

**ELECTION SYSTEMS & SOFTWARE, LLC
ELECTION SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");
Madison County, Mississippi ("Customer")

RECITALS:

- A. Customer has agreed to purchase certain election-related services from ES&S for use in **Madison County, Mississippi** (the "Jurisdiction"). The terms and conditions under which such 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 (Summary of Services)
- Exhibit B (Election Support Services)

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.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Mississippi**.
- Represents and warrants to the other party that as of its signature date indicated 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

MADISON COUNTY, MISSISSIPPI
P.O. Drawer 1626
Canton, MS 39046
Fax No.: (601) 859-8555

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

**ARTICLE I
GENERAL TERMS AND CONDITIONS**

1. **Consideration.** The consideration to be paid by Customer to ES&S for the services provided hereunder is set forth on the accompanying Exhibits.

2. **Limitation of Liability.** To the extent allowed by Mississippi law, neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. To the extent allowed by Mississippi law, neither party shall be liable for the other party's negligent or willful misconduct. To the extent allowed by Mississippi law, 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. As a political subdivision of the State of Mississippi, Customer's tort liability is governed in accordance with the Mississippi Tort Claims Act, Section 11-46-1, et seq., of the Mississippi Code of 1972, as amended, including all defenses and exceptions contained therein; nothing in this Agreement shall have the effect of changing or altering said tort liability or of eliminating any defense available to the Customer under statute. Additionally, ES&S agrees to give Customer prompt notice, in writing, of any action or suit filed, or of any claim made against ES&S by any person that may result in litigation related to this Agreement.

3. **Excusable Nonperformance.** Except for a delay or failure in the payment of money, if either party is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, 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. **Exclusive Service Provider.** Customer hereby agrees to purchase the products and services set forth on Exhibit B attached hereto from ES&S for the Term of this Agreement at the pricing set forth on each applicable Exhibit.

5. **Term; Termination.** This Agreement shall be in effect for the period as set forth on Exhibit B (the "Term"). 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 thirty (30) days after it receives written notification thereof from the non-breaching party.

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 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.

Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment,

the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

7. **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 any of its rights hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld.

8. **Entire Agreement.** This Agreement, including all Exhibits hereto (all of which are incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any 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 Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party.

9. **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 fax, 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 fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties.

10. **Disputes.**

Remedies for Past Due Payments. If any payment to ES&S is past due more than five (5) days, ES&S may suspend performance under this Agreement until such amount is paid.

Dispute Resolution Process. Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g., the nature of the dispute, dates, times, persons involved). The responding party shall respond to the notification within five (5) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. Notwithstanding anything in this Section 10 to the contrary, either party may apply to any court having jurisdiction over the subject matter of the dispute for a temporary restraining order, preliminary injunction, or other appropriate legal remedy at any time.

11. **Other.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations to the extent that such laws, by the terms and intents, are expressly applicable to each party, individually, under this Agreement. ES&S is providing its 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 will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. ES&S may engage subcontractors to provide certain of the services, but shall remain fully responsible for such performance. The provisions of Sections 1-4, 6-10 and this Section 11 shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
SUMMARY OF SERVICES**

Sale Summary:	
Description	Refer to
Election Support Services	Exhibit B
Terms & Conditions:	
Note 1: State and local taxes are not applicable as the Customer is a tax-exempt entity.	
Note 2: <u>Payment Terms are as Follows:</u>	
100% of Invoice Total Due Thirty (30) Calendar Days after Receipt of Corresponding ES&S Invoice.	

**EXHIBIT B
ELECTION SUPPORT SERVICES**

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

**August 6, 2019 Primary Election Support
August 27, 2019 Primary Runoff Election Support
November 5, 2019 General Election Support
November 26, 2019 General Runoff Election Support
2019 Special Election Support**

2. **Services.** The election support services to be provided by ES&S and total fees are described below.

August 6, 2019 Primary Election Support:			
Qty	Election Services	Unit Price	Total
X	ElectionWare Coding and Support	\$2,950.00	\$2,950.00
TBD	Ballot on Demand Setup and Configuration	Fees per ES&S and Customer BOD Agreement dated April 18, 2017	TBD
28	Pollbook & Election Technician Support	\$23,380.00	\$23,380.00
X	Pollbook Conversion Fee	\$2,650.00	\$2,650.00
Total for the August 6, 2019 Primary Election, excluding Ballot on Demand:			\$28,980.00

August 27, 2019 Primary Runoff Election Support:			
Qty	Election Services	Unit Price	Total
X	ElectionWare Coding and Support	\$2,750.00	\$2,750.00
TBD	Ballot on Demand Setup and Configuration	Fees per ES&S and Customer BOD Agreement dated April 18, 2017	TBD
23	Pollbook & Election Technician Support	\$19,205.00	\$19,205.00
X	Pollbook Conversion Fee	\$2,650.00	\$2,650.00
Total for the August 27, 2019 Primary Runoff Election, excluding Ballot on Demand:			\$24,605.00

November 5, 2019 General Election Support:			
Qty	Election Services	Unit Price	Total
X	ElectionWare Coding and Support	\$2,950.00	\$2,950.00
TBD	Ballot on Demand Setup and Configuration	Fees per ES&S and Customer BOD Agreement dated April 18, 2017	TBD

November 5, 2019 General Election Support:			
Qty	Election Services	Unit Price	Total
28	Pollbook & Election Technician Support	\$23,380.00	\$23,380.00
X	Pollbook Conversion Fee	\$2,650.00	\$2,650.00
Total for the November 5, 2019 General Election, excluding Ballot on Demand:			\$28,980.00

November 26, 2019 General Runoff Election Support:			
Qty	Election Services	Unit Price	Total
X	ElectionWare Coding and Support	\$2,750.00	\$2,750.00
TBD	Ballot on Demand Setup and Configuration	Fees per ES&S and Customer BOD Agreement dated April 18, 2017	TBD
23	Pollbook & Election Technician Support	\$19,205.00	\$19,205.00
X	Pollbook Conversion Fee	\$2,650.00	\$2,650.00
Total for the November 26, 2019 General Runoff Election, excluding Ballot on Demand:			\$24,605.00

2019 Special Election Support:			
Qty	Election Services	Unit Price	Total
X	ElectionWare Coding and Support	\$2,750.00	\$2,750.00
TBD	Ballot on Demand Setup and Configuration	Fees per ES&S and Customer BOD Agreement dated April 18, 2017	TBD
23	Pollbook & Election Technician Support	\$19,205.00	\$19,205.00
X	Pollbook Conversion Fee	\$2,650.00	\$2,650.00
Total for Special Elections, excluding Ballot on Demand:			\$24,605.00

Consumables	Unit Price	Total
All Consumable Items	Based on Consumable Item	TBD

Any additional services not set forth herein requested by the Customer shall be billed to the Customer at ES&S' then current rates.

EXHIBIT C
SOFTWARE LICENSE TERMS

1. a. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses to use the ES&S Software described on Exhibit B and related operating instructions, manuals and other ES&S provided information (collectively, "Documentation") supplied by ES&S. The licenses allow Customer to use (but not copy) the ES&S Software and the Documentation in the course of operating the ES&S Equipment and solely for the purposes of managing the printing of ballots in the Jurisdiction. The licenses granted in this Section 1 do not permit Customer to use the source code for the ES&S Software.

b. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

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

ii. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S 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 ballot printing, coding, programming or ballot layout services) without ES&S's prior written consent; or

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

iv. Allow a third party to 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.

2. **Term of Licenses.** The licenses granted in Section 1 shall commence upon the delivery of the ES&S Software described in Section 1 and shall continue for Term of the Agreement ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 1 or with respect to, such license. Upon the termination of either of the licenses granted in Section 1 for ES&S Software or upon Customer's discontinuance of the use of any 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.

3. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE SET FORTH HEREIN, 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.