

STATE OF MARYLAND
STATE BOARD OF ELECTIONS
CONTRACTUAL AGREEMENT
SBE-2009-07

WITH
PREMIER ELECTION SOLUTIONS, INC.

For
The Rental/Lease of Direct Recording Equipment (DRE)
Touch Screen Voting Devices

THIS CONTRACT (the "Contract") is made this day of 24th day of November, 2008 by and between the STATE OF MARYLAND, acting through the MARYLAND STATE BOARD OF ELECTIONS, ("SBE") and PREMIER ELECTION SOLUTIONS, INC. (the "Contractor").

IN CONSIDERATION of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Contract" means this Contract to rent hardware, software, licensing, warranties and other components for the 16 (TS) units.
- 1.2 "Contractor" means Premier Election Solutions, whose principle business address is 1253 Allen Station Parkway, Allen, Texas 75013 and whose principal office in Maryland is 190 Admiral Cochrane Drive, Suite 120, Annapolis, Maryland 21401.
- 1.3 "Department" means the Maryland State Board of Elections.
- 1.4 "Financial Proposal" means the Contractor's Financial Proposal dated 24 November 2008.
- 1.5 "Effective Date" means the date on which the State signs and executes this Contract.
- 1.6 "LBE" means the Local Board of Elections. Maryland has 24 LBEs as identified in Attachment #11.
- 1.7 "Procurement Officer" means Donna Wiltshire, Director of Procurement and Voting Systems.
- 1.8 "Receiving Entity" means Local Board of Elections receiving equipment and services under this contract.

- 1.9 "State" means the State of Maryland.
- 1.10 "State of Maryland Acceptance Testing" means testing performed by SBE or the Local Board of Elections to confirm that the equipment systems, including all hardware, software and other components is function and capable of satisfying the needs of the SBE and that the equipment satisfies all requirements, terms and conditions of the contract.

2. Scope of Work

- 2.1 The Contractor shall provide the SBE with 16 voting units including 6 power cord, privacy booth, roll of paper, keys, an internal battery for each voting unit as well as PCMCIA cards.
- 2.2 The equipment and services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated by reference:
 Exhibit A: Contract Affidavit (#SBE-2009-07) dated 24 November 2008.
 Exhibit B: Bid/Proposal Affidavit (#SBE-2009-07) dated 24 November 2008.
 Exhibit C: Contractor's Rental Pricing and Payment Schedule (#SBE-2009-07) dated 24 November 2008.
 Exhibit D: Contractor's Rental, License and Services Agreement (#SBE-2009-07) dated 24 November 2008.
- 2.3 If there are any inconsistencies between this Contract and the Exhibits A, B, and C, the terms of the contract shall control.
- 2.4 This contract is a Fixed Price contract. The Contractor shall deliver equipment being acquired under this contract to each LBE (see Attachment #1). The quantity being rented by each LBE is expected to be as follows:

LOCAL BOARD OF ELECTIONS	QUANTITY OF 16

- 2.5 In the event of any of the 16 voting devices supplied by the Contractor fails the State of Maryland Acceptance Testing, the Contractor is responsible for replacement of such equipment, including all hardware, software and other components, within 72 hours of notification that the system failed.
- 2.6 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for,

the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.7 Modifications to this Contract may be made provided (a) that the modification(s) are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Time for Performance

Unless terminated earlier as provided in this Contract, the Contractor shall begin on or about 24 November 2008 and shall end on 31 Dec. 2008. The Contractor shall provide equipment identified in this Contract no later than 3 Nov 2008.

4. Consideration and Payment

- 4.1 Payment to the Contractor pursuant to this Contract shall be at the rates provided in the Financial Proposal. The Contractor shall not receive any other payment for implementation and administrative services.

- 4.2 The Contractor's federal tax identification number, which is **85-0394190**, which must be reflected on any invoice submitted to the State. The Contractor shall submit an invoice to the SBE no later than 30 days after delivery and acceptance of the 16 voting device(s) at each requesting entity location. For each requesting entity acquiring equipment under this Contract, the Contractor shall attach a signed Deliverable Acceptance Form (Attachment #2) as documentation and acceptance of delivery of goods and services to the requesting entities. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after such invoice is presented to SBE. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

- 4.3 The Contractor shall be paid \$6,560.00 for services provided under this contract by SBE based on the total number of 16 voting devices delivered and accepted by the LBE.

4.4 In addition to any other available remedies if, in the opinion of the Procurement Officer, with good cause shown and Contractor's inability to cure any such deficiency within 72 hours of being notified by Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.5 Electronic funds transfer will be used by the State to pay the Contractor for this Contract and any other State payments due the Contractor unless the State's Comptroller's Office grants the Contractor an exemption.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials, including but not limited to, reports, computations and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor shall report to the Department, promptly and in written detail, within 30 days of receiving same, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.3 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third

party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

7. Non-Hiring of Employees

No official or employee of the State of Maryland or any unit thereof, as those terms are defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this Contract.

8. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

9. Maryland Law

This Contract shall be construed, interpreted and enforced according to the laws of the State of Maryland.

10. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

11. Contingent Fee Prohibition

The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide

employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

12. Nonavailability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

13. Termination for Cause or Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. Each Local Board of Election served under this contract shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor shall remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

14. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Each Local Board of Election served by this contract shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the

rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

15. Delays and Extensions of Time

The Contractor agrees to perform this agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions shall be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

16. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

17. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

18. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

19. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Section 14-101 through 14-108 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated

municipality or their agencies, during a calendar year under which the person receives the aggregate, \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract terms, on (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

20. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

21. Compliance with Laws

The Contractor hereby represents and warrants that:

- 21.1 It is qualified to do business in the State of Maryland and that it shall take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 21.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 21.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- 21.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

22. Cost and Price Certification

By submitting cost or price information (Exhibit C), the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its proposal or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its proposal or offer, was inaccurate, incomplete, or not current.

23. Living Wage

A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland.

23.1 Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.30 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$8.50 per hour. If Contractor is an out of state contractor, this contract is determined to be a Tier 1 Contract.

23.2 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland, including the submission of payroll reports to the Commissioner of Labor and Industry and the Posting in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

23.3 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

24. Commercial Nondiscrimination

24.1 As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor

understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 24.2 As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 13, and 15 through 28 of this Contract and any other terms and conditions that the State deems necessary to protect its interest. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Indemnification

- 26.1 The Contractor shall indemnify the State and each Local Board of Election served by this contract, against liability for any claims, damages, loss, costs, expenses, suits, or actions of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.
- 26.2 Neither the State of Maryland or any Local Board of elections served by this contract, has any obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

- 26.3 Neither the State of Maryland or any Local Board of Elections served by this contract, has any obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 26.4 The Contractor shall notify the Procurement Officer within fifteen (15) days of receiving notice, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and shall cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

27. Security

- 27.1 Any person who is an employee or agent of the Contractor or subcontractor and who enters the premises of a facility under the jurisdiction of SBE may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by SBE. Further, the Contractor, its employees and agents and subcontractor's employees and agents shall not violate §§ 9-410 et seq. of the Criminal Law Article of the Annotated Code of Maryland and such other security regulations of SBE about which they may be informed from time to time. The failure of any of the Contractor's or subcontractor's employees or agents comply with any provision of this Section 27 of this Contract is sufficient grounds for SBE to immediately terminate this Contract for default.
- 27.2 The Contractor shall comply with the MD Information Technology Security Policy and Standards which can be found at <http://www.dbm.maryland.gov>.

28. Administrative

- 28.1 **Contract Administration.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Director as identified in § 1.7. All matters related to the interpretation of this Contract shall be referred to the Procurement Officer for a determination.
- 28.2 **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to State:

Donna Wiltshire Procurement Officer
State Board of Elections
151 West Street, Annapolis, Maryland 21401

If to Contractor:

Jeffrey S. Adamcik, Division Counsel

Premier Election Solutions, Inc.
1253 Allen Station Parkway, Allen, Texas 75002

31. Limitation of Liability

For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 6 (“Patents, Copyrights, Intellectual Property”) of this Contract;
- B. Without limitation for damages for bodily injury (including death), damage to real property and tangible personal property, and for damages and/or charges claimed against the State which are attributable, in whole or in part, to Contractor’s failure to undertake and complete its duties, obligations and responsibilities hereunder;
- C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor’s liability per claim shall be limited to the greater of two (2) times the aggregate dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim.

32. Orderly Termination

Contractor agrees that at the commencement of this Contract, it shall have ready and available such items, inventory, systems, processes, and sufficient levels of qualified personnel to be able to promptly, diligently, efficiently and completely prosecute the requirements of this Contract.

Upon the expiration or earlier termination of this Contract, Contractor shall:

- (i) promptly, diligently, efficiently and in good faith work with any successor contractor and the State to transition services over to the successor contractor.
- (ii) During the transition period, continue to be subject to all of the terms and conditions of the Contract, including, by way of example only, those that govern the discounts, rates, fees and other charges that Contractor may be permitted to charge the State under the Contract, and under no circumstances shall the Contractor be entitled to lower or eliminate any discounts or to raise any such rates, fees and/or other charges during the transition period; and
- (iii) At the end of the transition period, provide the State with a summary report of the transition that, among other things, contains a certification signed by an officer of the Contractor who is authorized to legally bind Contractor, that states that all actions necessary to successfully transition the services to the successor contractor have been completed, or if they have not been completed, why they have not been completed. The State shall be entitled to withhold any final payment(s) otherwise due Contractor until it receives the summary report and certification specified in this subsection.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

FOR PREMIER ELECTION SOLUTIONS, INC.

Steve Moreland
By:

11/24/08
Date

Steve Moreland - VP Global
Title
Customer Svc

[Signature]
Witness

Approved as to Legal Form
[Signature]
Legal Department
11/24/08
Date

FOR THE MARYLAND STATE BOARD OF ELECTIONS

Linda H. Lumme
By:

11/24/08
Date

SBE ADMINISTRATOR
Title

[Signature]
Witness

Approved for form and legal sufficiency this _____ day of _____, 2008

Assistant Attorney General

PREMIER™

ELECTION SOLUTIONS

P.O. Box 1019
 Allen, TX 75003
 469-675-8990
 800-433-8683 (VOTE)
 Fax (214) 383-1596

RENTAL, LICENSE, AND SERVICES AGREEMENT

CUSTOMER:	Maryland State Board of Elections	PREMIER ELECTION SOLUTIONS, INC.
Addresses: Mailing	151 West Street, Suite 200 Annapolis, MD 21401	P.O. Box 1019 Allen, TX 75013 Attn: Contracts Department
Physical / Shipping	same	Overnight Deliveries: 1253 Allen Station Pkwy. Allen, TX 75002 Attn: Contracts Department
Contacts:	Donna Wiltshire, Procurement Director	Therese Covington, Paralegal Drew Stewart, Sales Representative
Phone:	410-269-2863	469-675-8990, ext. 1136 // 469-675-8990, ext. 1116
Fax:	410-974-2019	214-383-1596 // 214-383-1596
Email:		Therese.Covington@premierelections.com Andrew.Stewart@premierelections.com

Jurisdiction: (County / Municipality)	Carroll County	Effective Date:	Date of the last signature set forth below
State: (Customer's State)	Maryland	Term Date:	See "Term" definition herein.

Premier Election Solutions, Inc. ("Premier") and the Customer (as listed above) hereby enter into this Rental, License and Services Agreement ("Agreement") as of the date of the last signature set forth below (the "Effective Date") and expires on the date shown above unless earlier terminated under Section 12 or extended under Section 2.1 below (the "Term"). The Customer and Premier are sometimes hereinafter referred to collectively as the "Parties" and each individually as a "Party". This Agreement consists of this "Signature Page," the below standard terms and conditions, and Exhibit A, Pricing and Payment Schedule attached hereto and incorporated herein by this reference:

The parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

Maryland State Board of Elections		PREMIER ELECTION SOLUTIONS, INC.	
<i>Linda H. Lamone</i>	<i>11/24/08</i>	<i>Steve Moreland</i>	<i>11/24/08</i>
Authorized Signature	Date	Authorized Signature	Date
<i>DONNA LAMONE ADMINISTRATOR</i>		<i>Yvette Saenz, Controller</i>	<i>Steve Moreland - VP</i>
Printed Name, Title		Printed Name, Title	
APPROVED AS TO LEGAL FORM			
		<i>Therese Covington</i>	<i>11.24.08</i>
Authorized Signature	Date	Authorized Signature	Date
		Therese Covington, Paralegal	
Printed Name, Title		Printed Name, Title	

Should the Customer have any questions or concerns regarding the applicable terms and conditions, please contact the Premier Contracts Department at 469-675-8990, ext. 1136 or via email at PremierContracts@premierelections.com. For any questions regarding the attached quote/pricing, please contact the Sales Representative listed above.

1. Definitions

- 1.1. "Premier Software" means Premier's proprietary software and firmware as delivered to Customer on digital or magnetic media or loaded on the Hardware delivered hereunder, together with any user manuals or other associated documentation.
- 1.2. "Hardware" means Premier's voting system machines as specified in Exhibit A.
- 1.3. "Licensed Software" means the Premier Software and Third-Party Software, collectively, together with any user manuals or other associated documentation.
- 1.4. "Specifications" means descriptions and data regarding the features, functions and performance of the Hardware and/or Premier Software, as set forth in associated user manuals or other applicable documentation.
- 1.5. "System" means the Hardware and Licensed Software, collectively.
- 1.6. "Term" under this Agreement shall begin on the Effective Date of the Agreement, and the Agreement shall expire five (5) days subsequent to the completion of the election quoted in Exhibit A herein.
- 1.7. "Third-Party Software" means software owned by a third party that is provided by Premier hereunder, together with any user manuals or other associated documentation.

2. Term.

- 2.1. The Parties may extend the Term of this Agreement by agreeing in writing, before the expiration date set forth above, on a later expiration date;
- 2.2. Section 7 (to extent of any payments still due) and Section 10 will survive any expiration or termination of this Agreement in accordance with their respective terms; and
- 2.3. Terms of this Agreement that do not survive expiration or termination will nonetheless be effective in determining the Parties' rights and obligations as to acts, omissions or events taking place before such expiration or termination.

3. Premier's Responsibilities

- 3.1. Commencing on the Effective Date and continuing during the Term, Premier will provide the services described in the scope of work attached hereto as Exhibit A.
- 3.2. Premier shall rent the Hardware to Customer pursuant to Section 5 of this Agreement.
- 3.3. Premier shall license the Licensed Software to Customer pursuant to Section 6 of this Agreement.
- 3.4. Premier shall provide the services described in Exhibit A with respect to System delivery, installation and training and support.
- 3.5. Premier shall appoint a customer support representative, who will serve as a first point of contact with Customer, will be authorized to make day-to-day decisions relating to this Agreement and will have access to Premier's management for other decisions.
- 3.6. Premier shall have conducted criminal background checks on all on-site Premier personnel as a regular course of doing business.
- 3.7. Premier shall notify the Customer in writing, via e-mail or phone call no less than one (1) hour prior to the on-site visit of any Premier personnel to the Customer's Jurisdiction.

4. Customer Responsibilities

- 4.1. Customer shall provide Premier with physical accommodations reasonably required for Premier to perform its obligations, including premises access, electrical power, data connectivity, heat, ventilation and air conditioning.
- 4.2. Customer shall provide access to information and personnel reasonably required for Premier to perform its obligations.
- 4.3. Customer shall appoint a project manager, who will serve as a first point of contact with Premier, will be authorized to make day-to-day decisions relating to this Agreement and will have access to Customer's authorized officials for other decisions.
- 4.4. **CUSTOMER SHALL RETAIN ALL ORIGINAL RENTAL EQUIPMENT PACKAGING, INCLUSIVE OF INNER PLASTIC BAGS AND TIES, TO ELIMINATE OR REDUCE THE EXPENSES OF REPACKAGING SUPPLIES**

REQUIRED TO RETURN THE EQUIPMENT UPON COMPLETION OF RENTAL. SHOULD CUSTOMER FAIL TO DO SO, CUSTOMER SHALL BE RESPONSIBLE FOR THE EXPENSES RELATED TO PREMIER'S REPLACEMENT OF SUCH PACKING MATERIALS.

4.5. Upon expiration or termination of this Agreement for any reason, Customer will cease all use of the System and promptly make all components of the System available for pick up by Premier.

4.6. Customer is solely responsible for assuring all relevant state and local laws, ruling and ordinances are complied with in regard to the use of Premier's System for any Customer election, including all associated election guidelines and applicable election due dates.

5. Hardware

5.1. Premier agrees to rent the Hardware to Customer during the Term.

5.2. Customer acknowledges that, unless and until Customer exercises its purchase option, as between Premier and Customer, Premier owns the Hardware and retains title thereto. Customer shall avoid damage or loss to the Hardware, normal wear and tear excepted. Customer shall not permit any Hardware to be moved outside the geographic area of Customer's jurisdiction ("Jurisdiction"), or that of their legal representative, or surrender control of or sell any Hardware, and shall keep the Hardware free from security interests and other encumbrances.

6. Licensed Software

6.1. Subject to the terms of this Agreement, Premier grants Customer a non-exclusive license, without the right to transfer or sublicense, to use the Premier Software only in object code form, only during the Term and only in preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within the geographic area of the Customer's "Jurisdiction". The foregoing license may be exercised on Customer's behalf by any of its officials, employees or volunteers authorized to conduct Elections.

6.2. Subject to the terms of this Agreement, Premier agrees to sublicense the Third-Party Software to Customer only in object code form, only for use during the Term as part of the System and only for the purposes described in Section 6.1 above. This sublicense is conditioned on Customer's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which Third-Party Software is provided.

6.3. Other than as expressly set forth in Sections 6.1 and 6.2 above, Premier does not, expressly or by implication, assign or license any intellectual property rights to Customer or to any third party.

6.4. Upon expiration or termination of this Agreement for any reason, the licenses granted in this Agreement will terminate without further action by either Party, and Customer will cease all use of the Licensed Software.

7. Payment

7.1. In consideration of the products, licenses and services provided under this Agreement, Customer shall pay Premier the amounts specified in Exhibit A at the times specified therein.

7.2. Customer is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products, licenses or services provided under this Agreement. If Customer is exempt from such taxes or duties, Customer shall provide Premier with a tax exemption certificate.

7.3. Due to the volatile nature of estimating costs associated with travel, delivery and postage, Premier reserves the right to modify any such quoted amounts with actual costs should the actual expenses be incurred more than 60 days beyond the date of Customer's execution of this Agreement. Premier agrees to provide Customer with reasonable documentation concerning the amounts of any such expenses modified from the amounts previously quoted by Premier.

8. Limited Warranties

8.1. Premier warrants that, during the Term, the Premier Software will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such Premier Software is operated with hardware and software approved by Premier for use with such Premier Software.

8.2. Premier warrants that, during the Term, the Hardware will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such Hardware is operated with hardware and software approved by Premier for use with such Hardware.

8.3. The warranties in Sections 8.1 and 8.2 do not apply to the Third-Party Software or to any other third-party products. Notwithstanding the foregoing:

8.3.1. To the extent permitted by the manufacturers of Third-Party Software, Premier shall, during the Term, pass through to Customer all warranties such manufacturers make to Premier regarding the operation of such Third-Party Software.

8.3.2. Premier warrants that, during the Term, all components of the Hardware and Premier Software will interface and function properly with the Third-Party Software, so long as the Third-Party Software operates in compliance with all applicable manufacturers' warranties.

8.4. Premier will promptly undertake repair or replacement of any Hardware or Premier Software that fails during the Term to operate in accordance with any warranty under this Agreement. During the election cycle (one month prior to and after each election date), repair or replacement will be made within 48 hours after request for service. Such repair or replacement is Customer's exclusive remedy for such a failure.

8.5. PREMIER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

9. Force Majeure. Premier's obligations hereunder will be suspended so long as its performance is impeded or prevented by causes beyond Premier's reasonable control, including acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities.

10. Risk of Loss Insurance. Customer shall bear the entire risk of loss or damage to the Hardware and Licensed Software. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees prescribed under this Agreement. Customer may, at its own expense and option, obtain and maintain property and casualty insurance for the Hardware and Licensed Software against all risks of loss or damage. The amount of such insurance shall not be less than the replacement cost of the Hardware and Licensed Software. All policies for such insurance shall (i) designate Premier as a named insured and Premier and Customer as loss payees, as their interests may appear and (ii) contain a provision that entitles Premier to at least fifteen (15) days' written notice prior to cancellation or modification of such insurance policy. Customer shall provide Premier with a certificate of insurance with respect to such policy on or before the time of delivery of the System. Customer shall not be relieved of the obligation to reimburse Premier for the costs associated with damage or loss to Premier's Hardware and/or Software by failing to obtain the insurance coverage as described above. For purposes of calculating insured loss, Premier shall provide replacement copies of lost or damaged Premier Software for the cost of materials, provided that Premier provides Customer with proof of loss or damage.

11. Miscellaneous

11.1. Neither Party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other Party; provided that Premier may, upon 30 days' prior written notice to Customer, assign its rights and delegates its obligations under this Agreement to another entity controlled, directly or indirectly, by Diebold, Incorporated, and may, upon prior notice to Customer, subcontract obligations under this Agreement to third-party providers. Any attempted assignment in violation of this Section will be null and void.

11.2. If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law.

11.3. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

11.4. This Agreement will be governed by and construed under the laws of the State as identified on page 1 of this Agreement, and the state and federal courts within said State have non-exclusive jurisdiction for all actions to enforce this Agreement.

11.5. No waiver or failure by a Party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.

11.6. All notices under this Agreement will be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either Party to the other Party in compliance with this Section. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

11.7. This Agreement, including the Exhibit attached hereto as of the Effective Date (which are incorporated herein by this reference), is the complete and final expression of the Parties' agreement regarding its subject matter

and supersedes all prior or contemporaneous communications or agreements, written or oral, by the Parties regarding that subject matter. In the event of any conflict or ambiguity between the terms set forth in the body of this Agreement (i.e., Section 1.1 through this Section 15.7) and those set forth in the attached Exhibit, the terms set forth in the body of this Agreement will prevail. No amendment or supplement to this Agreement is effective unless in writing and signed by both Parties' authorized representatives. In this Agreement, the word "include" (or any of its derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

EXHIBIT A

**SEE ATTACHED QUOTATION FORM FOR
DETAIL RENTAL DESCRIPTION AND PRICING**

Any quote(s) attached to this Agreement shall be incorporated therein for all purposes.

Payment Terms

Customer shall pay the amounts indicated within 30 days from receipt of Premier's invoice.

PREMIER™

ELECTION SOLUTIONS

P.O. Box 1019
Allen TX 75013
United States

Rental Quote

Date 11/24/2008
Customer Contact Bill Cook
Customer Phone (770) 830-5909

Sales Rep

Ship Via Actual Shipping

Memo

Required Delivery Date 10/28/2008

Election Date 11/4/2008

Expected Return Date 12/2/2008

Special Instructions

Estimate # QT11311

Bill To

Maryland State Board of Elections
Carrol County
151 West Street
Suite 200
Annapolis MD 21401

Ship To

Ben Gregory
Premier Election Solutions, Inc
1890-A West Oak Pkwy
Marietta GA 30062
United States

341-2111-RNTL	16	AccuVote Touch Screen Rental	4,000.00
641-1400-RNTL	16	Memory Card 128 KB Rental	1,520.00

Subtotal 5,520.00
Shipping Cost (Actual Shipping) 1,040.00
Total \$6,560.00

This quote is good for 30 days.



QT11311