AGREEMENT FOR ACQUISITION OF VOTING SYSTEMS

AND

RELATED SERVICES

This Agreement for Acquisition of Voting Machines and Related Services ("Contract") is between the Office of the Ohio Secretary of State (hereinafter the "Secretary"), located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215, and Diebold Election Systems, Inc. (hereinafter the "Vendor"), a Delaware corporation, with offices at 5995 Mayfair Road, North Canton, Ohio 44720 and 1611 Wilmeth Road, McKinney, Texas 75069-8250.

RECITALS

WHEREAS, the Secretary has issued RFP SOS0428365 together with nine (9) amendments to the RFP for Statewide Voting Systems (collectively the "RFP") in furtherance of replacing punch card and lever voting machines as required by the Help America Vote Act ("HAVA"); and

WHEREAS, the Secretary has received several proposals in response to the RFP; and

WHEREAS, Vendor has responded to the RFP and in its response has indicated it has the willingness, experience and capacity to supply the voting systems and the related services; and

WHEREAS, the Secretary and Vendor desire to enter into this Contract to have Vendor supply Voting Systems and the services related thereto.

NOW, THEREFORE, for good and valuable consideration and based upon the mutual promises recited herein, the parties do agree as follows:

Article I. SCHEDULES AND CONTENTS

This Agreement includes the attached schedules:

Schedule A  Hardware and Software Requirements
Schedule B  Fcc Schedule
Schedule C  Statement of Work
Schedule D  Milestone and Timeline Dates
Schedule E  License Agreement
Schedule F  Performance Bond
Schedule G  Purchase Order
Schedule H  Escrow Agreement
Schedule I  Deliverables Signoff Form
Schedule J  Request for Proposal and Amendments
Schedule K  Response to the Request for Proposal
Schedule L  Insurance
Schedule M  List of Ohio Counties
Schedule N  List of Purchasing Counties and Addresses

This Agreement also includes these sections:

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Article IV.  DELIVERY, SOFTWARE LICENSE AND ESCROW
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Article II.  DEFINITIONS

2.01  Absentee Ballot System (ABS) – This has the same meaning as Optical Scan or Optical Scan Absentee Ballot Voting System.

2.02  Absentee Ballot for Optical Scan – A ballot that will be sent to an elector, upon request, who will then mark the ballot with their selections and return it to their county board of elections office prior to the close of the polls on election day.

2.03  Agency – Any and all State of Ohio departments, agencies, authorities, commissions, colleges and universities.
2.04 Ballot Field – The identification of the office name and applicable district.

2.05 Best Value – The expected outcome of an acquisition that, in the state’s estimation, provides the greatest overall benefit in response to the requirement. An approach that highlights the importance of technical merit and/or performance of an offer to satisfy a particular requirement, relative of the importance of the price paid to satisfy a particular requirement.

2.06 Cast – The final act of a voter to indicate the votes for races and issues have been selected on their ballot to show their vote.

2.07 Contract – This Contract, the Schedules, Exhibits, Appendices, and any amendments or modifications to any of them.

2.08 Contract Administration – The management of all actions that must be taken to assure compliance with the terms of the contract after award.

2.09 Contracting Officer ("CO") – Any person who is authorized to take actions on behalf of the Secretary to enter into a contract, amend, modify or deviate from the contract terms, conditions requirements, and specifications; terminate the contract for convenience or default; to issue final decisions regarding contract questions or matters under dispute. The CO may delegate certain responsibilities to his/her authorized representatives.

2.10 Contracting Officer Administrative Representative ("COAR") – Any person who is designated to assist in the administration of the Contract, or to assist the CO in the discharge of his/her responsibilities.

2.11 County – Any County in the state of Ohio, as listed in Schedule M, that receives Voting Systems from Vendor.

2.12 Delivery – The delivery, unpacking, and setup of the Voting Unit(s) at the appropriate location designated by the County.

2.13 DRE Voting System – Direct Recording Electronic Voting System. A Voting System that allows for recording votes by means of a ballot display provided with mechanical or electro-optical devices; processes the data by means of a computer program; records voting data in internal memory devices; and tabulates voting data as hard copy or stored in a removable memory device.

2.14 Information Technology ("IT") – Any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency. IT includes computers, ancillary equipment, software, firmware, and similar procedures, services
(including support services), and related resources.

2.15 Intellectual Property - All computer programs, literary articles, factual compilations, recordings, video tapes, multi-media content, images, musical work, sounds, algorithms, protocols, diagrams, methods, ideas, concepts, expressions, inventions, discoveries and improvements related to any of them.

2.16 Optical Scan Voting Equipment – A mark sense system in which voters record their choices by filling in a rectangle, circle or oval, or by completing an arrow.

2.17 Overvote – A casting of more selections per race or ballot issue than allowed.

2.18 Polling Place – A designated voting facility where electors cast ballots and includes one or more precincts.

2.19 Precinct – A geographical area, established in accordance with Ohio Revised Code Section 3501.18, within which all electors vote at one polling place.

2.20 Precinct Count Optical Scan (“PCOS”) – An optical scan voting system in which the voter inserts the ballot into a device which counts the vote within the polling location.

2.21 Project – The activities involved in providing the Voting Systems as more specifically described in Schedule C.

2.22 Project Manager – Person to whom the Vendor shall direct all required reports, status updates, and updated WBS (as defined in Schedule C) on a weekly basis, who will be the primary point of contact during the project.

2.23 Provisional Voting – Allows individuals whose names do not appear on the precinct’s list of registered voters to cast a ballot. This ballot is not added to the voted ballots until it is determined by local election officials whether the individual has properly registered to vote in the election in question.

2.24 Purchase Orders –Document utilized to acquire Voting Systems for a County (Schedule G).

2.25 Request for Proposal (“RFP”) - A solicitation used when discussions may be required prior to contract award; a document used for soliciting competitive proposals. The RFP and all amendments utilized in the transaction are attached hereto as Schedule J.

2.26 Response to RFP – The written document submitted by a vendor in response to an RFP. The Response to RFP submitted by Vendor is attached hereto as Schedule K.
2.27 Statutes – Laws passed by Congress or a state legislature and signed by the President or the governor of a state, respectively, that are codified in volumes called “codes” according to subject matter.

2.28 Undervote – Any circumstance resulting in the maximum allowed number of selections for a race or ballot issue not being selected.

2.29 Voter with Disability (“VWD”) – A registered voter with one or more physically restricting conditions such that the individual cannot vote or whose capacity to vote is impaired.

2.30 Voting System – All the necessary components (Voting Unit and associated services) to fulfill the requirements within this Contract for the DRE, PCOS, and absentee ballot requirements and more specifically described in Schedules A, C, and E.

2.31 Voting Unit – Includes all software, firmware, interfaces, the recording device, the voting booth, all electrical cords and other necessary wires and cables, a suitable power failure back-up system, and any necessary controlling unit or equipment.

2.32 VWD Unit – DRE voting unit that is designed to accommodate voters with disabilities by providing interactive devices that allow the voter to operate the voting unit without assistance. This unit must be capable of providing non-visual access using a method that includes manual controls and audible speech, and which has an ease of portability and adjustability at polling locations.

Article III. SYSTEMS AND SERVICES TO BE PURCHASED

3.01 Vendor shall provide the Voting System(s) as set forth in Schedule A (Hardware and Software Requirements), Schedule C (Statement of Work), Schedule E (Software License Agreement), Schedule J (Request for Proposal and Amendments) and Schedule K (Response to the Request for Proposal) at the fees set forth in Schedule B (Fee Schedule). Vendor shall perform such activities as required in the Schedules. To the extent there is a conflict or ambiguity between this contract and any of its schedules, the order of priority shall be this Contract; the Schedules except for Schedules J and K; and Schedules J and K.

3.02 The Vendor shall furnish Voting Units that are in accordance with the specifications set forth in Schedule A and shall furnish professional services in accordance with Schedule C and Schedule E. For all services performed that are not specifically described in Schedule C or which do not have specific service level requirements, Vendor shall furnish satisfactory performance.
3.03 The Vendor shall be deemed to be an Independent Contractor as that term is defined in Article XVIII and shall supply such staff as is necessary, and further described in Schedule C for the satisfactory performance of Vendor’s obligations hereunder.

3.04 The Secretary may, from time to time as it deems appropriate, communicate specific instructions and requests to Vendor concerning Vendor’s performance hereunder. Provided that the instructions and requests do not require additional services or equipment not included in this Contract, Vendor shall perform in accordance with such instructions and requests.

3.05 During the term of this Contract, including any renewals or extensions hereof, Vendor will provide the Voting Systems to the Secretary and the Counties as a most favored customer ("MFC"). "MFC" means a customer(s) of Vendor who receives pricing terms that are at least as favorable as those received by any other customers except the federal government. To make the determination as to whether or not the Secretary and the Counties are MFCs the Total Cost of Ownership of the Voting Systems is to be compared. In the event that Vendor provides an itemized cost in Schedule B for specific components and only a component is purchased, then that itemized cost of the component shall be the basis for comparison of a purchase of a component. However, if a component is dependent upon other components to cast or tally a vote the formula used in schedule B to derive the total cost of ownership must be utilized to derive the cost of the component(s). For example, if a DRE is dependent upon another component to cast or tally a vote, and the County is only purchasing a DRE, then the other component shall be built into, on a prorated basis, in the price of the DRE. For items not itemized in Schedule B, Vendor shall provide Secretary and Counties MFC pricing. For the period between the effective date of this Contract and the date after the first Federal election in 2006, the Secretary and Counties may examine pricing both prospectively and retrospectively to determine MFC pricing. After the date of the first Federal election, the Secretary and Counties may only examine pricing within a 60-day period before and after the proposed purchase. MFC status is to be afforded to the Secretary and the Counties regardless of the quantities of Voting Systems or Voting Unit purchased by the Secretary or Counties. To ensure compliance with this provision, Vendor agrees it will provide the Secretary and Counties with a certification upon request, but no more frequently than annually, which confirms the Secretary’s and Counties MFC status. If any annual certification reveals, or if the Secretary or Counties independently discover that the Secretary or Counties has not retained its MFC status Vendor will reimburse the Secretary or Counties retroactively for the savings the Secretary or Counties should have received as an MFC. Determination of whether Secretary or County is reimbursed shall be dependent upon which party actually paid for the Voting Systems or Voting Units.

3.06 Materials and Facilities - Unless otherwise provided in the Schedule, Vendor will provide all necessary equipment and related materials, including specialized equipment, and the like, to perform the services as specified in an applicable
Schedule. The Secretary or Counties will supply such working space and facilities for Vendor while on the Secretary or Counties premises, and such additional materials as specified in the Schedule.

3.07 Vendor’s obligations under this Contract are subject to receipt of reasonable assistance, access, any data necessary, approvals, working space and information and such other cooperation as reasonably necessary for the performance of such obligations.

Article IV. DELIVERY, SOFTWARE LICENSE AND ESCROW

4.01 Procedure for ordering Voting Systems. Secretary in conjunction with County will complete a Purchase Order (Schedule G) identifying which Voting System the County wishes to purchase. Vendor understands and agrees that Secretary has sole discretion on whether or not to issue the Purchase Order. Upon receipt of the Purchase Order, Vendor shall coordinate with Secretary and the County as to date and location of delivery, implementation, and training.

4.02 All shipments shall be Free on Board (F.O.B.) County’s facilities. Vendor will select the carrier, unless otherwise requested in advance by County. Vendor must ship all items, with insurance and freight prepaid, to the site(s) designated by the County. Vendor must notify County and Secretary when any equipment or other items are shipped. Title to the Voting Units shall transfer automatically to the County upon Delivery. Risk of loss shall be borne by the County upon Delivery of the Voting Unit. A fully executed and non-assessable license for all software included in the Voting Unit shall be granted to Secretary and is attached to this Contract as Schedule E. The transfer of title to the County shall not affect any other rights the Secretary or County has pursuant to this Contract, including rights of testing, acceptance and payment set forth in this Article IV or Vendor’s obligation to repair deficiencies under warranty and maintenance terms set forth in this Contract and Schedule E. In the event that County rejects the Voting Unit(s), cost of return freight shall be borne by Vendor.

4.03 It is agreed that any reference to transfer of title to the Voting Units shall exclude transfer of title to Vendor’s intellectual property rights, which are licensed in Schedule E.

4.04 Secretary shall be obligated to pay Vendor 65% of the Total Cost of Ownership fee for the applicable County as described in Schedule B upon acceptance by the Secretary and County. The Secretary and County, with assistance from the Vendor, will follow the acceptance criteria and procedure described below:

(a) View the machines for physical damage that might have occurred during shipping, with special attention given to any damaged or dented boxes. Then set the voting unit up and turn it on. Assure that it “boots up” properly and then print a
zero balance. Review the zero balance tape to ensure that there are no votes and that the proper version of the software is on the voting unit. Cast a series of votes in an easy pattern to determine (such as one vote for candidate one and two votes for candidate two, et cetera). Close the voting unit and print a tally tape, ensuring that the tally matches the expected results. The operator who conducted the test will initial both tapes as correct and attach them to the storage medium (such as the PEB or PCMCLIA card) to be counted by the EMS software and ensure that the results recorded match the votes tallied.

(b) If a unit is delivered without zero balances, the votes can be reset to zero. If the printed results do not match the expected results the machine will be retested, with two operators to ensure that there was not operator error in the entering of the votes. The machine will be rejected if it is delivered in a damaged state, fails to boot up, or fails to function properly.

(c) Acceptance is complete upon successful completion of the activities set forth in 4.04 (a) and (b).

(d) Acceptance will be commenced and diligently pursued by the County within thirty (30) days after delivery, implementation, and setup. If Voting System fails to achieve acceptance, Vendor will replace the failing units, and a retest for acceptance will be conducted within thirty (30) days. Upon a second failure to achieve acceptance, the Secretary and the applicable County may reject this Vendor for that County. Notwithstanding the foregoing, use of the Voting System in an election shall constitute acceptance.

4.05 Secretary shall be obligated to pay Vendor 5% of the Total Cost of Ownership fee for the applicable County as described in Schedule B upon receipt and acceptance of Vendor's training and informational material.

4.06 Secretary shall be obligated to pay Vendor 15% of the Total Cost of Ownership fee for the applicable County as described in Schedule B upon Vendor's successful completion of training of the purchasing County's personnel.

4.07 Secretary shall be obligated to pay Vendor 15% of the Total Cost of Ownership fee for the applicable County as described in Schedule B upon the successful completion of Election Administration Support as described in Schedule C.

4.08 Vendor shall continuously maintain an escrow agreement (Schedule H) covering all software source code for the software licensed under this Contract. The Secretary shall have the right to access the escrow and use the source code to maintain, support and enhance the Licensed Materials in the event: (i) Vendor becomes subject to bankruptcy, insolvency or other similar condition; (ii) Vendor goes out of business or ceases to conduct this particular line of business in its normal course; (iii) Vendor discontinues providing Maintenance for any of the Licensed
Materials for any cause other than the Secretary's terminating such coverage or failure to pay Vendor; (iv) Vendor makes the source code generally available to other users of the Licensed Materials (in which case Vendor shall make it available to the Secretary under similar terms and conditions); (v) Vendor is unable to correct a logic error or other bug in the software and such failure to correct constitutes an uncured breach of its obligations under Schedule E; or (vi) For purposes of temporarily auditing and/or testing the software source code held in escrow in accordance with the Escrow Agreement.

4.09 The parties agree that the licensed materials provided hereunder are intellectual property, as defined in Section 101(56) of the Bankruptcy Code and that this Contract is governed by Section 365(n) of the Bankruptcy Code. Vendor acknowledges that if it, as a debtor in possession, or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects this Contract, then Secretary may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of Secretary to Vendor or the bankruptcy trustee, Vendor or such bankruptcy trustee shall not interfere with the rights of Secretary provided in this Contract.

4.10 Except for the license granted by Vendor pursuant to the Software License Agreement attached as Schedule E, Vendor retains all right, title and interest in and to any Intellectual Property owned by or licensed to Vendor prior to the date of this Contract.

4.11 Upon reasonable notice, in order to verify Vendor's compliance with this Contract, Vendor shall grant Secretary auditors (internal and external), personnel, examiners and agents reasonable access to Vendor (including, without limitation, to Vendor's books, records, systems, controls, processes and procedures related to Vendor's provision of the services) for the purpose of performing audits or examinations of Vendor. Vendor shall fully cooperate and provide to such auditors, personnel, examiners and agents, in a timely manner, all such assistance as they may reasonably require in connection with any such audit or examination.

**Article V. TERM AND OPTION OF COUNTIES TO EXTEND TERM**

5.01 This Contract is effective as of ______________. This Contract will automatically expire five (5) years after execution of this Contract. Unless this Contract is terminated or expires without renewal, it will remain in effect until the expiration date set forth in the immediately preceding sentence.

Upon the expiration or earlier termination of this Contract, each County shall have the option to enter into another contract which shall contain the same terms and conditions as this Contract, to the extent applicable to the County. Provided, however, that the fees for the Voting Systems may be altered from the price contained herein. The fee to be assessed for the Voting Systems in such contract shall be at least equal to the best price
charged by Vendor for each component of the Voting Systems for all purchasers, except the federal government, at the time an order is placed. Such new contract shall have a term at least equal to the term of this Contract, or such shorter term that is allowable by law and selected by the County; shall contain all the goods and services provided for hereunder, unless the County entering into the new agreement chooses to increase or decrease the goods and services to be provided; and shall include the right to extend the contract for a period of up to five (5) years at the option of the County. In any such extension the County executing the extension shall replace the Secretary for all purposes, except the enforcement of any rights of the Secretary that survive termination of this Contract.

Article VI. CERTIFICATION OF FUNDS

6.01 It is expressly understood by the parties that none of the rights, duties or obligations described in this Contract shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07 of the Ohio Revised Code, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state or federal agencies, and when required, such expenditure of state or federal funds is approved by the Controlling Board of the State of Ohio until such time that the Secretary gives the Vendor written notice that such funds have been made available to the Secretary, by the Secretary’s funding source. The Secretary will not issue Purchase Orders (Schedule G) unless funding is available.

Article VII. COMPENSATION

7.01 In consideration for the promises and performance of the Vendor as set forth herein, the Secretary agrees to:

(a) Pay the Vendor, upon submission of appropriately detailed and accurate invoices for the Voting Systems with the fees as specified in Article IV, Schedule B, and Schedule C.

(b) In no event shall the total cost to the Secretary under this contract for goods delivered and services performed as detailed in Article II exceed ONE HUNDRED FIVE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND SIX HUNDRED NINETY-FIVE DOLLARS AND 00/100 (105,325,695.00), which is the Total Cost of Ownership set forth in Schedule B.

7.02 An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify the Vendor within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety.
7.03 Contractor shall forward all invoices to the Chief Financial Officer, for review and approval at the following location:

Secretary of State of Ohio
Attn: Chief Financial Officer
P.O. Box 16366
Columbus, Ohio 43216

7.04 Section 126.30 of the Ohio Revised Code is applicable to this Contract and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month, which equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

7.05 Unless expressly provided for elsewhere in this Contract, the Vendor shall be responsible for and assume all office and business expenses that are incurred by Vendor or its approved subcontractor as a result of the performance of this Contract.

7.06 The Secretary and Counties are exempt from any sales, use, excise and property tax. The Secretary and applicable County will provide reasonable documentation as to the tax-exempt status. To the extent sales, use, excise or any similar tax is imposed on the Vendor in connection with the Project, such will be the sole and exclusive responsibility of the Vendor, and the Vendor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

Article VIII. PERFORMANCE BOND

8.01 Vendor shall deliver to Secretary a performance bond duly executed by a reputable surety company reasonably satisfactory to Secretary, and Vendor must pay all premiums and related costs. Schedule F is the form of performance bond that Vendor must provide.

8.02 The performance bond shall be in an amount of 200% of the fee paid and owing for supplying the Voting System to a particular County. The Vendor must procure the performance bond upon acceptance of the Voting Unit by the Secretary and County. In order to receive payment as outlined in Section 4.04, Vendor must attach a copy of the performance bond for that County with its invoice.

8.03 The performance bond shall provide for the immediate release of funds to Secretary upon notice of a material breach, which is not cured within the applicable cure period, of this Contract by Vendor. Secretary need not file a legal action to avail itself of bond proceeds. Secretary may draw upon the performance bond only to the extent required to reimburse Secretary (and the County(ies)) for the actual.
direct and reasonable costs incurred by Secretary in procuring from alternate suppliers goods and services necessary to replace the functionality of those that Vendor is obligated to provide to Secretary under this Contract and that have not been provided due to Vendor's material breach, which is not cured within the applicable cure period, of this Contract, and the costs associated with re-running an election required due to Voting System errors.

8.04 The performance bond must be in effect from the date of acceptance of the Voting Systems by the Secretary and the purchasing County until sixty (60) days after the last governmental unit certifies the election results of the first Federal or General election in which the Voting Systems was used in the purchasing County, unless a Court of competent jurisdiction orders the bond to remain in effect longer than sixty days.

8.05 Vendor's failure to satisfy this Article during the term of this Contract may be deemed a material breach of this Contract. If after issuance of the bond there is a material adverse change in the financial condition of the issuing surety or sureties and the Secretary reasonably deems the surety or sureties unsatisfactory, Secretary must notify Vendor and Vendor must substitute a new surety or sureties satisfactory to Secretary. Secretary need not make further payments on this Contract until Vendor tenders and Secretary accepts a substitute surety or sureties.

Article IX. SUBCONTRACTS

9.01 The Vendor shall not enter into subcontracts without prior written approval by the Secretary, which approval shall not be unreasonably withheld, delayed or conditioned. All work subcontracted shall be at the expense of the Vendor. Any subcontractor named in or referred to in Schedule K shall be deemed acceptable for participation hereunder.

Article X. CONFLICTS OF INTEREST

10.01 No personnel of Vendor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

10.02 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his
or her interest to the Secretary in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless the Secretary shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

Article XI.  CONFIDENTIALITY

11.01 During the term of this Contract, each party may provide the other party with confidential and/or proprietary materials and information (collectively “Confidential Information”). All materials and information provided by one party to the other party shall be considered Confidential Information. Each party agrees to maintain the confidentiality of the Confidential Information and will not use or disclose such Confidential Information without the prior written consent of the other party. At any time, upon a party’s request, the other party shall return all Confidential Information in its possession. The obligations contained in this Section 11.01 as they relate to the Secretary and the Counties are subject to the requirements of Revised Code 149.43 relating to the right of citizens to inquire into the activities of a governmental unit in Ohio. In the event that any of the Vendor’s Confidential Information is requested to be disclosed under Revised Code 149.43, the Secretary shall provide the Vendor with as much prior notice as reasonably practicable in order to provide the Vendor with an opportunity to seek an appropriate protective order against disclosure of such Confidential Information.

Article XII.  SUSPENSION AND TERMINATION PROVISIONS

12.01 The Secretary may terminate this Contract if the Vendor defaults in meeting its material obligations under this Contract and fails to cure its default within the time allowed by this Contract as specified in 12.02, or if a petition in bankruptcy (or similar proceedings) has been filed by or against the Vendor and not otherwise dismissed within sixty (60) days after the filing of such petition. The Secretary may also terminate this Contract in the event that the Vendor violates any law or regulation in performing the Project, or if the Secretary reasonably determines that the Vendor is unwilling or unable to perform the obligations of the Contract through no fault of the Secretary. In any such case, the termination will be for cause, and the Secretary’s rights and remedies will be those identified below for termination for cause.

12.02 On written notice, the Vendor will have thirty (30) days to cure any default of its material obligations under this Contract, provided the default is curable, unless a different Cure Period is set forth in a provision of this Contract including, without limitation, provisions in a Schedule (collectively, the “Cure Period”). If the Vendor fails to cure the default within the Cure Period, or if the default is not one that is curable, the Secretary shall have the right to terminate this Contract. The Secretary may also terminate this Contract with respect to an individual County in the case of
defaults of obligations to that County that are cured within the Cure Period but are persistent. "Persistent" in this context means that the Secretary has notified the Vendor in writing of the Vendor's failure to meet any of its obligations three (3) times within a rolling 6-month period. After the third notice, the Secretary may terminate this Contract without a Cure Period if the Vendor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. If a provision of this Contract including without limitation a provisions in a Schedule may provide for a shorter Cure Period or for no Cure Period at all. Those provisions will prevail over this one. If a particular section does not state what the Cure Period will be, this provision will govern.

12.03 The Secretary may also terminate this Contract for its convenience if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, the Secretary may also terminate this Contract should that third party fail to release sufficient funds. The current General Assembly cannot commit a future General Assembly to an expenditure. The Secretary, however, may renew this Contract in the next biennium by issuing written notice to the Vendor of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Project continues.

12.04 Subject to any applicable Cure Period, the notice of termination will be effective as soon as the Vendor receives it. Upon the effective date of termination, the Vendor will immediately cease all work and deliveries and take all steps necessary to minimize any costs the Vendor will incur related to this Contract. The Vendor will also promptly prepare a report and deliver it to the Secretary. The report must detail the work completed at the date of termination, the percentage of completion and any costs incurred to that date.

12.05 If the termination is for the convenience of the Secretary, the Vendor will be entitled to compensation for any efforts expended on the Project that the Vendor has performed before the termination. Such compensation will be the Vendor's exclusive remedy in the case of termination for convenience and will be available to the Vendor only once the Vendor has submitted a proper invoice for such, with the invoice reflecting the amount reasonably determined to be owing to the Vendor. Unless otherwise agreed by the parties, the determination will be based on the number of Voting Systems completed as required by Schedule C. Upon termination, Vendor will be entitled to take possession of any Voting Units title to which has not passed before such termination is effective.

12.06 The Secretary will have the option of suspending rather than terminating the Project where the Secretary believes that doing so would better serve its interests or the interests of the County(ies). In the event of a suspension for the convenience of the Secretary, the Vendor will be entitled to receive payment for the work performed or the products delivered and accepted before the suspension. If the Secretary reinstates the Project after suspension for cause, rather than terminating this Contract
after the suspension, the Vendor may be entitled to compensation for work performed before the suspension, less any damage to the Secretary resulting from the Vendor’s breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the Secretary from the default or other event giving rise to the suspension.

12.07 In the case of a suspension for the Secretary’s convenience, the amount of compensation due to the Vendor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the Secretary’s convenience. The Vendor will not be entitled to compensation for any costs arising out of a suspension for the Secretary’s convenience, but the Vendor will immediately notify the Secretary of any such costs and cooperate with the Secretary in minimizing or eliminating them. No payment under this provision will be made to the Vendor until the Vendor submits a proper invoice.

12.08 Any notice of suspension, whether with or without cause, will be effective immediately on the Vendor’s receipt of the notice. The Vendor shall prepare a report concerning the Project in the case of termination. After suspension of the Project, the Vendor will perform no work without the consent of the Secretary and will resume work only upon receipt of a written notice from the Secretary to do so. In any case of suspension, the Secretary retains its right to terminate this Contract rather than to continue the suspension or resume the Project. If the suspension is for the convenience of the Secretary, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

12.09 The Secretary will not suspend the Project for its convenience more than once during the term of this Contract, and any suspension for the Secretary’s convenience will not continue for more than thirty (30) calendar days. If the Vendor does not receive notice to resume or terminate the Project within the thirty (30) day period, then this Contract will terminate automatically for the Secretary’s convenience at the end of the thirty (30) calendar day period.

12.10 Any default by the Vendor or one of its subcontractors will be treated as a default by the Vendor. The Vendor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Secretary for any liability to them. Each subcontractor will hold the Secretary harmless for any damage caused to them from a suspension or termination. They will look solely to the Vendor for any compensation to which they may be entitled.

12.11 Any County exercising the rights granted in Section 16.02 may pursue any of the rights granted in this Article XII. Provided, however, that the County shall not have the right to terminate the Contract, suspend performance or exercise any other rights contained in this Article XII as they relate to the Secretary or any other County. Any activity pursued by a County in accordance with this Article XII shall be accomplished only with the prior knowledge and consent of the Secretary.
Article XIII. INDEMNITY AND INSURANCE

13.01 Vendor agrees to indemnify and hold the Secretary, its officers, agents and employees harmless from any and all third-party claims for injury resulting from Vendor's negligence or willful misconduct in connection with this Contract. Vendor shall reimburse the Secretary for any judgments for infringement of intellectual property rights in accordance with Schedule E. Vendor agrees to defend, at its own expense, against any such claims or legal actions if called upon by the Secretary to do so. The Secretary will provide reasonable prior written notice and cooperate with Vendors in pursuing any action or defense.

13.02 Without limiting the Vendor's indemnification of the Secretary, the Vendor shall provide and maintain at its own expense, during the term of this Contract, or as may be further required herein, the insurance coverages and provisions detailed in Schedule L.

Article XIV. COMPLIANCE WITH LAW

14.01 The Vendor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. Vendor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions and any and all other taxes or payroll deductions required for all employees engaged by Vendor in the performance of the work authorized by this Contract.

14.02 Notwithstanding anything to the contrary in this Contract or Schedules to this Contract, any change in federal, state or local law or regulation requiring a change to Vendor's Voting Unit which requires a change in hardware shall be done at a charge subject to the MFC provisions of Section 3.05. Changes to the Vendor's software as a result of a change in federal, state or local law or regulation shall be included in Vendor's maintenance obligation under Schedule E.

Article XV. LIMITATION OF LIABILITY

15.01 EXCEPT AS STATED IN THE FOLLOWING SENTENCE, THE PARTIES HERETO SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES. SECRETARY'S LIMITATION: SECRETARY SHALL BE LIABLE TO VENDOR AND ANY OTHER PERSON OR ENTITY ONLY FOR THE TOTAL COST OF OWNERSHIP PAID, OR DUE AND UNPAID, BY THE SECRETARY TO THE VENDOR. VENDOR'S LIMITATION: VENDOR SHALL NOT BE LIABLE TO SECRETARY OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF
DAMAGES IN EXCESS OF THE TOTAL COST OF OWNERSHIP RECEIVED
PLUS THE COSTS IDENTIFIED IN SECTION 8.03 OF THIS CONTRACT.

Under no circumstances shall Section 15.01 limit Vendor’s Indemnification obligation
under Section 13.01 of this Contract and Section 12.01 of Schedule E. Under no
circumstances shall Section 15.01 limit Secretary’s or County’s liability for infringement
of Vendor’s Licensed Programs.

Article XVI.  CHANGES OR MODIFICATIONS

16.01 Any changes or modifications to this Contract shall be made and agreed to by
both parties, in writing, and in advance.

16.02 Notwithstanding the authorization granted by the Secretary to the County(ies)
as set forth in Article XII, Section 12.02, such authorization shall not include the
right to terminate, change or modify this Contract, except as specifically allowed in
Section 12.11. The Contract may only be changed or modified by an agreement in
writing between the Secretary and the Vendor.

Article XVII.  ASSIGNMENT AND AUTHORIZATION

17.01 Except for Secretary’s right to assign this Contract to a County, neither this
Contract nor any rights, duties or obligations described herein shall be assigned by
either party without the prior written consent of the other party, such consent shall
not be unreasonably withheld, delayed, or conditioned. Nor shall a party authorize
anyone to either receive the benefits or fulfill the obligations of that party without
the prior written consent of the other party which will not be unreasonably withheld,
delayed, or conditioned.

17.02 The Secretary may, and hereby does, authorize each of the Counties to
exercise the rights and perform obligations of the Secretary hereunder, provided,
however, that no County may assign, alter, modify or terminate the Contract, nor any
rights, duties or obligations described herein. (A County’s ability to perform is
subject to the restrictions in Sections 16.02 and 12.11)

Article XVIII.  RELATIONSHIP OF PARTIES

18.01 It is agreed and understood that Vendor’s (and its employees) relationship to
the Secretary is that of an independent contractor. Nothing in this Contract shall be
construed to create the relationship of employer and employee, a joint venture, a
partnership, or association between Vendor and Secretary.

18.02 The Secretary shall not provide any insurance coverage of any kind for the
Vendor's employees, and the Secretary will not withhold any amount that would normally be withheld from an employee's pay. Neither Vendor nor any of Vendor's employees shall be entitled to any of the benefits provided to employees of the Secretary, including, but not limited to health insurance, the accrual or use of paid vacation, and the accrual or use of sick time.

18.03 Vendor shall determine the method, manner and means by which any services will be performed; however, such method, manner and means shall be set forth in the applicable Schedules. Except as may be set forth in Schedule C and/or Schedule D, Vendor is not required to perform services during a fixed hourly or daily time.

18.04 Vendor hereby confirms to the Secretary that the Secretary will not be required to furnish or provide any training to the Vendor, and Vendor's employees or agents, to enable the Vendor to perform its obligations hereunder.

Article XIX. REPRESENTATIONS OF THE PARTIES

19.01 Each party to this Contract represents to the other party that it has full power and authority to enter into this Contract and the execution, delivery and performance of this Contract does not violate the terms of any other contract to which it is a party; or any law or regulation to which it is subject. The Secretary's performance is subject to Controlling Board approval as provided in Section 6.01.

19.02 Vendor represents and warrants that no person representing Vendor has provided any gift, gratuity, service or other inducement to any employee of the Secretary, the Secretary, or to any agency involved in retaining Vendor's services.

19.03 Vendor warrants that, in providing the Voting Systems under this Contract, (i) Vendor will comply with all descriptions and representations as to the Vendor's Voting Systems (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements) set forth in Schedule A; (ii) the Vendor will render all related services in a manner consistent with the standards of Vendor's industry using appropriately trained and qualified personnel; and (iii) the Voting Systems will not be in violation of any applicable law, rule or regulations, and Vendor will have obtained all permits required to comply with any such laws, rules and regulations.

19.04 Vendor represents and warrants that the Voting Systems to be provided hereunder are free from defects in materials and workmanship. Vendor further represents and warrants that for the term hereof the Voting Units will perform as required in the applicable Schedules.

19.05 Vendor represents and warrants that it owns, or has the right to use under valid and enforceable agreements, all Intellectual Property rights reasonably necessary for and related to the Voting Systems. To the best of Vendor's knowledge
the Voting Systems do not infringe or violate any Intellectual Property rights of any other person or entity and registered in the United States, and Vendor has not received any charge, complaint, claim, demand or notice alleging any such infringement or violation.

19.06 Vendor represents and warrants that all Vendor’s personnel assigned to Secretary or Counties under this Contract shall be qualified to perform the services described in an applicable Schedule. Vendor’s personnel shall agree to abide by Secretary’s or Counties current standard safety and security procedures and harassment-free and drug-free polices, as Secretary or Counties may communicate from time to time, while assigned to provide services to Secretary or Counties under this Contract. Secretary or Counties, in each instance, will be provided with an opportunity to interview that person, at least five (5) days prior to the scheduled replacement, before giving its approval or disapproval, such approval not to be unreasonably withheld, delayed or conditioned.

19.07 Vendor represents and warrants that: (i) all individuals designated to perform the services under this Contract are either citizens of the United States or legally eligible to work in the United States and (ii) it has and will comply with all applicable immigration laws and regulations relative to those individuals who are not citizens of the United States.

19.08 Secretary or Counties may terminate the assignment of any Vendor personnel with cause, immediately, if Secretary or Counties, in its sole discretion chooses, or in the event that Vendor personnel has breached any obligation set forth herein. In the event of removal of any Vendor personnel and upon the Secretary’s or Counties request, Vendor shall designate an employee to replace the removed employee until completion of the services in the applicable Schedule.

19.09 Vendor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Vendor agrees that if this representation and warranty is deemed to be false, the Contract shall be void ab initio as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

19.10 WARRANTY DISCLAIMER. VENDOR 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.
 Article XX. CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS

20.01 Vendor by signature on this Contract certifies that Vendor is currently in compliance and will continue to adhere to the requirements of Ohio Ethics Laws as provided by Sections 102.03 and 102.04 of the Ohio Revised Code.

Article XXI. MISCELLANEOUS

21.01 This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio without regard to conflict of law principles. The parties agree to the exclusive jurisdiction of the federal and state courts of Ohio in connection with any dispute arising hereunder.

21.02 This Contract may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

21.03 If any provision of this Contract is declared or found to be illegal, unenforceable or void, then the parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objective.

21.04 Each party agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

21.05 No failure or delay by either party with respect to exercising any of its rights hereunder shall operate as a waiver thereof.

21.06 Each party agrees that in the event an action is brought against it, directly involving the subject matter of this Contract by a third party, the outcome of which could have a direct and material effect upon the rights of the other party granted hereunder, the party against whom the action is brought will notify the other party as soon as possible and allow the other party an opportunity to appear in and defend such action, and its expenses (including reasonable attorney fees) shall be borne by the other party.

21.07 The parties agree that this Contract is for the benefit of the parties hereto, and the Counties, who are third party beneficiaries of this Contract. Except for the Counties, this Contract is not intended to confer any rights or benefits on any other third party, including any employee, vendor, or customer of either party, and, there
are no other third party beneficiaries as to this Contract or any part or specific provision of this Contract.

21.08 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, permitted assigns and authorized users.

21.09 This Contract is the complete agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, and communications on such subject matter. All prior negotiations, representations, or agreements, either written or oral and relating to the subject matter hereof, are superseded hereby.

21.10 This Contract in no way establishes an exclusive arrangement between Vendor and the Secretary, or the Counties. The Secretary retains the ability to contract, negotiate term with, and enter into contracts with any other third party, including any competitor of Vendor, at any time, without notice to Vendor, on the same or similar subject matter, without incurring liability to Vendor.

21.11 No waiver of any breach or of any of the terms or provisions of this Contract shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.

21.12 Any notices required or permitted to be sent hereunder shall be served personally or by registered or certified mail, return receipt requested or by facsimile with confirmation or receipt; respectively to the addresses listed below.

21.13 Vendor’s failure to perform any obligation or satisfy any condition hereunder will be excused if, and suspended for so long as, attributable to causes beyond the Vendor’s reasonable control; provided that the period of any such suspension shall not, in any event exceed 120 days.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State
Attn: Legal Department
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Facsimile: (614) 644-0649

Notices to the County shall be sent to the address(es) listed in Schedule N.

Notices to Vendor shall be sent to:

Diebold Election Systems, Inc.
Attn:
5995 Mayfair Road
Facsimile: 972-542-6044

With Copies to:
Diebold, Incorporated
5995 Mayfair Road
North Canton, Ohio 44720
Attn: General Counsel

Facsimile: 330-490-4450

Each of the parties has caused this Contract to be executed on its behalf by its duly authorized representative as of the date first above written.

SECRETARY:

By: Monty Lobb

Title: Assistant Secretary of State

Date: 7/16/04

VENDOR:

Diebold Election Systems, Inc.

By: Robert J. Urosevich

Title: President

Date: February 5, 2004

85 039 4190
FEDERAL TAX I.D. NUMBER
Schedule A – Hardware and Software Requirements

The Vendor shall provide hardware and software to meet the following minimum requirements:

1. State of Ohio Certified

All equipment and software must be certified by the Board of Voting Machine Examiners of the State of Ohio.

2. No Interface with Voter Registration System required

The Voting Unit shall not require an interface with any specific voter registration system.

3. Federal Election Commission Standards

All hardware and software components of the Voting Unit, including provisions for absentee voting and voters with disabilities, must comply with the FEC Voting System Standards. All hardware shall be approved at the time the Voting System is ordered by the Secretary. Software and firmware shall be approved at the time that the Voting System is ordered by the Secretary.

4. Independent Testing Agency (“ITA”)

All equipment and software must be qualified by an ITA. The ITA certification must be demonstrated with a copy of the qualification certificate issued by an ITA approved by the National Association of State Election Directors (“NASED”), or documentation from a NASED approved ITA that the system is pending qualification and that the source code review portion of the testing is complete and satisfactory. The vendor must provide a signed authorization directing the ITA that performed or is currently performing the qualification testing to:

Submit the results of its testing directly to the Contracting Officer, and;
Allow the Contracting Officer or designee full access to all test records and data.

5. Experience and Financial Capacity

The Vendor must demonstrate both the experience and financial capability to satisfy all immediate and long-term requirements for the requested system and system support. The Vendor must be able to meet the guarantee and bonding requirements.

6. System Requirements, Performance and Capabilities

The DRE, PCOS, and ABS systems must meet the following requirements, unless otherwise indicated:
7. **Accuracy**

The DRE, PCOS, and ABS systems must:
- Produce a paper audit trail. To guard against fraud, systems shall not produce individual paper records that voters could remove from the polling place;
- Accurately report all votes cast;
- Control logic and data processing methods to detect errors and provide correction method;
- Provide for the storage and tabulation of write-in votes;
- Accommodate multi-member districts whereby multiple votes are cast for more than one post in the same election;
- Permit diagnostic testing of all the major components within each unit;
- Provide printout results containing candidates and/or issues in an alphanumeric format next to the vote totals;
- Provide logic and accuracy tests in the memory of the main processor and the programmable memory device used on Election Day, including zero printouts before each election and a precinct tally printout at the close of each election;
- Permit recounts and contested elections to be conducted pursuant to the requirements of Title 35 of the Ohio Revised Code; and
- In the event of the failure of a unit, retain a record of all votes cast prior to the failure.

The DRE system must further:
- Present the ballot to the voter in a clear and unambiguous manner;
- Prohibit Overvotes before final vote is cast;
- Provide a summary screen at the end of the ballot showing what the voter has chosen prior to the final vote being cast;
- Provide a method to separate and hold provisional and absentee ballots that are cast;
- Provide for the tabulation of votes cast in split precincts, where all voters residing in one precinct are not voting the same ballot style; and
- Provide for the tabulation of votes cast in combined precincts, where more than one precinct is voting at the same location, on either the same ballot style or a different ballot style.
- The capability of storing and presenting to the voter any ballot style in use in given jurisdiction;
- Able to maintain multiple ballot combinations on a single voting unit;
- Able to accommodate multi-member districts; and
- Easily download results from balloting into the final tally of votes

The Voting System(s) shall be able to meet each of the requirements of Ohio Revised Code Section 3506.10, in effect as of the date of the Contract.

8. **Audit and Security**
The following requirements pertain to DRE, PCOS, and ABS systems unless otherwise noted:

- Provide a paper audit trail as referenced under Accuracy above;
- Provide that each voter's ballot is secret and the voter cannot be identified by image, code or other methods;
- Provide for summary reports of votes cast on each voting device by extracting information from a memory device or a data storage device;
- Provide printed records regarding the opening and closing of the polls and include the following:
  - Identification of election, including opening and closing date and times;
  - Identification of each unit;
  - Identification of ballot format;
  - Identification of candidate and/or issue, verifying zero start;
  - Identification of all ballot fields and all special voting options;
  - Summary report of votes cast for each device, or ability to extract same;
  - Prevent printing of summary reports before the sequence of events required for closing of the polls are completed;
- Poll opening reports should have all system audit information required;
- No loss of data during generation of reports including results, images and inaccurate vote counts;
- Integrity and security of data maintained according to time frame for federal, state and local elections;
- Prevention of functions in an improper sequence;
- Security provisions compatible with administrative set up and operational use;
- Requirement for pre-election testing of logic and accuracy;
- Requirement for logic and accuracy results to be stored in memory of main unit processor and Election Day device;
- Programmable memory device to be sealed in unit with means of tamper detection;
- Allow for extraction of data from memory devices to a central host;
- Prevent modification of the voter's vote after the ballot is cast;
- Protect the secrecy of the vote such that the vote may not be observed during the voter's selection of preferences, during the casting of the ballot, and as the voted ballot is transmitted for recording on a storage device; and
- Prohibit voted ballots from being accessed by anyone until after the close of polls.

- Provide for security procedures system-wide, from turn on to turn off, and
- Provide for safeguards against and evidence of tampering, theft or damage of the system and units.

9. Election Management System

The Election Management System ("EMS") shall consist of the hardware and software required to accomplish the functions described below.
a. Administrative Database

The EMS shall allow local and state election officials to generate and maintain an administrative database containing the definitions and descriptions of political subdivisions and offices within the jurisdiction. The environment in which all databases in the subsystem are maintained shall include all necessary provisions for security and access control.

The EMS shall provide for the definition of political and administrative subdivisions where the list of candidates or contests may vary within the polling place and for the activation or exclusion of any portion of the ballot upon which the entitlement of a voter to vote may vary by reason of place of residence or other such administrative or geographical criteria.

Any database may be generated and maintained in any file structure suitable to the requirements of the jurisdiction. It is the intent of the database hierarchy described herein to ensure that data entry, updating, and retrieval be effectively integrated and controlled. Any structure, which provides the required functional capability, security, and privacy, is acceptable.

For each election, the EMS shall allow the user to generate and maintain a candidate and contest database and provide for the production or definition of properly formatted ballots and software. This database shall be used by the system with the administrative database to format ballots or edit formatted ballots within the jurisdiction.

The EMS shall provide a software capability for the creation of newly defined elections, for the retention of previously defined formats in that election, and for the modification of a previously defined ballot format. Such systems shall be designed so as to facilitate error-free definition of elections and their associated ballot layouts for DRE, PCOS, and ABS and comply with the ballot rotation requirements of R.C. 3505.03.

The subsystem shall be capable of handling at least 500 potentially active voting positions, arranged to identify party affiliations in a primary election, offices and their associated labels and instructions, candidate names and their associated labels and instructions, and issues or measures and their associated text and instructions.

b. Election Programming

The subsystem shall provide a mechanism for the definition of the ballot, including the definition of the number of allowable choices for each office and contest, and for special voting options such as write-in candidates. It shall provide for all voting options and specifications as provided for in the Ohio Revised Code.
The subsystem shall generate all required master and distributed copies of the voting program in conformance with the definition of the ballot for each polling place and voting device, including devices required to facilitate absentee voting and disabled voters.

The distributed copies, resident or installed in each voting device, shall include all software modules required to monitor system status and generate machine-level audit reports, to accommodate device control functions performed by polling place officials and maintenance personnel, and to register and accumulate votes.

c. Ballot Validation

The subsystem shall provide a mechanism for executing test procedures which validate the correctness of election programming for each voting device and polling place and insure that the ballot display corresponds with the installed election program.

The voting system election management component must be able to receive data electronically from the Secretary and County Boards of Election via electronic storage media or modem in an agreed upon format that contains, at a minimum, the following data:

- Full candidate name;
- Candidate sequence;
- Text of ballot questions and voting option language;
- Name of authorizing presidential candidate for a Presidential Primary Delegate;
- Office name;
- Number to vote for each office;
- Party affiliation;
- Ballot style indicator; and
- Number of registered voters at the precinct.

The voting system election management component must also be capable of returning data electronically to the Secretary and County Boards of Election via electronic storage media or modem in an agreed upon format that contains the following information:

- Candidate Name;
- Office;
- Number of votes for (including ballot questions);
- Number of votes against (where applicable) (including ballot questions);
- Number of people voting summary and by party affiliation (if applicable); and
- Number of registered voters at the precinct level (by party affiliation if applicable).

The EMS shall contain minimal, if any, double entry elements.
The EMS shall be flexible enough to allow the import/export of ballot information and voter registration information to and from any centralized statewide database, which will be undergoing changes in the coming years. No voting system shall be selected that requires a specific voter registration database interface.

The EMS shall accommodate multiple languages. The system shall allow local election officials the ability to download information from software used to translate information to the appropriate language or the system should perform translations automatically.

10. Back-Up System

The back-up system must:

- Remain in operation during power surge or other abnormal electrical occurrences;
- Engage immediately with no loss of data in the event of disruption of electrical connection; and
- Provide documentation on the backup system and its maintenance while not in use for elections.

The back-up system should: Power all components, including illumination, audible and disabled voter tools.

11. Speed of System

The Voting System shall permit voters to cast ballots quickly and easily without any loss of accuracy.

The Voting System shall provide for an accurate and immediate transfer of data.

12. Absentee Voting

The absentee voting system must be integrated with the entire Voting System provided by the Vendor.

The devices that produce or process the absentee ballots shall be programmed from the same database and election definition that is used to program the precinct voting devices.

The reporting and tallying system for the absentee ballot system shall be capable of tallying the absentee votes as a separate precinct or allocating the absentee votes back to the voter's precinct.

The absentee results shall be easily integrated with Election Day results (if applicable) in a timely manner.
The absentee voting system element must produce and record results from an optical scan ballot.

13. Provisional Voting

The DRE, PCOS, and ABS voting equipment, as well as the EMS, shall be able to separate provisional ballots from non-provisional ballots cast at the precinct on Election Day and shall be able to download the provisional ballots into the final tally of votes if those provisional ballots are determined to be eligible for counting.

14. Election Reporting Requirements

The Voting Systems shall provide a cumulative, canvass and precinct report of absentee voting, provisional ballot voting and Election Day voting as one total.

The Voting Systems shall provide a cumulative, canvass and precinct report of Election Day Voting as one total.

The Voting Systems shall provide for unofficial and official reports, in standard or custom format, including absentee and, Election Day and total vote.

The Voting Systems shall provide the ability to custom design an election report to include the following information in total or in part:

- Name of election;
- Political subdivision and party involved - separate reports should be available for each subdivision and party;
- Date of election;
- Type of report;
- Total number of registered voters in each political subdivision and total number of registered voters in each race, and, where applicable, a breakdown by party; and
- Total number of registered voters in each voting precinct, including a sub-listing when the precinct is split; and
- Provide for the formatting of election results by capturing election data embedded in the database and producing specialized reports, i.e. a report of votes by multi-member district, legislative district or congressional district.

The Voting Systems shall provide, for election night reporting, a listing of precincts reporting and a listing of precincts not reporting.

The Voting Systems shall provide for the operator of the reporting system to change the appearance of the report by reformatting the data.

The Voting Systems shall provide for the removal of an already counted precinct and a re-counting of that same precinct in the event of errors in transmission.

The Voting Systems shall provide individualized sample ballot information for storage on a Web site and for reproduction and distribution.
The Voting Systems shall provide for the automatic transmission of election results through whatever medium chosen by the State, whether it be Internet, telephone lines, electronic data, etc.

The Voting Systems shall provide for the storage of election results in any version of software required, i.e., Access, Excel, Adobe, ASCII and HTML.

The Voting Systems shall provide for election results to be produced in such a manner as to allow for easy copying for paper distribution upon request.

15. System Audit Log

The system audit log shall contain sufficient information to allow the auditing of all operations related to central site ballot tabulation, results consolidation, and report generation. It shall include a/an:

- Identification of the program and version being run;
- Identification of the election file being used;
- Record of all options entered by the operator;
- Record of all actions performed by the subsystem; and
- Record of all tabulation and consolidation input.

The system audit log must be created and maintained by the system in the sequence in which operations were performed.

16. Access to Election Data

The Voting Systems shall provide for authorized access to election results after closing of the polls and prior to the publication of the official canvass of the vote.

The system may be designed so that results may be transferred to an alternate database or device. Access to the alternate file shall in no way affect the control, processing, and integrity of the primary file or allow the primary file to be affected in any way.

17. Voter Comfort

Each of the following requirements should be met:

- Font size should be adjustable for ease of sight, but not below the font size of twelve (12), at one hundred percent (100%) magnification (DRE only);
- Ballot should include minimal, easy to follow on-screen instructions for use by the voter (DRE only);
- Voters are to be shown a summary screen at the end of the ballot (DRE only);
- Device should be capable of supporting foreign languages;
- Voter should be aware by clear means of ballot choice;
• Voter should be allowed to change selection until the voter is satisfied with choice at anytime prior to the final casting of a ballot;
• Voter should be allowed to review all ballot choices before casting the ballot;
• Device should prevent Overvotes (DRE only);
• Device shall prompt the voter to confirm the voter’s choices before casting their ballot, signifying to the voter that casting the ballot is irrevocable and directing the voter to confirm the voter’s intention to cast the ballot, and shall further signify to the voter that the ballot has been cast after the votes are stored successfully;
• Voting booth must be designed so as to provide privacy for the voter while voting, must be well lit, equipped with a fixed surface of writing height on which to vote and must accommodate elderly, disabled or other voters with special needs (DRE only);
• The PCOS system should have the capacity to notify voter of all Overvotes; and
• During contract period, written materials shall be provided at each polling place to inform voters on how to use the voting equipment prior to actually voting.

18. Disabled Voter Comfort

All DRE VWD voting units should be adaptable for disabled voters, from a restructuring of the voting unit or booth to the removal of the device.

In addition, the units that will accommodate voters with disabilities must be capable of providing:
• Non-visual access using a method that includes touch controls and audible speech, playback, volume, speech;
• Ease of portability and adjustability at polling location;
• The voter with the ability to review the completed ballot before submitting his or her vote;
• The system must prevent the voter from Overvoting any race;
• The voter must be able to write in a candidate name in races which allow write-in candidates;
• The voter must be able to review their write-in input to the interface, edit that input, and confirm that the edits meet their intent;
• There must be a clear, identifiable action that the voter takes to “cast” the ballot;
• The system must make clear to the voter how to cast a ballot, such that the voter has minimal risk of doing so accidentally, but when the voter intends to cast the ballot, the action can be easily performed;
• Once the ballot is cast, the system must confirm to the voter that the action has occurred and that the voter’s process of voting is complete; and
• Once the ballot is cast, the system must preclude the voter from modifying the ballot cast or voting or casting another ballot.

19. DRE, PCOS, and ABS Comfort Requirements
The following requirements pertain to poll workers and election officials and staff for DRE, PCOS, and Absentee Ballot Systems:

- Devices should be transportable, without damage to internal circuitry;
- Devices should withstand frequent loading and unloading, stacking, assembling, disassembling, reassembling, and heavy use, without damage to internal circuitry;
- Devices should provide poll workers with a method to immediately detect if a voting unit is not operating properly;
- The programmable memory device should be easy for poll workers to operate after the closing of the polls; and
- Devices should be "tamper-proof" while in a storage configuration either in storage or the polling location.

20. DRE Comfort Requirements

The following requirements pertain to poll workers and election officials and staff for the DRE Systems:

- Devices should be of such size as to be able to move through standard size doorways into various size polling places for storage in a particular location within the polling place prior to Election Day use;
- Devices should allow for a Poll Worker to assist a voter in activation, either through remote help or direct access to the voting unit, or devices should allow the voter themselves to activate the unit using some form of activation device, [i.e. smart card, access code, or activation cartridge]; and
- DRE systems used should be as lightweight as possible.
<table>
<thead>
<tr>
<th>Items</th>
<th>Potential Quantity</th>
<th>Diebold Unit Price</th>
<th>Unit of Measure</th>
<th>Diebold Total Price</th>
</tr>
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<td><strong>DRE (1)</strong></td>
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<td>Software w/2yr license</td>
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<td>$ -</td>
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<td>Unpacking &amp; Removal of packaging</td>
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<td>Configuration (Hardware)</td>
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<td>$ -</td>
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<td>Acceptance Testing</td>
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<td>per unit</td>
<td>$ -</td>
</tr>
<tr>
<td>Installation (Software)</td>
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<td>per unit</td>
<td>$ -</td>
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<td><strong>Total Implementation Costs</strong></td>
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<td>Items</td>
<td>Potential Quantity</td>
<td>Diebold Unit Price</td>
<td>Unit of Measure</td>
<td>Diebold Total Price</td>
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<tr>
<td>-----------------------------------</td>
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<td>hour</td>
<td>$</td>
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<tr>
<td><strong>Total Support</strong></td>
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<td>$801,450.00</td>
</tr>
<tr>
<td>Misc.</td>
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<td>each</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Misc.</strong></td>
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<td>$</td>
<td>each</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Cost of Ownership</strong></td>
<td>35,523</td>
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</tr>
</tbody>
</table>

Special Allowance 9.75% 9.75%

Net Total Cost of Ownership $2,965.00 $105,325,685.00

The following assumptions were used to derive the total cost of ownership:

1. The total estimate of DRE & ADA Units for the whole state of Ohio is 35,523 units.
2. At this time we do not know how many Optical Scanners will be required, so we have set this at 0. After the Counties have chosen their choice of equipment this quantity will be updated and multiplied by your unit cost to calculate total price to the State.
3. At this time we do not know how many high speed ABSs will be required, so we have set this at 0. After the Counties have chosen their choice of equipment this quantity will be updated and multiplied by your unit cost to calculate total price to the State.
4. We have estimated that at least each county will require 1 ABS standard speed and that the larger will require more. Our average per County is 1.36. This will be based upon the choices of the Counties.
5. Quantity based upon total DRE+ADA requirements.
6. The SOS estimates that there are a total of 250 election officials in Ohio to be trained.
7. The SOS estimates that there is a total of 48,000 poll workers in Ohio to be trained.
8. The SOS has used an initial estimate of 1,000 hours of assistance with voter education.
9. Diebold will provide whatever support is necessary to ensure the first successful Federal election.

10. Total Unit Cost of Ownership is calculated by taking the total estimated cost and dividing by the total estimated quantity of DRE/ADAs.

The vendor agreed to the following contract terms:

A. All unit prices are valid regardless of the number of Counties that you are chosen to supply. It is understood that the quantities will change after the Counties have made their choices.
B. The base year shall be the last year of this agreement as it applies to each cost item. The escalation of all nonscheduled costs will be capped at the lesser of the prevailing increase of the CPI or 5%.
C. All license and maintenance costs are capped at the lesser of the prevailing increase of the CPI or 5% after the 10th year of this agreement.
D. Diebold must service any County that selects them.
E. Diebold has agreed to meet specific requirements as they pertain to the specific requirements of the Secretary's Security Survey and any statutory or standards based requirements.
F. Server costs are included in the above pricing.
<table>
<thead>
<tr>
<th>Items</th>
<th>Potential Quantity</th>
<th>Diebold Unit Price</th>
<th>Unit of Measure</th>
<th>Diebold Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>There are no additional costs to provide the equipment and services stated in the RFP and clarifications to the State of Ohio. Diebold shall immediately submit for certification in the State of Ohio any software releases for its election systems submitted for certification in any other state. Ohio shall have the right to utilize the latest version of any of Diebold's software that has received certification in any other state at no additional cost.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>A special allowance of 9.75% applies to all prices.</td>
<td></td>
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</table>
Schedule C - Scope of Work

This Schedule C describes the Project and what the Vendor must do to get the job done. It also describes what the Vendor must deliver as part of the completed Project (the "Deliverables").

Scope of Work

The Vendor must supply the Counties with installed and configured DRE, PCOS, ABS and EMS systems needed to respond with the Secretary’s commitment to meet the Voting System standards of the Help America Vote Act of 2002 (HAVA). The Vendor must also provide training for all individual poll workers and Board of Elections staff and overall knowledge transfer to State and local election officials. The Vendor will provide State and local election officials and Poll workers with training materials for use in voter education programs.

The scope of work includes:

- Project management and oversight
- Equipment installation, configuration, testing and certification
- Training for all poll workers and Board of Elections staff
- Assist with voter education
- On-site Administrative and technical support
- Warranty support and post-warranty maintenance and support

In the event that there is a conflict between the obligations set forth in this Schedule C and those set forth in Schedule B, those set forth in Schedule B shall control.

1. Key Milestone and Timeline Dates

Key completion dates for project activities are determined based upon the requirements in Schedule D.

2. Deliverables

The following ten (10) deliverables are included in the Scope of Work.

a. Work Breakdown Structure (WBS) and Deployment Schedule
   (Deliverable 1)

Provide a Program level Work Breakdown Structure (WBS) based on the number of Counties awarded, developed in Microsoft Project, which summarizes all
project-related tasks, durations, required resources and hours required (whether Secretary or Vendor) to meet the terms of this contract. The WBS should specify timeline and task associated with:

- project management and oversight;
- equipment installation;
- configuration;
- testing;
- certification;
- training;
- voter education; and
- administrative and technical support.

b. Execution of risk mitigation strategies (Deliverable 2)

The Vendor shall execute the required security risk mitigation strategies as described in Attachment C-A attached hereto and incorporated herein by this reference.

c. Validation of the State's requirements (Deliverable 3)

To confirm the ability of the chosen systems to meet the State's minimum requirements as detailed in Schedule A of the Contract, the Vendor must plan and facilitate a walk-through session within ten (10) calendar days of the start of the Project to annotate and demonstrate system capabilities for the Secretary of State staff and invited guests. To successfully conduct this session, the Vendor will:

i. Develop and distribute a checklist listing all of the State's minimum requirements plus any additional features the Vendor believes will help the State attain its Project objectives;
ii. Illustrate and confirm that the systems being demonstrated meet each defined requirement;
iii. Explain and document any variance between the minimum requirements and system capabilities;
iv. Respond effectively to comments and questions from participants;
v. Capture and document any additional requirements identified during the walk-through;
vi. Develop and submit a baseline listing of all requirements.

d. Installed and configured DRE, PCOS, ABS and EMS system

(Deliverable 4)

To confirm successful installation and configuring of all DRE, PCOS, ABS and EMS systems, the Vendor will:
i. Comply with all delivery and set-up dates detailed in Schedule D; and

ii. Prepare, assure completion of and submit a checklist filled-in and signed by a duly authorized State representative attesting to the successful installation, configuration and testing of equipment at each location.

e. Documentation (Deliverable 5)

The Vendor will provide software and firmware documentation, information, and materials, including the following:

i. Instructions required to install, operate and test the voting system;

ii. System flow chart describing information flow; entry and exit points; and the relationship of programs, device drivers, data files, and other program components;

iii. Identification of version, release, and modification levels of all software and firmware components;

iv. Identification of the steps and procedures required to generate all program modules providing system functions for which certification or provisional certification is requested;

v. Identification of all compilers, assemblers, development libraries, device drivers, operating systems, and monitors required to generate and operate the executable programs;

vi. Identification of all program elements which are static and not subject to change in either content or use when distributed for sale, during testing, or during operation; and

vii. Identification of all program elements that are not static and therefore are subject to change in content or use when distributed for sale, during testing, or during operation.

None of the above include source code.

f. User informational materials (Deliverable 6)

The Vendor shall provide:
i. Clear, graphically-driven pamphlets and brochures that tell voters how the voting devices work;

ii. Additional text-based items as required to supplement the training programs described below; and

iii. Web-based demonstrations.

g. Training (Deliverable 7)

The Vendor must provide:

i. Extensive training programs for all poll workers and Board of Elections staff on all phases of the Voting System(s). Such training shall be sufficient to the point that State and Local Election personnel shall be able to operate the system without continuous support by the Vendor. The training shall address, but shall not be limited to, the following topics:

   • Programming of units;
   • Preparation of each individual unit;
   • Preparation of polling place to accept voting devices;
   • Electronic transmission of election results;
   • Tabulation of results;
   • Equipment and software used at the central counting station;
   • Methods of ensuring the accuracy of precinct results;
   • Full understanding of the audit procedures;
   • Conduct of a recount;
   • Conduct of a contested election;
   • Records preservation;
   • Printing, designing and reformating election reports;
   • Troubleshooting to solve temporary problems;
   • Safeguards to prevent and detect tampering or theft;
   • Hot points for system errors; and
   • Training on the use of the Election Management System to design and layout ballots.

ii. A detailed training program for each county, which shall include:

   • Setting up and testing the voting equipment;
   • Suggestions for precinct set-up;
   • Operation of the voting device from start to finish;
   • Processing of voters, to the absentee voter, to the regular
voter, to the provisional voter;
• Troubleshooting methods to quickly identify and resolve any problems;
• The opening and closing of polling locations on Election Day;
• Proper operation and security for modern transmission of election results (if applicable);
• Printing of zero counts before the polls open;
• Assisting voters who require help while in the voting process;
• Immediate determination of device problems;
• Using the battery back up during electrical failure;
• Taking a malfunctioning piece of equipment out of service;
• Closing the polls and producing results in any of the methods available for that particular device;
• How and when to place service calls.
• Poll worker training provided by the vendor, to the county, at the direction of the county; and
• Training materials for use by election personnel when conducting educational outreach programs.

iii. The Vendor shall provide pre-election training of poll workers and Board of Elections staff prior and through the first County-wide election.

iv. The Vendor shall provide a poll worker training program on videotape to the Secretary and the Counties. This video program will assist the Secretary and local election officials in preparing poll workers to work the polls and properly operate the voting equipment. This videotape should be 15-20 minutes in duration and will likely include a brief message from the Secretary of State, an overview of the Secretary’s response to the Help America Vote Act, and a demonstration of the features and functions of the new voting system. The Vendor shall assume responsibility for producing this instructional video program and arranging to make at least one copy for each precinct.

v. Voter Education programs will be conducted by the Secretary and the County. However, the Vendor shall provide basic voter education material to support efforts of the Secretary and the Counties.

vi. The Vendor shall partner with the Secretary in using the Secretary of State’s Web presence as a communication and instructional medium for the new voting system. To this end, the Vendor will actively participate in creating of informative communiqués of public interest during the project. The Vendor shall also develop an on-line demonstration and simulation of the new voting equipment as an additional educational tool.
h. Warranty (Deliverable 8)

The Vendor shall provide:

i. A minimum of a five (5) year warranty, for all Voting System hardware and software, regardless of whether this warranty period for any piece of equipment and software shall extend beyond the term of this Contract as described in the RFP;

ii. Documentation of acceptance testing for each unit delivered;

iii. During the term of the contract all software upgrades, as well as all hardware and software patches to repair defects in the system, at no charge to the using entity or State;

iv. One complete set of user and technical documentation for all hardware and components required to operate each system for the Secretary and each County, in both printed and in an electronic format; and

v. Well-trained support personnel, conversant in the English language, for all activities that are the Vendor’s responsibility.

i. Election administrative support (Deliverable 9)

The Vendor shall provide:

i. An overall contract administrator who will serve as the principal point of contact for the Vendor with the Secretary.

ii. The Vendor will prepare a plan to support Counties in which the system is being deployed. This on-site technical support shall be provided through the first County-wide election.

iii. On-site technical support shall include at least the following:

1. Pre-election programming and ballot set-up;
2. Pre-election logic and accuracy testing;
3. Election day support during the full hours of operation; and
4. Post election testing and reporting.

iv. Service technicians must be well trained and capable of replacing malfunctioning equipment in the polling places. Each technician that performs troubleshooting in polling places must have reliable, dedicated
transportation that will allow the technician to promptly respond to a polling place voting system problem situation, and said transportation shall be of sufficient size to accommodate several voting units. As a primary function, these technicians shall transport spare voting units for possible replacement of polling-place voting units that are inoperative. Units that cannot be repaired “on the spot” and are needed at the polling location for the capturing of votes, shall be picked up immediately after the election ends, repaired and returned. Each technician shall further maintain a reasonable supply of spare parts and components necessary to repair a malfunctioning voting unit or return it to service. Technicians must also have cellular telephones or other means of real time communication so that they may be dispatched to polling locations that are experiencing system problems.

aa) The specifics of hardware maintenance are set forth in Schedule E and in the event of a conflict between this provision C.2.i.iv.aa and the provisions of Schedule E, the provisions of Schedule E prevail.

J. Post warranty maintenance and support (Deliverable 10)

i. Following the warranty period for each piece of equipment and software provided under the contract, the Vendor shall continue to maintain such equipment and software in proper operating condition for the full duration of the contract, including option periods, if exercised. The Vendor is to maintain a current inventory of all equipment and software provided under this contract, including information on the date of delivery of the equipment and software to the Secretary to readily ascertain whether any piece of equipment is currently within the warranty period or is covered under the after-warranty maintenance.

ii. The replacement of parts or components can be with entirely new parts or components, or with refurbished parts or components such that the equipment or software will function like new. Similarly, the Vendor can replace a malfunctioning unit or software with the same or similar unit, provided that the Secretary has certified such unit for usage in Ohio. For the purposes of this contract section, “replacement” shall mean replacement from the Vendor’s stock and not from the stock of the Secretary or using entities. In instances when a temporary replacement has been made from the Secretary or using entity stock, the Vendor shall perform repairs on the improperly functioning equipment or software or make replacement from its stock within 4 weeks from the date of the temporary replacement.

iii. All maintenance is to be performed within reasonable timeframes from notification to the Vendor of a problem. In instances where the Vendor learns of problem situations that are likely to negatively affect a significant
portion of the equipment or software provided under this contract, the Vendor shall prospectively make appropriate repairs, adjustments or replacements to all such equipment or software to forestall the problem's occurrence. When a piece of equipment or software does not operate properly during pre-election programming and ballot set-up, pre-election logic and accuracy testing, or during post election canvassing, testing and reporting, the equipment shall be repaired or replaced within 4 working hours of notification of the problem. When a piece of equipment or software ceases to operate properly on an Election Day and is not repaired or replaced at that time, the equipment or software shall be replaced within 4 weeks from the date of the election during the warranty period. During the maintenance period, the equipment or software shall be repaired or substituted with a loaner within 4 weeks from the date of the election.

iv. The specifics of hardware and software maintenance for post-warranty support are set forth in Schedule E and in the event of a conflict between this provision C.2.j and the provisions of Schedule E, the provisions of Schedule E prevail.

3. Vendor's Fee Structure

The table below provides the schedule of payments for the Voting Systems and Services procured through the Contract. Payment is based on the Vendor's completion of the requirements set forth below, and notification by the Counties to the Secretary of their acceptance of the applicable deliverables and the Secretary's final acceptance of the deliverables.

<table>
<thead>
<tr>
<th>Deliverable No.</th>
<th>Deliverable Description</th>
<th>Cost Per Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Work Breakdown Structure (WBS)</td>
<td>No additional cost</td>
</tr>
<tr>
<td>2</td>
<td>Execution of Risk Mitigation Strategies Based on the Secretary's Approved Plan.</td>
<td>No additional cost</td>
</tr>
<tr>
<td>3</td>
<td>Validation of the Secretary's Requirements</td>
<td>No additional cost</td>
</tr>
<tr>
<td>4</td>
<td>Configured, installed, and tested DRE, PCOS, ABS, and EMS Systems.</td>
<td>65% of the Total Cost of Ownership for each Voting System purchased</td>
</tr>
</tbody>
</table>

Note: Payment of this deliverable will be contingent upon acceptance of the applicable Voting Unit in accordance with the terms of Section 4.04 of the Contract.

| 5               | Documentation – one complete set of user                                               | Cost included in                                          |
4. Contract Oversight and Staffing

The Office of the Secretary of State will appoint a Project Manager to provide oversight and general administration to the Vendor from contract execution until conclusion. Vendor shall direct all required reports, status updates, and updated WBS on a weekly basis to the Secretary’s Project Manager, who will be the primary point of contact during the project.

5. Requirements of Modifications

During the contract period, the Vendor shall:

a. Make and deliver any software modifications that are necessary to comply with the updates or changes to the Federal Elections Commission’s Voting Systems Standards and any changes in applicable federal, state, and local statutes and regulations;

b. If modifications are made to the Voting Unit, submit the system to the NASED approved ITA for re-qualification testing;
c. Obtain re-certification by the Secretary; and

d. Apply all certified modifications to all systems in the state to maintain uniformity of the Voting System.

6. Delivery Requirements

The Vendor shall deliver system equipment, hardware, software, and necessary components and perform required services to implement the required new voting system during the stated implementation phases outlined in the RFP by the dates listed in Schedule D.

The Voting Unit(s) and any other items that need to be delivered shall be shipped (F.O.B. to County designated location) directly to the individual Counties and the exact locations shall be specified in the Purchase Order. For certain jurisdictions, or polling places within jurisdictions, as directed by the using entity point of contact (local election officials), there may be time of day, or day of the week, requirements or restrictions. These requirements or restrictions will be noted in the Purchase Order from the Office of Secretary of State that identifies each County requirement. With respect to the initial Delivery of Voting Units to the applicable County, the Vendor will assume the responsibility of providing the resources required to place the Voting Unit(s) in their designated location(s) within the appropriate building and remove the Voting Unit(s) from their packaging. The Vendor will also dispose of the packaging.

The Secretary shall specify to the Vendor, the equipment quantities to be delivered to each County. Counties requesting additional quantities above the Secretary specified quantity shall be responsible for the ordering of and payment for said equipment, however such equipment must be provided for a cost and upon terms no greater than those established by this Contract.

Vendor shall establish a means to conduct and track Delivery, testing and acceptance of Voting System deployment and shall further communicate this information to the Secretary’s Project Manager at mutually agreeable intervals.

7. Delivery Timeframe Requirements

Within thirty (30) days of Contract signing, provide a training program outline and an implementation schedule for poll workers and election officials.

Comprehensive training of election officials and staff from the counties shall be conducted for each County prior to the first use of the Voting System in a county-wide election. The Vendor will conduct comprehensive training for all poll
workers and local election officials.

Pursuant to the election support requirements, the Vendor will assist local election officials in programming the voting units and conducting pre-election testing and set-up in accordance with their deployment plan.

8. Unit Quantity Requirements

The Secretary has determined that the purchase of one DRE voting unit for every 200 registered voters in the state is appropriate for this Contract. For Counties choosing to use PCOS as their primary Voting System, the Secretary has determined that the purchase of no more than one PCOS device for every precinct in the County is appropriate for this Contract. Optical scan absentee ballot voting units may be purchased in appropriate quantities for every County that must change from punch card absentee voting. There will also be a license obtained for any software associated with any of these Voting Systems.

9. Reporting and Complaint Resolution

As required by Secretary's security risk mitigation strategy, Vendor shall inform the Secretary's Project Manager of each occurrence of hardware or software system errors of which it is aware in any jurisdiction within and outside of Ohio in which the Voting System is being used.

The Vendor shall ensure continuous and immediate access to a contract representative for the purpose of receiving complaints from the using entities. Such access shall be by the manner described in the Vendor's proposal or as may subsequently be agreed to by the Secretary.

For the period covered by the warranty, the Vendor must develop a complaint resolution tracking process that will be submitted for the Secretary's Project Manager's approval within 20 working days after the Secretary has signed and returned the Contract to the Vendor.

The Vendor must provide a weekly Summary Complaint Report to the Project Manager. The summary report must include:

- The name of the person issuing the complaint;
- The using entity represented by the person;
- County from which complaint was received;
- Complaint type;
- Complaint resolution;
- Pending and unresolved complaints; and
- Other information specified by the Secretary.

The Vendor shall provide a monthly status report to the COAR on complaint resolution implementation progress.
Schedule D – Voting Systems Implementation Schedule

State of Ohio – Statewide Voting Systems Project

The following Implementation Schedule has been agreed to by SOS, the County, and the Vendor for the PO Number specified below.

**Note:** This schedule cannot be changed without the agreement of SOS, County, and Vendor.

<table>
<thead>
<tr>
<th>Related PO#</th>
<th>Contract No.</th>
<th>Vendor</th>
<th>County</th>
<th>Delivery Address 1</th>
<th>Delivery Address 2</th>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
<th>Address</th>
<th>Delivery Restriction</th>
<th>Dates/Times</th>
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**Implementation Dates**

<table>
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<tr>
<th>Equipment Type</th>
<th>Implementation Date</th>
<th>Location</th>
<th>Comments</th>
<th>Complete (x)</th>
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**Vendor Personnel**

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone Number</th>
<th>Locations Covered</th>
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Schedule E – Software License Agreement

This Software License Agreement (the “Agreement”) is dated this __ day of __________, 2004, by and between the Office of the Ohio Secretary of State (“Licensee”) and Diebold Election Systems, Inc. (“Licensor”), a Delaware Corporation.

Article 1. DEFINITIONS

The following defined terms shall have the meanings set forth below:

Section 1.01 Acceptance.

“Acceptance” shall have the meaning set forth in Section 5.03.

Section 1.02 Agreement.

“Agreement” shall mean this Agreement including any Schedules, attachments or other exhibits attached hereto as the same may be amended by the parties from time to time.

Section 1.03 Confidential Information.

“Confidential Information” shall have the meaning set forth in Section 14.15.

Section 1.04 County or Counties.

“County” or “Counties” shall mean any county in the state of Ohio, as listed in Schedule M of the Voting Systems Agreement, which receives Voting Systems from Licensor.

Section 1.05 Intellectual Property.

“Intellectual Property” shall mean, to the extent that any of the following are recognized in any jurisdiction in the world: intellectual property and/or proprietary rights, whether registered or unregistered, including without limitation: copyrights; patent rights (including without limitation applications for patent protection); publicity rights; trade secret rights; registered or otherwise protected trademarks, trade names and service marks and protections from trademark dilution.

Section 1.06 Licensed Documentation.

“Licensed Documentation” shall mean Licensor’s user manuals and related technical publications, including updates, if any, in whatever form provided, that facilitate the use of, and relate to the Licensed Program(s).

Section 1.07 Licensed Materials.

“Licensed Materials” shall mean the Licensed Documentation and Licensed Program(s) collectively.
Section 1.08   Licensed Program(s).

"Licensed Program(s)" shall mean the actual computer programs, in source code and object code format, including any third party software products, licensed hereunder and shall also include all corrections, modifications and enhancements to the Licensed Program(s) as well as any databases and files that may be provided by Licensor from time to time under this Agreement. As used in this Agreement, and unless otherwise specified, Licensed Program(s) shall mean the object code version of the computer programs.

Section 1.09   Maintenance.

"Maintenance" shall mean the maintenance and support Services for both hardware and software provided by Licensor under this Agreement and the Voting Systems Agreement.

Section 1.10   Optional Features.

"Optional Features" shall mean a version of the Licensed Program(s) that incorporates additional capability or functionality and that is not generally distributed to licensees of Licensor without charge but does not include routine program fixes, updates or revisions.

Section 1.11   Person.

"Person" shall mean any individual, firm, corporation, business trust, partnership, or other entity and shall include any successor (by merger or otherwise) of such entity.

Section 1.12   Personnel.

"Personnel" shall mean the officers, directors, partners, principles, and employees, respectively of Licensor and its parent, affiliates and Subcontractors or agents, or any other Person acting for or on behalf of Licensor.

Section 1.13   Polling Place.

"Polling Place" shall mean a geographic location under the purview of Licensee or County where voting for public officials or issues takes place, utilizing the products and services provided by Licensor.

Section 1.14   Representative.

"Representative" shall have the meaning set forth in Section 6.02.

Section 1.15   Schedules.

"Schedules" shall mean the one or more consecutively lettered attachments to the Voting System Agreement, signed by both parties, which set forth the specific terms and conditions that govern a particular transaction.

Section 1.16   Services.

"Services" shall have the meaning set forth in Section 6.1.

Section 1.17   Site.
“Site” shall mean any Polling Place or other location(s) owned, operated or controlled by Licensee or the applicable County.

Section 1.18 Source Code.

“Source Code” shall have the meaning set forth in Section 13.01.

Section 1.19 Specifications.

“Specifications” shall mean the functional and operational characteristics of the Licensed Program(s) as described in Licensor’s Licensed Documentation, and the specific features, functions and capabilities listed in the Schedule(s).

Section 1.20 Subcontractor.

“Subcontractor” shall mean any Person, other than an employee of Licensor who contracts with Licensor to furnish labor, materials or both in connection with Licensor’s obligations under this Agreement.

Section 1.21 Term.

“Term” shall have the meaning set forth in Section 11.01.

Section 1.22 Voting System Agreement.

“Voting System Agreement” shall mean the Agreement for Acquisition of Voting Systems and Related Services entered into by the Office of the Ohio Secretary of State and Licensor, and of which this Agreement is incorporated thereto.

Article 2. SCOPE OF AGREEMENT

Licensor shall provide Licensee and the applicable County, with the Licensed Materials and Services as set forth in this Agreement and the applicable Schedule(s). Unless any provisions hereof are specifically excluded or modified in a particular Schedule hereto, each such Schedule shall be deemed to incorporate therein all the terms and conditions of this Agreement and may contain such additional terms and conditions as the parties may mutually agree. Unless specifically noted, the terms and conditions contained in a particular Schedule shall apply exclusively to the transaction described in such Schedule and shall have no effect on any other Schedule. Any new or additional Licensed Materials or Services to be provided hereunder shall be added to this Agreement by means of a new Schedule. Neither party shall have any obligation with respect to payment, delivery and/or acceptance of any Licensed Materials and/or Services until a Schedule setting forth the specific terms with respect to such Licensed Materials and/or Services has been executed by both of the parties.

Article 3. GRANT OF LICENSE

Licensor hereby grants, and Licensee and the County(ies) hereby accept, a nonexclusive license to use, as specified in Section 4.01, the Licensed Materials described in the applicable Schedule(s).
Article 4. AUTHORIZED USE

Section 4.01 Use of License Materials

Licensee and the Counties are authorized to use the Licensed Materials for Licensee's internal business purposes in accordance with this Section. Internal business purposes of Licensee and the Counties shall be deemed to include all voting activities currently conducted by either of them with regard to public elections within the purview of the Licensee, as well as any future voting activities that may be conducted as a result of changes due to legislation. Internal business purposes shall not include traditional (bona fide) service bureau. Internal business purposes of Licensee and the Counties shall also include providing processing services for Boards of Election of Counties that have purchased voting systems from the Licensor in the case of an emergency. Licensee and Counties may create a reasonable number of backup and archival copies of the Licensed Material(s) at no additional charge. Additionally, Licensee and Counties shall have the right to use multiple copies as reasonably necessary for operation, backup, and archival purposes and versions of the Licensed Programs to permit orderly migrations of the Licensed Programs and for other internal business purposes. Licensee and Counties may copy and reproduce the Licensed Documentation, on any medium, as it deems necessary for the use of the Licensed Programs consistent with the terms of this Agreement. The Licensed Materials may be relocated at no charge and without penalty to any Polling Place or storage location. Licensee and Counties have the right, at its discretion and without notification to Licensor, to run any of the Licensed Programs on any of the CPUs residing at a Polling Place in a County at which the Licensed Programs were initially installed.

Section 4.02 Third Party Beneficiary

Licensor agrees that the Counties are intended third party beneficiaries of this Agreement and are entitled to rely upon all rights representations, warranties, and covenants made by Licensor herein to the same extent as if the each County were Licensee hereunder.

Section 4.03 Authorized Users.

Neither Licensee nor any County shall disclose to any third party, or permit any third party to receive or use, the Licensed Material unless (i) such disclosure or use is required for Licensee or any County to gain the full benefit of the Licensed Materials, and (ii) Licensor shall have consented in writing to such disclosure or use in each instance, such consent shall not be unreasonably withheld, delayed or conditioned; and (iii) such third party shall have agreed in writing to be bound by all provisions of this Agreement applicable to Licensee.

Section 4.04 Prohibited Acts.

The Licensee and Counties shall not (and shall not permit any other party to) without the prior written permission of the Licensor in each instance:

(a) Transfer or copy onto any other disk or hardware or otherwise copy the Licensed Materials in whole or in part except for purposes of system backup,

(b) Reverse engineer, disassemble, decompile, decipher or analyse the Licensed Materials in whole or in part;

(c) Alter or modify the Licensed Materials in any way or prepare any derivative works of the
Licensed Materials or any part of parts of the Licensed Materials;

(d) Alter, remove or obstruct any copyright or proprietary notices from the Licensed Materials, or fail to reproduce the same on any lawful copies of the Licensed Materials;

(e) Use the Licensed Materials other than on the Voting Units (as defined in the Voting System Agreement); or

(f) Export, directly or indirectly, any Licensed Materials to any country outside of the United States, or make disclosure of the Licensed Materials to any foreign national where such disclosure would require an export license or other governmental permit.

**Article 5. DELIVERY, INSTALLATION AND ACCEPTANCE**

**Section 5.01 Delivery.**

(a) Licensor shall deliver Licensed Materials and other related materials in accordance with the terms set forth in the Voting System Agreement or the applicable Schedule.

(b) In the event the medium upon which the Licensed Program(s) is provided is ever lost or damaged during the term of this Agreement, Licensor shall provide an additional copy, upon request, at no additional charge.

(c) Licensor shall deliver any work product in accordance with the terms set forth in the applicable Schedule.

(d) A failure to deliver any component of the work product to the extent such failure is not attributable to Licensee or the applicable County, within the time frame set forth in the applicable Schedules shall be deemed a material breach of this Agreement. Upon such a breach, Licensee shall have the right to terminate this Agreement either partially or in its entirety with regard to the applicable County immediately with notice, notwithstanding Section 11.02 (Termination for Cause). Additionally, Licensee shall be entitled to a complete refund of any payment made in connection with the work product.

**Section 5.02 Installation.**

(a) Licensor agrees to supply the type of installation and implementation support as specified in the applicable Schedule.

(b) A failure to deliver any component of the object code version of the Licensed Materials and any other related materials as specified in the applicable Schedule of the Voting Systems Agreement within the applicable time and a failure to perform the implementation and installation support as specified in the applicable Schedule shall each be deemed a material breach of this Agreement. Upon such a breach, Licensee shall have the right to terminate the Agreement with regard to the applicable County, immediately with notice, notwithstanding Section 11.02 (Termination for Cause). Additionally, Licensee shall be entitled to a complete refund of any payment made in connection with the Licensed Materials and Services.

**Section 5.03 Acceptance.**
Article 6. SERVICES

Section 6.01 Provision of Services.

From time to time, Licensee may contract with Licensor to provide various services ("Services") under this Agreement. Such Services may include, but shall not be limited to, Maintenance, development, programming, installation and training. The Services shall be performed in accordance with this Agreement and the applicable Schedule(s).

Section 6.02 Representatives.

Where applicable, the parties hereto may appoint representatives ("Representatives") to be responsible for all communications regarding a particular Schedule. The names of these Representatives shall be set forth in the applicable Schedule.

Section 6.03 Subcontractors.

Licensor shall not enter into any contract or arrangement with any Subcontractor pursuant to which such Subcontractor shall have responsibility for providing any of the Services without the prior written consent of Licensee. Such consent shall not be unreasonably withheld, delayed or conditioned. In the event that Licensee authorizes the use of Subcontractors, Licensor hereby assumes responsibility for its Subcontractors' actions and inactions and agrees to be liable for and indemnify and hold harmless Licensee from and against any and all liability, expenses (including reasonable attorney's fees), costs, damages, settlements and obligations resulting from the actions and/or inactions of the Subcontractors to the same extent Licensor would be responsible for its own actions and/or inactions hereunder.

Section 6.04 Independent Contractor Status.

Licensee is contracting with Licensor for the specific Services set forth in the Schedule(s) hereto, and Licensor reserves the right to determine the method, manner and means by which the Services will be performed. Licensor is interested only in the results to be accomplished. Notwithstanding the foregoing, when performing the Services, Licensor shall abide by all safety and security rules and all applicable policies and procedures of Licensee or County(ies) as Licensee or County(ies) may communicate from time to time. Further, the Services herein must meet the approval of Licensee and shall be subject to Licensee's general right of approval and supervision to secure satisfactory completion thereof. Licensor hereby confirms to Licensee that Licensor will not be required to furnish or provide any training to Licensor to enable Licensor to perform the Services required hereunder. The Services shall be performed by Licensor, and Licensee or County(ies) shall not be required to hire, supervise or pay any assistants to help perform the Services under this Agreement. Licensor is not required to perform the Services during a fixed hourly or daily time. If the Services are performed at Licensee's or County(ies) premises, then Licensor's time spent at the premises is to be at the discretion of Licensor, subject to Licensee's normal business hours and security requirements. The order or sequence in which the work is to be performed shall be under the control of Licensor. All materials used in providing the Services shall be provided by Licensor. Licensee or County(ies) shall not provide any insurance coverage for Licensor, and Licensee or County(ies) will not withhold any amount that would normally be withheld from an employee's pay. Nothing in this Agreement shall be construed to create a relationship between the parties other than that of an independent contractor. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties. Neither party has the authority.
to bind the other to any third person, except for the obligations to the Counties as described herein, or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. Licensor agrees to be responsible for all of its taxes and insurance applicable under existing laws, including but not limited to social security taxes, and federal, state and city income taxes. Licensor will make all necessary payments due appropriate governmental agencies to comply with the foregoing and indemnify Licensee or County(ies) against any claims or liabilities resulting from a breach of this Section. Because Licensor is not an employee of Licensee or County(ies), Licensor acknowledges that its employees are not entitled to any benefits paid by Licensee or County(ies) to its employees, including, but not limited to vacation pay, holiday pay, profit sharing, health insurance, unemployment insurance and workers compensation.

Section 6.05 Additional Services.

From time to time, Licensee or a County may request that Licensor provide Services in addition to or different from those set forth on a particular Schedule. In such an event, Licensee or County(ies) shall submit to Licensor a change order form containing a description of the requested additional or different Services sufficient to allow Licensor to price and analyze its ability to deliver such additional and/or different Services. Within ten (10) business days of the receipt of such change order form, Licensor will respond by providing a detailed, written response to include a statement of the availability of Licensor’s Personnel and resources, and the impact, if any, on the completion date and/or costs of the Services described in the applicable Schedule. In the event Licensee or a County elects to authorize such change order form, Licensee or the County will as soon as possible, but within not more than ten (10) business days, following the receipt by Licensee or the County of Licensor’s response, authorize Licensor to perform the Services detailed in such change order form by returning a duly authorized copy of such change order form to Licensor. At all times during this process for requesting additional services, Licensee has the sole and final say in determining whether Licensee or the County will approve the change order and pay for such additional service. Such change order form shall be deemed to be appended to the applicable Schedule. In the event Licensor commits resources to the performance of a change order form prior to Licensor’s receipt of an authorized change order form, as set forth above, performance of such commitments by Licensor shall neither extend the original completion date nor shall it add any cost to the fees set forth in the original Schedule.

Article 7. MAINTENANCE AND SUPPORT

Section 7.01 Maintenance Services.

Under the terms of the Voting Systems Agreement, Maintenance is included for the five (5) year term of the Voting System Agreement. Thereafter, the County(ies) may elect, at its sole option, to renew the Voting System Agreement. If County(ies) elect to renew the Voting Systems Agreement, then the fees for License and Maintenance are set forth in Schedule B of the Voting Systems Agreement.

After Acceptance of the Licensed Materials and subject to the terms, conditions and fees set forth in this Article, during the term of the license in the applicable Schedule(s), including renewals thereof, Licensor will provide Licensee with Maintenance for the Licensed Program(s) as follows:

(a) Licensor will provide corrections, modifications and other assistance, including without limitation scheduled preventive maintenance, as necessary to cause the Voting Units to perform in accordance with the Specifications and Licensed Documentation. Substantial efforts to make such corrections shall begin within four (4) hours after such deficiencies are reported to Licensor unless stipulated otherwise in the Schedule(s) and shall be at no cost to Licensee. Telephone Maintenance services shall be available on a full-time twenty-four (24) hour per day, seven (7) day per week basis sixty days prior to and including the day of an
election. At other times, Licensor shall provide a call center staff during the business hours of 8:00 a.m. to 6:00 p.m. Eastern Time unless otherwise stipulated in the Schedule. Outside of these business hours, Licensor shall provide Maintenance services on an on-call basis not more than two (2) hours after telephone request by Licensee. All Maintenance shall be provided by qualified technical specialists familiar with the Licensed Program(s) installed at Licensee's Polling Places or storage facilities. Maintenance obligations are also described in Schedule C.

(b) For the Term of this Agreement, and in any renewal Term, Licensor will provide generally available improvements, enhancements, upgrades and updates to the Licensed Program(s) for use by Licensee or County(ies) at no additional charge to Licensee or County(ies), provided Maintenance is purchased by Licensee or County(ies). The preceding sentence includes the situation where there is a change in law or regulation requiring a change in the Licensed Materials in order to be compliant with the change in law or regulation. If custom improvements, enhancements, upgrades and updates are developed for other customers of Licensor, Licensee and County have the opportunity to review such improvements, enhancements, upgrades and updates for the purchase of such improvements, enhancements, upgrades and updates. It is the obligation of the Licensor to ensure that any improvements, enhancements, upgrades and updates is installed and properly operating as part of Licensor’s Maintenance obligation. Licensor may first provide County with such improvements, enhancements, upgrades and updates via Licensor’s customary chain of distribution. Licensor shall provide telephone support to County to assist County to install such improvements, enhancements, upgrades and updates. In the event Licensor is required to provide on-site support to install such improvements, enhancements, upgrades and updates, Licensor shall send a project manager to assist County personnel with the installation. If it is determined that the County is responsible for the failure of the installation, then Licensor may charge the agreed-upon hourly rate for Maintenance. Provided, however, that the County will be allowed one (1) on-site support visit without additional charge in each year of the term of this Agreement for problems that are determined to be the failure of the County to properly install the improvements, enhancements, upgrades and updates;

(c) Licensor will update the Licensed Programs, as required, to cause them to operate under new versions or releases of the operating systems and associated system software specified in the Schedule(s). Such revisions or releases will be made without charge to Licensee. Updates shall be provided to Licensee within thirty (30) days after their post-certification release; Licensor shall furnish all necessary elements of any upgraded version or release of the Licensed Materials at any time Licensor shall make the same available to its other customers; and

(d) Licensor will not subcontract or permit anyone other than Licensor’s personnel to perform any of the Services required of Licensor under this Agreement, without the prior written consent of Licensee. Such consent shall not be unreasonably withheld, delayed or conditioned.

Section 7.02 Priority Levels.

(a) Technical problems will be assessed by the following priority status:

Priority 1: A problem shall be deemed a Priority 1 problem when the Licensed Program is causing serious system/operation problems and there is no circumvention for the problem. When a problem is classified as Priority 1, Licensor shall assign technical support and development personnel, as needed, to work on the problem full-time and continuously until it has been resolved. Licensor shall use best efforts to resolve a Priority 1 problem within twenty-four (24) hours of first notification by Licensee of the problem, or within such shorter time frame as the parties may otherwise mutually agree. Any problem that occurs on an election day (or
in preparation for an election day within the sixty-day period as defined in Section 7.01(a)) and which affects the use of Voting Machines shall be designated as a Priority 1 problem. Notwithstanding anything to the contrary contained herein, or in any other agreement between the parties hereto, an election day (or in preparation for an election day) problem shall be responded to immediately and correction of the problem shall be pursued continuously until achieved. The goal for problem resolution shall be to minimize disruption of voting on an election day.

Priority 2: A problem shall be deemed a Priority 2 problem when the Licensed Program is causing serious system/operation problems and there is circumvention for the problem. When a problem is classified as Priority 2, Licensor shall assign technical support and development personnel, as needed, to work on the problem full-time until it has been resolved. Licensor shall use all reasonable efforts to resolve a Priority 2 problem within forty-eight (48) hours of first notification by Licensee of the problem, or such shorter time frame as the parties may otherwise mutually agree.

Priority 3: A problem shall be deemed a Priority 3 problem when the Licensed Program is working incorrectly or differently than documented. When a problem is classified as Priority 3, Licensor shall assign technical support and development personnel, as needed, to work on the problem until it has been resolved. Licensor shall use all reasonable efforts to resolve a Priority 3 problem within two (2) weeks of first notification by Licensee of the problem, or such shorter time frame as the parties may otherwise mutually agree.

Priority 4: A problem shall be deemed a Priority 4 problem when there are errors in Licensed Documentation. When a problem is classified as Priority 4, Licensor shall resolve it with the next release of the Licensed Documentation, which must occur prior to the next election at which the Voting Systems are to be used.

(b) Failure to correct a Priority 1 problem within thirty (30) days shall be deemed a default. Failure to correct a Priority 2 problem within sixty (60) days shall be deemed a default. Failure to correct Priority 3 or 4 problems within ninety (90) days shall be deemed a default.

Section 7.03 Escalation Procedure.

In the event Licensor has responded to Licensee’s request for Maintenance but has been unable to provide either a temporary or permanent resolution within the time-frames established for Priority 1 and 2 problems, Licensor shall initiate the following escalation procedure: (i) Licensor’s Personnel attempting to correct the problem(s) shall notify Licensee’s Representative in ongoing two (2) hour intervals of Licensee’s maintenance situation and provide an evaluation of the existing problem(s) and an estimated cure time until such time as the problem is resolved; (ii) in the event the problem(s) remains unresolved after such cure time, Licensor’s second level manager shall notify Licensee and provide an evaluation of the existing problem(s) and an estimated cure time until such time as the problem is resolved; (iii) Licensor’s Personnel shall provide continuous ongoing support to Licensee until such time as the problem(s) is resolved and recertified.

Section 7.04 Maintenance Services Fee Calculations.

Licensor shall invoice Licensee for License and Maintenance fees in accordance with Schedule B of the Voting Systems Agreement.

Section 7.05 Security Elements.
During the term of this Agreement, Licensor agrees that any changes to the Licensed Programs will not diminish the required security risk mitigation strategies based on technical and administrative recommendations provided by independent validation and verification.

**Article 8. PAYMENT OBLIGATIONS**

Section 8.01 Payment Terms.

For years one (1) through five (5) of this Agreement, License and Maintenance fees are included in the Total Cost of Ownership as set forth in Schedule B. For years six (6) through ten (10) of this Agreement, Licensee shall pay Licensor in accordance with the provisions set forth in Schedule B of the Voting System Agreement. All payments shall be made in US Dollars.

Section 8.02 Expenses.

Unless otherwise set forth in a Schedule, Licensee shall not reimburse Licensor for travel and other expenses incurred by Licensor’s Personnel in connection with this Agreement. In the event that expenses are to be reimbursed, as may be set forth in a Schedule, such reimbursement will be made in accordance with the then current Licensee travel and expense reimbursement policy.

**Article 9. LICENSEE REPRESENTATION AND WARRANTIES**

Licensee represents and warrants as follows:

Section 9.01 Due Authorization.

The execution and delivery of this Agreement and compliance by Licensee with all provisions of this Agreement (a) are within the corporate power and authority of Licensee and, (b) have been duly authorized by all requisite corporate proceedings. The Agreement has been duly executed and delivered by Licensee and constitutes a valid and binding agreement of Licensee, enforceable in accordance with its terms.

Section 9.02 Consents.

No authorizations or other consents or approvals or notices of or to any Person are required in connection with (a) the performance of Licensee’s obligations under this Agreement, (b) the validity and enforceability of this Agreement, and (c) the execution, delivery and performance by Licensee of this Agreement.

**Article 10. LICENSOR REPRESENTATIONS AND WARRANTIES**

Licensor represents and warrants as follows:

Section 10.01 Organization and Qualification.
Licensor is duly organized and existing in good standing under the laws of the jurisdiction in which it is organized, is duly qualified and in good standing as a foreign corporation in every state in which the character of its business requires such qualifications, and has the power to own its property and to carry on its business as now being conducted.

Section 10.02  Due Authorization.

The execution and delivery of this Agreement and compliance by Licensor with all provisions of this Agreement (a) are within the corporate power and authority of Licensor and, (b) have been duly authorized by all requisite corporate proceedings. The Agreement has been duly executed and delivered by Licensor and constitutes a valid and binding agreement of Licensor, enforceable in accordance with its terms.

Section 10.03  Conflicting Agreements.

The execution and delivery of this Agreement shall not conflict with or result in a breach of the terms, conditions or provisions of, give rise to a right of termination under, constitute a default under, or result in any violation of, the organizational documents of Licensor or any mortgage, agreement, contract, instrument, order, judgment, decree, statute, law, rule or regulation to which Licensor or any of its respective properties is subject.

Section 10.04  Consents.

No authorizations or consents, approvals or notices of or to any Person are required in connection with (a) the performance of Licensor of its obligations under this Agreement, (b) the validity and enforceability of this Agreement, or (c) the execution, delivery and performance by Licensor of this Agreement.

Section 10.05  Compliance Warranty.

Licensor represents and warrants that Licensor’s business is in compliance with all applicable federal, state and local laws and government rules and regulations, to the extent material to performance of Licensor’s obligations hereunder. Licensor further represents and warrants that Licensor’s performance under this Agreement will comply with all applicable federal, state and local laws and government rules and regulations, to the extent material to performance of Licensor’s obligations hereunder.

Section 10.06  No Inducements.

Licensor represents and warrants that its Personnel have not provided any gift, gratuity, service or other inducement to any Licensee employee or to any agency involved in retaining Licensor’s Services.

Section 10.07  Software Warranty.

(a)  Licensor shall provide a five (5) year warranty period from the date of Acceptance of the Licensed Materials. During such time period, Licensor shall provide Maintenance at no additional charge. During the warranty period and thereafter, so long as Licensee obtains Maintenance, the warranties in this Section 10.07 shall remain in effect.

(b)  Licensor represents and warrants that (i) when delivered, the Licensed Program(s) have been thoroughly tested in an operating environment similar to that of Licensee’s and is virus-free; (ii) for the term of
the license that the Licensed Program(s) will perform as represented by Licensor and as described in the Licensed Documentation, any responses or proposals prepared by Licensor, and as set forth in this Agreement and any Schedule(s) hereto; (iii) Licensor will notify Licensee within thirty (30) days of its knowledge of the existence of any errors in the Licensed Program(s); and (iv) any revisions, enhancements, modifications or updates to the Licensed Program(s) will not prevent the Licensed Program(s) from remaining compatible with data generated by previous versions of the Licensed Program(s).

(c) Licensor represents and warrants that Licensed Program(s) will operate in accordance with the Specifications.

(d) Licensor represents and warrants that there are no methods for gaining access to the Licensed Program(s) or other computer resources or data of Licensee (such as a master access key, ID, password, or trap door) other than as set forth in the Specifications, and Licensor will not embed any device in the Licensed Program(s) or take any action to disrupt or terminate Licensee’s operation of the Licensed Program(s).

(e) Licensor represents and warrants that the Licensed Program(s), as a whole and by their components, are Year 2000 Compliant. For purposes of this Agreement, “Year 2000 Compliant” means that the Licensed Program(s) may be used prior to, during and after the Gregorian calendar year 2000 A.D. and will operate during each such time period without error relating to date data, specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century. Without limiting the generality of the foregoing, “Year 2000 Compliant” means that the Licensed Program(s):

(i) will not abnormally end or provide invalid or incorrect results as a result of date data, specifically including date data which represents or references different centuries or more than one century;

(ii) have been designed to ensure year 2000 compatibility, including, but not limited to, date data century recognition, calculations which accommodate same century and multi-century formulas and date values, and date data interface values that reflect the century;

(iii) will manage and manipulate data involving dates, including single century formulas and multi-century formulas, and will not cause an abnormally ending scenario within the application or generate incorrect values or invalid results involving such dates;

(iv) provide that all date-related user interface functionalities and date fields include the indication of century;

(v) provide that all date-related data interface functionalities include the indication of century;

(vi) operate correctly, as determined by Licensee’s project test in an integrated environment with all of the other hardware, software and data which the Licensed Programs would be operated under normal operating conditions, including, but not limited to, application programs, microcode, firmware, software systems, operating systems, hardware components, files and databases; and

(vii) will correctly identify and process all leap years.
(f) Licensor warrants that all such Licensed Programs, when installed, contain no code, residing on or in Licensor’s equipment or software which modifies, destroys, impairs or alters the operation of the Voting Machines, application software programs or any Licensee data in any unauthorized manner (“Disabling Code”). Notwithstanding anything to the contrary contained herein, Licensor shall be liable for any resulting loss of data, disruption of operations, or unauthorized modification of Licensee’s or County’s Voting Machine from any such Disabling Code, or which is introduced to Licensee’s or County’s Voting Machine by any subsequent repair, set-up process and installation, software releases, updates, or modifications or interaction of any kind by Licensor or its Personnel with Licensee’s or County’s equipment or software.

Section 10.08 Service Warranty.

Licensor warrants that, in performing the Services under the Agreement and in addition to any service levels set forth in the applicable Schedule: (i) Licensor will comply with the descriptions and representations as to the Services (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements) set forth in this Agreement and the applicable Schedule; (ii) render Services in a professional manner consistent with the standards of service provider’s industry using appropriately trained and qualified personnel, and (iii) the Services will not be in violation of any applicable law, rule or regulation, and Licensor will have obtained all permits required to comply with such laws and regulations. Licensor further warrants that any preparation software including, without limitation, tools and utilities, or data analysis used in the Services shall be available to Licensee or County(ies) for a period of not less than five (5) years following the completion of the Services. This warranty shall apply only to preparation software or data analysis owned by or under the control of Licensor.

Section 10.09 Intellectual Property Rights Warranty.

Licensor represents and warrants that, to Licensor’s knowledge, it owns, or has the right to use under valid and enforceable agreements, all Intellectual Property rights reasonably necessary for and related to the performance of the Services. The performance of the Services as presently conducted or proposed to be conducted by Licensor does not infringe or violate any Intellectual Property rights of any other Person, and Licensor has not received any charge, complaint, claim, demand or notice alleging any such infringement or violation. Licensor further represents and warrants that it owns or has the right to provide under valid and enforceable agreements all Licensed Materials and other materials to be provided to Licensee under this Agreement. Such Licensed Materials and other materials do not infringe or violate any Intellectual Property rights of any other Person, and Licensor has not received any charge, complaint, claim, demand or notice alleging any such infringement or violation. In the event it is determined that Licensor is infringing upon any Intellectual Property right, Licensor shall, at its expense and as soon as practicable, (a) obtain for Licensee the right to continue using the infringing item or (b) replace the infringing item or modify it such that it becomes non-infringing. Additionally, Licensor will indemnify, defend and save harmless Licensee and its Affiliates from and against any claim, damage, liability, cost or expense (including legal fees and expenses) resulting, directly or indirectly in whole or in part, from any alleged breach of this warranty or any claim by a third party with respect to Intellectual Property rights infringement.

Article 11. TERM AND TERMINATION

Section 11.01 Term.

The license(s) granted hereunder shall be for a five (5) term. The Counties may, at its option, extend this Agreement for the License and Maintenance fees set forth in Schedule B of the Voting System Agreement. At the expiration of the tenth year of the option period, County and Licensor may renew this
Agreement provided such Maintenance and License fees are capped at the lesser of the prevailing increase of the CPI or 5%, as specified in Schedule B of the Voting System Agreement.

Section 11.02 Termination For Cause.

Either party may, at its option, terminate this Agreement in the event of an uncured material breach of this Agreement by the other party. Such termination may be effected only through written notice to the breaching party, which notice shall specify the breach upon which termination is based. Following receipt of such notice, the breaching party shall have thirty (30) days to cure such breach. The Agreement shall terminate, on notice given by the non-breaching party, in the event such cure is not effected by the end of such period, or longer period as determined by the non-breaching party.

Section 11.03 Termination Upon Bankruptcy, Liquidation or Dissolution.

Either party may, at its option, terminate this Agreement, immediately with notice, in the event the other party: (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute (which is not dismissed within thirty (30) days); (iii) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; or (iv) has wound up or liquidated, voluntarily or otherwise.

Section 11.04 Termination of Maintenance and/or other Services

(a) Licensee shall have the right to terminate any or all Maintenance and/or other Services provided hereunder, without cause and without liability, by providing Licensor with thirty (30) days notice of its intent to terminate. If Licensee elects to terminate less than all of the Maintenance and/or Services provided, Licensee’s notice will identify those Licensed Programs for which Maintenance is being terminated. Such termination shall in no way affect Licensee’s right to use the Licensed Materials provided hereunder. In the event that Licensee terminates a portion of the Maintenance and/or Services, such termination shall in no way affect Licensor’s obligation to perform all Maintenance and/or Services that have not been terminated. In the event Licensee terminates any Maintenance and/or other Services pursuant to this Section, Licensee shall be responsible for all Maintenance and/or Service fees it incurs prior to the date of such termination. In the event that Licensee has prepaid any Maintenance and/or Service fees, Licensee shall be entitled to a prorata refund of such fees.

(b) Licensee shall have the right to terminate coverage for any Licensed Program(s), without further obligation or liability, if said Licensed Program(s) fail to operate according to the Specifications. Additionally, should the Licensed Program(s) fail to meet Licensee’s Acceptance, Licensee shall have the right, at its option, to cancel Maintenance for the applicable Licensed Program(s) and receive the return of all sums previously paid to Licensor for such Maintenance, in addition to any other damages to which Licensee may be legally entitled.

(c) Licensor may terminate Maintenance Services only in accordance with an arbitration ruling or a ruling by a court of competent jurisdiction.

Section 11.05 Return of Licensed Materials Upon Termination.

Except as provided below, upon the termination of this Agreement and/or any license granted hereunder, all rights relating to the applicable Licensed Materials shall immediately cease, and Licensee shall
immediately: (i) return (or destroy) the applicable Licensed Materials to Licensor and (ii) purge all copies of the applicable Licensed Program(s) from any computer storage medium or device on which Licensee has placed it, provided however that Licensee or County may maintain copies of voting records on copies of the Licensed Programs as necessary to enable compliance with all federal, state and local laws and/or regulations.

Section 11.06 Right to Continued Use.

Notwithstanding anything contained within this Agreement to the contrary, in the event that this Agreement and/or any license granted hereunder is terminated by Licensee in accordance with Section 11.02 or Section 11.03, Licensee shall, at its option, either (i) return the Licensed Materials to Licensor as provided for in Section 11.05, or (ii) retain the right to continued use of the Licensed Materials subject to the terms set forth in Article 4 (Authorized Use) hereof. In the event Licensee elects to retain its rights to continued use, it shall not be entitled to the refund of license fees specified below. The remedies provided in this Section are in addition to all other remedies available at law or in equity.

Article 12. INDEMNIFICATION

Section 12.01 Licensor Indemnification.

Licensor hereby agrees to indemnify and hold harmless Licensee, and its successors and assigns, from any loss, liability, claim, damage or expense incurred by the Licensee with respect to any third party:

(a) incurred as a result of the breach of any Licensor warranty set forth in this Agreement;

(b) incurred as a result of the gross negligence or willful misconduct of Licensor (or its Personnel) or a breach of any obligation of Licensor (or its Personnel) under this Agreement;

(c) pursuant to Licensor’s obligation set forth in Section 10.09 (Intellectual Property Rights Warranty); and

(d) for personal injury or property damage incurred by a third party (excluding County(ies)) as a result of Licensor’s (or its Personnel) grossly negligent or intentional acts or from Licensor’s breach of any term of this Agreement.

Article 13. SOFTWARE ESCROW

Section 13.01 Source Code Escrow.

Licensor shall continuously maintain an escrow agreement as provided for in the Voting Systems Agreement. In the event Licensee has the right to utilize the Source Code pursuant to this Section, Licensee shall have the right to hire maintenance personnel of Licensor in order to assist Licensee with its utilization of the Source Code.

Section 13.02 Continuing Agreement.
The parties agree that the Licensed Materials provided hereunder are intellectual property, as defined in Section 101(56) of the Bankruptcy Code and that this Agreement is governed by Section 365(n) of the Bankruptcy Code. Licensor acknowledges that if it, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects this Agreement, then Licensee may elect to retain its rights under this License Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of Licensee to Licensor or the bankruptcy trustee, Licensor or such bankruptcy trustee shall not interfere with the rights of Licensee provided in this Agreement.

Article 14. GENERAL TERMS AND CONDITIONS

Section 14.01 Waiver, Amendment or Modification.

Any waiver, amendment or modification of any provisions of this Agreement and/or any Schedule hereto or any right, power or remedy hereunder or thereunder shall not be effective unless made in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof in the future.

Section 14.02 Assignment.

Neither party may assign its rights or obligations under this Agreement, in whole or in part, to any entity without the prior written consent of the other party. Such consent shall not be unreasonably withheld, delayed or conditioned. Any change in control resulting from an acquisition, merger, or otherwise shall constitute an assignment under the terms of this provision.

Section 14.03 Severability.

If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objective.

Section 14.04 Headings.

The headings used in this Agreement and/or any Schedule hereto are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

Section 14.05 Notices.

Any notices required or permitted to be sent hereunder shall be served personally or by overnight courier, or by registered or certified mail, return receipt requested, to the addresses stated below for Licensee and for Licensor:

Licensee at:
Office of the Ohio Secretary of State

Counts identified in Schedule N

With a copy to:
Section 14.06 Governing Law.

This Agreement will be governed and interpreted by the internal laws of the State of Ohio without reference to the conflict of laws rules. Further, the parties consent to the jurisdiction and venue of the State and Federal Courts located in the State of Ohio.

Section 14.07 Entire Agreement.

This Agreement and any Exhibits and/or Schedules hereto are the complete and exclusive agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, negotiations, and communications on such subject matter. All prior negotiations, representations, or agreements, either written or oral are superseded hereby. Purchase orders exchanged between the parties shall be written for billing purposes only and shall not supersede or supplement the provisions of this Agreement.

Section 14.08 Media Releases.

Licensor shall not use any trade name, trademark, service mark, or any other information which identifies Licensee in Licensor’s sales, marketing, or publicity activities, including, but not limited to, press releases, interviews with representatives of any written publication, television station or network, or radio station or network, without the prior written consent of Licensee.

Section 14.09 Notice of Claims.

As a continuing obligation of Licensor throughout the term of this Agreement, Licensor shall notify Licensee of any claims, either filed or threatened to be filed, which materially affect, or could materially affect, the Licensed Materials and/or Services supplied by Licensor to its customers. Additionally, at Licensee’s request, Licensor shall provide Licensee with adequate assurance of Licensor’s ability to perform under this Agreement.

Section 14.10 Notice of Financial Information.

As a continuing obligation of Licensor throughout the term of this Agreement, Licensor shall provide Licensee, at Licensee’s request, such financial information as is sufficient to provide a complete and accurate report of Licensor’s financial status.

Section 14.11 Non-Exclusive Agreement.
Licensor recognizes and hereby expressly agrees that this Agreement in no way establishes an exclusive arrangement between Licensor and Licensee. Licensee retains the ability to contact, negotiate terms with, and enter into contracts with any other third party, including any competitor of Licensor, at any time, without notice to Licensor, and without incurring liability therefore.

Section 14.12 Survival.

The provisions relating to the following rights and obligations shall survive the termination, cancellation, expiration and/or rescission of this Agreement: Ownership, Escrow, Warranty, Limitation of Liability, Indemnification, and Confidentiality/Non-Disclosure. In addition, any provisions relating to the enforcement of any of the surviving provisions and any remedies available under this Agreement shall also survive.

Section 14.13 Relationship of Parties.

Except as otherwise specifically set forth in this Agreement, this Agreement shall not be construed as authority for either party to act for the other in any agency, partnership, joint venture or any other capacity or to make commitments of any kind for the account of or on behalf of the other.

Section 14.14 Schedules.

In the event of a conflict between the terms of this Agreement, as may be amended from time to time, and any Schedule, the terms of this Agreement shall govern.

Section 14.15 Confidentiality.

During the term of this Agreement, each party may provide the other party with confidential and/or proprietary materials and information (collectively “Confidential Information”). All materials and information provided by one party to the other party shall be considered Confidential Information. Each party agrees to maintain the confidentiality of the Confidential Information and will not use or disclose such Confidential Information without the prior written consent of the other party. At any time, upon a party’s request, the other party shall return all Confidential Information in its possession. The obligations contained in this Section as they relate to the Licensee and the Counties are subject to the requirements of Revised Code 149.43 relating to the right of citizens to inquire into the activities of a governmental unit in Ohio. In the event that any of the Licensor’s Confidential Information is requested to be disclosed under Revised Code 149.43, the Licensee and County shall provide the Licensor with as much prior notice as reasonably practicable in order to provide the Licensor with an opportunity to seek an appropriate protective order against disclosure of such Confidential Information.

Section 14.16 Allocation of Risk

(a) Limitation of Liability.

Limitation of Liability is as stated in Section 15.01 of the Voting System Agreement, subject to the following exceptions. Licensor shall be liable for, and agrees to indemnify and hold the Licensee harmless from, any and all liability, expenses (including reasonable attorneys’ fees), costs, damages, settlements, and obligations resulting from the reckless or willful misconduct of the Licensor or that of its employees or agents, and for its obligations under or breach of Section 14.15 (Confidentiality), Section 12.01(e) (Indemnification for Physical Injury and Property Damage), and Section 10.09 (Intellectual Property Rights Warranty).
(b) Warranties.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED MATERIALS AND/OR SERVICES TO BE PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

c) Insurance Coverage.

Licensor shall maintain insurance coverage of the types and in the amounts as set forth in Schedule L to the Voting Systems Agreement.

Section 14.17 Cumulative Remedies.

Except as specifically provided in this Agreement, the rights and remedies provided in this Agreement and all other rights and remedies available to either party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity, neither asserting a right or employing a remedy shall preclude the concurrent assertion of any other right or employment of any other remedy.

Each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative as of the date first above written.

(Licensee)                                                                 (Licensor)

Name:                                                                   Name:

Title:                                                                  Title:

Date:                                                                   Date:
Schedule F - Performance Bond

Insert Performance Bond Here
Schedule G – Voting Systems Purchase Order

State of Ohio – Statewide Voting Systems Project

County Authorization for Purchase

The County agrees to be bound by all of the terms of the Voting Systems Agreement.

Authorized
Signature: ___________________________________________

Name: _______________________________________________

Title: _______________________________________________

Date: _______________________________________________
**Schedule G – Voting Systems Purchase Order**

State of Ohio – Statewide Voting Systems Project

Completion of this form signifies the intent to purchase the voting systems listed below.

**Note:** Refer to the related Implementation Schedule (Schedule D) for implementation dates.

<table>
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<th>PO Number:</th>
<th>County Contact Info:</th>
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<td>Vendor:</td>
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<td>County:</td>
<td>Email:</td>
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<td>Delivery Address 1:</td>
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<td>Delivery Address 2:</td>
<td>Delivery Restriction Dates/Times:</td>
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**Voting Units**

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<th>Unit Cost</th>
<th>Total Cost</th>
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¹ Such as DRE, ADA, JBC, Card Writer, Smart Card, PEB, Optical Scan, Software Delivery, Training, etc.

**Authorized Signatures**

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<tr>
<th>Signature:</th>
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<tr>
<td>Name:</td>
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<td>Title:</td>
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<td>Date:</td>
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<td>Chief Financial Officer (CFO):</td>
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Schedule H - Escrow Agreement

Insert Vendor's Escrow Agreement Here
Schedule I – Delivery Signoff Form

State of Ohio – Statewide Voting Systems Project

Completion of this form certifies that the voting system(s) have been delivered by the specified vendor and tested by the county representative. This form designates acceptance of the deliverable.

**Note:** Items must be signed off on as “Accepted” on this form, and this form must be submitted along with the invoice, before payment will be made by the Secretary of State’s office.

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</table>

If an item was not accepted, please provide additional information below.

<table>
<thead>
<tr>
<th>Item Not Accepted</th>
<th>Reason/Comments</th>
</tr>
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<tbody>
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01/30/04
**Schedule J - Request for Proposal and Amendments**

This Schedule J includes:

<table>
<thead>
<tr>
<th>Item</th>
<th>Date Issued</th>
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<tbody>
<tr>
<td>Request for Proposal Number SOS0428365</td>
<td>May 23, 2003</td>
</tr>
<tr>
<td>Amendment Number 1</td>
<td>May 28, 2003</td>
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<td>Amendment Number 2</td>
<td>May 30, 2003</td>
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<td>Amendment Number 3</td>
<td>June 6, 2003</td>
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<td>Amendment Number 4</td>
<td>June 6, 2003</td>
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<td>June 6, 2003</td>
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<td>Amendment Number 6</td>
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<td>Amendment Number 7</td>
<td>June 16, 2003</td>
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<td>Amendment Number 8</td>
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<td>Amendment Number 9</td>
<td>June 16, 2003</td>
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Secretary of State's Request for Proposal number SOS0428365 is referenced and incorporated herein.
Schedule K - Response to Request for Proposal

Vendor's response to SOS Request for Proposal number SOS0428365 is referenced and incorporated herein.
Schedule L - Insurance

During the term of the Contract Vendor will provide, pay for and maintain in full force and effect the insurance outlined herein for coverages at not less than the prescribed minimum limits of liability, covering Vendor activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

Commercial General Liability Insurance (Primary and Umbrella/Excess) with limits of not less than Six Million Dollars ($6,000,000) per occurrence and in the aggregate for bodily injury, personal injury and property damage. Coverages must include the following: Blanket Contractual liability, products and completed operations, independent contractors, severability of interest and waiver of subrogation against all parties described as additional insureds Licensee, and its Affiliates are to be named as Additional Insureds.

Workers’ Compensation Insurance in compliance with statutory limits and Employer’s Liability Insurance with limits of not less than One Million Dollars ($1,000,000).

Automobile Liability Insurance covering liability arising out of any auto (owned, hired and non-owned) if used in connection with work to be performed under this Contract, with limits of not less than One Million Dollars ($1,000,000) per occurrence and in the aggregate for bodily injury and property damage. Licensee, and its Affiliates are to be named as Additional Insureds.

All insurance shall be written through companies having an A.M. Best's rating of at least A VII or with such other companies as may reasonably be approved by Licensee. All such liability insurance maintained by Vendor or any subcontractor shall include the condition that it is primary and that any such insurance maintained by Licensee or any other additional insured is excess and non-contributory.

Certificates of Insurance evidencing such coverages shall be furnished Licensee prior to commencement of this Contract and at each subsequent policy renewal date. The Certificates shall provide for not less than thirty (30) days written notice to Licensee prior to policy cancellation, non-renewal or material change.

The required coverages referred to and set forth in this Section shall in no way affect, nor are they intended as a limitation of, Vendor liability with respect to the performance of its obligations under this Contract. Vendor further releases, assigns and waives any and all rights of recovery against Licensee and its affiliates, employees, successors and permitted assigns which Vendor may otherwise have or acquire in or from, or are in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Vendor pursuant to this Contract or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
Insert Insurance Certificate(s) Here
### Schedule M - List of Ohio Counties

<table>
<thead>
<tr>
<th>Counties (A-G)</th>
<th>Counties (H-M)</th>
<th>Counties (N-Z)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams</td>
<td>Hamilton</td>
<td>Noble</td>
</tr>
<tr>
<td>Allen</td>
<td>Hancock</td>
<td>Ottawa</td>
</tr>
<tr>
<td>Ashland</td>
<td>Hardin</td>
<td>Paulding</td>
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<tr>
<td>Ashtabula</td>
<td>Harrison</td>
<td>Perry</td>
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<td>Athens</td>
<td>Henry</td>
<td>Pickaway</td>
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<tr>
<td>Auglaize</td>
<td>Highland</td>
<td>Pike</td>
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<tr>
<td>Belmont</td>
<td>Hocking</td>
<td>Portage</td>
</tr>
<tr>
<td>Brown</td>
<td>Holmes</td>
<td>Preble</td>
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<tr>
<td>Butler</td>
<td>Huron</td>
<td>Putnam</td>
</tr>
<tr>
<td>Carroll</td>
<td>Jackson</td>
<td>Richland</td>
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<tr>
<td>Champaign</td>
<td>Jefferson</td>
<td>Ross</td>
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<tr>
<td>Clark</td>
<td>Knox</td>
<td>Sandusky</td>
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<tr>
<td>Clermont</td>
<td>Lake</td>
<td>Scioto</td>
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<tr>
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<td>Lawrence</td>
<td>Seneca</td>
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<tr>
<td>Columbiana</td>
<td>Licking</td>
<td>Shelby</td>
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<tr>
<td>Coshocton</td>
<td>Logan</td>
<td>Stark</td>
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<tr>
<td>Crawford</td>
<td>Lorain</td>
<td>Summit</td>
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<tr>
<td>Cuyahoga</td>
<td>Lucas</td>
<td>Trumbull</td>
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<tr>
<td>Darke</td>
<td>Madison</td>
<td>Tuscarawas</td>
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<tr>
<td>Defiance</td>
<td>Mahoning</td>
<td>Union</td>
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<tr>
<td>Delaware</td>
<td>Marion</td>
<td>Van Wert</td>
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<tr>
<td>Erie</td>
<td>Medina</td>
<td>Vinton</td>
</tr>
<tr>
<td>Fairfield</td>
<td>Meigs</td>
<td>Warren</td>
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<tr>
<td>Fayette</td>
<td>Mercer</td>
<td>Washington</td>
</tr>
<tr>
<td>Franklin</td>
<td>Miami</td>
<td>Wayne</td>
</tr>
<tr>
<td>Fulton</td>
<td>Monroe</td>
<td>Williams</td>
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<tr>
<td>Gallia</td>
<td>Montgomery</td>
<td>Wood</td>
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<tr>
<td>Geauga</td>
<td>Morgan</td>
<td>Wyandot</td>
</tr>
<tr>
<td>Greene</td>
<td>Morrow</td>
<td></td>
</tr>
<tr>
<td>Guernsey</td>
<td>Muskingum</td>
<td></td>
</tr>
<tr>
<td>County</td>
<td>Address 1</td>
<td>Address 2</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------</td>
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</tr>
<tr>
<td>Athens</td>
<td>15 S. Court St.</td>
<td>Room 130</td>
</tr>
<tr>
<td>Brown</td>
<td>Administration Building</td>
<td>800 Mt. Crab Pk.</td>
</tr>
<tr>
<td>Butler</td>
<td>315 High St.</td>
<td>10th Floor</td>
</tr>
<tr>
<td>Carroll</td>
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<td>119 S. Lisbon St.</td>
</tr>
<tr>
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<td>41 N. Park Ave.</td>
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<tr>
<td>Crawford</td>
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<td>Suite A</td>
</tr>
<tr>
<td>Delaware</td>
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<tr>
<td>Fairfield</td>
<td>951 Liberty Drive</td>
<td>Suite 100</td>
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<tr>
<td>Gallia</td>
<td>18 Locust St.</td>
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</tr>
<tr>
<td>Guernsey</td>
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<td>Suite 101</td>
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<tr>
<td>Hardin</td>
<td>One Court House Sq.</td>
<td>Suite 170</td>
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<tr>
<td>Harrison</td>
<td>Court House</td>
<td>100 W. Market St.</td>
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<tr>
<td>Henry</td>
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<td>660 N. Perry St.</td>
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<tr>
<td>Hocking</td>
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</tr>
<tr>
<td>Holmes</td>
<td>75 East Clinton St.</td>
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<tr>
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<td>County Administration Bldg.</td>
<td>180 Milan Ave.</td>
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<tr>
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<td>226 Main St.</td>
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<tr>
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<tr>
<td>Logan</td>
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<tr>
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<tr>
<td>Marion</td>
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<tr>
<td>Medina</td>
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<tr>
<td>Meigs</td>
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<tr>
<td>Mercer</td>
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<tr>
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<tr>
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<tr>
<td>Pike</td>
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<tr>
<td>Richland</td>
<td>77 N. Mulberry St.</td>
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<td>Seneca</td>
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<tr>
<td>Stark</td>
<td>201 Third St. NE</td>
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<tr>
<td>Trumbull</td>
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<tr>
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