

**ELECTION SYSTEMS & SOFTWARE, INC.
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, Inc., a Delaware corporation ("ES&S");

AND: Mercer County, Missouri ("Customer")

RECITALS:

- A. Customer has agreed to purchase certain election-related services from ES&S for use in **Mercer County, Missouri** (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):

 X Exhibit A (Ballot Layout, Coding, and Voice File Services)

 X Exhibit B (Ballot Printing 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 Missouri**.
- 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, INC.

11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291



Signature

Thomas F. O'Brien

Name (Printed or Typed)

CFO

Title

2/27/08

Date

MERCER COUNTY, MISSOURI

Attn: Darlene McReynolds
802 Main
Princeton, MO 64673
Fax No.: (660) 748-3180



Signature

Judy Hamilton

Name (Printed or Typed)

County Clerk - Mercer County

Title

2-19-08

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 will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. ES&S' total liability to Customer arising out of or relating to this Agreement will not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S shall be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for the selection of, use of and results obtained from any services not provided by ES&S.

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 Exhibits A and B attached hereto from ES&S for the Term of this Agreement at the pricing set forth on each applicable Exhibit. Customer's agreement to purchase all of such products and services from ES&S for the entire Term entitles Customer to receive the preferred pricing for each product or service as provided herein. In the event that Customer terminates its purchase commitment for one or more of the products and services set forth on Exhibits A and B prior to expiration of the Term of this Agreement for any reason other than for cause pursuant to Section 5 of this Agreement, or purchases any such products or services from a provider other than ES&S during the Term, or fails to pay for such products or services provided by ES&S pursuant to the payment terms in Exhibit A and B, during the Term, Customer shall no longer be entitled to receive the pricing set forth on Exhibits A and B, as applicable, and shall pay ES&S its then current rates for such product and services.

5. **Term; Termination.** This Agreement shall be in effect for a three year period beginning on the Effective Date, covering all elections within the Jurisdiction beginning sixty (60) days after the Effective Date (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. **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.

7. **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.

8. **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.

9. **Disputes.**

Remedies for Past Due Payments. If any payment to ES&S is past due more than thirty (30) 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 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. **Other.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. 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 1-6, and this Section 10 shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
BALLOT LAYOUT, CODING, AND VOICE FILE SERVICES**

1. **Services.** The services to be provided by ES&S, a description of such services, and per unit fees are set forth below. Customer acknowledges that ES&S' fees for these services are based on (a) a commitment by Customer to subscribe to such services for a period of at least three (3) years, and (b) the descriptions listed in the table below. A change in the Customer's commitment to a period of less than three (3) years for any reason other than a termination for cause pursuant to Section 5 of this Agreement will result in a change the fees set forth below.

Election Systems & Software Ballot Layout, Coding, Voice File Service Pricing	
Covered Elections: See Section 5	
	Per Unit Fee
Paper Ballot Layout	
English and Spanish (combined):	
1 to 500 Faces	\$15.00
501 or more Faces	\$12.50
Languages other than English/Spanish	
1 to 500 Faces, per Language	\$30.00
501 or more Faces, per Language	\$25.00
Base Charge for Ballot On Demand (BOD)	\$422.10
Electronic Screen Layout - AutoMARK and Ivotronic	
English and Spanish (combined):	
Per Ballot Style, or precinct, whichever is greater	Included
Languages other than English/Spanish	
Per Ballot Style, or precinct, whichever is greater	Included
Programming Services	
Base Charge per Equipment Type	\$371.88
Base Charge for ERM file set-up	\$371.88
Ballot types (open primary or multiple-page ballots)	\$53.13
Precincts (every precinct in the election)	\$5.31
Ballot faces (every unique face in the election)	\$10.63
Contests / Issues (total number of contests, referenda, questions / propositions in the election)	\$12.75
Candidate / Responses (total number of candidates &/or responses, including referenda and all write-ins for each contest/issue)	\$5.31
Headers (Central Tabulators)	\$1.49
Re-Coding Fees	\$371.88 + applicable fee for each changed element
Voice Files per Ivotronic and AutoMARK Equipment Type	
Language Setup Charge - English	\$256.50
Language Setup Charge - Spanish	\$256.50
Language Setup Charge - All Other languages	\$367.00 per language

Election Systems & Software Ballot Layout, Coding, Voice File Service Pricing	
Covered Elections: See Section 5	
Political Parties	\$5.22
Ballot Faces	\$10.53
Contests / Issues	\$10.53
Candidates / Yes-No Responses	\$7.29
Propositions / Amendments / Instructions	\$15.48
Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)	\$0.27
Resubmission	\$256.50 for English & Spanish and \$387.00 (for each additional language), plus the applicable fee for each element changed for each language
Other Services (Standard Overnight Delivery Charges Will Apply and Will Be Billed Separately)	
Media burn (Flash / PCMCIA Cards, Mem Packs, PEBs, and Jump Drives)	\$10.00
Electronic transfer files (one charge per county, per election)	\$125.00
SOS Media	\$50.00

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

Note 2: Payment terms are 100% of invoice total due within 30 calendar days of invoice date.

[END OF EXHIBIT A]

**EXHIBIT B
BALLOT PRINTING SERVICES**

Description	Price per Ballot
14" and 17" Ballots:	
Base ballot charge	\$0.24
Backside of ballot	\$0.03
Stub and / or numbering	\$0.03
Folding	\$0.02
Scoring	\$0.02
Packaging	\$0.01
Color requirements – defined as a color bar on the ballot. Other designs or methods quoted separately.	\$0.02
Per Ballot Fee Subtotal	\$TBD
Additional charges for special requests, including watermarking, unique packaging requirements and expedited delivery requirements.	\$TBD
Per Ballot Fee Total	\$TBD
Prices are exclusive of freight, which will be billed separately.	
19" ballots are quoted separately.	

Note 1: 100% of payment for Ballot Printing services due within thirty (30) calendar days from issuance of invoice.

Note 2: The above pricing assumes the use of ES&S partner printers. The use of a Customer requested printer may result in a change in the fees outlined above.

Note 3: Unexpected and material changes in costs such as paper may result in changes to the fees reflected above.

Note 4: See Section 5 of the Agreement for covered elections.