

ELECTION SYSTEMS & SOFTWARE, LLC
BALLOT PRINTING SERVICES AGREEMENT #117-S1411

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");

AND: El Dorado County, California ("Customer")

RECITALS:

A. Customer has agreed to purchase certain election-related services from ES&S for use in El Dorado County, California (the "Jurisdiction"). The terms and conditions under which such services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

X Exhibit A (Summary of Services)

X Exhibit B (Ballot Printing Services)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the State of California. Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.
- Represents and warrants to the other party that as of its signature date indicated below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

EL DORADO COUNTY, CALIFORNIA
2850 Fairlane Court
Placerville, CA 95667
Fax No.: (530) 626-5514

[Signature]
Signature

[Signature]
Signature

DICKSON DUBICANSKI
Name (Printed or Typed)

Norma Santiago
Name (Printed or Typed)

VP of Finance
Title

Chair, Board of Supervisors
Title

12/5/2013
Date

1/7/14
Date

ATTEST: James S. Mitrin
Clerk of the Board of Supervisors
By *[Signature]*
Marcie MacFarland, Deputy Clerk

**ARTICLE I
GENERAL TERMS AND CONDITIONS**

1. **Consideration.** The consideration to be paid by Customer to ES&S for the services provided hereunder is set forth on the accompanying Exhibits.

2. **Limitation of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (a) Customer's failure to timely or properly install and use the most recent Update provided to it by ES&S or (b) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.

3. **Excusable Nonperformance.** Except for a delay or failure in the payment of money, if either party is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

4. **Exclusive Service Provider.** Customer hereby agrees to purchase the products and services set forth on Exhibit B attached hereto from ES&S for the Term of this Agreement at the pricing set forth on each applicable Exhibit. Customer's agreement to purchase all of such products and services from ES&S for the entire Term entitles Customer to receive the preferred pricing for each product or service as provided herein. Customer understands, acknowledges and agrees that ES&S' fees for the services as set forth on the accompanying exhibits are based upon (a) a contractual commitment by Customer to subscribe for and purchase such services for a period of at least three (3) years, (b) ES&S' dedication of sufficient resources during the Term to perform such services and provide associated prioritization of Customer in its service deliveries, and (c) the descriptions of such services in the accompanying exhibits. In the event that Customer changes its commitment to a period of less than three (3) years for any reason other than a termination for cause pursuant to Article I, Section 5, of this Agreement, or purchases any such products or services from a provider other than ES&S, or does not pay for such products or services provided by ES&S pursuant to the payment terms in Exhibit A during the Term, Customer hereby agrees to promptly pay a balance due charge using the Non-Discounted Fees applied to the Ballot Layout, Coding and Voice File Services provided to the Customer up through the date of early termination.

5. **Term; Termination.** This Agreement shall be in effect for a three year period beginning on the Effective Date, covering all elections within the Jurisdiction beginning sixty (60) days after the Effective Date (the "Term"). This Agreement may be terminated, in writing, in whole or in part at any time by either party, (i) if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party or (ii) upon thirty (30) calendar days written notice without cause. If such termination is effected, Customer shall pay for satisfactory services rendered prior to the effective date of termination as set forth in the Notice of Termination and for such other services, which Customer may agree to in writing as necessary for resolution of this Agreement.

6. **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign any of its rights hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld.

7. **Entire Agreement.** This Agreement, including all Exhibits hereto (all of which are incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in

accordance with the laws of the State of California. Venue for all claims arising out of or related to this Agreement shall be resolved in the applicable courts of the State of California.

8. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties. The Customer officer or employee with responsibility for administering this Agreement is William E. Schultz or successor.

9. **Disputes.**

Remedies for Past Due Payments. If any payment to ES&S is past due more than five (5) days, ES&S may suspend performance under this Agreement until such amount is paid.

Dispute Resolution Process. Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g., the nature of the dispute, dates, times, persons involved). The responding party shall respond to the notification within five (5) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. Notwithstanding anything in this Section 9 to the contrary, either party may apply to any court having jurisdiction over the subject matter of the dispute for a temporary restraining order, preliminary injunction, or other appropriate legal remedy at any time.

10. **Business License.** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing an El Dorado County business license unless exempt under County Code Section 5.08.070

11. **Other.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ES&S is providing its services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. ES&S may engage subcontractors to provide certain of the services, but shall remain fully responsible for such performance. The provisions of Sections 1-4, 6, 8, 10 and this Section 11 shall survive the termination of this Agreement, to the extent applicable.

12. **Audit by California State Auditor.** ES&S acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, ES&S shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

13. **Insurance.** ES&S shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that ES&S maintains insurance that meets the following requirements:

a. Full Worker's Compensation and Employer's Liability Insurance covering all employees of ES&S as required by law in the State of California.

b. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.

c. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the ES&S in the performance of the Agreement.

d. In the event ES&S is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.

e. ES&S shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

- f. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- g. ES&S agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, ES&S agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and ES&S agrees that no work or services shall be performed prior to the giving of such approval. In the event the ES&S fails to keep in effect at all times insurance coverage as herein provided, Customer may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- h. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without prior written notice to Customer, and;
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- i. The ES&S's insurance coverage shall be primary insurance as respects the Customer, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Customer, its officers, officials, employees or volunteers shall be in excess of the ES&S's insurance and shall not contribute with it.
- j. Any deductibles or self-insured retentions must be declared to and approved by the Customer, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Customer, its officers, officials, employees and volunteers; or the ES&S shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- k. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Customer, its officers, officials, employees or volunteers.
- l. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- m. ES&S's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- n. In the event ES&S cannot provide an occurrence policy, ES&S shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- o. Certificate of insurance shall meet such additional standards as may be determined by the contracting Customer Department either independently or in consultation with Risk Management, as essential for protection of the Customer.

[END OF GENERAL TERMS]

**EXHIBIT A
SUMMARY OF SERVICES**

| Sale Summary: | |
|---|-----------------|
| Description | Refer to |
| Ballot Printing Services | Exhibit B |
| Terms & Conditions: | |
| Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. | |
| Note 2: Payment terms: Ballot Printing Services will be invoiced as Services are provided. 100% of invoice total due within 30 calendar days of invoice date. | |
| Note 3: Customer understands, acknowledges and agrees that ES&S' fees for the services as set forth on the accompanying exhibits are based upon (a) a contractual commitment by Customer to subscribe for and purchase such services for a period of at least three (3) years, (b) ES&S' dedication of sufficient resources during the Term to perform such services and provide associated prioritization of Customer in its service deliveries, and (c) the descriptions of such services in the accompanying exhibits. In the event that Customer changes its commitment to a period of less than three (3) years for any reason other than a termination for cause pursuant to Article I, Section 5(i), of this Agreement, Customer hereby agrees to promptly pay a balance due charge using the Non-Discounted Fees applied to the Ballot Printing Services provided to the Customer up through the date of early termination. | |

**EXHIBIT B
BALLOT PRINTING SERVICES**

| Setup Charges | Discounted Fees | Non-Discounted Fees |
|--|------------------------|----------------------------|
| Initial Election Database Setup (per database) | \$350.00 | \$350.00 |
| Supplemental Ballot Order (per database) | \$150.00 | \$150.00 |
| Base per Ballot | | |
| Duplex 11" and 14" Ballot | \$0.21 | \$0.28 |
| Duplex 17" and 18" Ballot | \$0.29 | \$0.29 |
| Absentee and Mail Ballots | | |
| Scoring / Folding | Included | Included |
| Variable Data Printing | Included | Included |
| Full Four Color/Digital Printing Process | Included | Included |
| Packaging by Precinct by Density | Included | Included |
| Additional Party Ballots over Three | \$0.02 | \$0.02 |
| Poll Ballots | | |
| Staple or Shrink Wrap | Included | Included |
| Variable Data Printing | Included | Included |
| Full Four Color/Digital Printing Process | Included | Included |
| Packaging by Precinct by Density | Included | Included |
| Additional Party Ballots over Three | \$0.02 | \$0.02 |
| Test Decks | | |
| Duplex 11" and 14" Test Deck | \$0.28 | \$0.28 |
| Duplex 17" and 18" Test Deck | \$0.29 | \$0.29 |
| Expected Result Reporting | Included | Included |

Note 1: Prices are exclusive of freight, which will be billed separately.

Note 2: Special requests, including watermarking, unique packaging requirements and expedited delivery requirements are not included in the table above, and will be priced separately.

Note 3: The above pricing assumes the use of ES&S partner printers. The use of a Customer requested printer may result in a change in the fees outlined above.

Note 4: Unexpected and material changes in costs such as paper may result in changes to the fees reflected above.

[END OF EXHIBIT B]