



11208 JOHN GALT BLVD OMAHA, NE 68137-2364 (402) 593-0101

# Sales Order Agreement

Customer P.O. #:

			1st	t Election D	ate: To be Agreed	Upon by the Parties
			Estimated	Delivery D	ate: To be Agreed	Upon by the Parties
	Customer Contact, Title	e: Deborah Neuser - City Clerk		Phone Num	ber: (920) 686-695	1
	Customer Nam	e: City of Manitowoc, Wisconsin		Fax Num	ber: N/A	
Type	of Sale:					
	of Equip:  NEW	REFURBISHED				
ypc	or Equip.	L REPORBISHED				
Bill T	Control of the Contro		Ship To:			
	of Manitowoc, Wisconsin		City of Manitowoc, Wisconsin			
000000	orah Neuser - City Clerk		Deborah Neuser - City Clerk			
	Quay Street		900 Quay Street			
Mani	itowoc, WI 54220		Manitowoc, WI 54220			
	<u>ltem</u>	Descript	ion	Qty	Price	Total
1	DS200	Model DS200 Digital Image Scanner with Interrwith Steel Door and e-Bin, Paper Roll, and 4GE		12	\$5,750.00	\$69,000.00
2	Other	4GB Jump Drive (Additional)		12	\$105.00	\$1,260.00
3	ExpressVote	ExpressVote BMD Terminal with Internal Backs ADA Keypad, Headphones, and 4GB Flash Dri	up Battery, Power Supply with AC Cord, ve	10	\$3,325.00	\$33,250.00
4	Other	Soft-Sided Carrying Case		10	\$175.00	\$1,750.00
5	Equipment Installation	Model DS200 Scanners		12	\$115.00	\$1,380.00
6	Equipment Installation	ExpressVote BMD Terminals		10	\$105.00	\$1,050.00
7	Services	Equipment Operations Training Day		1 1	\$1,650.00	\$1,650.00
8	Trade-In Allowance	Equipment Being Traded-In by Customer Include 12 - Eagle IIIPE with Ballot Box	des:	1	(\$1,800.00)	(\$1,800.00)
9	Shipping	Shipping & Handling		1	\$1,674.00	\$1,674.00
	r				Order Subtotal	\$ 109,214.00
	Freight Billable: yes	☑ no □		Cu	stomer Discount	(\$7,951.73)
					Order Total	\$ 101,262.27
	Mac Beeson		CITY OF MAN	ITOW	OC	
	Regional Sales Manager		The state of the s	tomer Sign		Date
			Ву:			
			By:	. Nic	ckels, Ma	ayor
	V.P. of Finance	Date	Deborah No	euser	Title City	Clerk
						ozoz K

### Sales Order Agreement

#### Trade-In Equipment:

ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. ES&S is responsible for preparing, packaging and palletizing the trade-in equipment for shipment.

#### Special Notes:

100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice

### **Payment Terms**

Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Warranty Period (Years): One (1) Year From Equipment Delivery

### Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)

The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.

SEE GENERAL TERMS AND CONDITIONS

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ebecurcations. (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) equipment which: (i) have not been stored or operated in a lumporature range according their communication interruptions, and (iV) Customer has installed and is using the most recent update, or the second most recent update, provided to it by ES&S. This warranty is void for any units of the researche control of ES&S or Customer, including eats of God, fire, rids, eats of war, temoram or insurrection, labor disputes, transportation delays, governmental regulations and utility or which is not in accordance with instructions or specifications furnished by ESSS or causes beyond except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of socident, theft, vandalism, neglect, abuse, use ESBS Software to be repaired or replaced has not been repaired, changed, modified or attered warranty is effective provided that (I) Customer promptly notifies ESSS of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ESSS Equipment or components of the ES&S Equipment or ES&S Softwere will become the property of ES&S. This PCMCIA cards or marking devices. Any repeired or replaced item of the Warranty Period. All replaced Software shall be warranted only for the unoxpired form of the Warranty Period. All replaced ncluding printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices Edinbusent components that are consumed in the normal course of operating the ES&S Equipment, on the commence upon delivery. The Warranty shall not include the report or replacement of any ES&S in all material respects, or (ii) is defective in material or workmenship. The Warranty Period w Warrarty Period), it will repair or replace any component of the ES&S Equipment or ES&S Software white under normal use and service. (i) fails to perform in accordance with its Documentation E282 EquipmentE285 Software, E585 warrants that for a one (1) year period (the

product. The terms of post-warranty license, maintenance and support are set forth on Exhibit A

have been operated or handled in a mannor inconsistent with reasonable treatment of an electronic

ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WERRANTES OTHERWISE PROVIDED HEREUNDER WITH REPECT TO THE SYSTEM PURCHASED, CLASSED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF EXPRESS OR IMPLIED, WHICH REE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, BAY IMPLIED WARRANTIES OF MERCHAUTESITY OR FITNESS FOR A PRRICCULAR PURPOSE, FURTHER, IN THE EVENT CUSTOMER, DECLURES ESAS, INSTALLATION AND ACCEPTANCE TEATING SERVICES OR IN BAY WAY AT THEM ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PRRYT THEM ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PRRYT THEM PREVIOUSLY INSTALLED BY ESAS OR WHICH ARE OTHERWASE REQUIRED IN PREVIOUSLY INSTALLED BY ESAS OR WHICH ARE OTHERWASE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFESSION ALL WARRANTES PERSONAL REMEDIES ESS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXAS' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND BULLOATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND STATEMENT OF SUBSECTION 7(8).

obtained from any equipment, software or services not provided by ESSS and used with the ESSS Equipment or ESSS Software; or (e) user emore, voter emors or problems encountered by any individual in voting that are not otherwise a result of the failure of ESSS to perform. ESSS shall not intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S Software; (d) the selection of, use of and results lotal liability to Customer strising out of or relating to this Agreement, shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility (or (s) the selection of the ES&S Equipment and ES&S Software to achieve Customer's responsibility (or (s) the selection of the ES&S Equipment and ES&S Software to achieve Customer's Agreement. Neither party shall be liable for the other partys negligant or wilkly misconduct. ESES's Limitation Of Liability. Neither party shall be liable for any indirect, incidental, punitive, NO FURTHER FORCE AND EFFECT,

ESSS owns the ESSS Software, all Documentation and training materials provided by ESSS, the Proprieta Rights, Customer admowledges and agrees as follows: Waterance and Support. settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most rocent update, provided to it by ES&S or (s) Customer's election not to receive, or the second most recent update, provided to it by ES&S or (s) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in

Software, the Documentation, training materials and ballots that are provided, and all permitted other intellectual or proprietary rights notices that are set forth on the ESSS Equipment, the ESSS substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all cleims, liens and encumbrances and shall maintain all copyright, trademark, patent or contain confidential and proprietary trade secrets of ESSS that are protected by law and are of property in, or used in connection with, the atonementioned items. The atonementioned items also ESSS also owns all patents, tradematics, copyrights, trade names and other proprietary or intellectual Customer has the right to use the aforementioned items to the extent specified in this Agreement. design and comfiguration of the ESS Equipment and the format, layour, measurements, design and all other technical information associated with the ballots to be used with the ESSS Equipment.

yanguse Consequences.) susing out of or relating to the following: indemnity and hotel harmless ESSS from and egainst any and all delims, damages, amounts paid in additionant and reasonable fees and costs (including reasonable attorneys' fees) (collectively Indemnification To the fullest extent permitted under applicable taw, Customer shall .UT

ESSS; (ii) the use of any ESSS Equipment or ESSS Software in combination with other equipment, or ESSS; (iii) the use of any ESSS Equipment or ESSS software or software not meeting ESSS's specifications for use with such ESSS. a. Any daim that any of the ESSS Equipment or ESSS Software infringes upon any third party's copyright, bademark or patent ousting as of the date hereof (e. Third Party Infringement Claim') nestiting from (i) Customer's failure to timely or properly install and use any Update provided to it by ESSS. Simple of the ESSS Sequence of the control of the ESSS Sequence o

Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S

b. Any claims by third parties arising out of religing to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Ropresentatives") of any any other persons under its authority or control ("Customer's Ropresentatives") of any Software without the prior written consent of ESSS;

cure party nems,

act, orier or omission or one or more of Customor's Representatives; and Personal injury (including death) or property demage that is caused by any negligent or willful

Customer's election not to receive, or to terminate, Hardware Maintenance Services or ES&S

to indemnification under this Section 10, and hereby gives Customer full and complete authority, and ESSS shall notify Customer immediately if it becomes eware of any claim for which it may be entitled

Software maintenance and Support.

applicable federal and state authorities of such state mandated Updates. (m) compliant with applicable laws and regulations; and for herein that may be developed and offered by ESSS in order for such ESSS Equipment to remain the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted (n)

the total cost of any third party items that are required in order to operate the Updates;

applicable flow. In the event that any Updates are required due to changes in state law, ESSS that it has installed and is using only certified versions of ES&S Software in accordance with

applicable state law requirements at the time of delivery. Customer shall be responsible to ensure

Customer or any third party. ES&S represents to Customer that the Updates will comply with all

discretion, elect to make or not to make such changes without reference or compensation to ESSS Software to ESSS, such proposals will become ESSS property. ESSS may, in its sole

install and use the most necent Update provided to it by ESSS. If Customer proposes changes in the judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to

Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ESSS Software that is required as a result of Customer's faiture to maintenance and support on the Customer facility of manager that is a faiture to the contracts and the contracts of the contract of the contracts of the contracts of the contract of the contracts of the contract of

Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on

any upgrades or purchases at Third Party items required to operate the Updates as well as the cost order to operate the Updates that ESSS Equipment which regions on this percentance with ESSS Equipment which regions of this ESSS install the Updates in accordance with ESSS orders or the Updates of the Customer way install the Updates in accordance with ESSS and this percentance with ESSS install the Updates or ESSS and Statement or the Customer or the Updates or produced the Updates or ESSS and Statement (ii) train Customer or the Updates or produced the Updates or the Customer (ii) train Customer or the Updates or the Customer (ii) train Customer or the Updates or the Customer (ii) train Customer or the Updates or th

Documentation ("Updates"), on a schedule defined by ESSS. Customer is responsible for obtaining new releases, upgredes or maintenance patches to the ESSS Software, together with appropriate

Sortiwate and the relation becomeniation (including any and all copies thereof) to ES&S, or (if requested by ES&S) deatoy such ES&S Sortiwate and Documentation and certify in writing to ES&S.

discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S the north of the for, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the universities of the licenses granted in Section 2 for ESES Software or upon Customers granted in Section 2 for ESES Software or upon Customers.

set forth on the reverse side. ES&S may terminate either license if Customer fails to pay the payment by Customer of the annual software license and software maintenance and support tee as

an unimited number of successive one-year periods (each a "License Renewal Term") upon the License Term). Upon expiration of the Initial License Term, the licenses shell automatically renew for to vevileb ent noqu eonemmos lishs a coticos ni botrang soeraca ent . <u>#2ena21.</u> fermal chiami'n di la Socition 2 con divina de la cotico 2 cast brail a continue de la cotico 2 cast pend con divina de la cotico carte de la

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Reproduction or printing at any output,

b. Cause or permit any uso, display, losn, publication, transfer of possession, subliconaing or other desemble of the ESSS Softwere or Documentation, in whole or in part, to or by any third

create, or permit, allow or assist others to create, the source code or the structural tramework for part

reporting election results in Customer's jurisdiction. The licenses granted in this Section 2 do not Equipment and solely for the purposes of defining and conducting elections and tabulating and

ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S

Fees set forth on Schedule A1. The licenses allow such bons fide employees to use and copy the Equipment and timely pays the applicable arrual ES&S Sativare License, Maintenance and Support

the ESSS Software and related Documentation in the Jurisdiction white Customer is using the ESSS

2. Grant of Licenses. Subject to the terms and conditions of this Agreement, ESSS hereby grants to Customer nonexclusive, nontrensferable icenses for its bone fide full time employees to use

shall pass to Customer when Customer has paid ES&S the lotal amount set lotal on the reverse side for the license during the hinted Term for

ESSS Equipment and ESSS Software are set forth on the reverse side. Title to the ESSS Equipment

1. <u>Purchase/License Terms.</u> Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license, and Customer agrees to purchase and ES&S Equipment, ES&S Software and ES&S Firmware described on the reverse ade. The ES&S Firmware described on the reverse ade. The ES&S Firmware the CES Software are collectively referred to havenate at the 'ES&S Software. The payment terms for the CES SOFTWARE and the payment terms for the CES SOFTWARE and the conflictively referred to havenate at the 'ES&S Software.' The payment terms for the conflictively referred to havenate at the 'ES&S Software and the payer set of the conflictively referred to havenate at the 'ES&S SOFTWARE and 'ES&S SOFTWARE AND 'S SOFTWARE AND 'S

permit Customer to access or in any way use the source code for the ES&S Software.

the ES&S Firmware is included in the cost of the ES&S Equipment.

Cense ot beurit and change to be made to the ES&S Schware without ES&S, prior

Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to

Prohibited Uses. Customer shall not take any of the following actions with respect to the

Unding the Initial License Term or any License Renewal Term, ESSS may provide

bmely or properly install an Update. Customer shall be responsible for any claim, dama

Customer's pro-rate share of the costs of designing, developing end/or certification by

registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the the time by dividing the number of registered voters in Customer's jurisdiction by the total number of Customer's pro-rate share of the costs included under subsection (iii) above shall be determined at

constitute and international constitutions insured therefore on the ESSS Equipment and ESSS Softwere and shall name ESSS as an additional insured thereunder until all amounts payable to ESSS under designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for 6. Dollvoyr: Risk of Loss. The Estimated Delivery Dates set forth on the reverse side are merely estimates and may be rovised by ES&S because of delays in executing this Agreement, changes requested by Customer and other events. ES&S will notify Customer at revisions to the Estimated Delivery Dates are con as ES&S becomes ware at such revisions. Risk of loss for Estimated Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's feature of the resconsible for desiranted toositon. Here themselves the resconsible to the resconsible to

Update which is required due to a change in local law or is otherwise requested or required by Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire casts incurred for design, development and certification of any

this Agreement have been paid by Customer.

teserves the right to charge Customer for the following:

that such destruction has occurred.

suens or bailet code stock

bauk willions F292, bliot willieu couzeuf ol

were or the Documentation:

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shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

11. <u>Termination.</u> This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

#### 12. Disputes.

- a. Payment of Undisputed Amounts. In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.
- b. Remedias for Pest Due Undisputed Payments, if any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than 60 days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter the premises where the ES&S Equipment is located and remove it. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.
- 13. Assignment, Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.
- 14. <u>Compliance with Laws.</u> ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been contribed by the appropriate state authorities for use in Customer's state.
- 15. <u>State Recertifications.</u> In the event that any future state certifications or recertifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Equipment licensed and sold hereunder, Customer shall be responsible for:
  - (i) the total cost of any third party items that are required in order for the ES&S Equipment and/or ES&S Software to remain certified;
  - (ii) Customer's pro-rate share of such future state certification or recentification costs; and
  - (iii) Customer's pro-rate share of the costs of designing, developing, manufacturing and/or contification by applicable federal and state authorities of any mandated modifications to the ES&S Equipment and/or ES&S Software that may result from such future state certifications or recentifications.

Customer's pro-rata share of the costs included under subsections 15(ii) and 15(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Equipment and/or ES&S Software purchased and licensed by Customer under this Agreement.

16. Entire Agreement. This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agroement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall construct a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. 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 Sections 1-5, 7(b), 8-10, 12(b), 13-16 these General Terms shall survive the termination of this Agreement, to the extent applicable

### **EXHIBIT A**

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

### ARTICLE I GENERAL

- This Exhibit A for Hardware Maintenance and Software License. Term; Termination. Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). Upon expiration of the Initial Term, this <u>Exhibit A</u> shall automatically renew for an unlimited number of successive **Two-Year Periods** (each a "Renewal Period") until this <u>Exhibit A</u> is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, 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, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. The termination of this Exhibit A 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 is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) above.
- Fees. In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. ES&S may increase the Hardware Maintenance and Software License. Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Exhibit A through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period 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 and Software License, Maintenance and Support plan coverage.

## ARTICLE II HARDWARE

- 1. <u>Maintenance Services.</u> The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on <u>Schedule A1</u> (the "Products") shall be subject to the following terms and conditions:
  - a. <u>Routine Maintenance Services.</u> An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine

Maintenance Services shall be provided once each Twenty-Four (24) Months during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. 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 Schedule A1 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.

### b. Repair Services.

- i. <u>Defects Under Normal Use and Service.</u> 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 Routine Maintenance Service event at the Customer's Designated Location.
- ii. <u>Defects Due to Customer Actions or Omissions.</u> 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 72 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. <u>Timing.</u> 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 by ES&S within 48 hours after Customer notifies ES&S of the need therefore), 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 <u>Schedule A1</u>.
- 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(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.
- c. <u>Exclusions.</u> ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been

removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to 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. <u>Sole Provider; Access.</u> 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. <u>Storage.</u> 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 Period 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 will be at ES&S' then current rates 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 ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

## ARTICLE III SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

- 1. <u>License and Services Provided.</u> ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.
- 2. <u>Updates.</u> During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms.
- 3. <u>Conditions.</u> ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or 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 three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this <u>Exhibit A</u>. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by 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.

- 4. <u>Proprietary Rights.</u> 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 <u>Exhibit A</u>, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, 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 <u>Exhibit A</u>. All licensed items shall be deemed to be ES&S Software for purposes of this <u>Exhibit A</u>. 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 Exhibit A.
- 5. Reinstatement of Software License, Maintenance and Support. If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and 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 License, Maintenance and Support services.

## Schedule A1 Pricing Summary

Summary:		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$10,980.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$6,440.00
Total Maintenance Fees for the Initial Term:		\$17,420.00

### **Terms & Conditions:**

Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.

Note 2: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.

### **ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES**

Initial Term: Expiration of the Warranty Period through the fourth anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total	
12	Model DS200 Scanner	Year 1	\$147.50	\$1,770.00	
10	ExpressVote BMD Terminal	Year 1	\$97.50	\$975.00	
	Total Maintenance Fees	for Year 1		\$2,745.00	
12	Model DS200 Scanner	Year 2	\$147.50	\$1,770.00	
10	ExpressVote BMD Terminal	Year 2	\$97.50	\$975.00	
	Total Maintenance Fees	for Year 2		\$2,745.00	
12	Model DS200 Scanner	Year 3	\$147.50	\$1,770.00	
10	ExpressVote BMD Terminal	Year 3	\$97.50	\$975.00	
and the same of th	Total Maintenance Fees	for Year 3		\$2,745.00	
12	Model DS200 Scanner	Year 4	\$147.50	\$1,770.00	
10	ExpressVote BMD Terminal	Year 4	\$97.50	\$975.00	
		\$2,745.00			
	Total Hardware Maint	enance Fees for the Initial 1	Term	\$10,980.00	

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 24-month period shall be 75% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location: City of Manitowoc, Wisconsin

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: Upon expiration of the Initial Term, this Schedule A1 shall automatically renew as set forth in Article I, Section 1.

### Hardware Maintenance Services Provided by ES&S Under this Schedule A1

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

#### 4. Routine Maintenance Services.

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

### 5. Repair Services.

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

#### 6. Priority Services.

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

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

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

Initial Term: Expiration of the Warranty Period through the **fourth** anniversary thereof Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
12	Model DS200 Scanner	Year 1	\$80.00	\$960.00
10	ExpressVote BMD Terminal	Year 1	\$65.00	\$650.00
Tota	I License, Maintenance and Su	pport Fees for Year 1		\$1,610.00
12	Model DS200 Scanner	Year 2	\$80.00	\$960.00
10	ExpressVote BMD Terminal	Year 2	\$65.00	\$650.00
Tota	I License, Maintenance and Su	pport Fees for Year 2	<b>州和西西西北京</b>	\$1,610.00
12	Model DS200 Scanner	Year 3	\$80.00	\$960.00
10	ExpressVote BMD Terminal	Year 3	\$65.00	\$650.00
Tota	I License, Maintenance and Su	pport Fees for Year 3		\$1,610.00
12	Model DS200 Scanner	Year 4	\$80.00	\$960.00
10	ExpressVote BMD Terminal	Year 4	\$65.00	\$650.00
Tota	I License, Maintenance and Su		\$1,610.00	
	Total Firmware License, Mainte	nance and Support Fee	s for the Initial Term	\$6,440.00

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

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

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

### <u>Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities</u>

- 1. Customer shall have completed a full software training session for each product selected.
  - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.

- Customer shall have the ability to install firmware and application software and make changes to date and time settings.
- Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
- Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
- 2. Customer shall have reviewed a complete set of User Manuals.
- 3. Customer shall have reviewed Training Checklists.
- 4. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
- 5. Customer shall be responsible for data extraction from Customer voter registration system.
- Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
- 7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
- 8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
- Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
- 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.
- 11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.