

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

This Agreement ("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")

AND: 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.
- Acknowledges that no services will be performed without a duly authorized and issued purchase order by Customer.

ELECTION SYSTEMS & SOFTWARE, LLC
1208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

MADISON COUNTY, MISSISSIPPI
P.O. Box 608 - 128 W. North Street
Canton, MS 39046
Fax No.: N/A

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

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.** 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. Neither party shall be liable for the other party's negligent or willful misconduct. 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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S; and (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform.
3. **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 3, 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.
4. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. 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.
5. **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.
6. **Term; Termination.** This Agreement shall be in effect for the period of January 1, 2021 through December 31, 2022 (the "Initial Term"). Thereafter, this Agreement may be renewed upon mutual written agreement by the parties for one (1) additional two (2) year period (the "Renewal Period"). The Initial Term and the Renewal Term shall be collectively referred to herein as 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.
7. **Assignment.** Except in the case of a reorganization of the assets or operation of ES&S with one or more affiliates of ES&S or the 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.
8. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by

confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) 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, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

9. **Disputes.**

a. **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.

b. **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 9 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.

10. **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 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. 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, 8 and this Section 10 shall survive the termination of this Agreement, to the extent applicable.

11. **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.

**EXHIBIT A
SUMMARY OF SERVICES**

Sale Summary:	
Description	Refer to
Election Support Services	Exhibit B
Terms & Conditions:	
Note 1: Any applicable state and local taxes are not included and are the responsibility of Customer.	
Note 2: Invoicing and Payment Terms are as Follows:	
<p>Initial Term: Election Support Services will be invoiced as Services are provided. 100% of Order Total due Forty-Five (45) Calendar Days after Receipt of Corresponding ES&S Invoice.</p> <p>Optional Renewal Term: Election Support Services will be invoiced as Services are provided. 100% of Order Total due Forty-Five (45) Calendar Days after Receipt of Corresponding ES&S Invoice.</p>	
Note 3: The Services set forth in <u>Exhibit B</u> are reflective of the following daily rates, which assume the use of local resources:	
<p>2021 – \$898.00 per day, including expenses 2022 – \$898.00 per day, including expenses 2023 – \$929.00 per day, including expenses 2024 – \$957.00 per day, including expenses</p> <p>Services provided by ES&S personnel that need to travel from outside the State of Mississippi shall be charged at the rate of \$1,475.00 per day, including expenses.</p>	
Note 4: No Services will be performed without a duly authorized and issued purchase order by Customer.	

**EXHIBIT B
ELECTION SUPPORT SERVICES AND SUPPLIES**

1. **Covered Elections.** The services and supplies described herein shall be provided only for specified elections (the "Elections"), as set forth in the tables below.

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

Pricing for Initial Term and Optional Renewal Period (Years 2021-2024)

Description	Election	Quantity	Price
Election Ballot Coding Services: Vendor completes Ballot layout, tabulator coding, and voice files.	Initial Term:		
	- 2021 Primary	1	\$3,980.00
	- 2021 General	1	\$3,680.00
	- 2021 Special	1	\$3,250.00
	- 2021 Any Single Run-Off	1	\$3,250.00 per Run-Off
	- 2022 Primary	1	\$3,980.00
	- 2022 General	1	\$3,680.00
	- 2022 Special	1	\$3,250.00
	- 2022 Any Single Run-Off	1	\$3,250.00 per Run-Off
	Optional Renewal Period:		
	- 2023 Primary	1	\$4,179.00
	- 2023 General	1	\$4,179.00
	- 2023 Special	1	\$3,410.00
	- 2023 Any Single Run-Off	1	\$3,410.00 per Run-Off
	- 2024 Primary	1	\$4,179.00
	- 2024 General	1	\$4,179.00
- 2024 Special	1	\$3,410.00	
- 2024 Any Single Run-Off	1	\$3,410.00 per Run-Off	

Description	Election	Quantity	Price
Pre-Election Election Support	Initial Term:		
	- 2021 Primary	30 Days	\$26,940.00
	- 2021 General	30 Days	\$26,940.00
	- 2021 Special	22 Days	\$19,756.00
	- 2021 Any Single Run-Off	25 Days	\$22,450.00 per Run-Off
	- 2022 Primary	30 Days	\$26,940.00
	- 2022 General	30 Days	\$26,940.00
	- 2022 Special	22 Days	\$19,756.00
	- 2022 Any Single Run-Off	25 Days	\$22,450.00 per Run-Off
	Optional Renewal Period:		
	- 2023 Primary	30 Days	\$27,870.00
	- 2023 General	30 Days	\$27,870.00
	- 2023 Special	22 Days	\$20,438.00
	- 2023 Any Single Run-Off	25 Days	\$23,225.00 per Run-Off
	- 2024 Primary	30 Days	\$28,710.00
	- 2024 General	30 Days	\$28,710.00
- 2024 Special	22 Days	\$21,054.00	
- 2024 Any Single Run-Off	25 Days	\$23,925.00 per Run-Off	
Poll Book Data Conversion Services	Initial Term:		
	- 2021 Primary	1	\$3,480.00
	- 2021 General	1	\$3,480.00
	- 2021 Special	1	\$2,980.00
	- 2021 Any Single Run-Off	1	\$2,980.00 per Run-Off
	- 2022 Primary	1	\$3,480.00
	- 2022 General	1	\$3,480.00
	- 2022 Special	1	\$2,980.00
	- 2022 Any Single Run-Off	1	\$2,980.00 per Run-Off
	Optional Renewal Period:		
	- 2023 Primary	1	\$3,654.00
	- 2023 General	1	\$3,654.00
	- 2023 Special	1	\$3,129.00
	- 2023 Any Single Run-Off	1	\$3,129.00 per Run-Off
	- 2024 Primary	1	\$3,654.00
	- 2024 General	1	\$3,654.00
- 2024 Special	1	\$3,129.00	
- 2024 Any Single Run-Off	1	\$3,129.00 per Run-Off	

[END OF EXHIBIT B]