

AGREEMENT BETWEEN
_____ COUNTY, NEW JERSEY
AND
VOTING SYSTEMS CONTRACTOR

This Agreement is made and entered into as of the _____ of _____, 20____, (the "Effective Date") by and between _____ **County**, New Jersey, with offices located at _____, NJ _____, (hereinafter referred to as "County") and **Voting Systems Contractor** (hereinafter referred to as "Contractor"), having its offices at _____.

RECITALS

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

WHEREAS, County desires to obtain from Contractor the election equipment, systems, and services described in this Agreement on the terms and conditions set forth in this Agreement for the purpose of administering fair and impartial elections for public office and on public questions,

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

1. AGREEMENT

This Agreement shall solely consist of this Purchase Agreement and its attached schedules. In the event that there are any internal conflicts or discrepancies in this Agreement, or that the factual circumstances of a dispute evidences material ambiguity internal to this Agreement, the text of the Purchase Agreement and its attached schedules shall prevail over all extrinsic evidence.

2. SALE AND PURCHASE OF SYSTEM

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

- 1.** The equipment set forth 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 3 of this Agreement.

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

The Equipment and Software constitutes a voting system (which is referred to in this Agreement as the "System").

3. DELIVERY AND INSTALLATION OF SYSTEM

A. Delivery

The Equipment and Software shall be delivered to a location to be designated by County in writing prior to shipping. The Equipment and Software shall be delivered FOB the County's designated location. Contractor 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 Contractor's standard practice. Risk of loss shall pass to County upon delivery to County. Prior to passage of risk of loss, Contractor shall insure all Equipment and Software at its full value. Title to the Equipment shall pass to County upon delivery of the Equipment and Software, however, a UCC filing will remain in place until full payment is received by Contractor under this Agreement.

B. Installation

Contractor shall assist County with installation of the Equipment at County's designated location.

4. SOFTWARE AND FIRMWARE LICENSE

A. License Agreement

Contractor grants to County a license for use of the Software and any upgrades pursuant to the software license agreement attached as Schedule 3 to this Agreement (the "License Agreement"). In the event of any conflict between this document and the License Agreement, including, without limitation, conflicts with Section 5, Section 6 or Section 27 of this Agreement, this document shall control. Any License Agreement shall not exceed the maximum length provided by N.J.S.A. 40A:11-15.

B. Software and Firmware Upgrades

From time to time, Contractor may release improvements to the Software and Firmware ("Upgrades") and shall supply County with such upgrades in accordance with this Section 4. All modifications shall constitute Development Intellectual Property Rights owned by Contractor pursuant to Section 20 hereof.

These improvements ("Upgrades"), will fall into three distinct categories:

(i) Mandatory Major Upgrades, meaning an update to the Software and Firmware that adds functionality or makes major changes, which is required to operate the System in a manner consistent with all applicable federal and state laws and regulations; (ii) Discretionary Major Upgrades, meaning an upgrade to the Software and Firmware that adds functionality or makes major changes, but which is not necessary to operate the System in a manner consistent with applicable state and federal laws and regulations; and (iii) Maintenance Upgrades, meaning releases to fix "bugs" and/or making minor changes to the Software or Firmware.

Cost to County of for the any licenses, parts and labor required by an Upgrade shall be as follows:

(i) Mandatory Major Upgrades: Free, plus the cost of any required configuration chips at the prevailing market price; (ii) Discretionary Major Upgrades: An amount not to exceed twenty percent (20%) of the annual license fee otherwise due under this Agreement, plus the cost of any required configuration chips at the prevailing market price; and (iii) Maintenance Upgrades: Free.

C. Firmware License

The Equipment incorporates software and logic which constitute an Intellectual Property Right owned by Contractor pursuant to Section 20 ("Firmware"). References to "Equipment" in this agreement include the Firmware incorporated into the Equipment. Contractor 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. Except as permitted by Section 6 of 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.

D. No Modification

Except as provided in Section 5 and Section 6 of this Agreement, County shall not modify, or permit or suffer any third party to modify, any Software, Upgrades or Firmware without the prior express written authorization of Contractor.

E. Firmware and Software License Terms and Period

The License Agreement shall provide that:

1. After County has paid all fees due under the Agreement, including annual License fees for a period of five (5) years from commencement of this Agreement, County shall receive a perpetual License to use the Software and Firmware without additional costs or fees, at which time all other terms and conditions of the License shall remain in effect except for Contractor's obligation under Section 4 to supply Upgrades for Software or Firmware.

2. The total of all license fees due by County under a License Agreement and any renewals or renegotiations thereof shall not be increased more than 5 percent per annum.

5. TESTING AND ACCEPTANCE

A. Time of Testing

Contractor shall instruct County in writing ("Testing Instructions") on how to properly perform the test procedures for the Equipment and Software. Within forty (40) days after the receipt of Testing Instructions and delivery of the Equipment and Software to the County, County shall complete testing. The test procedures shall be performed as set forth in the Testing Instructions. In the event that results of the tests of Equipment or Software in accordance with the testing instructions indicate that any part of the System, or any individual piece of equipment or installation of Firmware or Software is not performing functions correctly, including but not limited to anomalies, errors, or malfunctions, County shall notify Contractor within five (5) days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth the performance failures. Contractor shall, within thirty (30) days from receipt of a Defect Notice, make any corrections necessary to cause the Equipment and Software to function in the manner contemplated by this Agreement. Within ten (10) days of completion of such corrections, County shall commence retesting of the System in accordance with the Documentation. County also reserves the right to conduct additional testing, pursuant to Section 6 of this Agreement.

B. Acceptance

The Equipment and Software shall be deemed to have been accepted: (i) on the 41st day after County receives Testing Instructions; or (ii) if a Defect Notice is given, within the 41st day after County commences retesting and does not submit an additional Defect Notice.

6. THIRD PARTY TESTING AND REPORTING

In the event that the County reasonably believes there is an anomaly, error, or malfunction within the System, or with equipment or software that is not part of the System but is used in conjunction with the System, County, its Superintendent of Elections or Board of Elections, may solicit agents ("Testers") to test ("Test") and report on the System for accuracy and reliability, subject to the following conditions:

A. Testing

- 1.** County, County affiliates, and Testers shall not disseminate or communicate any Confidential Information as defined in Section 27 of this Agreement to any other person or entity who are not Testers or Test participants and who are not authorized to have access to such Confidential Information under Section 27 of this Agreement.
- 2.** For purposes of Testing, County and Testers reserve the right to test the voting system in such a manner as deemed necessary by County and Testers to conduct a comprehensive Test of the System that includes but is not limited to modifying, reverse engineering, disassembling, decompiling, deciphering, or analyzing the System in whole or in part, or testing the System in conjunction with other equipment, firmware or software not supplied by Contractor but otherwise customarily used by County in conducting elections.
- 3.** Neither Confidential Information nor any information, materials, or knowledge derived therefrom shall be used for, or be permitted to be used for: (i) purposes of "patent mining;" (ii) preparation or development of any derivative or competing technologies; or (iii) review or analysis of the Confidential Information for any reason other than in conjunction with the Testing and County reporting, as described in clause 6B, below.
- 4.** Any party becoming aware of any unauthorized use of the Confidential Information or any part thereof shall immediately report in writing to Contractor and County.
- 5.** Prior to Testing, County shall provide Contractor with an examination plan ("Plan") that provides a summary overview of the testing that County and Testers intend to conduct. If the Plan is modified, Contractor must be given reasonable notice. Such Plan shall further specify a security plan for the Testing, which shall include provisions that all examination, inspection, analysis, operation, testing, and use of the voting system and Confidential Information shall: (i) occur in a restricted access controlled room ("Testing Room") within the State of New Jersey designated by County; (ii) remain within the Testing Room for the entire duration

of the Test; (iii) at minimum, be in a Testing Room containing camera surveillance and a log-in sheet for all entrants.

6. County and Testers shall, within fifteen (15) days following the completion of the Test, provide Contractor with documentation outlining the Test results. Within fifteen (15) days of receiving the Test results, Contractor may submit to County a response to the Test results that County may consider when preparing relevant reports for public consumption.

B. Reporting

County reserves the right to publicly release a report or reports ("Report") on the results of the Test. County shall send a final version of the Report to Contractor no less than ten (10) days prior to the Report's public release. County shall not include Confidential Information in the Report.

7. PAYMENT

County shall pay Contractor the purchase price as outlined in Schedule 1 attached hereto.

8. PATENT AND COPYRIGHT PROTECTION

A. Contractor Indemnity

Subject to clauses 8B and 8C, Contractor shall, at its own expense, defend County against any claim asserted by any third party that the Software or Equipment infringes a patent, trademark or copyright of that third party.

B. Conditions

Contractor shall have no liability or obligation for any claim of infringement as provided in clause 8A unless County: (i) notifies Contractor in writing of any infringement or alleged infringement of which County becomes aware within a reasonable time thereafter; (ii) does not prevent or impede Contractor from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provides Contractor with reasonable assistance in conducting the defense of such claim; (iv) permits Contractor to alter the Equipment or Software, at its own expense, to render it non-infringing; (v) authorizes Contractor 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

Contractor shall have no liability for any claim of infringement based on: (i) use of a superseded or modified release of the Equipment or 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 Contractor or for a purpose other than County's use in accordance with this Agreement; (iii) use of the Software or Equipment which has been altered by County or any person other than Contractor, except as permitted in Section 6 of this Agreement; (iv) the combination, operation, or use of the Equipment or Software with other equipment or software not furnished by Contractor, 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 Contractor's reasonable opinion is likely to become, the subject of an infringement claim, Contractor 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; or, in the event that neither 8(D)(i) or 8(D)(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, Contractor acknowledges that it will be in breach of contract and the remedies provided hereunder and at law shall apply.

9. TRAINING

To the extent required by this Agreement, Contractor shall provide training to County personnel on the operation and use of the System at warehouse location specified by County, at times to be agreed upon by Contractor and County. The number of training days provided as part of this Agreement is set forth in Schedule 1, Section _____. Any additional training required will be provided as determined by Contractor and County at prices not in excess of the lowest price charged by Contractor for training services for any other county within the State of New Jersey.

10. TAXATION

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

11. WARRANTY INFORMATION

Contractor warrants as follows:

A. Warranty Claims

- 1.** On the date of the delivery of the System and for five (5) years from the date of acceptance of the Equipment and Software pursuant to Section 5 above, the System and any Upgrades thereto issued by Contractor and accepted by County comply in all respects with all applicable federal and state laws and regulations as such laws and regulations exist on the date of this Agreement, including but not limited to N.J.S.A. 19:48-1; the Americans with Disabilities Act ("ADA"); and the Help America Vote Act ("HAVA").

Contractor further warrants that the System and any Upgrades thereto issued by Contractor and accepted by County have been duly approved by the Secretary of State as required by New Jersey law.

Contractor further warrants that the System and any Upgrades thereto issued by Contractor and accepted by County are compliant with the 2005 Voluntary Voting System Guidelines ("2005 VVSG") of the United States Election Assistance Commission ("EAC").

Contractor further warrants that the System and any Upgrades thereto issued by Contractor and accepted by County are compliant with any other guidelines approved by the EAC or any successor federal agency intended to supplement or supersede the 2005 VVSG, if those guidelines are effective prior to the Effective Date of this Agreement ("Successor Guidelines"). This provision applies whether those guidelines are denominated as mandatory, voluntary, advisory, or otherwise.

- 2.** On the date of its delivery and for a period of five (5) years from the date of acceptance of the Equipment and Software pursuant to Section 5 above, the System and its component parts are merchantable as such term is used in Section 2-314 of the Uniform Commercial Code, are fit for the purpose of accurately conducting elections, are fit for the purpose of accurately and verifiably recording and counting votes cast in such elections, and will

continue to function in the manner contemplated by this Agreement. Contractor further warrants, as to any equipment or software delivered to County within the five years prior to the Effective Date of this contract, such equipment and software is merchantable as such term is used in Section 2-314 of the Uniform Commercial Code, is fit for the purpose of accurately conducting elections, is fit for the purpose of accurately and verifiably recording and counting votes cast in such elections and will continue to function in the manner contemplated by this Agreement for a period of five (5) years from its original delivery to County.

- 3.** Contractor will provide all parts to replace those that have been broken through normal wear and tear, or do not function properly (excluding items listed in Section 11C of this Agreement), any Firmware or Software that has become unusable, and the necessary labor to replace or repair those parts, Firmware, or Software, without charge to the County, for a period of five (5) years from the date of acceptance of the Equipment and Software.
 - 4.** System equipment, defective components, or materials shall be returned at Contractor's expense in accordance with Contractor's instructions upon receipt from Contractor of a Return Material Authorization Number ("RMA") and shipping instructions. Goods returned in accordance with the foregoing procedures shall be replaced or repaired and returned to County via the United States Postal Service, United Parcel Service, Federal Express, or DHL within thirty (30) days and where possible at least thirty (30) days prior to an election. Special handling on expedited shipments shall be at County's expense.
- B.** Contractor 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.

C. Limitations

- 1.** This agreement does not require Contractor to replace:
 - a. Paper, seals, batteries, or other consumable parts or supplies;
 - b. Products that have been repaired or altered by persons other than those expressly approved in writing by Contractor; provided, however that independent testing performed pursuant to Section 5 or Section 6 above shall not operate to void this warranty.
 - c. Products from which the serial numbers have been removed, defaced, or changed.

- d. Products damaged as a result of accident, disaster, theft, vandalism, recklessness, 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 Contractor.
- e. Products that have been subjected to physical stress, mechanical stress, electrical stress, or alteration in an amount that exceeds the permissible limits of the 2005 VVSG or Successor Guidelines.
- f. Products that have been subject to alteration or any conversion by persons other than those expressly approved in writing by Contractor, or authorized pursuant to Section 5 and Section 6 of this Agreement.

D. Warranty Disclaimer

CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, NOT EXPRESSLY AND SPECIFICALLY SET FORTH HEREIN.

- E.** Contractor acknowledges that should its voting systems fail, malfunction, or otherwise cause errors, the County, its clerk, its board of elections, and other election officials at the municipal, county, or State level, whether located in this County or not, may incur substantial, reasonably foreseeable costs as a consequence of that failure, malfunction, or error. Such costs may include, but are not limited to, audits of an election, recounts, new elections, time and overtime of employees, legal fees, and other damages as a consequence of breach. Contractor shall indemnify County, its clerk, its board of elections, and other election officials at the municipal, county, or State level, whether located in this County or not, for all such costs where the failure, malfunction, or error in its Equipment or Software was either the proximate cause of, or a substantial factor in, the governmental entity incurring such costs.

12. INDEMNIFICATION

A. By Contractor

Contractor 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 Contractor's employees, agents, or officers to the extent caused by the negligent or intentional acts of Contractor or its employees in performing under this Agreement.

B. By County

County hereby agrees to defend, indemnify, protect, and hold Contractor 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 in performing under this Agreement.

13. INSURANCE

A. From the execution of this agreement until five (5) years after its effective date, Contractor will maintain in full force and effect insurance coverage for Contractor's employees and property. The insurance companies for the coverage below required herein must be licensed by the State of New Jersey, and acceptable to the County. Contractor shall not take any action to cancel or materially change any of the insurance required under this Agreement without County's approval. The maintenance of insurance under this section shall not relieve the Contractor of any liability greater than the insurance coverage. Failure by the Contractor to supply such written evidence shall constitute an event of default. The required amounts of insurance set forth in this section 13 shall not limit the liability of Contractor.

1. Worker's Compensation

Contractor 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 of New Jersey.

2. General Liability Insurance

Contractor 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 \$2,000,000 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; (D) Broad Form General Liability Extensions or equivalent. Contractor may elect to self-insure this coverage.

3. Motor Vehicle Liability

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

4. Errors and Omissions

Coverage shall include a minimum limit of liability of \$1,000,000 per occurrence.

[Note: higher sums may be appropriate, especially in larger counties acquiring a greater number of voting machines]

B. Certificate of Insurance

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

14. ASSIGNMENT

Subject to Section 15, 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.

15. SUBCONTRACTING

Contractor may use subcontractors in connection with the work performed under this Agreement, provided that notice of the identity of any subcontractor(s) is provided to County. The use of subcontractors does not relieve Contractor of its obligation under this Agreement and the attached schedules.

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. TERM OF AGREEMENT

This agreement shall take effect upon the earlier to occur of (i) full execution by the parties; (ii) appropriation and receipt by County for payments of amounts owing to Contractor hereunder; or (iii) substantial performance by either party of their obligation hereunder. The term remains in full force and effect until the expiration of the Warranties, except as otherwise provided for herein.

18. 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.

19. LIMITATION OF CONTRACTOR'S LIABILITY

CONTRACTOR'S TOTAL AGGREGATE LIABILITY IN CONTRACT OR WARRANTY FOR ANY LOSS, DAMAGE, COSTS, OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT OF CONSEQUENTIAL DAMAGES DEFINED ELSEWHERE IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THOSE MENTIONED IN SECTION 11(E).

20. 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 Contractor will be owned exclusively by Contractor; provided, however, that County, unless it has materially 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 the 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 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 Contractor under this Agreement.

21. FINANCIAL ASSURANCE

In the event that a performance bond or other financial assurance is required by County in connection with this Agreement or Contractor's performance hereunder, the following terms shall apply:

- A.** County shall not demand payment with respect to such financial assurance by reason of an alleged default by Contractor under this Agreement until County shall have provided Contractor with written notice and any applicable cure period under Section 26 shall have expired without such default having been cured by Contractor.
- B.** In the event County seeks payment with respect to such financial assurance, the amount County shall demand, and which may be

payable to County, shall be limited to those amounts actual and necessary costs incurred by County for the sole purpose of replacing goods or services provided by Contractor hereunder with those which are of reasonable equivalents.

22. PRICING

County acknowledges and understands that Contractor has not made any promises, or given County any assurances, written or verbal, concerning the pricing under this Agreement, with the exception of any promises or assurances about market price as provided by Section 4B of the Agreement.

23. COUNTY'S OBLIGATION

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

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

24. DUE AUTHORIZATION

County and Contractor 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.

25. FORCE MAJEURE

- A.** Should a Party be prevented wholly or in part from fulfilling any of its obligations under this Agreement for reasons of force majeure, such obligation shall be suspended to the extent and for as long as such obligation is affected by the force majeure. The Party claiming force majeure under this section shall be entitled to such extension of time to fulfill such obligation as may be reasonably necessary in the circumstances.
- B.** The Party claiming force majeure must notify the other Party of their inability to perform as soon as practicably possible.
- C.** Force majeure hereunder shall be defined as any unforeseeable events, the consequences of which are unpreventable or unavoidable, including but not limited to earthquake, typhoon,

flood, fire, riots or war, but shall exclude financial difficulties of the Party claiming force majeure.

26. TERMINATION

A. By Contractor

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

- 1.** County fails to pay any sum owing to Contractor within thirty (30) days of notice of non-payment.
- 2.** 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 materially 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 any bankruptcy or similar proceeding for the purpose of affording relief from creditors.

C. Effect of Termination

- 1.** In the event this Agreement is terminated by County pursuant to Section 26B(1) above, County shall pay all undisputed amounts owing to Contractor under this Agreement, without prejudice, however, to any claims the County may have against Contractor. In the event this Agreement is terminated for any reason other than by the County pursuant to Section 26B(1), all amounts owing to Contractor accrued prior to such termination shall be immediately due and payable.
- 2.** In the event this Agreement is terminated for any reason, County shall promptly make available for retrieval by Contractor the System and other materials provided by Contractor which have not been fully paid for under the terms of this Agreement. Upon making the materials available for retrieval, the risk of loss to Contractor. A termination shall not affect the rights of the parties accrued prior to the date of termination.

D. Survival

In the event of termination, the provisions of Sections 1, 6, 8, 11, 12, 20, 25, 27, 29, 31, 32, 33 and 39 shall survive termination of this Agreement.

27. CONFIDENTIALITY

- A.** County acknowledges that during the course of Contractor's performance under this Agreement and/or performance of prior agreements with County, Contractor may disclose and/or may have disclosed to County, orally or in writing, information concerning Contractor's pricing, products, trade secrets, and other information that is competitively sensitive and proprietary ("Confidential Information"), and which may be disclosed to County in tangible or intangible form, including, without limitation, technical, operating, business, marketing and financial information, computer software and data, physical objects and samples. No information provided to County shall be deemed confidential unless designated as such by Contractor in the manner described by Section 27B. County shall not disclose any information designated as Confidential without prior approval by Contractor unless disclosure is required by other applicable law.
- B.** Confidentiality Index
- 1.** Contractor may provide County, from time to time, an itemized index of all information that Contractor has provided or will provide County that Contractor reasonably believes should be deemed confidential. The index shall include a brief description of the information, without revealing the information itself, with sufficient detail to provide County and third parties with a reasonable understanding of the item so that County or third parties can challenge its confidentiality in court or through applicable administrative procedures. The index required by this Section shall not itself be deemed confidential.
 - 2.** County is permitted to provide Confidential Information to third party testers when testers are conducting tests on the voting system pursuant to Section 5 and Section 6 of this Agreement. In the case that the third party testers are provided with such Confidential Information, third party testers will be held to the same confidentiality standards from this Section as County.
- C.** All work performed by Contractor pursuant to this Agreement is solely for the benefit of the County and shall not be disclosed or released by Contractor, its employees, agents, representatives, contractors or subcontractors to any person without prior written approval of the County.

28. 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.

29. ENTIRE AGREEMENT

The Agreement and its schedules embody the entire agreement between parties with respect to the subject matter hereof and supersedes any other agreements between the parties with respect thereto (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.

30. 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 or 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 specified 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.

31. 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:
County Project Manager: TBD
Contractor Project Manager: TBD
- B.** The project managers shall communicate at least once every thirty (30) days or at such periods as may be agreed to review progress.

32. CHOICE OF LAW; JURISDICTION; FORUM SELECTION.

- A.** 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.

- B.** The parties agree to submit to the exclusive jurisdiction of the courts of the State of New Jersey and the federal district courts situated in New Jersey with respect to any matter arising from or relating to this Agreement.
- C.** All claims against either party, or any third parties involved in any aspect of this Agreement, shall be heard in a state superior court within County or in a United States District Court embracing such County, and not elsewhere.

33. DISPUTE RESOLUTION

- A.** 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:
 - 1.** 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 non-privileged 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 furnishes to the other party.
 - 2.** If the project managers cannot resolve the dispute, then the dispute shall be escalated to the Vice President of Operations of Contractor and the head voting officer of County, for their review and resolution. If the dispute cannot be resolved by such officers, then the parties may submit a claim to a state superior court within County or in the United States District Court embracing such County.
- B.** However, no claim may 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.

34. CONSTRUCTION OF THE AGREEMENT

The County and the Contractor agree the parties reached this Agreement after fair-play negotiations and an equal, joint drafting effort. In the case of a dispute about the meaning of any term in this Agreement or the attached schedules, the parties agree there shall be no assertion that ambiguities will be construed against the drafter of any term in this Agreement.

35. RELATIONSHIP OF THE PARTIES

County and Contractor 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, and to purchase similar products and services from others.

36. NO THIRD PARTY BENEFICIARIES

Contractor and County agree that his 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, except for (i) the rights of county superintendents of election and county boards of election set forth in Section 6; and (ii) the rights of municipal, county, and state governments to recover those damages described in Section 11(E). Nothing in the contract abrogates the rights of the public with respect to obtaining public government information under the Open Public Records Act or similar

laws, nor does it abrogate any rights of the public or government agencies under generally applicable statutory or common law protecting citizens, taxpayers and consumers, including but not limited to the New Jersey Civil Rights Act, the New Jersey False Claims Act, and/or the New Jersey Consumer Fraud Act.

37. MANDATORY COMPLIANCE WITH NJ STATE LAW

- A.** Contractor shall comply with the requirement of the New Jersey Political Contribution Disclosure Compliance Law, P.L. 2004, c.19; P.L. 2005, c. 51; P.L. 2005, C. 271; Executive Order 118 (2008) and any subsequent amendments thereto.
- B.** Further, Contractor represents and promises that during the course of this Agreement:
 - 1.** It has filed a business registration certificate with the State Department of the Treasury, and will maintain a current registration certificate;
 - 2.** It will not engage in discrimination in employment and will abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38 and all rules and regulations issued thereunder;
 - 3.** It will comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. § 12101 et seq.
 - 4.** It will comply with the terms of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., to the extent applicable.
 - 5.** It has, prior to the execution of this Agreement, provided County with the ownership disclosure information required by N.J.S.A. 52:25-24.2.
 - 6.** It will comply with the provisions of N.J.S.A. 40A:11-18, regarding the use of products manufactured in the United States.

38. DISCLOSURE OF INVESTIGATIONS, ACTIONS, AND TESTS

Contractor warrants that at least seven (7) days prior to execution of this Agreement:

- A.** Contractor provided to County a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving other public sector clients during the past five (5) years including the status and nature of the investigation, and, for any litigation, the caption of the action, a

- brief description of the action, the date of inception, current status, and, if applicable, disposition; and
- B.** Contractor provided to County a comprehensive and detailed description of all testing of voting systems, substantially similar to those included in the subject of this Agreement, performed by or on behalf of government agencies in the last five (5) years, including all favorable or unfavorable results.

39. SUCCESSOR LIABILITY

This Agreement binds the parties hereto, their officers, agents, representatives, successors and assigns.

SCHEDULE 1

SECTION A

[LIST OF GOODS TO BE ACQUIRED, WITH FIRMWARE VERSION NUMBER STATED]

SECTION B

[SOFTWARE TO BE ACQUIRED, WITH VERSION NUMBER(S) STATED]

SCHEDULE 2

LIST OF ADDITIONAL SERVICES (E.G. ASSISTANCE INCLUDING
INSTALLATION ASSISTANCE PER SECTION 3(B), TRAINING, ETC.)

SCHEDULE 3

COMPLETE SOFTWARE LICENSE

N.B.: Inconsistencies between this Schedule and the main Agreement are resolved in favor of the Agreement, per clause 4(A).