

**ADDENDUM NO. 1
TO
BALLOT ON DEMAND SYSTEM, PROCESSING AND SERVICES AGREEMENT
BETWEEN
ELECTION SYSTEMS & SOFTWARE, LLC
AND
WILLIAMSON COUNTY, TEXAS**

The underlying Ballot on Demand System, Processing and Services Agreement (the "Agreement"), between Election Systems & Software, LLC ("ES&S") and Williamson County, Texas ("Customer") is amended as specifically set forth herein to incorporate the terms and conditions of this Addendum No. 1. As amended, the Agreement shall remain in full force and effect according to its terms and conditions. All terms used in this Addendum No. 1 shall have the meanings attributed to them in the Agreement. This Addendum No. 1 supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. In the event there is a conflict between the terms and conditions of the Agreement and the terms and conditions of this Addendum No. 1, the following terms and conditions of this Addendum No. 1 shall control:

- 1. Termination for Convenience.** Customer may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to ES&S. In the event of such termination, it is understood and agreed that only the amounts due to ES&S for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Customer's termination of this Agreement for convenience.
- 2. No Indemnification by Customer.** ES&S acknowledges and agrees that under the Constitution and the laws of the State of Texas, Customer cannot enter into an agreement whereby Customer agrees to indemnify or hold harmless any other party, including but not limited to ES&S; therefore, all references of any in this Agreement to Customer indemnifying, holding or saving harmless any other party, including but not limited to ES&S, for any reason whatsoever are hereby deemed void and deleted.
- 3. Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- 4. No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Customer, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party.

Customer does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

5. **Customer's Right to Audit.** ES&S agrees that Customer or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of ES&S which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. ES&S agrees that Customer shall have access during normal working hours to all necessary ES&S facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. Customer shall give ES&S reasonable advance notice of intended audits.
6. **Non-Appropriation and Fiscal Funding.** The obligations of the Customer under this Agreement do not constitute a general obligation or indebtedness of Customer for which Customer is obligated to levy, pledge, or collect any form of taxation. It is understood and agreed that Customer shall have the right to terminate this Agreement at the end of any Customer's fiscal year if the governing body of the Customer does not appropriate sufficient funds as determined by the Customer's budget for the fiscal year in question. Customer may effect such termination by giving written notice of termination to ES&S at the end of its then-current fiscal year to be effective as of the last day of Customer's fiscal year.
7. **Payment, Interest and Late Payments.** Customers' payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date the Customer receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by the Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of the Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

In the event that an error appears in an invoice submitted by ES&S, the Customer shall notify ES&S of the error not later than the twenty first (21st) day after the date the Customer receives the invoice. If the error is resolved in favor of ES&S, ES&S shall be entitled to receive interest on the unpaid balance of the invoice submitted by ES&S beginning on the date that the payment for the invoice became overdue. If the error is resolved in favor of the Customer, ES&S shall submit a corrected invoice that must be paid in accordance within the time set forth above. The unpaid balance accrues interest as provided by Chapter 2251 of the Texas Government Code if the corrected invoice is not paid by the appropriate date.

Authorized Expenses: In the event County authorizes, in advance and in writing, reimbursement of non labor expenses related to the services subject of this Contract, County will pay such actual non-labor expenses in strict accordance with the Williamson County Vendor Reimbursement

Policy (as amended), which is incorporated into and made a part of this Contract by reference. The Williamson County Vendor Reimbursement Policy can be found at: <https://www.wilcotx.gov/351/Vendor-Reimbursement>. Invoices requesting reimbursement for authorized non-labor expenses must be accompanied by copies of the provider's invoice and clearly set forth the actual cost of the expenses, without markup.

- 8. General Insurance Requirements.** This provision shall apply in the event insurance is required under the Agreement. **“Williamson County, Texas” and its directors, officers and employees shall be added as additional insureds** under the general liability and auto liability coverages of required policies, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary, and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County. The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. Client shall furnish County with a certification of coverage issued by the insurer. Client shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Client shall also notify County, within twenty-four (24) hours of receipt of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**
- 9. General Insurance Requirements.** This provision shall apply in the event insurance is required under the Agreement. **“Williamson County, Texas” and its directors, officers and employees shall be added as additional insureds** under the general liability and auto liability coverages of required policies, and on those policies where the Customer, its directors, officers and employees are additional insureds, such insurance shall be primary, and any insurance maintained by the Customer shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of the Customer. The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. ES&S shall furnish Customer with a certification of coverage issued by the insurer. ES&S shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, ES&S shall also notify Customer, within twenty-four (24) hours of receipt of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**
- 10. Relationship of the Parties.** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- 11. Sales and Use Tax Exemption.** Customer is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. §


151.309, as amended, and the services and materials subject hereof are being secured for use by Customer. Exemption certificates will be provided to contractors and suppliers upon request.

- 12. Texas Public Information Act.** To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Customer, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Customer as to whether or not the same are available to the public. It is further understood that Customer's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Customer, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Customer by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- 13. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.
- 14. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

Williamson County, Texas:

Election Systems & Software, LLC:

Authorized Signature



Authorized Signature

County Judge/Presiding Officer

Jared Plath

Printed Name

Dated: _____, 20____

Dated: June 18, 2025

Approved as to Legal Form
HAL HAWES
General Counsel, Commissioners Court
Date: Jun 18 2025 Time: 2:24 pm

APPROVED
By Jalyn Morris at 2:50 pm, Jun 18, 2025

Williamson County, Texas
Purchase Proposal Quote - Texas BuyBoard Contract # 710-23
 Submitted by Election Systems & Software

Quote Date: 6/10/2025
Quote Valid Through: 7/10/2025

Purchase Solution Includes:

Quantity	Item Description	Unit Price	Extended Price
Ballot On Demand Hardware			
300	Compact Printer with Firmware (For use with BOD Laptop)	\$775.00	\$232,500.00
300	Laptop Computer with Router	\$1,725.00	\$517,500.00
Software			
300	Balotar Software License		\$185,000.00
X	Single Request Capability Only		
Services			
6	Implementation Services	\$2,050.00	\$12,300.00
X	Project Management		
X	Ballot on Demand Training		
X	Ballot on Demand Equipment Installation		\$82,000.00
X	1 Year Hardware and Software Warranty		Included
X	Estimated Shipping and Handling		\$108,000.00
Total Purchase Solution			<u>\$1,137,300.00</u>
Payment Terms			
Amount due within thirty (30) calendar days of contract execution:			\$568,650.00
Amount due within thirty (30) calendar days of delivery of Hardware and/or Software:			\$568,650.00
Annual Post-Warranty License and Maintenance and Support Fees (Fees are Based Upon a 1-Year Customer Commitment to Subscribe to the Following Services)			
Annual Post-Warranty Software License and Maintenance and Support Fees:			
300	Balotar Software License		\$74,010.00
Total Annual Post-Warranty License and Maintenance and Support Fees			<u>\$74,010.00</u>

Footnotes:

- This quote is an estimate and is subject to final review and approval by both ES&S and the Customer.
- Any applicable (City & State) sales taxes have not been included in pricing and are the responsibility of the customer.
- Subject to state, municipal, jurisdictional, provincial or territory laws to the contrary, the above pricing information is confidential, proprietary and trade secret information of ES&S and is intended only for the use of the individual or entity to which the document is directed to. This information may not be disclosed or reproduced either publicly or to any other individual or entity without the prior written authorization of ES&S.
- Annual Post-Warranty License and Maintenance and Support Fees are not listed on Texas BuyBoard Contract # 710-23.
- The quantity of service days reflects a reasonable estimate for implementation and selected ongoing election services. Quantities may change depending on specific Customer needs.

Ballot On Demand Footnotes:

- Customer is responsible for purchasing blank ballot stock and consumables.
- ES&S shall provide a warranty to the Customer for the Ballot on Demand Printer ("Printer") in coordination with the manufacturer of the Printer that shall commence upon delivery and terminate upon the earlier of: (1) three (3) years from the date of delivery (the "Maximum Coverage Period"), or (2) the end of the life of the fuser unit in the Printer. In the event that Customer desires to make a warranty claim prior to expiration of the Maximum Coverage Period, the parties shall determine if the warranty has expired by printing a printer settings sheet which displays the remaining life of the Printer's fuser unit. ES&S warrants during the Warranty Period it, in coordination with the manufacturer of the Printer, will replace a Printer which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any Consumables. Any replaced Printer shall be warranted only for the unexpired term of the Warranty Period.

**ELECTION SYSTEMS & SOFTWARE, LLC
BALLOT ON DEMAND SYSTEM, PROCESSING AND SERVICES AGREEMENT
B.O. #: 4071**

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

BETWEEN: ELECTION SYSTEMS & SOFTWARE, LLC, a Delaware Limited Liability Company ("ES&S")
AND: WILLIAMSON COUNTY, TEXAS ("Customer").

RECITALS:


- A. ES&S is the owner of certain ballot printing equipment and software as set forth herein and Customer has agreed to purchase and license the ballot printing equipment and related software and services from ES&S for use in **Williamson County, Texas** (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto and incorporated herein by reference.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
 - Exhibit A (Pricing Summary)
 - Exhibit B (Ballot on Demand Equipment, ES&S Software and Services Description, Pricing and Fees)

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

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Texas**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

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

WILLIAMSON COUNTY, TEXAS
301 S.E. Inner Loop - Suite 104
Georgetown, TX 78626
Fax No.: N/A



Signature
Jared Plath

Name (Printed or Typed)
VP of Finance

Title
06/17/2025

Date

Signature

Name (Printed or Typed)

Title

Date

**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the ES&S Equipment and ES&S Software.
- b. "ES&S Software" means ES&S' proprietary Ballot on Demand Software and all Updates delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- c. "Ballot on Demand Equipment" means hardware and software manufactured and developed by parties other than ES&S. Ballot on Demand Equipment shall include, but not be limited to, any printers and laptop computers provided under this Agreement.

**ARTICLE 2
SALE OF ES&S EQUIPMENT AND LICENSE OF ES&S SOFTWARE AND PAYMENT OF FEES**

2.1 **Purchase Terms; Use.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the Ballot on Demand Equipment and licenses to the ES&S Software described on Exhibit B. The payment terms are set forth on Exhibit A. Title to the Ballot on Demand Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the Ballot on Demand Equipment.

2.2 a. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time, part time and temporary employees to use the ES&S Software described on Exhibit B and related Documentation supplied by ES&S. The licenses allow Customer to use (but not copy) the ES&S Software and the Documentation in the course of operating the ES&S Equipment and solely for the purposes of managing the printing of ballots in the Jurisdiction. The licenses granted in this Section 2.2 do not permit Customer to use the source code for the ES&S Software.

b. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

i. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;

ii. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any ballot printing, coding, programming or ballot layout services) without ES&S's prior written consent; or

iii. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or

iv. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the software (except ballots by ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g.,

copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.3 **Term of Licenses.** The licenses granted in Section 2.2 shall commence upon the delivery of the ES&S Software described in Section 2.2 and shall continue for the Initial Term of the Agreement (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.5, or 3.6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.4 **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades, or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third-Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the Ballot on Demand Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S will charge Customer at its then-current rates to (i) install the Updates to the Customer, (ii) train Customer on Updates if such training is requested by Customer; or (iii) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Notwithstanding the foregoing, Customer shall pay ES&S to install all election management software Updates. If applicable, Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall pay ES&S for any Update which is required due to a change in state or local law.

2.5 **Fees.**

a. **Equipment Sale and Software License Fees.** The fees for the purchase of Ballot on Demand Equipment and License of ES&S Software are set forth on Exhibit A

**ARTICLE 3
MISCELLANEOUS**

3.1 **Term; Termination.** This Agreement shall be effective for a **One (1) Year Period beginning on the Effective Date** (the "Initial Term"). The Initial Term shall automatically renew for an unlimited number of successive one-year period unless otherwise agreed to, in writing, by the parties (each a "Renewal Period"). The Initial Term and all Renewal Periods shall be collectively referred to herein as the "Term". The Term shall continue until this Agreement is terminated by the first to occur of (i) either party's election to terminate it upon the expiration of the Initial Term or any Renewal Period thereof, written notice of such election shall be given to the other party at least sixty (60) calendar days prior to the expiration of the Initial Term or any Renewal Period; (ii) the date that is thirty (30) days after either party notifies the other that the other has materially breached this Agreement, and the breaching party fails to cure such breach within such thirty (30) day period, (except a breach as provided in (iv) below which will require no notice); (iii) the date which is thirty (30) days after ES&S notifies the Customer of ES&S intent to terminate the Agreement as a result of the Customer no longer utilizing ES&S' voter tabulation system with the Ballot on Demand Printer purchased and licensed hereunder, or (iv) Customer's failure to make any payment due

hereunder within thirty (30) days after it is due. In the event of early termination by ES&S due to (a) a breach of this Agreement by Customer, (b) Customer's failure to pay any amounts owed under this Agreement or (c) the failure of Customer to appropriate funds to make the payments due under this Agreement, Customer shall pay ES&S for all products delivered and services performed up through the effective date of termination. Upon termination of this Agreement, Customer shall immediately return all ES&S Software and Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

3.2 **Delivery; Risk of Loss; Insurance.** ES&S anticipates shipping the Ballot on Demand Equipment and ES&S Software identified on Exhibit B to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are estimates and may only be established or revised, as applicable, by the parties, because of delays in executing this Agreement, changes requested by Customer, product availability and other events outside of ES&S's control. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the Ballot on Demand Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Ballot on Demand Equipment and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement for Ballot on Demand Equipment and software have been paid by Customer.

3.3 **Warranty.**

a. **ES&S Software.** ES&S warrants for a one (1) year period for the ES&S Software (the "Warranty Period") it will repair any component of the ES&S Software which, while under normal use and service: fails to perform in accordance with its Documentation in all material respects. The Warranty Period will commence upon installation. If a defect or malfunction occurs in the ES&S Software while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S or its authorized representatives shall use reasonable efforts to restore the Software to perform in accordance with its Documentation as soon as practicable. ES&S or its authorized representatives shall restore ES&S Software at a location as determined by ES&S in its sole discretion. If a defect or malfunction occurs in any ES&S Software as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations, rodent infestation, and utility or communication interruptions, Customer shall pay ES&S for any maintenance services at ES&S' then-current rates, as well as for the cost of all parts used in connection with the performance of such maintenance services. Customer shall have access to ES&S Help Desk Support during the Warranty Periods. ES&S reserves that right to use third parties approved by ES&S to perform the warranty services hereunder.

b. **Ballot on Demand Equipment.**

i. **Ballot on Demand Printer.** ES&S shall provide a warranty to the Customer for the Ballot on Demand Printer ("Printer") in coordination with the manufacturer of the Printer that shall commence upon delivery and terminate upon the earlier of: (1) one (1) year from the date of delivery (the "Maximum Coverage Period"), or (2) the end of the life of the fuser unit in the Printer. In the event that Customer desires to make a warranty claim prior to expiration of the Maximum Coverage Period, the parties shall determine if the warranty has expired by printing a printer settings sheet which displays the remaining life of the Printer's fuser unit. ES&S warrants during the Warranty Period it, in coordination

with the manufacturer of the Printer, will replace a printer which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any Consumables as defined in Section 3.5 below. Any replaced Printer shall be warranted only for the unexpired term of the Warranty Period.

aa. **Warranty Procedures.** In the event of a potential warranty claim, Customer shall contact the ES&S Helpdesk to assess and diagnose Printer performance issues. In the event the Customer and ES&S Helpdesk are unable to resolve the issue, ES&S shall arrange for Customer to be provided with a replacement Printer. Upon receipt of the replacement Printer, Customer shall have seven (7) business days within which to return the malfunctioning Printer to the manufacturer. Customer shall be responsible for shipping and handling costs incurred in order to return the malfunctioning Printer to the manufacturer. If Customer fails to return the malfunctioning Printer within the specified timeframe, Customer shall be responsible for the cost of the replacement Printer and all shipping and handling costs for the replacement Printer. This warranty is effective provided that, (I) Customer cooperates with the ES&S Helpdesk to fully troubleshoot any defects related to the Printer, and (II) the Printer to be replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or the manufacturer of the Printer or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

ii. **Ballot on Demand Laptop Computer.** ES&S shall provide a one (1) year warranty to the Customer in coordination with the manufacturer of the Ballot on Demand Laptop Computer ("Laptop") that shall commence upon delivery (the "Warranty Period"). ES&S warrants during the Warranty Period it, in coordination with the manufacturer, will repair or replace any component of the laptop which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. Any repaired or replaced item of Laptop shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the laptop become the property of ES&S. In the event that the laptop fails to perform in accordance with its Documentation, Customer shall contact the ES&S Helpdesk to assess and diagnose any material defects. In the event the ES&S Helpdesk is unable to resolve the issue, ES&S will work with the Customer to return the item to ES&S, and ES&S will work in coordination with the laptop manufacturer to repair and/or replace the laptop. This warranty is effective provided that (I) Customer cooperates with the ES&S Helpdesk to fully troubleshoot any defects related to the Laptop, and (II) the Laptop to be replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or the manufacturer of the Laptop or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and

utility or communication interruptions. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

c. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 3.3(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.4 **Consumables.** Customer shall be responsible for the purchase, shipping and installation of all components that are consumed in the normal course of operating the Ballot on Demand Equipment, including, but not limited to, toner, drums, transfer belts, fusers, and ballot stock (collectively, "Consumables"). All Consumables shall meet ES&S' specifications and may be purchased directly from ES&S or from authorized dealers. In the event the Customer purchases Consumables which do not meet ES&S specifications, Customer shall be solely responsible for any and all costs, expenses, liabilities, losses and damages resulting from the Customer's failure to purchase Consumables which meet ES&S' specifications.

3.5 **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special, or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Ballot on Demand Equipment or ES&S Software; or (b) errors that arise from mechanical or electronic component failures that are not covered under warranty or not subject to maintenance efforts or cure under this Agreement; or (c) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform its obligations under this Agreement.

3.6 **Taxes; Interest.** Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.6, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

3.7 **Proprietary Rights.** Customer acknowledges and agrees as follows:

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, and the format, layout, measurements, design, and all other technical information associated with the ballots to be used with the Ballot on Demand Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the Ballot on Demand Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the Ballot on Demand Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.8 **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.9 **Non-Appropriation of Funds.** Customer represents, warrants, and covenants that it has appropriated, and will have appropriated, funds available necessary to pay the amounts due herein through the end of the Customer's current fiscal year, and that Customer shall use its best efforts to obtain and appropriate funds in order to pay all payments which shall be due in each year of this Agreement. In the event that funds are not appropriated or otherwise made available to support the continuation of performance by Customer hereunder in any subsequent fiscal period, this Agreement may be terminated by either party; provided, however, that this Section 3.9 shall not be construed so as to permit Customer to terminate this Agreement in order to acquire a ballot on demand system and/or related services from a third party. Either party may notify the other of the termination, which may occur no later than the beginning of the subsequent fiscal period. Upon termination, Customer shall pay ES&S for all services performed pursuant to this Agreement up to the date of termination and reasonable exit costs incurred by ES&S. The amount of such payment may be paid from any appropriations available for such purposes, and Customer's highest-ranking officer or official shall use his/her best efforts to timely and sufficiently request the appropriation necessary to pay such amount.

3.10 **Assignment.** Except in the case of a reorganization of the assets or operation of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

3.11 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

3.12 **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due to ES&S for any product or service, or (3) the due date of any payment, Customer

shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid.

3.14 **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form, or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. ES&S is providing Ballot on Demand Equipment, ES&S Software, and services to Customer as an independent contractor and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Ballot on Demand Equipment, ES&S Software, or services, but shall remain fully responsible for such performance. The provisions of Article 2 and Sections 3.6-3.14 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

3.15 **Texas Prompt Payment Act Compliance.** Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date Customer receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

3.16 **Tax Exemption.** Williamson County is a body corporate and political under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exemption certificate will be furnished upon request.

3.17 **Authorized Expenses.** In the event the County authorizes, in advance and in writing, reimbursement of non-labor expenses related to the services subject of this Contract, County will pay such actual non-labor expenses in strict accordance with the Williamson County Vendor Reimbursement Policy (as amended), which is incorporated into and made a part of this Contract by reference. The Williamson County Vendor Reimbursement Policy can be found at: <https://www.wilcotx.gov/351/Vendor-Reimbursement>. Invoices requesting reimbursement for authorized non-labor expenses must be accompanied by copies of the provider's invoice and clearly set forth the actual cost of the expenses, without markup.

3.18 **County's Right to Audit.** ES&S agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of ES&S which are directly pertinent to the services to be performed and amounts expended under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. ES&S agrees that County shall

have access during normal working hours to all necessary ES&S facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. County shall give ES&S reasonable advance notice of intended audits.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

<u>Sale Summary:</u>		
Description	Refer to	Amount
Ballot on Demand Equipment, ES&S Software, and Services	Exhibit B	\$1,029,300.00
Shipping & Handling		\$108,000.00
Total Sale:		\$1,137,300.00
<u>Terms & Conditions:</u>		
<p>Note 1: Pursuant to Section 3.6, any applicable state and local taxes are not included, and are the responsibility of Customer. Premium or rush transportation services incurred in connection with deliverables included in the Total Sale are additive and will be billed as incurred.</p>		
<p>Note 2: <u>Invoicing and Payment Terms are as Follows:</u></p> <p>\$1,137,300.00 will be invoiced upon delivery of the Ballot on Demand Printing System. Invoices are due net 30 from invoice date.</p>		
<u>Ongoing Services:</u>		
Description	Annual Fee – First Renewal Period	
Software License, Maintenance & Support Services:		
- Ballot on Demand Software Fees (See <u>Exhibit B</u> for descriptions). Fees for any License Renewal Term will be increased at a rate not to exceed more than 10% of the previously paid fee.	\$74,010.00	
<p>Fees reflect a one-year term. Payment is due as set forth above and at the start of each Renewal Period.</p>		

**EXHIBIT B
BALLOT ON DEMAND EQUIPMENT, ES&S SOFTWARE, AND SERVICES DESCRIPTION,
PRICING AND FEES**

QUANTITY	DESCRIPTION	TOTAL PRICE
Ballot on Demand Hardware		
300	Compact Printer with Firmware	\$232,500.00
300	Laptop Computer with Router	\$517,500.00
Ballot on Demand Software		
X	Ballot on Demand 1-Year Software Licenses Including: - Single Request Capability Only	\$185,000.00
Ballot on Demand Services		
X	Equipment Installation	\$82,000.00
1	Training Day	\$2,050.00
5	Project Management Day	\$10,250.00
TOTAL SALE:		
		\$1,029,300.00