SOS Contract Number 219

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 MAXIMUS, Inc. (hereinafter the "Vendor"), a(n) __________ corporation, with offices at 11419 Sunset Hills Road, Reston, Virginia 20190. Vendor shall subcontract with Hart InterCivic, Inc., a __________ corporation, with offices at 15500 Wells Port Drive, Austin, Texas 78728.

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 Fee Schedule
Schedule C Statement of Work
Schedule D Milestone and Timeline Dates
Schedule E License Agreement
This Agreement also includes these sections:

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Article II. DEFINITIONS
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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 to 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 for 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 median (such as the PEB or PCMCIA 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
SIX MILLION FOUR HUNDRED NINETY-SEVEN THOUSAND THIRTY-
SEVEN DOLLARS AND 00/100 (106,497,037.00), 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 contact, 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:

MAXIMUS, Inc.
Attn:
Statewide Voting System(s) Project
Agreement for Acquisition of Voting Systems/Related Services

11419 Sunset Hills Road
Reston, Virginia 20190.

Facsimile: 703-251-8240

With copies to:
Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, Texas 78728

Facsimile: 512-252-6506

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:

By: President, Human Services

Title: President, Human Services

Date: February 6, 2004

54-1000588

FEDERAL TAX I.D. NUMBER