NYSE or NASDAQ, would mark box Y on line 1.

Line	SMALL BUSINESS	LARGE BUSINESS	OWNERSHIP
1.	<input type="checkbox"/> B	<input checked="" type="checkbox"/> X <input type="checkbox"/> Y	Regardless of Ownership
2.	<input type="checkbox"/> C	<input type="checkbox"/> A	Women-Owned
3.	<input type="checkbox"/> X	<input type="checkbox"/> V	Minority-Owned

NAME OF FIRM: Election Systems & Software, LLC

**Exhibit I**

**Exhibit I shall consist of the following Attachments which are specifically Incorporated herein:**

- Attachment 1 – CNI Response, dated November 18, 2013;
- Attachment 2 – Responses to SAC Negotiation Questions, dated April 7, 2014; and
- Attachment 3 – Responses to Negotiation Questions and Project Manager Biography, dated April 22, 2014.

**Exhibit J  
ES&S Service Level Requirements**

PRIORITY CODE	RESPONSE TIME	SYSTEM TRACKING	LEVEL OF SUPPORT
<p><b>1-Critical – Tier 3</b></p> <p>Resolution to begin immediately. One (1) hour resolution time unless otherwise mutually agreed upon by the parties (to include weekends during an election cycle)</p>	<p>Not to exceed 10 Minutes response to customer - Immediate</p>	<p>An acknowledgement reminder email is sent to the assigned individual within 10 minutes of service call.</p>	<p>ES&amp;S' Tier 3 Level of Software Support is staffed by ES&amp;S' Software Developers who have the most detailed understanding of the ES&amp;S' Software. ES&amp;S' Software Developers will provide thorough troubleshooting as well as work around solutions in order to resolve any Customer questions/issues as quickly as possible in order to enable the Customer to continue preparing for, or conducting the election with minimal disruption.</p> <p>ES&amp;S' Tier 3 Level of Hardware Support is provided by Field Services technicians who have the most detailed and experienced understanding of the ES&amp;S' Hardware. The Tier 3 Field Services Technicians will provide on-site support in order to diagnose and resolve the issue affecting the individual piece of hardware in order to return such hardware to Normal Working Condition as soon as possible. In the interests of time, and under certain circumstances, the recommendation may be to remove a piece of Equipment from service and replace it with a back-up unit.</p>
<p><b>2-High – Tier 2</b></p> <p>24 hour resolution time unless otherwise mutually agreed upon by the parties (to include weekends during an election cycle)</p>	<p>Not to exceed 1 hour Response to customer</p>	<p>An acknowledgement reminder email is sent to the assigned individual within 1 hour of service call if problem has not been acknowledged.</p>	<p>Tier 2 Level of Software Support is provided by ES&amp;S, and this level of support will address and resolve questions/issues which PrintElect's Tier 1 Level of Software Support is unable to resolve. ES&amp;S Tier 2 Level of Software Support is staffed with experienced software support technicians who understand the configuration, operation and use of the ES&amp;S Software. In addition, ES&amp;S' experienced software support technicians have access to troubleshooting techniques as well as work around solutions in order to timely resolve any Customer question/issue. Issues that are unable to be resolved within Tier 2 Support are elevated to Tier 3.</p> <p>Tier 2 Level of Hardware Support is provided by ES&amp;S, and this level of support will resolve any questions/issue which PrintElect's Tier 1 Level of Hardware Support is unable to resolve. ES&amp;S Tier 2 Level of Hardware Support is staffed with experienced hardware support technicians who understand the configuration, operation and use of the ES&amp;S Hardware. In addition, ES&amp;S' experienced hardware support</p>

PRIORITY CODE	RESPONSE TIME	SYSTEM TRACKING	LEVEL OF SUPPORT
			technicians have access to troubleshooting techniques as well as work around solutions in order to timely resolve any Customer question/issue. Issues that are unable to be resolved within Tier 2 Support are elevated to Tier 3.
<b>3-Medium/Low Tier1</b>  5-15 days resolution time unless otherwise mutually agreed upon by the parties (to include weekends during an election cycle)	Not to exceed 2 hours response time to customer	An acknowledgement reminder email is sent to the assigned individual within 2 hours of service call if problem has not been acknowledged.	<p>Tier 1 Level of Software Support is provided by PrintElect (ES&amp;S' Authorized Subcontractor) who will provide answers to general and procedural questions with respect to the use and operation of the ES&amp;S Software. All calls placed to PrintElect's Help Desk will be answered as soon as the incoming call is received during the Support Hours set forth below. In the event PrintElect's Tier 1 Level of Software Support is unable to resolve the Customer's question or issue, PrintElect will elevate such question/issue to the ES&amp;S Tier 2 Level of Software Support for response and resolution.</p> <p>Tier 1 Level of Hardware Support is provided by PrintElect who will answer general and procedural questions with respect to the use and operation of the ES&amp;S Hardware. All calls placed to PrintElect's Help Desk will be answered as soon as the incoming call is received during the Support Hours set forth below. In the event PrintElect's Tier 1 Level of Hardware Support is unable to resolve the Customer's question or issue, PrintElect will elevate such question/issue to the ES&amp;S Tier 2 Level of Hardware Support for response and resolution.</p>

### Priority Code Definitions

**Critical** – Production system is down. Program or device is unusable or inoperable resulting in total disruption of work or severe/critical impact on the business. Customer not aware of any workaround.

**High** – Major feature/function/device failure. Operations are severely restricted with a major disruption of work. Customer is not aware of an acceptable interim workaround.

**Medium/Low** -- Minor feature/function/device failure. Program or equipment does not operate as designed or expected with moderate disruption of work. Customer may know of an acceptable interim workaround. Minor problem or general inquiry.

### **Service Level Requirements**

In determining the criticality of a failure, the following parameters will be applied to all Fairfax County General, Special and Primary Elections:

1. All failures that occur or persist within the time period beginning (a) five (5) days before absentee voting begins or the date of a scheduled election whichever comes first and ending twelve (12) days after said election or (b) five (5) days prior to any election qualifying deadline and extending until ballot

design and preparation is complete will be assigned a Priority Code based on the Priority Code definitions set forth above, unless otherwise mutually agreed upon by ES&S and Fairfax County or its designee.

2. All failures that occur or persist within the time period beginning thirty (30) days before a scheduled election and ending ten (10) days after said election will be assigned a Priority Code based on the Priority Code definitions set forth above, unless otherwise mutually agreed upon by ES&S and Fairfax County or its designee.
3. All failures that occur or persist more than thirty (30) days before or after an election will be assigned Priority Codes to be mutually agreed upon by ES&S and Fairfax County or its designee. In the event of a dispute, ES&S and Fairfax County agree that ES&S will provide service and resolution as expeditiously as possible and at not less than a Priority Code 3-Medium standard.

### **ES&S Maintenance and Support Services Help Desk information:**

#### **Tier 1 Level of Support**

PrintElect Telephone: 1-800-682-4500

- Option 117/118 for Technical Support
- Option 117/118 for Hardware Support
- Option 114 for Software Support
- Emergency after hour only: 910-303-0554

Email: [software@printelect.com](mailto:software@printelect.com) for Software Support; [hardware@printelect.com](mailto:hardware@printelect.com) for Hardware Support

- Hours/days of operation: Monday - Friday, 8:00 a.m. to 5:00 p.m. EST
- After hours: Leave a message and a call will be returned the next business day.
- After hours critical issues: on-call technician will be paged to return call as soon as possible
- Hours of operation during major elections: 5:30 am – until election is over (usually 2-3 am the following morning)

Alternatively,

ES&S Telephone: 1-877-377-8683 (1-877-ESS-VOTE)

- Option 1 for Hardware Support
- Option 2 for Software Support
- Option 4 for Technical Support

Email: [software@essvote.com](mailto:software@essvote.com) for Software Support; [hardware@essvote.com](mailto:hardware@essvote.com) for Hardware Support

- Hours/days of operation: Monday - Friday, 7:00 a.m. to 7:00 p.m. CST
- After hours: Leave a message and call will be returned the next business day.
- After hours critical issues: on-call technician will be paged to return call as soon as possible
- Hours of operation during major elections: One hour before the first polls open CST until election is over (usually 2-3 am the following morning).

#### **Tier 2 & Tier 3 Level of Support**

ES&S Telephone: 1-877-377-8683 (1-877-ESS-VOTE)

- Option 1 for Hardware Support
- Option 2 for Software Support
- Option 4 for Technical Support

Email: [software@essvote.com](mailto:software@essvote.com) for Software Support; [hardware@essvote.com](mailto:hardware@essvote.com) for Hardware Support

- Hours/days of operation: Monday - Friday, 7:00 a.m. to 7:00 p.m. CST

- After hours: Leave a message and call will be returned the next business day.
- After hours critical issues: on-call technician will be paged to return call as soon as possible
- Hours of operation during major elections: One hour before the first polls open CST until election is over (usually 2-3 am the following morning).
- ES&S maintains information regarding all statewide election dates. In the event of a special election, or other significant date, the customer can notify ES&S of these dates and Tier 2 support will be staffed accordingly.