

PURCHASE AGREEMENT

BETWEEN

COUNTY OF MONMOUTH, NEW JERSEY

AND

SEQUOLA VOTING SYSTEMS, INC.

TABLE OF CONTENTS

- 1. AGREEMENT
- 2. SALE AND PURCHASE OF SYSTEM
- 3. DELIVERY AND INSTALLATION OF SYSTEM
- 4. SOFTWARE AND FIRMWARE LICENSE
- 5. TESTING AND ACCEPTANCE
- 6. PAYMENT
- 7. PATENT AND COPYRIGHT PROTECTION
- 8. TRAINING
- 9. DOCUMENTATION
- 10. TAXATION
- 11. LIMITED WARRANTY
- 12. INDEMNIFICATION
- 13. INSURANCE
- 14. ASSIGNMENT
- 15. SUBCONTRACTING
- 16. SEVERABILITY
- 17. NONDISCRIMINATION
- 18. EXCUSABLE DELAYS
- 19. TERM OF AGREEMENT
- 20. HEADINGS NOT CONTROLLING
- 21. LIMITATION OF SEQUOIA'S LIABILITY
- 22. INTELLECTUAL PROPERTY RIGHTS
- 23. EMPLOYEES
- 24. PRICING
- 25. COUNTY'S OBLIGATIONS
- 26. DUE AUTHORIZATION
- 27. TERMINATION
- 28. CONFIDENTIALITY
- 29. WAIVER
- 30. MISCELLANEOUS
- 31. ENTIRE AGREEMENT
- 32. NOTICES
- 33. CHANGE CONTROL
- 34. PROJECT MANAGERS – COORDINATION OF PROJECT
- 35. LAW
- 36. DISPUTE RESOLUTION
- 37. ARBITRATION
- 38. RELATIONSHIP OF THE PARTIES
- 39. NO THIRD PARTY BENEFICIARIES
- 40. BUSINESS REGISTRATION

Schedule 1	Description of Equipment, Software and Pricing/Payment Terms
Schedule 2	Additional Services
Schedule 3	Delivery Terms
Schedule 4	Standard Form License Agreement
Schedule 5	Affirmative Action and Americans with Disabilities Act Provisions
Schedule 6	New Jersey Business Registration Requirements

**AGREEMENT BETWEEN
COUNTY OF MONMOUTH, NEW JERSEY
AND
SEQUOIA VOTING SYSTEMS, INC.**

This Agreement is made and entered into as of this ____ day of _____, 2005, (the "Effective Date") by and between **Monmouth County, New Jersey**, located at One East Main Street, Freehold, New Jersey 07728 (hereinafter referred to as "County") and **Sequoia Voting Systems, Inc.**, having its offices at 7677 Oakport Street, Suite 800, Oakland, California 94621 (hereinafter referred to as "Sequoia").

RECITALS

WHEREAS, Sequoia is in the business of providing election equipment, software, systems and services; and

WHEREAS, County desires to obtain from Sequoia election hardware and software on the terms and conditions set forth in this Agreement,

NOW, THEREFORE, in consideration of the mutual benefits and promises set forth in this Agreement, the parties agree as follows.

1. AGREEMENT

The Agreement shall consist of the following:

- A. This Purchase Agreement and its attached schedules.
- B. Sequoia's manuals and other documentation for the System (the "Documentation").

In the event that there are any conflicts or differences among the above documents, the Purchase Agreement and its attached schedules shall prevail.

2. SALE AND PURCHASE OF SYSTEM

A. The System

Sequoia agrees to sell, and County agrees to purchase, on the terms set forth in this Agreement, the following:

- 1. The equipment listed on Schedule 1 to this Agreement (the "Equipment").
- 2. A license for the Software listed on Schedule 1, which shall be licensed to County pursuant to Section 4 of this Agreement.

3. The additional services, as set forth on Schedule 2 to this Agreement (the "Additional Services").

The Equipment and Software, when operated in accordance with the Documentation, constitutes a voting system (which is referred to in this Agreement as the "System").

B. Purchase Price

County shall pay the purchase price for the System set forth on Schedule 1 to this Agreement (the "Purchase Price").

3. DELIVERY AND INSTALLATION OF SYSTEM

A. Delivery

The Equipment and Software shall be delivered to a warehouse to be designate by County in writing prior to shipping, which notice shall be incorporated as Schedule 3 of this Agreement. The Equipment and Software shall be shipped FOB County's warehouse. Sequoia shall insure the Equipment and Software at full value. Sequoia shall endeavor to notify County when the Equipment is shipped and the anticipated delivery date. The Equipment shall be preserved, packed and marked in accordance with Sequoia's standard practice. Risk of loss shall pass to County upon delivery to the County. Title to the Equipment shall pass to County upon delivery of Equipment and Software, however, a UCC filing will remain in place until full payment is received by Sequoia under this Agreement.

B. Installation

Sequoia shall assist County with installation of the Equipment at County's warehouse.

4. SOFTWARE AND FIRMWARE LICENSE

A. License Agreement

Sequoia shall grant to County a license for use of the Software pursuant to the software license agreement attached as Schedule 4 to this Agreement (the "License Agreement"). Simultaneously with execution of this Agreement, Sequoia and County shall execute the License Agreement. The license of the Software shall be strictly in accordance with the terms of the License Agreement.

B. Software Upgrades

From time to time Sequoia, in its sole discretion, may release improvements to the Software which add or change functionality of the Software, or include programs not included in the Software at the time of execution of this Agreement and the License Agreement ("Upgrades"). Upgrades shall be governed by the License Agreement whether or not installed by County. Upgrades will be provided to County as long as County is current in the payment of License Fees.

C. Firmware License

The Equipment incorporates software and logic which constitutes an Intellectual Property Right previously owned by Sequoia pursuant to Section 22 ("Firmware"). Sequoia hereby grants to the County a non-exclusive, non-transferable limited license to use the Firmware solely with and for the operation of the Equipment, as contemplated by this Agreement. The County shall not, and shall not permit any third party to, reverse engineer, disassemble, decompile, decipher or analyze the Firmware in whole and in part. Unless expressly required to do so in this Agreement or in a written amendment to this Agreement signed by Sequoia, Sequoia has no obligation to modify or update the Firmware to meet any future requirements, legal or otherwise.

D. Compliance with Law

The Software, Upgrades and Firmware comply with applicable laws in effect at the time this Agreement was executed. Should applicable laws change in the future in such a manner as to require modifications to the Software, Upgrades or Firmware, all costs incurred in any required modification to the Software, Upgrades or Firmware will be paid by County at a price to be agreed upon at that time. All modifications shall constitute Development Intellectual Property Rights owned by Sequoia pursuant to Section 22 hereof.



E. No Modification

Customer shall not modify, or permit or suffer any third party to modify any Software, Upgrades or Firmware without the prior express written authorization of Sequoia in each instance.

5. TESTING AND ACCEPTANCE

A. Time of Testing

Within ten (10) days after delivery of the Equipment and Software to County's warehouse, County shall conduct the test procedures described in the Documentation. The test procedures shall be performed in the order set forth in the Documentation. In the event that results of the tests of Equipment or Software in accordance with the Documentation indicates that the System is not performing functions correctly, County shall notify Sequoia within five (5) days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth with specificity the performance failures. Sequoia shall, within thirty (30) days from receipt of a Defect Notice, make any corrections necessary to cause the Equipment and Software to function in accordance with the Documentation. Within ten (10) calendar days of completion of such corrections, County shall retest the system in accordance with the Documentation.

B. Acceptance

The Equipment and Software shall be deemed to have been accepted by County on the earlier to occur of (i) failure of County to timely test the Equipment or (ii) failure of County to timely issue a Defect Notice, or (iii) completion by Sequoia of corrections following receipt of a Defect Notice and the successful retesting by County.

6. PAYMENT

The total purchase price for the System, as described on Schedule 1, is \$8,078,970.00. All sums owing to Sequoia shall be payable in the following manner:

25%, or \$2,019,742.50, shall be due upon execution of contract

40%, or \$3,231,588.00, shall be due upon delivery of Equipment

35%, or \$2,827,639.50, shall be due upon acceptance of Equipment in accordance with Section 5B above

Sequoia shall issue individual invoices in accordance with the payment terms above. All sums owing shall be payable in full, without offset or deduction of any kind, within sixty (60) days of invoice date. Any amounts not paid when due shall bear interest at a rate of one (1%) percent per month until paid in full. In the event Sequoia takes legal action to collect amounts owing under this Agreement (and whether or not legal action is instituted), County shall reimburse Sequoia for Sequoia's costs and expenses (including, without limitation, court costs and reasonable attorney's fees) incurred in connection with such collection effort.

7. PATENT AND COPYRIGHT PROTECTION**A. Sequoia Indemnity**

Subject to clauses 7B and 7C, Sequoia shall, at its own expense, defend County against any claim asserted by any third party that the Software or Equipment infringes a registered United States patent or copyright of that third party.

B. Conditions

Sequoia shall have no liability or obligation for any claim of infringement as provided in clause 7A unless County: (i) notifies Sequoia in writing of any infringement or alleged infringement of which County becomes aware within a reasonable time thereafter; (ii) does not prevent or impede Sequoia from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provides Sequoia with reasonable assistance, in conducting the defense of such claim; (iv) permits Sequoia to alter the Equipment or Software, at its own expense, to render it non-infringing; (v) authorizes Sequoia to procure for County the authority to continue the use and possession of the Software or Equipment at no cost or expense to County beyond sums owing under this Agreement.

C. Exclusions


Sequoia shall have no liability for any claim of infringement or alleged infringement based on: (i) use of a superseded or modified release of the Software or portion thereof, if such infringement would have been avoided by the use of a current unmodified release of the Software; (ii) use of the System in a manner not authorized by Sequoia or for a purpose other than County's use in accordance with this Agreement; (iii) alterations of the Software or Equipment by County or by any person other than Sequoia or its authorized

representatives; (iv) the combination, operation, or use of the Equipment or Software with other equipment or software not furnished by Sequoia or its authorized representatives, if such infringement would have been avoided by use of the Equipment or Software alone.

D. Infringement Alteration

In the event County's use of all or any portion of the Equipment or Software (the "Infringing Component") becomes, or in Sequoia's reasonable opinion is likely to become, the subject of an infringement claim, Sequoia may at its option and expense: (i) obtain for County the continuing right to use the Infringing Component; or (ii) alter the Infringing Component or replace it with a functional equivalent so long as it no longer infringes; or if neither (i) or (ii) is reasonably practicable, (iii) on not less than ninety (90) days prior written notice to County, repurchase the Infringing Component and refund to County an amount equal to the purchase price for the Infringing Component amortized on a five (5) year period on a straight line basis. In the event neither 7.D (i) or (ii) is reasonably practicable and it is determined that removal of the Infringing Component renders the Equipment or Software unusable as contemplated by this Agreement, Sequoia acknowledges that it will be in breach of contract and the remedies provided hereunder and at law shall apply.

8. TRAINING

To the extent required by this Agreement, Sequoia shall provide training to County personnel on the operation and use of the System at times to be agreed upon by Sequoia and County. Any additional training required as a result of equipment and/or software upgrades to the System purchased under this Agreement will be provided as determined by Sequoia and County at the prices set forth in Sequoia's published prices for training at the time of the upgrade. 

9. DOCUMENTATION

The Documentation shall be delivered to County upon shipment of Equipment and Software. The Documentation is subject to the confidentiality requirements of Section 29, and shall not be copied or reproduced without the prior written consent of Sequoia.

10. TAXATION

County is exempt from payment of sales and use taxes. County will sign an exemption certificate submitted by Sequoia. Sequoia shall be responsible for payment of taxes on Sequoia's income and withholding of payroll taxes on Sequoia's employees as required by law.

11. LIMITED PARTS WARRANTY

A. Terms of Limited PARTS Warranty
Sequoia warrants as follows:

1. The System materially complies with applicable federal, state and county laws as such laws exist on the date of this Agreement.

2. For a period of one year from the date of acceptance or deemed acceptance of the Equipment and Software by County pursuant to Section 5B, the System will function in accordance with the Documentation.
- B.
1. For the Warranty Period, Sequoia will provide all parts to replace those which have been broken through normal wear and tear (excluding items listed in 11.E.1. of this Agreement), as determined by Sequoia Voting Systems, without charge to the Customer as long as this Agreement remains in force.
 2. Defective components or materials shall be returned at Sequoia's expense to Sequoia in accordance with Sequoia's instructions, upon receipt from Sequoia of a Return Material Authorization Number ("RMA") and shipping instructions. Goods returned in accordance with the foregoing procedures shall be replaced or repaired, at the option of Sequoia, and returned to the Customer via United Parcel Service within 30 days and where possible at least 14 days prior to an election. Special handling on expedited shipments shall be at the customer's expense.
- C. Sequoia will provide telephone support to answer questions on equipment use or repair during normal business days between 8:00 a.m. and 5:00 p.m. EST. Any diagnostics on machines beyond phone support, whether on-site or at a Sequoia facility will be billable to the county. This warranty does not include any labor for diagnostics or repair performed on whole units shipped back to Sequoia, or any labor performed on-site at the customer location. All travel expenses will be billable to the county for any on-site labor.
- D.
1. Sequoia will provide to the Customer software upgrades, which may become available from time to time. Such upgrades shall be installed by the Customer. They shall be at no cost, unless additional or new program or configuration chips are necessary, in which case the Customer shall purchase such chips at the cost then in effect.
 2. Sequoia will provide to the Customer any and all firmware upgrades available on the AVC Advantage®. These upgrades shall be installed by the Customer onto the AVC Advantage® voting units.
- E. Limitations
1. This agreement does not require Sequoia to replace:
 - A. paper, seals, batteries, or other consumable parts or supplies,
 - B. products which have been repaired or altered by persons other than those expressly approved in writing by

- C. Sequoia, products from which the serial numbers have been removed, defaced or changed,
- D. products damaged as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with instructions furnished by Sequoia,
- E. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Sequoia,
- F. products used by any person other than Customer's employees or persons under Customer's direct supervision,

2. Customer's exclusive remedy and Sequoia's entire liability in Contract, tort or otherwise, will be to make all necessary adjustments and repairs, or at Sequoia's option replace or substitute equipment to keep the equipment in good operating condition in accordance with the manufacturer's policies then in effect.

F. Warranty Disclaimer

SEQUOIA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, NOT EXPRESSLY AND SPECIFICALLY SET FORTH HEREIN INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. IN NO EVENT WHATSOEVER SHALL SEQUOIA BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES AS A RESULT OF ITS BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT.

12. INDEMNIFICATION

A. By Sequoia

Sequoia hereby agrees to defend, indemnify, protect, and hold County harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury to Sequoia's employees, agents or officers to the extent caused by the negligent or intentional acts of Sequoia or its employees in performing under this Agreement.

B. By County

County hereby agrees to defend, indemnify, protect, and hold Sequoia harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury

to County's employees, agents or officers to the extent caused by the negligent or intentional acts of County or its employees.

13. INSURANCE

A. During the performance of this Agreement, Sequoia will maintain in full force and effect the following insurance coverage for Sequoia employees and property:

1. Worker's Compensation

Sequoia shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with applicable laws of the State in which County is located.

2. General Liability Insurance

Sequoia shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability of \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent. Sequoia may elect to self-insure this coverage.

3. Motor Vehicle Liability

Coverage shall include all owned and non-owned vehicles and all hired vehicles in the amount of \$1,000,000.

B. Certificate of Insurance

Prior to execution of this Agreement, Sequoia shall provide County with a certificate evidencing such coverage and naming County as an additional insured in regards to Sequoia's negligence.

14. ASSIGNMENT

Neither party shall assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Sequoia may assign this Agreement to any entity owned or controlled, directly or indirectly, by Smartmatic International Corp.

15. SUBCONTRACTING

Sequoia may use subcontractors in connection with the work performed under this Agreement.

16. SEVERABILITY

If any term or provision of this Agreement, or the application thereof, to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this

Agreement, or the application of such terms and provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

17. NONDISCRIMINATION

Sequoia warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation. Sequoia agrees to the mandatory Affirmative Action provisions attached hereto as Schedule 5.

18. EXCUSABLE DELAYS

A. Any failure by Sequoia to perform any obligation of Sequoia under this Agreement shall not constitute a default by Sequoia under this Agreement if such failure arises out of causes beyond the reasonable control of Sequoia or its subcontractors. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, terrorist attack, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

B. Upon Sequoia's request, County shall consider the facts and extent of any failure to perform the work and, if Sequoia's failure to perform was without it or its subcontractors fault or negligence, the Agreement, Schedules and/or any other affected provision of this Agreement shall be revised accordingly, subject to County's rights to change, terminate, or stop any or all of the work at any time.

19. TERM OF AGREEMENT

This Agreement shall take effect upon the later to occur of (i) full execution by the parties; or (ii) appropriation and receipt by County of funding for use by County for payments of amounts owing to Sequoia hereunder. The term remains in full force and effect until the expiration of the Warranties, except as otherwise provided for herein.

20. HEADINGS NOT CONTROLLING

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

21. LIMITATION OF SEQUOIA'S LIABILITY

SEQUOIA'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE SUM OF EIGHT MILLION SEVENTY

EIGHT THOUSAND NINE HUNDRED SEVENTY (\$8,078,970.00) DOLLARS. SEQUOIA SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY COUNTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

22. INTELLECTUAL PROPERTY RIGHTS

Each party shall retain its rights in any Intellectual Property Rights owned by or licensed to it prior to the Effective Date. All Development Intellectual Property Rights whether or not developed by Sequoia will be owned exclusively by Sequoia; provided, however that County, provided it has not breached this Agreement, shall have a non-exclusive license to the use of such Development Intellectual Property Rights solely as necessary for County to use the Product in the manner contemplated by this Agreement. For purposes of this Agreement, "Intellectual Property Rights" shall mean rights in inventions, know-how, patents, registered designs, design rights, trade names, trademarks, service marks, trade secrets, copyrights, semiconductor design rights, mask works and topography rights whether or not registered and including any application to register any of the same, and all rights or forms of protection of a similar nature or having equivalent effect which may subsist anywhere in the world. "Development Intellectual Property Rights" shall mean any Intellectual Property Rights created or coming into being during performance by Sequoia under this Agreement.

23. EMPLOYEES

County shall not solicit for employment, whether directly or indirectly or otherwise, employ, engage or contract from the date of this Agreement and for a period of two (2) years thereafter, any person who is employed or contracted by Sequoia during the duration of this Agreement. If a person who is employed or contracted by Sequoia seeks to be employed or contracted by County prior to the expiration of said two (2) year period, County shall promptly advise Sequoia in writing. County agrees that the restrictions set forth in this Section 23 are fair and reasonable and are in addition to and not in substitution for any similar restrictions in any other agreements between the parties.

24. PRICING

County acknowledges and understands that Sequoia has not made any promises, or given County any assurances, written or verbal, concerning the pricing under this Agreement or the relationship of these prices to those charged to any past, current or future customer of Sequoia.

25. COUNTY'S OBLIGATIONS

County's obligations under this Agreement shall include, but not be limited to, the following:

- A. County shall pay Sequoia amounts owing under this Agreement when due.
- B. County shall make County's personnel and facilities available to Sequoia as required for Sequoia's performance under this Agreement.
- C. County shall comply with other requests of Sequoia as reasonably required for Sequoia's performance under this Agreement.

26. DUE AUTHORIZATION

County and Sequoia each represent to the other that this Agreement has been duly authorized and executed on behalf of each party, and is a legally binding obligation of each party.

27. TERMINATION**A. By Sequoia**

Sequoia may terminate this Agreement by written notice to County if:

- 1. County fails to pay any sum owing to Sequoia within thirty (30) days of date when due.
- 2. County fails, in the reasonable opinion of Sequoia, to cooperate with Sequoia to the extent reasonably necessary to permit Sequoia to fulfill its obligations under this Agreement.
- 3. Sufficient sums have not been appropriated by law to permit County to meet its payment obligations under this Agreement.

B. By Either Party

Either party may terminate this Agreement by written notice to the other if:

- 1. The other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the other party.
- 2. Either party enters into, or proposes to enter into, any bankruptcy or similar proceeding for the purpose of affording relief from creditors.

C. Effect of Termination

In the event this Agreement is terminated for any reason, all amounts owing to Sequoia accrued prior to such termination shall be immediately due and payable. Such termination shall not affect the rights of the parties accrued prior to the date of termination.

D. License Agreement

Upon termination of this Agreement, the License Agreement and all of County's rights thereunder shall terminate. This Agreement shall terminate automatically on termination of the License Agreement.

E. Survival

In the event of termination, the provisions of Sections 1, 11A, 11B, 11E, 11F, 12, 21, 22, 23, 28, 31, 35, 36 and 37 shall survive termination of this Agreement.

28. CONFIDENTIALITY

County acknowledges that during the course of Sequoia's performance under this Agreement, Sequoia may disclose to County information concerning Sequoia's pricing, products, trade secrets and other information which is competitively sensitive and proprietary, and which may be disclosed to County orally or in writing, in tangible or intangible form, including, without limitation, technical, operating, business, marketing and financial information, computer software and data, physical objects and samples (collectively, the "Information"). County acknowledges that disclosure of the Information would materially injure Sequoia's competitive position in the marketplace. County therefore agrees, to the maximum extent permitted by law, to keep confidential and not to disclose any of the Information to any other person or entity, or use such Information for any purpose other than as expressly contemplated by this Agreement. In the event County is required by law to disclose any of the Information, County shall give written notice to Sequoia as soon as is practicable, but in no event less than five (5) business days prior to disclosure.

29. WAIVER

Any failure or delay by either party to exercise or enforce any right or any time or indulgence given shall not affect that party's right to exercise or enforce that right against the other party nor shall any waiver of such breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective any waiver must be in writing, signed by an authorized representative of the party and delivered to the other party.

30. MISCELLANEOUS

A. Sequoia agrees to Upgrade the AVC Advantage® units purchased under this Agreement with a voter-verified printer (VVPAT) by January 1, 2008, at a cost not to exceed \$2,000 per unit, in accordance with New Jersey Senate Bill No. 29. In the event Sequoia fails to provide the VVPAT Upgrade by the

January 1, 2008 deadline, Sequoia acknowledges that it will be in breach of this Agreement and shall refund an amount equal to the purchase price less the two (2) year lease of the System to the County. In the event of a breach under this Section 30.A, County shall return all Equipment and Software to Sequoia at Sequoia's expense.

- B. County shall be one of the first five (5) counties to receive the Sequoia VVPAT Upgrade in the State of New Jersey.

31. ENTIRE AGREEMENT

This Agreement and the License Agreement embody the entire agreement between the parties and supercedes any other agreements between the parties (all of which other agreements are void and of no further effect). This Agreement may be amended only by agreement in writing signed by both parties.

32. NOTICES

- A. Any notice to be given by either party under the terms of this Agreement shall be in writing and shall be given by registered or certified letter, overnight courier providing written evidence of delivery or confirmed facsimile addressed to the party for whom it is intended at its address stated in this Agreement or such other address as may be notified in writing for the receipt of notices.
- B. Every notice shall be deemed to have been given and received the earlier of (i) the date actually accepted, rejected or marked by the carrier unable to deliver or (ii) four (4) business days after the date such Notice is mailed by United States registered or certified mail, as provided above, in any post office or branch post office regularly maintained by the United States Government.

33. CHANGE CONTROL

- A. Should applicable laws change in such a manner to necessitate modification to the Equipment, Software or System, or should the County wish to make any other changes to the Equipment, Software or System, the County shall submit to Sequoia full particulars in writing of such proposed changes. Sequoia shall, within a reasonable time after receipt of such a submission from County, submit to the County a full quotation for incorporating such changes specifying any impact on the pricing and project schedule.
- B. Upon receipt of such quotation, County may elect either:
1. to accept such quotation; or

2. to withdraw the proposed changes by written notice to Sequoia within the ten (10) days of receipt of such quotation, in which case this Agreement shall continue unchanged; or
 3. to negotiate amendments with Sequoia and upon agreement the parties shall sign an amendment to this Agreement detailing the agreed changes, any price impact and any other change in terms.
- C. If Sequoia wishes to suggest changes to the Equipment, Software or System, it shall submit to County a description of such proposed changes including any effect on the pricing and project schedule. County shall be under no obligation to accept any such proposal, but if it does so the changes shall only take effect after the agreed changes have been described in an amendment to this Agreement signed by both parties.

34. PROJECT MANAGERS - COORDINATION OF PROJECT

- A. Each party shall appoint a project manager for all administrative activities associated with this Agreement. Each project manager shall ensure that copies of all written communications relating to this Agreement are copied to the other project manager. The initial project managers shall be determined prior to delivery.
- B. The project managers shall meet at least once every thirty (30) days or at such periods as may be agreed to review progress. Unless otherwise agreed, meetings will alternate between the offices of the parties.

35. LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflict of laws, and the parties agree, subject to the arbitration requirements of Section 37 to submit to the exclusive jurisdiction of the courts of the State of New Jersey and the federal district courts situate in New Jersey with respect to any matter arising from or relating to this Agreement.

36. DISPUTE RESOLUTION

Any dispute between the parties either with respect to the interpretation of any provision of this Agreement or with respect to the performance by either party hereunder shall be resolved as follows:

- A. Upon the written request of either party, the project managers of each party will meet for the purpose of endeavoring to resolve such dispute. The project managers shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made

by one party to the other for nonprivileged information reasonably related to this Agreement will be honored in order that each of the parties may be fully advised of the other's position. The specific format for such discussions will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party.

- B. If the project managers cannot resolve the dispute, then the dispute shall be escalated to the Vice President of Operations of Sequoia and the County Administrator, for their review and resolution. If the dispute cannot be resolved by such officers, then the parties may initiate formal arbitration proceedings; however, arbitration proceedings for the resolution of any such dispute may not be commenced until the earlier of:
1. the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely; or
 2. twenty (20) days after the initial request to negotiate such dispute; or
 3. thirty (30) days before the statute of limitations governing any cause of action relating to such dispute would expire.
- C. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions hereof.

37. ARBITRATION

Any disputes between the parties hereto arising out of or relating to the interpretation or performance of this Agreement, including, without limitation, any alleged breach hereof, shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association relating to commercial arbitration then in effect (the "AAA Rules"). The arbitration shall be conducted by a panel of three (3) arbitrators appointed in accordance with such AAA Rules. Such arbitral tribunal shall apply the substantive (not the conflicts) law of the State of New Jersey as provided in Section 35. All proceedings of the arbitration, including arguments and briefs, shall be conducted in the English language. Any award of the arbitral tribunal shall be rendered in writing and shall be final and binding on the parties to it. Judgment on such award may be entered in any court of competent jurisdiction. The costs of arbitration shall be borne by the parties as the arbitral tribunal may award.

38. RELATIONSHIP OF THE PARTIES

County and Sequoia agree that under this Agreement:

- A. Both parties are independent contractors;
- B. Neither party is a legal representative, agent or partner of the other;

- C. Neither party will represent or act on behalf of the other, unless otherwise agreed to in writing; and
- D. Both parties are free to enter into similar agreements with others and to market its products and services to others.

39. NO THIRD PARTY BENEFICIARIES

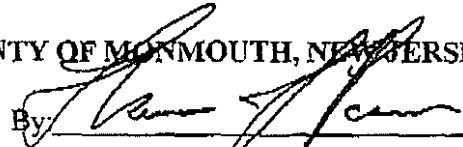
Sequoia and County agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

40. BUSINESS REGISTRATION

Sequoia shall comply with the New Jersey Business Registration requirements as set forth in Schedule 6 attached hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the Effective Date.


COUNTY OF MONMOUTH, NEW JERSEY

By: 

Name: THOMAS POWERS

Title/Date: Director of the board 10/7/05

SEQUOIA VOTING SYSTEMS, INC.

By: 

Name: Jack Blaine

Title/Date: President 9/29/05

Thereafter, the license fee will be renewed and invoiced yearly. This price does not include hardware or licenses for non Sequoia Voting Systems products.

3.1 HARDWARE WARRANTY

The AVC Advantage includes a one – year parts warranty. If components fail during the first year, they are generally shipped within 24 hours of proper notification for replacement by trained County Staff. Extended warranty options are available if the County deems them desirable.

3.2 INSTALLATION, TRAINING & SUPPORT

INSTALLATION

The key to a successful change in election equipment is the ability of the vendor to support the installation. Monmouth County will be assigned a representative with experience installing the proposed equipment. This representative will assist with oversight and advice during the acceptance of the new equipment. Further, he or she will provide guidance to technical staff providing maintenance and set-up of the new equipment and to those responsible for utilizing the election management software. The representative will work with designated

County Staff to instruct them in the recommended methods for training poll workers and conducting voter outreach. Sequoia will assist the County in designing a procedure guide for poll workers, and will guide your staff in voter outreach efforts.

TRAINING

Sequoia conducts training courses as follows.

AVC Advantage Acceptance Tcst Training	1 day
Pollworker train the trainer	2 days
WinEDS I -Pre-LAT and tally training	2 days
WinEDS II election management	3 days
AVC Advantage Technician Training	4 days
Total	12 days

SUPPORT

Sequoia will provide a technician for on-site Election Day support for up to three elections. This includes on-site technician to oversee the Election Day process. Additional services may be at prevailing rate schedule.

MONMOUTH COUNTY, NEW JERSEY BOARD OF ELECTIONS

Opscan Absentee Voting System

Teamwork Software Upgrade No charge

Monmouth County currently owns an older version of Teamwork software used to tabulate punch card ballots. The proposed version is an upgrade to the existing version to tabulate the Opscan ballots.

Teamwork operates in a DOS environment and the software includes election setup, tally and report printing functions for tabulation of optical scan ballots processed on the Opscan V and VI scanning units. This software does not include a graphical layout module. The costs associated with ballot printing and layout are not included.

Training for two employees is included in this proposal and will be conducted at a location determined by Sequoia and compatible with the needs of the Monmouth County Board of Elections.

Sequoia will provide on site election day support to supervise and complete instruction on the processing of ballots utilizing this software and associated equipment for the first election within the first year of purchase

Programming services are not included in this proposal. The number of contests and candidates would determine the cost for Sequoia to program. Monmouth County also has the option of programming Teamwork themselves.

It should be noted that setup for absentee is partially an inclusive function with WinEDS, the software package that supports the Sequoia product line of precinct/district level vote and tally equipment (i.e. the AVC Advantage) therefore limiting data entry to only one time.

3 Scanners @ \$13,500. each No charge
The third unit is purchased as a backup

Notes:

- The above pricing does not include hardware for the TeamWork Software.
- The required hardware for TeamWork must include the following specifications
Any PC that can run DOS, 16MB of RAM, hard drive with 100 megabytes of free disc space, 3.5 inch floppy, and an operating speed of 266MHz or higher
- A yearly license fee of 15% of the software cost is assessed after the first year.

SCHEDULE 2

ADDITIONAL SERVICES

1. Election Coding Plan:

Sequoia will perform the following items in English only: WinEDS Profile Setup and Maintenance, WinEDS Election Database Setup, provide the Absentee Ballot Camera Ready Copy, provide a WinEDS Technician on-site for election database installation, verification and proofing for each election, provide a WinEDS Technician on-site for Election Tally, provide audio setup for audio voting in house. Outside recording charges would be at the County's expense. Election coding charges are as follows:

Pricing per Election

Base Charge:

Precincts or Splits 1 through 100	\$200 per precinct or split
Precincts or Splits 101 through 500	\$ 75 per precinct or split
Each Additional Language	25% of Base Charge
Deduction for No Audio	10% of Base Charge

2. Additional Support & Service Fees:

- a) Support not outlined in the above information that may be requested by the County will be available at the rates listed below. Requests for such support must be requested in writing to the Sequoia Account Manager or other appropriate Sequoia personnel.

Type of Service/Support	Level	Fee
Election Support	On-site field technicians, On-site phone tech support	\$125/hr
Election Product/Service Support	Product/Account Associate	\$125/hr
Election Product/Service Support	Specialist, Account/Project Manager	\$175/hr
Election Product/Service Support	Senior Specialist/Project Manager, General Manager	\$225/hr
Election Product/Service Support	Senior Manager/Developer	\$275/hr

Fees do not include travel and expenses for on-site support. When travel is required, there will be a minimum charge of eight hours per day if round trip travel exceeds four hours. Sequoia reserves the right to adjust the election coding fees, additional support and service fees yearly without advanced

notice to the County. Associated travel expenses will be billed separately following the general guidelines listed below.

b) **TRAVEL AND EXPENSE GUIDELINES**

1. Every effort will be made to choose the most efficient, prudent, and economical option available for the travel occasion.
2. Unless otherwise stated, the maximum per diem for meals shall not exceed \$65/day*
3. Unless otherwise stated, the maximum hotel charge shall not exceed \$150/day (not including fees and taxes)*
4. Reimbursement for employee car travel in the employee's personal vehicle will be billed at \$0.375/mile.
5. Personal entertainment or other personal expenses will not be billed.

*Note: Meals and hotel fares may exceed the max amount in certain metropolitan areas determined by the federal index to be high cost of living locations.

SCHEDULE 3**DELIVERY TERMS**

300 AVC Advantage units shall be delivered in December 2005, 300 AVC Advantage units shall be delivered in January 2006 and the remaining 350 AVC Advantage units shall be delivered in February 2006. The Equipment and Software is to be delivered to a warehouse to be designated by County prior to shipping.

SCHEDULE 4
STANDARD FORM LICENSE AGREEMENT

SCHEDULE 5**AFFIRMATIVE ACTION AND
AMERICANS WITH DISABILITIES ACT PROVISIONS**

1. During the performance of this contract, the Contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

c. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act [*N.J.S.A. 10:5-31, et seq.*] and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31, et seq.*, as amended and supplemented from time to time.

e. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with:

(i.) The applicable county employment goals [Employment Goal Compliance] established in accordance with *N.J.A.C. 17:27-5.2*; or

(ii.) A binding determination of the applicable county employment goals determined by the Division [Division of Contract Compliance and Equal Employment Opportunity in Public Contracts, N.J. Department of the Treasury], pursuant to *N.J.A.C. 17:27-5.2*.

f. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and

court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

h. In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

i. The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

2. The Contractor and the County do hereby agree that the provisions of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101, *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the County pursuant to this contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the Contractor shall defend the County in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the County, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the County's grievance procedure, the Contractor agrees to abide by any decision of the County which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the County or if the County incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The County shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the County or any of its agents, servants, and employees, the County shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the County or its representatives.

It is expressly agreed and understood that any approval by the County of the services provided by the Contractor pursuant to this contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the County pursuant to this paragraph.

It is further agreed and understood that the County assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of the Agreement. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Contractor from any liability, nor preclude the County from taking any actions available to it under any other provisions of this Agreement or otherwise at law.

SCHEDULE 6
NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS

The Contractor has previously provided the County with a copy of the Contractor's business registration certificate verifying that the Contractor is properly registered with the New Jersey Department of the Treasury. The Contractor will also comply with the following:

- a. The Contractor will provide written notice to each subcontractor, as defined in *N.J.S.A. 52:32-44*, namely "any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract issued by a contracting agency", that the subcontractor must provide a copy of the subcontractor's business registration certificate to the Contractor prior to entering into the subcontract.
- b. The Contractor will obtain and promptly forward to the County, for filing, a copy of a business registration certificate for every subcontractor.
- c. The Contractor will provide the County with a complete and accurate list of subcontractors and their addresses, or a certification that no subcontractors were used, before final payment is made.
- d. The Contractor and each of its affiliates, as "affiliates" are defined in *N.J.S.A. 52:32-44(g)(3)*, will collect and remit to the New Jersey Division of Taxation any use tax due pursuant to the "Sales and Use Tax Act" (*N.J.S.A. 54:32B-1, et seq.*) on all sales of tangible personal property delivered into New Jersey.
- e. The Contractor will include a provision in all subcontracts that the subcontractor and the subcontractor's affiliates will collect and remit to the New Jersey Division of Taxation any use tax due pursuant to the "Sales and Use Tax Act" (*N.J.S.A. 54:32B-1, et seq.*) on all sales of tangible personal property delivered into New Jersey.

SCHEDULE 1

DESCRIPTION OF EQUIPMENT, SOFTWARE AND PRICING/PAYMENT TERMS

HARDWARE

1.1 AVC ADVANTAGE ELECTRONIC VOTING MACHINE

Machines 950 units @ \$ 6,000 each	\$ 5,700,000
Audio Component 950 units @ \$2,000	\$ 1,900,000

- Sequoia recommends that Monmouth County purchase 2 voting machines per district plus spares to minimize lines and delays on Election Day. The County has (463) districts. Total 926 machines plus 24 spares (950).

1.2 CARTRIDGE READER KIT

3 Kits @ \$ 5,000 each	\$ 15,000
3 audio@ \$1,000 each	\$ 3,000

1.3 CARTRIDGE READER KITS (REMOTE TALLY)

53 Kits @ \$5,000 each	\$ 265,000
------------------------	------------

1.4 OPTIONS

Spare Parts Inventory	\$ 10,000
Tool Kits for Technicians (6 @ \$150. ea.)	\$ 900
50 Vote Simulation Cartridges (@ \$250. ea.)	\$ 12,500
50 Spare Results Cartridges (@ \$250. ea.)	\$ 12,500
Secure Cartridge Storage Carts for 500 2 @ \$3200.	\$ 6,400
AVC Edge Cartridge Trays 17 @ \$60.	\$ 1,020
AVC Advantage Cartridge Trays 20 @ \$20.	\$ 400
Emergency Ballot Boxes 950 @ \$55	\$ 52,250

SOFTWARE APPLICATIONS

2.1 WinEDS ELECTION DATABASE SYSTEM LICENSE	\$ 200,000
---	------------

INSTALLATION, TRAINING & SUPPORT

3.1 HARDWARE WARRANTY	N/C
3.2 WinEDS SUPPORT YEAR ONE (up to 3 elections)	N/C

TOTAL w/WinEDS Application:	\$ 8,178,970
Discount (Valid if Board resolution is ratified before October 1, 2005)	-\$ 100,000
TOTAL	\$ 8,078,970

PAYMENT TERMS

Contract execution	25%, or \$2,019,742.50
Machine Delivery	40%, or \$3,231,588.00
Machine Acceptance	35%, or \$2,827,639.50

1.1 AVC ADVANTAGE ELECTRONIC VOTING MACHINEFeatures

Booth Light
 504 Voting Positions (12x 24)
 Electronic Write-In Keypad
 On-Board Audit * Trail
 Removable Results Cartridge
 Seiko DPU-414 Printer
 Battery Backup
 Operator Panel
 2 Sets of Keys for Each Machine
 Maintenance Diagnostics
 Setup Diagnostics
 Operator Log / Maintenance Log
 Verify the Ballot
 Pre-Election Logic and Accuracy Test
 Post-Election Logic and Accuracy Test
 Random Storage of Ballot Images
 Endorsed Candidate Logic

1.2 CARTRIDGE READER

The Cartridge Reader Kit includes a Cartridge Reader and PC interface card and supports the function of writing to and reading from the results cartridges.

1.3 Miscellaneous

Parts Inventory
 Vote Simulation (test vote) Cartridges
 Spare Results Cartridges
 Cartridge Storage Carts
 Tool Kits
 AVC Edge Cartridge Trays
 AVC Advantage Cartridge Trays
 Emergency Ballot Boxes

2.1 WinEDS ELECTION DATABASE APPLICATION

This is a results cartridge generation and results cartridge tally package, which provides for central machine programming and central election results reporting. The application provides for election management and setup for a large fleet of voting machines. Reports generated include countywide summary, town and district reports, absentee results, and many more. The above licensing price represents the first year cost for installing the software on up to three workstations. The price quoted includes the first year annual software license fee.

AGREEMENT
BETWEEN
SEQUOIA VOTING SYSTEMS, Inc.

AND

COUNTY OF MONMOUTH, NEW JERSEY

INDEX OF CLAUSES

- 1. Definitions
- 2. Grant of License
- 3. Delivery
- 4. Price
- 5. Prohibited Acts
- 6. Confidentiality
- 7. Termination
- 8. Return of Software
- 9. Warranty
- 10. Limitation of Liability
- 11. Entire Agreement
- 12. Severability
- 13. Waiver
- 14. Force Majeure
- 15. Notices
- 16. Assignment
- 17. Relationship of the Parties
- 18. No Third Party Beneficiaries
- 19. Governing Law
- 20. Affirmative Action
- 21. Business Registration

- Appendix 1 License Fee
- Appendix 2 Affirmative Action and Americans with Disabilities Act Provisions
- Appendix 3 New Jersey Business Registration Requirements

THIS AGREEMENT is made on _____ day of _____ 2005

BETWEEN

SEQUOIA VOTING SYSTEMS Inc., located at 7677 Oakport Street, Suite 800, Oakland, CA 94621 ("the Licensor")

AND

COUNTY OF MONMOUTH, NEW JERSEY, having its office at One East Main Street, Freehold, New Jersey 07728 ("the Licensee").

WHEREAS

The Licensee wishes the Licensor to grant to it a license to use the Software in relation to the Equipment (both as hereinafter defined) and the Licensor is agreeable to granting such a license subject to the following terms and conditions:

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement the following terms shall bear the following meanings:

- "Documentation" the manuals, procedures and materials accompanying the Software.
- "Software" WinEDS election management software
Teamwork Optical Absentee Software
- "License Fee" the license fee payable by the Licensee to the Licensor for the license of the Software herein as specified in Appendix 3.
- "Specifications" the specifications for the Software set forth in the Documentation.

1.2 Words used in the singular shall include the plural and vice versa.

2. GRANT OF LICENSE

2.1 The Licensor grants to the Licensee a personal, non-transferable and non-exclusive license for one (1) year to use the Software solely for the Licensee's own internal business purposes and solely in conjunction with the Hardware at the Locations. The license shall take effect from the date of signature of this Agreement. This Agreement may not be assigned or transferred by the Licensee, voluntarily or by

operation of law (including without limitation, by transfer of ownership interests in the Licensee), to any party without the Licensor's express prior written permission. The Licensee shall have no power to grant sub-licenses, prepare derivative works or modify the Software. Any use of all or any portion of the Software not expressly permitted by the terms of this Agreement is strictly prohibited.

- 2.2 Licensor shall retain ownership of and all copyright and other proprietary rights in the Software and any modifications or translations thereof. Licensee shall acquire only the limited license to the Software granted under the express terms of Section 2.1 above.
- 2.3 No right is granted to Licensee by this Agreement to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of, Licensor or a corporate affiliate of Licensor. Licensee agrees that it will not, without the prior written permission of Licensor, (i) use any such identifying mark in advertising, publicity, packaging, labeling or in any other manner to identify any of its products or services, or (ii) represent, directly or indirectly, any product or service of Licensee as a product or service of Licensor or such an affiliate or is made in accordance with or utilizes any information or documentation of Licensor or such an affiliate.

3. DELIVERY

- 3.1 The Software shall be supplied in executable form together with one back-up copy and one copy of Software documentation.
- 3.2 Delivery of the Software shall take place at the Location(s) or any other site of the Licensee and on the dates agreed between the parties.

4. PRICE

- 4.1 In consideration of the grant of the license the Licensee shall pay the Licensor the License Fee.
- 4.2 The Licensee shall pay all invoices within sixty (60) days of invoice date. Licensor reserves the right to withdraw its services and support if any invoice is not paid within thirty (30) days of the date when due.
- 4.3 The Licensee shall pay the Licensor interest on all sums outstanding at an annual rate of interest equal to four per cent (4%) above the prime rate as published in the Wall Street Journal and changed from time to time until payment is made in full (whether before or after judgment).
- 4.4 Licensee shall be responsible for payment of all sales, personal property, use and other taxes or governmental impositions of any nature, with the sole exception of taxes calculated solely upon the income of Licensor ("Taxes"). Licensee shall, at the option of Licensor, pay Taxes directly to the taxing authority or reimburse Licensor

immediately for any Taxes paid by Licensor.

5. PROHIBITED ACTS

5.1 The Licensee shall not (and shall not permit any other party to), except to the extent permitted by law, without the prior written permission of the Licensor:-

- 5.1.1 Transfer or copy onto any other disk or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;
- 5.1.2 Reverse engineer, disassemble, decompile, decipher or analyze the Software in whole or in part;
- 5.1.3 Alter or modify the Software in any way or prepare any derivative works of The Software or any part of parts of the Software;
- 5.1.4 Alter, remove or obstruct any copyright or proprietary notices from the Software or fail to reproduce the same on any lawful copies of the Software;
- 5.1.5 Use the Software other than on the Hardware at the Locations; or
- 5.1.6 Export, directly or indirectly, any Software to any country outside of the United States, or make disclosure of the Software to any foreign national where such disclosure would require an export license or other governmental permit.

6. CONFIDENTIALITY

The Licensee acknowledges that the Software is the sole and exclusive property of the Licensor or its licensors, contains confidential information of the Licensor or its licensors and embodies certain valuable proprietary information and trade secrets of the Licensor or its licensors. The Licensee shall not give or make available the Software, or any part thereof, or otherwise disclose confidential information contained in, supplied with or relating to the Software to any third party except to such of its employees as are required to have access to the Software in the normal course of use of the Software for the purpose permitted under Section 2 and under like conditions of confidentiality as contained in this Section 6. The provisions of this Section 6 shall survive the termination or expiration of this Agreement.

7. TERMINATION

7.1 Without prejudice to any other remedy which may be available, at law, equity or otherwise, Licensor may terminate this Agreement immediately upon written notice to the Licensee;

- 7.1.1 If the Licensee breaches any of the terms of this Agreement which, in the case Of breach capable of being remedied, is not remedied within thirty (30) days Written notice from the Licensor, or
- 7.1.2 If the Licensee uses the Software for any purpose not expressly permitted

hereunder.

- 7.2 Either party may terminate this Agreement if the other party ceases to trade, fails to pay its debts in the normal course, makes or offers to make any voluntary arrangement or composition with its creditors, commences to be wound up otherwise than voluntarily for the purposes of solvent amalgamation or reconstruction, becomes bankrupt, insolvent or if a receiver, administrator, trustee or like officer is appointed over the whole or part of its business.

8. RETURN OF SOFTWARE

Upon termination or expiration of this Agreement, the Licensee shall (i) forthwith return to the Licensor all Software in its possession or control, or, if so requested by the Licensor, destroy all such Software and (ii) purge all Software from any electronic media, and certify in writing to the Licensor that it has been destroyed and purged.

9. WARRANTY

- 9.1 The Licensor warrants that the Software will function substantially in accordance with the Specification. This warranty shall remain in effect so long as there is a Licensing Agreement in place between the parties. The Licensor shall use reasonable efforts to correct any material failure of the Software to function substantially in accordance with the Specification provided the Licensee has given the Licensor written notice of the defect within the said thirty (30) day period and provided that the Licensee can reproduce the defect to the Licensor. If the Licensor establishes that a reported defect is not covered by the foregoing warranty or is not covered by the Software maintenance fee payable by the Licensee to the Licensor, pursuant to the terms of a separate Software maintenance agreement entered between the parties (if any), the Licensee shall be responsible for the costs of the Licensor's investigative and remedial work at the Licensor's then current charging rates. The foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than the Licensor or its licensors or (ii) having been used by the Licensee for purposes other than those for which the Software was designed by Licensor.
- 9.2 The warranty set forth in Section 9.1 is in lieu of all other warranties, express or implied, statutory or otherwise, including but not limited to any warranty of fitness for a particular purpose, warranty of merchantability, satisfactory quality, usefulness or timeliness. The remedies set forth in Section 9.1 shall be the sole and exclusive remedies available to the Licensee for breach of the warranty set forth in Section 9.1.
- 9.3 Licensee acknowledges that the Software may contain materials prepared by other developers. Licensor makes no warranty or representation whatsoever as to those materials not prepared by Licensor contained in the Software.

10. LIMITATION OF LIABILITY

- 10.1 Subject only to the provisions of Sections 10.3 and 10.4 below, the Licensor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement and in connection with the Software howsoever arising, including

without limitation loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the License fee paid by the Licensee to the Licensor under this Agreement.

- 10.2 The Licensor shall not be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental special or consequential loss or damage whatsoever, howsoever arising, incurred by Licensee or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.
- 10.3 Notwithstanding the provisions of Section 10.1 above the Licensor shall be liable for loss or damage to any physical property of the Licensee caused solely by the negligence of Licensor provided, however, the Licensor's total aggregate liability to the Licensee for such loss or damage shall be limited to a maximum of the annual License Fee for all such occurrences.
- 10.4 The limitations contained in Sections 10.1, 10.2 and 10.3 shall not apply to any injury to, illness or death of any person caused solely by the negligence of the Licensor.

11. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties regarding its subject matter and supersedes of any previous communications, agreements or understandings. Both parties acknowledge that neither has placed any reliance on any previous communications or understandings other than those expressly incorporated in this Agreement. This Agreement may be amended only by agreement in writing signed by authorised representatives of each party.

12. SEVERABILITY

The provisions of this Agreement are declared to be severable. If any provision is held to be void, contrary to law or enforceable by a court of competent jurisdiction the validity and enforceability of the remainder of this Agreement shall not be affected.

13. WAIVER

Any failure or delay by either party to exercise or enforce any right or any time or indulgence given shall not affect that party's right to exercise or enforce that right against the other party nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective any waiver must be in writing, signed by an authorised representative of the waiving party and delivered to the other party.

14. FORCE MAJEURE

Neither party shall be liable for any delay or failure to meet its obligations under this Agreement due to any cause outside its reasonable control including (without limitation), inclement weather, Acts of God, war, riot, terrorism, malicious acts of damage, civil commotion, strike, holocaust, industrial dispute, refusal of license,

power failure or fire or the lack of availability of materials. If performance of this Agreement is substantially prevented for a continuous period of six months by virtue of any of the aforesaid events then either party may terminate this Agreement by written notice to the other. This Section 14 shall not be applicable to a failure to pay any money owing by Licensee under this Agreement

15. NOTICES

Any notice given under this Agreement shall be sufficient if it is sent by ordinary first class pre-paid mail, by nationally-recognized overnight courier service or by telex or confirmed fax to the other party at the address appearing at the head of this Agreement or such other address as may have been notified. Every notice shall be deemed to have been received and given on the third working day after posting if sent by mail, on the next working day if sent by overnight courier or in the case of telex or fax, such notice shall be deemed to have been received and given at the time of transmission.

16. ASSIGNMENT

This Agreement may on notice to the Licensee be assigned by Licensor to any entity controlling, controlled by or under common control with Licensor, but otherwise this Agreement may not be assigned by either party without the written consent of the other party.

17. RELATIONSHIP OF THE PARTIES

Licensor and Licensee agree that under this Agreement:

17.1 Both parties are independent entities;

17.2 Neither party is a legal representative, agent or partner of the other;

17.3 Neither party will represent or act on behalf of the other, unless otherwise agreed to in writing; and

17.4 Both parties are free to enter into similar agreements with others and to market its products and services to others.

18. NO THIRD PARTY BENEFICIARIES

Licensor and Licensee agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

19. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the state of New Jersey (without regard to principles of conflict of law). The parties

hereby consent to the exclusive jurisdiction of the Courts of the State of New Jersey, and the Federal Courts located within the State of New Jersey, as to any matter arising under or relating to this Agreement.

20. AFFIRMATIVE ACTION

Sequoia agrees to the mandatory Affirmative Action provision attached hereto as Appendix 2.

21. BUSINESS REGISTRATION

Sequoia shall comply with the New Jersey Business Registration requirements set forth in Appendix 3 attached hereto.

IN WITNESS WHEREOF the parties or their duly authorised representatives have set their hands and seals the day and year first above written.

SIGNED for and on behalf of
SEQUOIA VOTING SYSTEMS Inc.

Name Jad A Blum

Title/Date President 9/29/05

SIGNED for and on behalf of
COUNTY OF MONMOUTH, NJ

Name [Signature]

Title/Date Director of the Board 10/1/05

APPENDIX 2**AFFIRMATIVE ACTION AND
AMERICANS WITH DISABILITIES ACT PROVISIONS**

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.
 - b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.
 - c. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act [*N.J.S.A. 10:5-31, et seq.*] and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31, et seq.*, as amended and supplemented from time to time.
 - e. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with:
 - (i.) The applicable county employment goals [Employment Goal Compliance] established in accordance with *N.J.A.C. 17:27-5.2*; or
 - (ii.) A binding determination of the applicable county employment goals determined by the Division [Division of Contract Compliance and Equal Employment Opportunity in Public Contracts, N.J. Department of the Treasury], pursuant to *N.J.A.C. 17:27-5.2*.
 - f. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
 - g. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and

court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

h. In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

i. The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

2. The Contractor and the County do hereby agree that the provisions of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101, *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the County pursuant to this contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the Contractor shall defend the County in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the County, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the County's grievance procedure, the Contractor agrees to abide by any decision of the County which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the County or if the County incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The County shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the County or any of its agents, servants, and employees, the County shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the County or its representatives.

It is expressly agreed and understood that any approval by the County of the services provided by the Contractor pursuant to this contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the County pursuant to this paragraph.

It is further agreed and understood that the County assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of the Agreement. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Contractor from any liability, nor preclude the County from taking any actions available to it under any other provisions of this Agreement or otherwise at law.

APPENDIX 3
NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS

The Contractor has previously provided the County with a copy of the Contractor's business registration certificate verifying that the Contractor is properly registered with the New Jersey Department of the Treasury. The Contractor will also comply with the following:

- a. The Contractor will provide written notice to each subcontractor, as defined in *N.J.S.A. 52:32-44*, namely "any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract issued by a contracting agency"; that the subcontractor must provide a copy of the subcontractor's business registration certificate to the Contractor prior to entering into the subcontract.
- b. The Contractor will obtain and promptly forward to the County, for filing, a copy of a business registration certificate for every subcontractor.
- c. The Contractor will provide the County with a complete and accurate list of subcontractors and their addresses, or a certification that no subcontractors were used, before final payment is made.
- d. The Contractor and each of its affiliates, as "affiliates" are defined in *N.J.S.A. 52:32-44(g)(3)*, will collect and remit to the New Jersey Division of Taxation any use tax due pursuant to the "Sales and Use Tax Act" (*N.J.S.A. 54:32B-1, et seq.*) on all sales of tangible personal property delivered into New Jersey.
- e. The Contractor will include a provision in all subcontracts that the subcontractor and the subcontractor's affiliates will collect and remit to the New Jersey Division of Taxation any use tax due pursuant to the "Sales and Use Tax Act" (*N.J.S.A. 54:32B-1, et seq.*) on all sales of tangible personal property delivered into New Jersey.

APPENDIX 1**LICENSE FEE**

The Licensee agrees to pay the sum of \$30,000.00 to the Licensor for the use of the WinEDS® software in accordance with this agreement for a period of one year starting one year from the execution date of this agreement.

The Licensee agrees to pay the sum of \$3,000.00 to the Licensor for the use of the Teamwork® software in accordance with this agreement for a period of one year starting one year from the execution date of this agreement.

RENEWALS

The Licensor reserves the right to adjust these yearly fees within five percent (5%) of the current fee for renewals without advanced notice to the licensee. For an increase greater than five percent (5%) the Licensee will be informed by the Licensor within sixty (60) days advanced notice. At all times, the License Renewal Fees shall be reasonable.