

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 7, 2012

SUBJECT: Election Systems & Software LLC maintenance contract

PRESENTER: Beverly Cunningham

ATTACHMENT(S): Draft contract along with information from local (NC) agent

SUMMARY OF REQUEST:

Attached is the draft contract for the maintenance of the voting machines with Election Systems & Software (“ES&S”, which is the only vendor of hardware and software which North Carolina’s state-created specifications allow), which PrintElect, ES&S’s North Carolina agent, is requesting the County execute.

These costs have been paid for by the state since 2006 with the Help America Vote Act (“HAVA”) funds, but beginning July 1, 2012, such fees are County responsibilities.

Most counties appear to be opting for the five year contract because of the cost savings and the fact that if for any reason the hardware is decertified we will not be required to complete the contract.

NOTES FROM THE OFFICE OF THE COUNTY ATTORNEY:

This draft (form) contract from ES&S does not contain a provision for “pre-audit certification” by the County’s Finance Director, as required by N.C. Gen. Stat. §159-28. The absence of this certification would likely not preclude the County from enforcing this contract, but would likely preclude enforcement against the County. It is further noted that the draft contract presented by ES&S contains the following language in Article IV, Paragraph 5: *“Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect.”*

This contract is terminable by the County upon thirty days’ notice of the end of any year. Note, however, if the County terminates the contract prior to the end of the period chosen (one, three or five years), it has to pay the difference between the rate chosen and the then-current rate for ES&S for the period of years the contract was in effect. (By way of example, if the “five year rate” was \$90 per year, the County terminated after 3 years, and the then-current rate for a one year contract was \$110, the County would have to pay \$20 (the difference between the one year rate and the five year rate) times 3 years, or \$60.)

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Consideration of contract. If approved, choose term (1, 3 or 5 years).

Suggested Motion:

I move that the Board approve the Contract with ES&S for a period of [1] [3] [5] years.

Beverly Cunningham

From: Chris Andrews [chrisandrews@printelect.com]
Sent: Tuesday, March 27, 2012 3:40 PM
To: North Carolina
Subject: HMA Contracts & Coding Discount

Good Afternoon!

I wanted to send everyone a quick email regarding your ES&S Hardware Maintenance, Software and Firmware Licensing Contracts. I have followed up with almost all of the counties, and here are some of the hot topics-

- There is a 10% coding discount on all 5-year signed agreements. The discount is applicable for your next coding order, and is valid the entire length of your contract. I have attached the original email from Owen that stated the terms of this discount.
- Payment for your annual term will not be due until July 1st, next fiscal year. That is stated on the first page of your Terms and Conditions.
- This contract is not a binding contract, in the sense that your county can decide not to renew on an annual basis. This is stated in Article 1, number 1, under "Term; Termination":
 - "...Customer may terminate this Agreement at the end of any annual anniversary period during the Initial Term or an Renewal Period, written notice shall be delivered to ES&S at least thirty (30) days prior to the end of such annual anniversary period during the Initial Term or any Renewal Period, as applicable."
- There is not a specific due date for the signed contract. At the latest, I would think early May. I will let you know if one is set. We are receiving contracts now.

Those are the biggest concerns that I have had through my follow up so far. If you have any other questions, please contact me directly.

We have received back around 35% of the contracts. The overwhelming majority are taking advantage of the 5-year Agreement's price savings.

If I have not gotten to you yet, I will soon. If you have any immediate concerns, such as you have not received your folder with the contracts enclosed, feel free to email me, or call my cell phone (919) 208-3926.

Chris D. Andrews
Account Executive / Marketing Manager

410 N. Boylan Avenue, #98
Raleigh, NC 27603
Chrisandrews@printelect.com
(919) 208-3926



Dear North Carolina Election Officials,

I would like to take this opportunity to thank everyone for a great 2011 and wish everyone a Happy New Year. 2012 promises to be a busy year in the world of elections and our main goal at Printelect will remain to be providing exceptional products and customer services.

We realize that budget time is right around the corner and in some counties already in progress. To assist with this process ES&S recently mailed information related to the 2012 Hardware, Software and Firmware Maintenance and Support Renewal Plan options. Once you have received and reviewed the plan if you have any questions please feel free to contact me or a Printelect Team Member at 252-633-3197. You may also contact Mac Beeson, Regional Sales Manager for ES&S at 919-943-9446.

We are pleased to announce that in addition to what you have received on the 2012 Hardware, Software and Firmware Maintenance and Support Renewal Plans, we have secured a 10% discount off of the current ES&S coding prices for our North Carolina customers that commit to a 3 or 5 year contract on the Renewal Plans.

We look forward to a working with you in 2012 to ensure another successful election year and hope you will contact us if there is anything we can do to assist you.

Thank you for your continued support.

Owen D. Andrews
President
Printelect/ODG, Inc.

Election Systems & Software, LLC ("ES&S") Purchase Order
Term as selected below and beginning on July 1, 2012

Please select Term of Agreement: 1-Year Term _____ 3-Year Term _____ 5-Year Term _____

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Qty	Description	Annual Maintenance Fee Per Unit: 1-Year Term	Annual Maintenance Fee In Total: 1-Year Term
198	iVotronic ADA	\$140.40	\$27,799.20
2	iVotronic Supervisor	\$140.40	\$280.80
96	iVotronic Voter	\$138.50	\$13,295.56
N/A	Model 650	N/A	N/A
3	Model 100	\$244.93	\$734.79
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 1-Year Term			\$42,110.35

Qty	Description	Annual Maintenance Fee Per Unit: 3-Year Term	Annual Maintenance Fee In Total: 3-Year Term
198	iVotronic ADA	\$133.71	\$26,474.58
2	iVotronic Supervisor	\$133.71	\$267.42
96	iVotronic Voter	\$131.90	\$12,662.14
N/A	Model 650	N/A	N/A
3	Model 100	\$233.27	\$699.80
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 3-Year Term			\$40,103.94

Qty	Description	Annual Maintenance Fee Per Unit: 5-Year Term	Annual Maintenance Fee In Total: 5-Year Term
198	iVotronic ADA	\$120.34	\$23,827.12
2	iVotronic Supervisor	\$120.34	\$240.68
96	iVotronic Voter	\$118.71	\$11,395.93
N/A	Model 650	N/A	N/A
3	Model 100	\$209.94	\$629.82
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 5-Year Term			\$36,093.55

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period 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: 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 4: Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period") until this Agreement is terminated according to Article I, Section 1.

ES&S SOFTWARE MAINTENANCE AND SUPPORT DESCRIPTION AND FEES

Listed below are the Unity Software Modules for which Software License, Maintenance and Support will be provided:

Description	Support Provided and Number of Licenses
Software - BIM	N/A
Software - BOD	N/A

**ELECTION SYSTEMS & SOFTWARE, LLC
HARDWARE MAINTENANCE AND SOFTWARE MAINTENANCE AND SUPPORT SERVICES
GENERAL TERMS**

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Agreement for Hardware Maintenance and Software Maintenance and Support Services shall be in effect for the coverage period as described on the attached Hardware Maintenance and Software maintenance and Support Services Purchase Order ("Purchase Order"), attached hereto and fully incorporated herein by this reference (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period"). Notwithstanding the foregoing, this Agreement may be terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies 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 federal and/or state authorities for use in Customer's jurisdiction, (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement or (f) in the event the Customer purchases a non-ES&S voting system as a replacement to the Customer's ES&S' voting system, Customer may terminate this Agreement at the end of any annual anniversary period during the Initial Term or an Renewal Period, written notice shall be delivered to ES&S at least thirty (30) days prior to the end of such annual anniversary period during the Initial Term or any Renewal Period, as applicable. In the event the Customer terminates this Agreement pursuant to Section 1(f), Customer hereby agrees to pay ES&S within thirty (30) days of its termination of this Agreement a balance due charge that consists of the difference between ES&S' then current published fees as of the effective date of this Agreement for Hardware Maintenance and Software Maintenance and Support Services and the discounted fees for such services set forth on the attached Purchase Order for the period during which this Agreement remained in effect prior to the Customer's termination. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy the Software and Documentation and certify in writing to ES&S that such destruction has occurred. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) below.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software Maintenance and Support Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance and Support Fees set forth on the Purchase Order for the Initial Term. The Hardware Maintenance and Software Maintenance and Support Fees for any Renewal Period 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 such Renewal Period. The Renewal Period fees are due and payable on July 1 of each 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 Agreement. If Customer elects to receive Hardware Maintenance or Software Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, ES&S will charge an incremental fee for such service. In the event Customer terminates this Agreement 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 Initial Term 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.

ARTICLE II **HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment listed on the Purchase Order is set forth on the Purchase Order (the "Products") and shall be subject to the following terms and conditions and those set forth on Attachment 1:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each **Twelve Months** during the Initial Term or 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 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 the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Purchase Order 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 the Purchase Order as "depot 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 it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 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.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

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

emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on the Purchase Order.

iv. **Loaner Unit.** At Customer's request and if 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 (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(c)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, 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, 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 Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

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

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. 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 Initial Term 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 fit for the ordinary purpose for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published ES&S 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).

ARTICLE III

SOFTWARE MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide 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 Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Attachment 1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "Software", and shall be subject to all the terms and conditions of ES&S' license of the Software, upon delivery. Customer shall install Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. In the event Customer requests ES&S to install an ES&S Firmware Update, ES&S shall install such Update only in connection with the Routine Maintenance Services provided herein. ES&S may charge Customer at its then-current rates to (a) ship the Updates, (b) install the Updates (c) provide maintenance and support on the Software which is required as a result of Customer's failure to timely install an Update or (d) train the Customer on the Updates. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in federal or state law.

3. **Conditions.** ES&S shall not provide Software Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations 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, (e) Customer's failure to notify ES&S within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 4 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of 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 Initial Term 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 Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

ARTICLE IV MISCELLANEOUS

1. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2. **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S shall be commenced within one (1) year after the cause of action has accrued. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate, the Hardware Maintenance and Software Maintenance and Support Services.

3. **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including, but not limited to, natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, communications or transportation disruptions, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

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

5. **Entire Agreement.** This Agreement, including the Purchase Order and Attachment 1 (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, USA, without regard to its conflicts of laws principles. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may engage duly qualified subcontractors to perform certain of the Hardware Maintenance Services, but shall remain fully responsible for such performance.

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

Attachment 1

Hardware Maintenance Services Provided by ES&S Under the Agreement

1. Telephone support.
 - ES&S will provide Hardware support on procedural questions of a specific nature not covered in ES&S' Hardware User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution. (to be provided on a limited basis)
 - ES&S will provide Hardware issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Equipment User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
3. ES&S posts Technical Bulletins 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 federally and state certified parts.
 - Conducting a final test to verify that the unit is working according to manufacturer's specifications.
 - Use of a checklist tailored for each piece of 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, 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.

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

1. Telephone support.
 - ES&S will provide Software support on procedural questions of a specific nature not covered in ES&S' Software User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution. (to be provided on a limited basis)
 - ES&S will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
3. ES&S will provide Technical Bulletins available on the ES&S Customer Portal on a schedule to be determined by ES&S regarding specific issues the Customer may be experiencing.

Note: Except for those Software Maintenance and Support services specifically set forth herein, 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 Responsibilities

1. Customer's current software and hardware operator shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.

- Customer shall have the ability to change the stick batteries on the iVotronic system and the pick belts on the Model 650. Any other changes made by the customer must be pre-approved in writing by ES&S.
 - 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. Customer shall be responsible for integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
 5. Customer shall be responsible for data extraction from Customer VR system.
 6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise.
 7. Customer shall be responsible for Customer Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
 8. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of ES&S software or hardware.
 9. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
 10. 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.