

**ELECTION SYSTEMS & SOFTWARE, LLC.
VOTER REGISTRATION AND ELECTION MANAGEMENT SYSTEM SOFTWARE MAINTENANCE
AND SUPPORT AND SYSTEM SERVICES AGREEMENT**

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

BETWEEN: Election Systems & Software, LLC, a Delaware limited liability company ("ES&S");
AND: The Nebraska Secretary of State's Office on behalf of The State of Nebraska ("Customer").

RECITALS:

A. Customer has previously licensed certain voter registration software from ES&S for use in the State of Nebraska (the "Jurisdiction") and now desires to purchase maintenance and support services for the voter registration software as well as other services from ES&S all in support of such voter registration system. The terms and conditions under which such services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

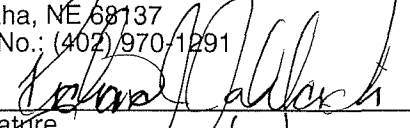
B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

- X Exhibit A (Pricing and Payment Summary)
- X Exhibit B (ES&S Software Description)
- X Exhibit C (ES&S Software Maintenance Services)
- X Exhibit D (Hosting Services)
- X Exhibit E (Third Party Items)
- X Exhibit F (Additional Services)
- X Exhibit G (Insurance Requirements)

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 Nebraska**, 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 the date 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



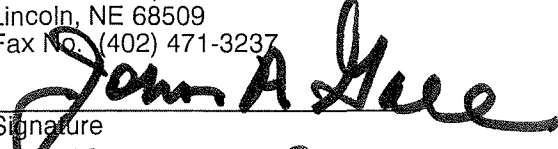
Signature
RICHARD J. NAROWSKI

Name (Printed or Typed)
VP OF FINANCE

Title
7/5/17

Date

NEBRASKA SECRETARY OF STATE
1445 K Street, Suite 2300
Lincoln, NE 68509
Fax No.: (402) 471-3237



Signature
JOHN A. GALE

Name (Printed or Typed)
Secretary of State

Title
June 28, 2017

Date



**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not 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 ES&S Software.
- b. "ES&S Software" means ES&S' proprietary voter registration software as previously licensed to the Customer by ES&S and as set forth on Exhibit B as well as all Updates, New Software Products, and items delivered to Customer under this Agreement.
- c. "ES&S Software maintenance and support" means those services described on Exhibit C.
- d. "System" means, collectively, the ES&S Software and Third Party Products as previously installed and configured by ES&S.
- e. "Third Party Products" means hardware, software and equipment which have been manufactured, created and/or licensed by persons other than ES&S. Such items are set forth on Exhibit E hereto.

**ARTICLE 2
SERVICES TO BE PROVIDED BY ES&S**

2.1 ES&S Services.

(a) **ES&S Software Maintenance and Support Services.** During the Term of this Agreement, ES&S shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support") (a) to enable the Software to perform in all material respects in accordance with its Documentation, as provided by ES&S, and (b) to cure any defect in material or workmanship. The specific ES&S Software Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Exhibit C. In consideration for ES&S providing Software Maintenance and Support, the Customer agrees to pay ES&S the fees set forth on Exhibit A for Software Maintenance and Support.

(b) **Hosting Services.** During Term of this Agreement, ES&S shall provide hosting services to the Customer in accordance with the terms set forth on Exhibit D ("Hosting Services"). In exchange for ES&S providing such Hosting Services to the Customer, the Customer shall pay ES&S the fees set forth on Exhibit A. ES&S shall only be obligated to provide support to the computer hosting environment under the terms as set forth on Exhibit D. All support and maintenance of the ES&S Software shall be in accordance with the Software Maintenance and Support terms set forth on Exhibit C.

(c) **Additional Services.** During the Term of the Agreement and upon request by the Customer, ES&S shall provide those additional services as set forth on Exhibit F. In consideration for ES&S providing such additional services, the Customer agrees to pay ES&S the fees set forth per a signed changer order by both parties. ES&S and the Customer shall mutually agree upon the date and time in which ES&S will provide the requested services.

**ARTICLE 3
MISCELLANEOUS**

3.1. **Term; Termination.** This Agreement shall be effective July 1, 2017 through June 30, 2020 ("Initial Term") unless otherwise terminated as set forth herein. Thereafter, this Agreement shall

automatically renew for one (1) additional two year period (July 1, 2020 to June 30, 2022)(the, "Renewal Period") unless either party provides written notice of its election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term. The Initial Term and the Renewal Period shall be collectively referred to herein as the "Term." The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. The obligations of the ES&S and the Customer may be terminated prior to the termination as follows:

- a. Customer and ES&S, by mutual written agreement, may terminate the Agreement at any time.
- b. Customer may terminate the Agreement immediately for the following reasons:
 - i. If directed to do so by statute;
 - ii. ES&S has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they may mature, or has ceased operating in the normal course of business;
 - iii. A trustee or receiver of ES&S or any substantial part of ES&S' assets has been appointed by a court;
 - iv. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Agreement by ES&S, its employees, officers, directors, or shareholders;
 - v. An involuntary proceeding has been commenced by any party against ES&S under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) ES&S has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) ES&S has been decreed or adjudged a debtor;
 - vi. A voluntary petition has been filed by ES&S under any of the chapters of Title 11 of the United States Code;
 - vii. ES&S intentionally disclosed confidential information;
 - viii. ES&S has or announces it will discontinue support of the deliverable;
 - ix. Second or subsequent documented "vendor performance report" form deemed acceptable by the Customer; or
 - x. ES&S engaged in collusion or actions which could have provided ES&S an unfair advantage in obtaining this Agreement.
- c. By the Customer, in whole or in part, if ES&S fails to perform its obligations under the Agreement in a timely and proper manner. The Customer shall, by providing a written notice of default to ES&S, allow ES&S to cure a failure or breach of contract within a period of thirty (30) days (or longer at Customer's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing ES&S time to cure a failure or breach of contract does not waive the Customer's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of ES&S, the Customer may contract the service from other sources and hold ES&S responsible for any excess cost occasioned thereby;
- d. By ES&S if the State breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives notification thereof from the non-breaching party.

3.2. **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. ES&S' total liability to the Customer arising out of or relating to this Agreement will not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, The

Customer agrees to accept responsibility for (a) the use of the System; and (b) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the System. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (y) the Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) the Customer's election not to receive, or to terminate, the Maintenance Services provided under Exhibit C

3.3. **Proprietary rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of the applicable fees, ES&S hereby grants to Customer a non-exclusive license or the right to access and use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Agreement. All licensed or hosted items shall be deemed to be "ES&S Software", and shall be subject to all the terms and conditions of ES&S' license and hosting of the ES&S Software, upon delivery. Except as, and to the extent, expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

3.4. **Confidentiality.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the Documentation, the information imparted during training provided by ES&S, and any other information relating to the Customer's or ES&S' operations, services, products, research or development, provided that the Disclosing Party labels the documentation and information it desires to protect as Confidential Information at the time it provides the documentation and information to the Receiving Party. In the event that the Disclosing Party makes an oral or visual disclosure of information which it considers to be Confidential Information, it shall confirm the confidentiality of such disclosure in writing to the Receiving Party within fifteen (15) calendar days after its initial disclosure. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons shall be informed of and will agree to the provisions of this Section, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control. In addition to the foregoing, all materials and information provided by the Customer or acquired by ES&S on behalf of the Customer shall be regarded as Confidential Information. All materials and information provided by the Customer or acquired by ES&S on behalf of the Customer shall be handled in accordance with Federal and State Law, and ethical standards. ES&S ensures the confidentiality of such materials or information. Should said confidentiality be breached by ES&S; ES&S shall notify the Customer immediately of said breach and take immediate corrective action. It is incumbent upon ES&S to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act



of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

3.5 **Taxes; Interest.** Customer is not required to pay taxes of any kind and assumes no such liability as a result of this Agreement. Any property tax payable on ES&S' equipment which may be installed in a Customer-owned facility is the responsibility of ES&S. Any undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

3.6 **Force Majeure.** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the Agreement due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Agreement. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Customer may grant relief from performance of the Agreement if ES&S is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon ES&S. To obtain release based on a Force Majeure Event, ES&S shall file a written request for such relief with the Customer. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the Agreement.

3.7 **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

3.8 **Independent Contractor.** It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. ES&S represents that it has, or will secure at its own expense, all personnel required to perform the services under the Agreement. ES&S' employees and other persons engaged in work or services required by ES&S under the Agreement shall have no contractual relationship with Customer; they shall not be considered employees of the Customer. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against ES&S, its officers, or its agents) shall in no way be the responsibility of Customer. ES&S will hold Customer harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from Customer including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits. In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ES&S is providing the services hereunder to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S will not be responsible for (a) user errors or (b) compatibility problems encountered through the use of the Software with equipment or software not meeting ES&S's specifications. ES&S may engage subcontractors to provide certain of the Software or Software Maintenance and Support, but shall remain fully responsible for such performance.

3.9 **Assignment.** ES&S may not assign, voluntarily or involuntarily, the Agreement or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the Customer, which will not be unreasonably withheld.



3.10 **Remedies.** Except as specifically provided herein, the remedies provided to the parties under this Agreement shall be cumulative and non-exclusive, and the parties shall be entitled to seek any other rights to which they may be entitled at law or in equity, subject to the terms of this Agreement.

3.11 **Severability.** If any term or condition of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

3.12 **Notice.**

a. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

If to the Customer:

John A. Gale
Secretary of State
Capitol Building
1445 K St. Ste 2300
Lincoln, Nebraska 68509
Phone: (402) 471-1527
Fax: (402) 471-3237

If to ES&S:

Office of General Counsel
Election Systems & Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137
Fax Number: (402) 970-1291

b. Whenever ES&S encounters any difficulty which is delaying or threatens to delay its timely performance under the Agreement, ES&S shall immediately give notice thereof in writing to Customer reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by Customer of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the Agreement. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the Agreement, all communication between ES&S and Customer regarding the Agreement shall take place between ES&S and individuals specified by the Customer in writing. Communication about the Agreement between ES&S and individuals not designated as points of contact by Customer is strictly forbidden.

A handwritten signature or set of initials in black ink, appearing to be 'GAS' or similar, located in the bottom right corner of the page.

3.13 **Time is of the Essence.** Time is of the essence in this Agreement. The acceptance of late performance with or without objection or reservation by Customer shall not waive any rights of Customer nor constitute a waiver of the requirement of timely performance of any obligations on the part of ES&S remaining to be performed.

3.14 **Disputes.**

a. **Payment Disputes.**

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

ii. **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, provided that ES&S has made standard, commercially reasonable attempts to notify Customer of the past due, undisputed payments and requested payment in writing from Customer. If Customer's payment is past due for more than ninety (90) days and is undisputed, ES&S may, with demand and notice to Customer and as applicable, declare the total amount immediately due and payable. Upon receiving such notice, Customer shall make the ES&S Software and Third Party Items available if purchased by ES&S at its premises for ES&S, and ES&S may remove the ES&S Software and Third Party Items and sell any or all of the Third Party Items as permitted under applicable law.

b. **Dispute Resolution Process.** Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g. the nature of the dispute, dates, times, persons involved). The responding party shall respond to the notification within ten (10) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. Notwithstanding anything in this Section 3.14 to the contrary, either party may apply to any court having jurisdiction over the subject matter of the dispute for a temporary restraining order, preliminary injunction, or other appropriate legal remedy at any time.

3.15 **Compliance with Civil Rights Laws and Equal Opportunity Employment / Nondiscrimination.** ES&S shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations or privileges of employment because of race, color, religion, sex, disability, marital status or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). ES&S guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of the Agreement. ES&S shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

3.16 **State of Nebraska Personnel Recruitment Prohibition.** ES&S shall not, at any time, recruit or employ any State employee or agent who has worked on the project, or who had any influence on decisions affecting the project without advance approval of the Customer.

3.17 **Conflict of Interest.** ES&S certifies that there does not now exist any relationship between ES&S and any person or entity which is or gives the appearance of a conflict of interest related to this project. ES&S certifies that it shall not take any action or acquire any interest, either



directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest. ES&S certifies that it will not employ any individual known by ES&S to have a conflict of interest.

3.18 **Governing Law.** The Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by State of Nebraska law. ES&S must be in compliance with all Nebraska statutory and regulatory law.

3.19 **Attorney's Fees.** In the event of any litigation, appeal or other legal action to enforce any provision of the Agreement, the non-prevailing party agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, of the prevailing party.

3.20 **Advertising.** ES&S agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the Customer. News releases pertaining to the project shall not be issued without prior written approval from the Customer.

3.21 **Funding Out Clause or Loss of Appropriations.** The Customer may terminate the Agreement, in whole or in part, in the event funding is no longer available. The Customer's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the Agreement. Should said funds not be appropriated, the Customer may terminate the Agreement with respect to those payments for the fiscal years for which such funds are not appropriated. The Customer will give ES&S written notice thirty (30) days prior to the effective date of any termination, and advise ES&S of the location (address and room number) of any related equipment and software. All obligations of the Customer to make payments after the termination date will cease and all interest of the Customer in any related equipment and/or software will terminate. ES&S shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall ES&S be paid for a loss of anticipated profit.

3.22 **Indemnification.**

a. **General.** ES&S agrees to defend, indemnify, hold, and save harmless the Customer and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the Customer, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of ES&S, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Customer which directly and proximately contributed to the claims.

b. **Intellectual Property.** ES&S agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by ES&S or its employees, subcontractors, consultants, representatives, and agents; provided, however, the Customer gives ES&S prompt notice in writing of the claim. ES&S may not settle any infringement claim that will affect the Customer's use of the Licensed Software without the Customer's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against Customer's use of any intellectual property for which ES&S has indemnified Customer, ES&S shall



at ES&S' sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on Customer's behalf to provide the necessary rights to the Customer to eliminate the infringement, or provide the Customer with a non-infringing substitute that provides Customer the same functionality. At Customer's election, the actual or anticipated judgment may be treated as a breach of warranty by ES&S, and Customer may receive the remedies provided under this Agreement.

c. **Personnel.** ES&S shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by ES&S.

3.23 **Nebraska Technology Access Standards.** ES&S shall review the Nebraska Technology Access Standards, found at <http://nita.nebraska.gov/standards/2-101.html> and ensure that products and/or services provided under the Agreement comply with the applicable standards. In the event such standards change during ES&S' performance, the Customer may create an amendment to the Agreement to request that the Agreement complies with the changed standard at a cost mutually acceptable to the parties.

3.24 **Antitrust.** ES&S hereby assigns to the Customer any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State of Nebraska.

3.25 **Drug Policy.** ES&S certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. ES&S agrees to provide a copy of its drug free workplace policy at any time upon request by the Customer.

3.26 **New Employee Work Eligibility Status.** ES&S is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

3.27 **Certification Regarding Debarment, Suspension and Ineligibility.** ES&S certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). ES&S also agrees to include the above requirements in any and all subcontracts into which it enters. ES&S shall immediately notify the Customer if, during the term of this Agreement, ES&S becomes debarred. The Customer may immediately terminate this Agreement by providing ES&S written notice if ES&S becomes debarred during the term of this Agreement. ES&S certifies that ES&S has not had an agreement with the State of Nebraska terminated early by the State of Nebraska.

3.28 **Permits, Regulations, laws.** ES&S shall procure and pay for all permits, licenses, and approvals necessary for the execution of the Agreement. ES&S shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations. ES&S acknowledges and agrees that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this Agreement. The Agreement price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks, and copyrights that are in any way involved in the Agreement. ES&S shall pay for all royalties and costs, and the Customer shall be held harmless from any such claims.

3.29 **Ownership of Data.** Customer has the unlimited right to publish, duplicate, use, and disclose all data developed or derived by ES&S pursuant to this Agreement.



3.30 **ES&S Insurance Requirements.** ES&S shall comply with the insurance requirements set forth on Exhibit G attached hereto and incorporated herein by this reference.

3.31 **Customer Self-Insurance.** Customer is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this Agreement, ES&S may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. Customer retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

3.32 **Contractor Responsibility.** ES&S is solely responsible for fulfilling the Agreement, with responsibility for all services offered and products to be delivered as stated in the Agreement. ES&S shall be the sole point of contact regarding all contractual matters. ES&S agrees that it will not utilize any Subcontractors in the performance of the Agreement without the prior written authorization of Customer. ES&S shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the Agreement.

3.33 **ES&S Personnel.** With respect to its employees, ES&S agrees to be responsible for the following:

- a. any and all employment taxes and/or other payroll withholding;
- b. any and all vehicles used by ES&S' employees, including all insurance required by state law;
- c. damages incurred by ES&S' employees within the scope of their duties under the Agreement;
- d. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing state law; and
- e. determining the hours to be worked and the duties to be performed by the ES&S' employees.

3.34 **Site Rules and Regulations.** ES&S shall use commercially reasonable efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State or Political Subdivision premises. If ES&S must perform on-site work outside of the daily operational hours set forth by the State or Political Subdivision, it must make arrangements with the State or Political Subdivision to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State or Political Subdivision on the basis of lack of access, unless the State or Political Subdivision fails to provide access as agreed to between the State or Political Subdivision and the Contractor.

3.35 **Inspection and Approval.** Final inspection and approval of all work required under the Agreement shall be performed by the designated Customer officials. Customer and/or its authorized representatives shall have the right to enter any premises where ES&S or Subcontractor duties under the Agreement are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

3.36 **Disaster Recovery/Back Up Plan.** ES&S shall have a disaster recovery and back-up plan, of which a copy should be provided to Customer upon request, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under these specifications in the event of a disaster.

3.37 **Invoices.** Invoices for payments must be submitted by ES&S to the agency requesting the services with sufficient detail to support payment as determined by Customer. The terms and



conditions included in ES&S' invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon Customer, and no action by Customer, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping Customer with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by Customer as an amendment to the Agreement.

3.38 **Payment.** Customer will render payment to ES&S in accordance with the payment terms set forth on Exhibit A. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). Customer may require ES&S to accept payment by electronic means such as ACH deposit.

3.39 **Penalty.** In the event that ES&S fails to perform any substantial obligation under the Agreement, Customer may withhold monies due and payable to ES&S for those specific items which ES&S fails to perform, without penalty, until such failure is cured or otherwise adjudicated.

3.40 **Administration Upon Agreement Termination.**

- a. ES&S must provide confirmation that upon Agreement termination all deliverables prepared in accordance with this Agreement and paid for by the Customer shall become the property of Customer; subject to the ownership provision (section 3.3) contained herein, and is provided to Customer at no additional cost to Customer.
- b. ES&S must provide confirmation that in the event of Agreement termination, all records that are the property of the Customer will be returned to Customer within thirty (30) calendar days. Notwithstanding the above, ES&S may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of ES&S' routine back up procedures.

3.41 **Political Subdivisions.** ES&S may extend the Agreement to political sub-divisions conditioned upon the honoring of the prices charged to Customer. Terms and conditions of the Agreement must be met by political sub-divisions. Under no circumstances shall Customer be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

3.42 **Entire Agreement.** This Agreement, including Exhibits A through F (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces 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. ES&S may engage duly qualified subcontractors to perform certain of the services to be provided hereunder, but shall remain fully responsible for such performance. The terms of sections 3.2, 3.3, 3.4, 3.6, 3.12, 3.18, 3.19, 3.20, 3.22, 3.29, 3.30, 3.40 and this Section 3.42 shall survive the termination of this Agreement to the extent applicable.

[END OF GENERAL TERMS]



**EXHIBIT A
PRICING AND PAYMENT SUMMARY**

Fee Summary:		
Description	Refer to	Amount
Maintenance and Support Fees Year 1 – Coverage Dates 7/1/2017 – 6/30/2018 Year 2 – Coverage Dates 7/1/2018 – 6/30/2019 Year 3 – Coverage Dates 7/1/2019 – 6/30/2020 Year 4 – Coverage Dates 7/1/2020 – 6/30/2021 Year 5- Coverage Dates 7/1/2021 – 6/30/2022 Once the Agreement is signed, an invoice will be submitted to the state for Year 1 of the maintenance and support fees.	Exhibit C	\$ 520,000.00 \$ 520,000.00 \$ 520,000.00 \$ 520,000.00 \$ 520,000.00
Hosting Services Fees Year 1 – Coverage Dates 7/1/2017 – 6/30/2018 Year 2 – Coverage Dates 7/1/2018 – 6/30/2019 Year 3 – Coverage Dates 7/1/2019 – 6/30/2020 Year 4 – Coverage Dates 7/1/2020 – 6/30/2021 Year 5- Coverage Dates 7/1/2021 – 6/30/2022 The fees shall be due and payable on a monthly basis during the Term of the Agreement. The first payment shall be due on the first day of the month in which the Hosting Services are made available to the Customer.	Exhibit D	\$ 397,000.00 \$ 397,000.00 \$ 397,000.00 \$ 397,000.00 \$ 397,000.00
Third Party Items	Exhibit E	Included in price of hosting services
Total Fees		\$4,585,000.00
Terms and Conditions:		
<p>Note 1: Payment Terms for the Services Provided herein shall be as follows:</p> <ul style="list-style-type: none"> • Maintenance and Support Fees: Year 1 Fees shall be due within thirty (30) days of Agreement Execution. Thereafter, shall be due within thirty days of receipt of ES&S invoice which shall be issued in July of the coverage year. • Hosting Services Fees: The Customer agrees to pay ES&S a monthly fee for Hosting Services during the Term of the Agreement. The first payment shall be due on the first day of the month in which the Hosting Services are made available to the Customer. Thereafter, payment for the Hosting Services shall be due within thirty (30) days of receipt of an invoice from ES&S. • Additional Services Fees per Exhibit F: Due within thirty (30) days of Customer's receipt of ES&S invoice which shall be provided by ES&S upon the completion of the applicable service. 		

EXHIBIT B
ES&S Software Modules Licensed by the State of Nebraska
PowerProfile EE

(Check all that apply)

- X Voter Registration Module
- X Absentee Module
- X Election Worker Module
- X Election Management Module
- X Polling Place Module
- X Street File Module
- X Notices Module
- X Image Indexing Module
- X Petitions Module
- X Public Service Requests Module
- X Voter View
- X Agency Central
- X PowerScan
- X NVRA
- X NCOA
- X Job Processor
- X Mass Change
- X MS Word Integration
- X Candidate Filing(Enabled upon customer request)
- X GIS
- X iPowerProfile
- X New or existing Modules within the PowerProfile EE product not currently used by the Customer (To be agreed upon by the parties)

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EXHIBIT C
ES&S Software Maintenance & Support

1. **SERVICES PROVIDED.** Upon Customer's payment of the Software Maintenance and Support fees set forth on Exhibit A (the "Maintenance Fee"), ES&S shall provide Software Maintenance and Support during the Term. The respective support responsibilities of the parties for maintenance and support are set forth herein.

2. **REINSTATEMENT OF MAINTENANCE SERVICES.** If the Term expires without being renewed, Customer may thereafter resume receiving Software Maintenance and Support services upon (a) notification to ES&S, (b) payment of all Maintenance Fees which would have been due to ES&S had the Term not expired, and (c) the granting to ES&S of access to the System, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support services.

3. **SYSTEM ADMINISTRATORS.** The customer shall always have two (2) designated State System Administrators. ES&S shall be notified of their names, telephone numbers and email addresses.

4. **UPDATES AND NEW PRODUCTS.**

(a) **UPDATES.** ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation ("Updates"), on a schedule defined by ES&S. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer is responsible for obtaining any upgrades or purchases of third party hardware and/or software required to operate the Update. All Updates shall be subject to the license and hosting terms upon delivery. ES&S production support staff will install all statewide PowerProfile EE releases. If a specific Customer install is required, ES&S will send recommended instructions in order for the Customer to install the Update. ES&S will provide an updated PowerProfile User Guide at the time of install or at the time ES&S sends the recommended install instructions, if Customer will be installing the Update. ES&S may charge Customer at the rates set forth in Exhibit F to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) 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. Customer shall report any failure of performance of an Update within 3 business days after the Update is, or is required to be, installed.

(b) **NEW SOFTWARE PRODUCTS.** From time to time, ES&S may offer new software products that are not currently included within the ES&S Software license or hosted services hereunder to Customer as outlined in Exhibit B ("New Products"). Customer may elect to license or access a New Product provided Customer continues to maintain and pay for all license, maintenance and hosting services set forth in Exhibit A for the Term of the Agreement. In the event ES&S has a replacement or next generation voter registration system available, ES&S agrees to provide such replacement or next generation voter registration system to Customer at no additional cost provided Customer continues to maintain and pay for all license, maintenance and hosting services set forth in Exhibit A for the Term of the Agreement.

5. **CONDITIONS.** ES&S shall not be obligated to provide Software Maintenance and Support services if:



- (a) the ES&S Software is not used with hardware and software meeting specifications supplied by ES&S;
- (b) the hardware and software used with the ES&S Software is not in good operating order or is not installed in a suitable operating environment;
- (c) the hardware does not have a current warranty or support agreement by the original vendor
- (d) the ES&S Software or any hardware or software with which the ES&S Software is used is modified, changed or altered without ES&S' prior authorization or approval in writing;
- (e) the data and/or the database structure used in conjunction with the ES&S Software is manipulated using application software other than the ES&S Software;
- (f) the failure of performance is caused by Customer, its employees or authorized representatives, or any third party;
- (g) Customer does not notify ES&S of the failure of performance within 5 business days of discovering the failure of performance and is otherwise not in compliance with its obligations hereunder. For purposes of this section, notice by a county election official in Nebraska or their employee constitutes notice by the Customer; or
- (h) Customer does not pay any Maintenance Fee on a timely basis.

6. **SUPPORT HOURS.** ES&S will maintain support Monday – Friday from 7:00 am – 6:00 pm CST. A support member or an automated voice mailbox will greet the caller. Outside of the times noted, ES&S provides after-hours emergency help line support. When calling ES&S' toll-free help-line outside of regular hours, an on-call Support Specialist will return the call and work to resolve the problem. Response times on all calls during non-business hours will be within 2 hours. Priority 1 calls will still be a 30 minute call back time.

7. **SUPPORT CONTACT INFORMATION.** The following is the support contact information for ES&S.

Phone: 1-800-353-2832

Fax: 1-402-970-1284

Email: helpdesk@essvote.com

Only send non-critical support requests to our Internet e-mail address. Upon receipt, your request will be entered into our call tracking system and will follow the same process had you called the helpdesk from our toll-free number.

8. **TRAINING.** ES&S will provide up to 100 hours of on-going training either on-site or via WebEx per each year of the Term. The 100 hours of training will be included as part of the annual maintenance fee. If training is required on-site, the customer will pay actual cost for facilities, airfare, room and board, and mileage at the State's mileage rate. Cost will be submitted in advance and approved by the Customer by means of an ES&S Change Order.

If additional training is requested by the State or County, ES&S will provide a change order for approval outlining the financial cost.

9. **SUPPORT.** ES&S provides four tiers of support and corresponding support representatives defined below:

- **Tier 1** – used during high volume times, Tier 1 will be used to answer calls, log tickets, and determine prioritization of calls.
- **Tier 2** – incidents / requests are normally resolved by our customer service representative. Occasionally, coordination with other ES&S departments is necessary.
- **Tier 3** – incidents / requests require resolution by a dedicated Nebraska Customer Account Specialist experienced in troubleshooting software and hardware issues.

- **Tier 4** – incidents require support from senior network or application software engineers and / or skilled database administrators.

ES&S incorporates a prioritized response process to manage maintenance issues and hardware or software enhancement / defect submittals. Incidents and service requests are escalated to the appropriate resource based on the level of support required. During the mission critical time periods, ES&S works to resolve issues within 24 hours. Below are descriptions of each support level.

The level of call escalation priorities are defined as follows:

Priority 1 – URGENT Users are experiencing an urgent software or hardware technical failure which is inhibiting the ability to perform election-critical functions. (Priority 1 often indicates an entire system failure and all users have no capabilities). Priority 1 calls are returned within 30 minutes and resolved as quickly as possible. In order to decrease downtime, workarounds may be necessary.

Priority 2 – SERIOUS Users are experiencing a serious software or hardware technical failure, causing loss of productivity during election-critical periods. Priority 2 calls are returned within 1 hour.

Priority 3 – IMMEDIATE Users are experiencing a software or technical malfunction or are in need of assistance with a process, which is causing loss of productivity during election critical periods. Priority 3 calls are returned within 1 hour.

Priority 4 – QUESTION Users have questions related to software or hardware technical function. Priority 4 calls will be returned within a 2 hour timeframe to answer basic system questions or to set a time for a “walk thru” of a process.

Priority 5 – MINOR Users are experiencing a minor software or technical problem which is causing loss of productivity during non-election periods. Priority 5 calls will be returned within a 2 hour timeframe

Priority 9 – CLIENT IN THE OFFICE Users have an immediate need because you have a registrant, a candidate or some other individual in the office and you need information from the application at that moment. Examples might be help with a PSR, Printing a report, printing an ID card. These tickets are handled with a high priority. Priority 9 calls will be returned within minutes.

Responsibilities of ES&S	Responsibilities of Customer
<ul style="list-style-type: none"> ➤ ES&S Software support as outlined in the Agreement. ➤ Installation of database software upgrades. ➤ Database analysis and recommendation of tuning parameters as required. ➤ Implement tuning recommendations approved by Customer as required. ➤ Outline operational and technical requirements for a Backup and Recovery Strategy. ➤ Outline procedures and provide scripts for performing routine database exports. ➤ Notification of OS Service Packs approved by ES&S. ➤ Assist Customer in its performance of the following: <ul style="list-style-type: none"> ▪ Hardware problem diagnosis ▪ Software problem diagnosis ▪ Support of ES&S approved third-party software required to run ES&S Software Products. ▪ Provide Update impact planning and assistance ▪ Provide server and database recovery as set forth in the Disaster Recovery/Back Up Plan pursuant to Section 3.36 of this Agreement and in compliance with the Service Level requirements set forth in Exhibit D Software Hosting Services Terms. ▪ Work with technicians to resolve problems after Customer has contacted the appropriate vendor. ▪ Coordinate with the Customer to set a schedule when routine maintenance or Updates will be performed. ▪ Provide hardware problem diagnosis and resolution. ▪ Provide third-party software problem diagnosis and resolution. ▪ Provide support of approved client operating systems – Windows 7, 8.1 and 10 32/64-bit (Professional/Enterprise) ▪ Provide support for ES&S approved third-party software required to run the ES&S Software products. ▪ Contact the appropriate vendor if replacement of parts is necessary. ▪ Provide backup and archiving of data (including the network operating system, applications, and data.) as set forth in the Disaster Recovery/Back Up Plan pursuant to Section 3.36 of this Agreement and in compliance with the Data Protection Services requirements set forth in Exhibit D Software and Hosting Services Terms. ▪ Perform vulnerability and penetration scans on a monthly basis (or more often upon request by Customer) and provide results to Customer. 	<ul style="list-style-type: none"> ➤ Day-to-day administrative duties related to PC workstation maintenance, including but not limited to, system access, setup printing, monitor system performance and drive capacity. ➤ Become thoroughly familiar with ES&S Software manuals and documentation. ➤ Understand proper use of ES&S Software application functions and proper use of ES&S Software application in the conduct of election management and administration. ➤ Inquire directly with ES&S support for questions regarding use of ES&S Software. ➤ Coordinate with county election officials in Nebraska to establish user credentials to access ES&S Software. Customer acknowledges that ES&S is not responsible for the accuracy of data input in the ES&S Software application by Customer or Nebraska county election officials or their employees. Maintaining and managing Customer purchased software licenses. ➤ Consumables, such as toner ➤ Cost associated with any additional hardware or software required to perform required Updates ➤ PC workstation related routine cleaning, or maintenance and mechanical wear ➤ Damage to Customer's PC workstations caused by or due to the following: <ul style="list-style-type: none"> ➤ misuse, abuse, or neglect ➤ manufacturer's parts ➤ warranted parts that were repaired or replaced by an organization other than those approved by the hardware manufacturer ➤ Inform ES&S Software end-users of the need to follow appropriate PC workstation security practices such as performing operating system updates when they become available, using anti-virus software, and educating themselves about phishing scams.

EXHIBIT D

Software Hosting Services Terms

This Software Hosting Services Agreement ("Hosting Agreement") by and between Election Systems & Software, LLC, a Delaware limited liability company ("ES&S") and the Nebraska Secretary of State's Office on behalf of The State of Nebraska, ("Customer") sets forth the terms and conditions under which ES&S will provide Services to the Customer. Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

**ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in this Hosting Agreement shall have the meanings ascribed to them in this Article 1:

1.1 "AUP" means ES&S' Acceptable Use Policy, which is attached hereto as Schedule D-3 and incorporated herein by this reference.

1.2 "Customer Materials" shall mean all information, content, data or any other materials disclosed or provided to ES&S by the Customer pursuant to the terms and conditions of this Agreement, for the purpose of assisting ES&S with the performance of its obligations under this Agreement.

1.3 "Normal Business Hours" shall mean 8:00 a.m. (CST) through 5:00 p.m. (CST) Monday through Friday, excluding all national holidays (as recognized by the United States Federal Government).

1.4 "Services" means the hosting services described on Schedule D-1 attached hereto.

1.5 "SLA" means the Service Level Agreement described on Schedule D-2.

**ARTICLE 2
ES&S OBLIGATIONS**

2.1 In consideration for the performance of the Customer's obligations hereunder, ES&S shall provide the Services and otherwise perform its obligations hereunder. ES&S represents and warrants that it shall provide the Services in a professional and workmanlike manner, and in accordance with applicable industry standards.

2.2 ES&S shall, within the specifications set forth herein, determine the method, details and means of performing the Services.

**ARTICLE 3
CUSTOMER OBLIGATIONS**

3.1 Customer shall provide ES&S with reasonable and necessary access to Customer's personnel, facilities, computers, computer software, data and Customer Materials during Customer's normal business hours and otherwise as reasonably requested by ES&S, in order to enable ES&S to provide the Services.

3.2 The Customer hereby grants to ES&S a non-exclusive right and license to use, reproduce and/or modify the Customer Materials to the extent necessary to enable ES&S to provide Services. Unless otherwise agreed by the parties, any changes made by ES&S to any Customer Materials shall be the property of the Customer.

3.3 The Customer agrees to comply with the AUP.

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3.4 The Customer hereby represents and warrants that Customer has obtained all necessary authorizations, permissions or licenses to distribute and provide the Customer Materials to ES&S. The Customer hereby represents and warrants that the Customer has the authority to grant the license granted by Customer to ES&S under this Hosting Agreement. The Customer hereby represents and warrants to the best of its knowledge that the use of Customer Materials by ES&S to provide the Services shall not infringe upon or violate any patent, copyright, trade secrets or trademark rights of any third party, or violate any laws, including United States Customs export laws. The Customer hereby represents and warrants that Customer Materials shall not to the best of Customer's knowledge contain any authorization code routines (unless otherwise disclosed to ES&S), viruses, time bombs or disabling routines.

ARTICLE 4 FEES AND EXPENSES

4.1 Customer shall pay ES&S for all Services at the times and in the manner as set forth in this Hosting Agreement as more fully set forth on Schedule D-1 and Exhibit A of the Agreement. The Customer shall reimburse ES&S for reasonable out-of-pocket expenses incurred by ES&S in the rendition of the Services (collectively the "Out-of-Pocket Expenses") if such expenses occur as a result of an act or omission by Customer which results in nonconformance with the term and conditions of this Agreement. ES&S shall furnish documentation verifying the Out-of-Pocket Expenses for which ES&S seeks reimbursement. ES&S shall furnish Customer a monthly invoice, which shall describe the Services rendered and the amount due to ES&S. Customer shall pay all undisputed amounts due and owing within thirty (30) days. Any undisputed payment that is past due to ES&S shall bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

4.2 Customer's failure to make any undisputed payment owing and due to ES&S shall be considered a material breach of this Hosting Agreement. As such, ES&S may issue a Non-Payment Notice to Customer, which, if not satisfied within thirty (30) days after the receipt thereof, shall constitute grounds for ES&S to terminate this Hosting Agreement in its sole discretion.

ARTICLE 5 TERM AND TERMINATION

5.1 The Services shall commence on the date in which ES&S notifies the Customer that the Services are available to the Customer and shall continue for the remaining Term of the Agreement.

5.2 This Hosting Agreement may be terminated, in writing, by either party in accordance with the termination provisions set forth in Section 3.1 of the Agreement. Notwithstanding the foregoing, in the event ES&S or Customer terminates this Hosting Agreement for any reason other than as a result of an uncured breach committed by ES&S or the unavailability of funds as referenced in Section 3.1 of the Agreement, Customer shall be responsible for paying for all hosting services rendered by ES&S to Customer before termination of the Hosting Agreement occurs. Such payment for services rendered shall be paid by Customer within thirty (30) days from the termination of this Hosting Agreement. If ES&S has provided services and there are no longer funds legally available to pay for such services, then ES&S may file a claim for payment for such services with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board.

ARTICLE 6 OWNERSHIP AND LICENSE

6.1 **Intellectual Property.** Except as expressly set forth in this Hosting Agreement, each party acknowledges and agrees that nothing in this Hosting Agreement shall transfer any right, title or interest in any of either party's trade secrets, code, software, inventions, trademarks, copyrighted works of authorship or any other intellectual property (the "Intellectual Property"). Further, ES&S shall own all equipment and software associated with the performance of the Services hereunder.



6.2 **Data.** The Customer shall exclusively own all rights, title and interest in and to all of the data generated by Customer and any political subdivisions utilizing the voter registration software.

ARTICLE 7 WARRANTIES AND WARRANTY DISCLAIMER

7.1 Each party hereby represents and warrants unto the other as follows:

a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and has full power, authority and legal right to carry on its present business, incur the obligations provided for in this Hosting Agreement, execute and deliver this Hosting Agreement and to perform and observe the terms and provisions hereof;

b. This Hosting Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof;

c. The execution, delivery and performance of this Hosting Agreement have been duly authorized by all necessary action on the part of such party, and this Hosting Agreement has been duly executed and delivered by its authorized signatory;

d. The execution, delivery and performance of this Hosting Agreement will not violate or exceed the power of such party, or contravene any provision of any applicable law, regulation, decree or order to which such party is subject or any provision of any Agreement or Hosting Agreement to which such party is a party, or which is binding upon it or any of its assets; and,

e. All authorizations, consents, approvals and licenses required for the execution, delivery and performance of this Hosting Agreement have been or will be duly obtained or granted and are or will be in full force and effect.

7.2 EXCEPT AS OTHERWISE NOTED IN THIS HOSTING AGREEMENT , EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND PERTAINING TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

ARTICLE 8 LIMITATION OF LIABILITY

8.1 The limitation of liability shall be as set forth in Section 3.2 of the General Terms of the Main Agreement, except that ES&S's total aggregate liability for damages in any way arising out of, or relating to this Hosting Agreement, regardless of the form of action, damage, claim, liability, costs, expense or loss, whether in Agreement, statute, tort (including without limitation negligence) or otherwise, is limited to the direct damages not to exceed the total price as set forth in this Hosting Agreement as modified by any later amendments, whichever is greater.

ARTICLE 9 MISCELLANEOUS

9.1 All Assignments, Transfers, and Subcontracting with respect to this Hosting Agreement are subject to the terms and conditions of Section 3.9 and 3.32 of the Agreement.

9.2 If any term of this Hosting Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Hosting Agreement will remain in full force and effect.



9.3 No right of either party under this Agreement may be waived except as expressly set forth in a writing signed by an authorized representative of the party waiving such right. No waiver of any provision shall be implied by a party's failure to enforce any of its rights or remedies provided in this Agreement, and no express waiver shall affect any provision other than that to which the waiver is applicable and only for that occurrence.

9.4 All notices with respect to this Hosting Agreement are subject to the terms and conditions of Section 3.12 of the Agreement.

9.5 This Hosting Agreement, together with the Schedules attached hereto, and those specific provisions of the Agreement as set forth herein which are incorporated herein by this reference, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein. It may not be amended except by written agreement of the parties.

9.6 Articles 6, 7, 8 and 9 shall survive the termination of this Agreement, to the extent applicable.

9.7 Each party shall take such additional actions, including the execution of any and all additional documents, as may be reasonably necessary to effectuate the purposes of this Hosting Agreement, at its own cost.

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SCHEDULE D-1

1. Definition of "Hosting Services". "Hosting Services" shall mean the physical hosting of the separately licensed ES&S software upon ES&S' equipment within its data center. The following physically and logically separate environments will be hosted by the ES&S: (1) Production, (2) Training, and (3) Testing. ES&S shall establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to guard against the unauthorized access to, destruction, loss, or alteration of the Customer's Data. ES&S shall only be obligated to provide support to the hosting environment under this Agreement. All support and maintenance of the ES&S Software shall be in accordance with the maintenance and support provisions of Exhibit C of the Agreement.

2. Required Third Party Products. ES&S will provide and maintain all third party products necessary to host the ES&S Software.

3. Pricing. The Customer agrees to pay ES&S a monthly fee for Hosting Services during the Term of the Agreement. The first payment shall be due on the first day of the month in which the Hosting Services are made available to the Customer. Thereafter, payment for the Hosting Services shall be due within thirty (30) days of receipt of an invoice from ES&S.

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SCHEDULE D-2
Service Level Agreement

Service Level Agreement. This Service Level Agreement ("Agreement"), Schedule D-2, sets forth the details regarding the level of service and technical support available for the Hosting Services.

1. Restrictions

Confidential Information. Each party (the "Receiving Party") shall keep confidential and not disclose to any person or entity any proprietary or confidential information that it has learned or learns relating to the business of the other party (the "Disclosing Party's"), including the Disclosing Party's financial information, actual and prospective customer lists, marketing plans and projections, research and development, pricing strategies, agreements with third parties, know-how and the Improvements (collectively the "Confidential Information"). Confidential Information, however, does not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; or (c) is published or otherwise made known to the public by the Disclosing Party. The Receiving Party shall refrain from using the Confidential Information of the Disclosing Party except to the extent necessary to perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Confidential Information to only those who have a need to know the Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons will be informed of and will agree to the provisions of this Section 1, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena or an order or other legal process or requirement of law so long as it shall (x) first notify the Disclosing Party of such request or requirement; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon termination of this Agreement or earlier upon request by the Disclosing Party, the Receiving Party shall return to the Disclosing Party (or destroy, if requested to do so by the Disclosing Party) any documents or other information or materials in its possession or under its control, which constitute the Confidential Information.

In addition to the foregoing, all materials and information provided by the Customer or acquired by ES&S on behalf of the Customer shall be regarded as Confidential Information. All materials and information provided by the Customer or acquired by ES&S on behalf of the Customer shall be handled in accordance with Federal and State Law, and ethical standards. ES&S ensures the confidentiality of such materials or information. Should said confidentiality be breached by ES&S; ES&S shall notify the Customer immediately of said breach and take immediate corrective action. It is incumbent upon ES&S to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

The Customer shall own all Customer data including data generated by any political subdivision utilizing the voter registration software that may reside within ES&S's hosting environment and/or equipment/media. Upon termination of the services, for any reason, ES&S agrees to return all original Customer owned data to the Customer. Following the Customer's verified receipt of the original Customer owned data, the ES&S agrees to physically and/or electronically destroy or erase the Customer owned data.



2. Service Level

ES&S will use commercially reasonable efforts to provide a target 99.9% Service Level. Service Level is defined as the percentage of time in a month, less Excluded Downtime, that the environment is accessible across the Internet via tcp port 443. Downtime is defined as the time the environment is not accessible across the Internet via tcp port 443 with a duration greater than 10 minutes. Excluded Downtime includes time the environment is not accessible across the Internet via port tcp 443 caused directly or indirectly by the following:

- Software configuration changes not made or approved by ES&S;
- Hardware configuration changes not made or approved by ES&S;
- Regular scheduled or emergency system maintenance agreed to by Customer and ES&S;
- Failure of any components or services not managed by ES&S including but not limited to external hardware, network access, and third party vendor support.
- Issues beyond ES&S' and its subcontractor's reasonable control, including, without limitation, denial of service or similar attacks, DNS resolution, domain name expiration, external hardware, software or network failure, Internet degradation or outages, SYN attacks, and other similar events or any Force Majeure Event.

If a disruption of the hosted Service occurs, ES&S will assign the highest priority and will make commercially reasonable efforts to ensure the timely restoration of the Services.

Level	Definition	Support Ticket Entry	Ack.	Resolution target	Expectations
Emergency	Critical systems down. Severe security and/or operational implications to Customer.	15 Min	30 Min	Incident will be resolved as soon as possible at the highest priority level.	Support Center/Help Desk will provide Customer with updates, status reports, and notification of expected delays. Manager notification by Support Center/Help Desk. Customer emergency requests require that a Customer contact be available to ES&S at all times. Updates to Customer every hour, or as requested.
Critical	Serious disruption to Customer business where there is no alternative or work around. Serious security and/or financial implications to agency/Customer.	30 Min	1 Hour	2 Hours	Support Center/Help Desk will provide Customer with updates, status reports, and notification of expected delays. Updates to Customer every 2 hours or as requested.
Normal	Affects small number of users. Causes inconvenience for Customer or somewhat delays Customer business. Prevents some use of a fully supported service by an agency or individual.	30 Min	4 Hours	3 Business days	3 Business days for resolution

DEFINITIONS (Standard Priority Levels Continued)

- Support Ticket entry – Time frame between when Support Center/Help desk receives the Agency email and/or call and when the issue is entered into the Support Ticket process.
- ACK = Acknowledgement – Time frame for technician to review and acknowledge the assignment.
- Resolution Target - Target time for resolution of issue begins when the technician acknowledges the assignment. Target time can be exceeded and negatively impacted by limited staff availability, availability of repair parts, distance to site, older tickets with same priority, and problem determination.

Data Protection Services

- Data Protection Services shall be completed in accordance with the Disaster Recovery/Back Up Plan pursuant to Section 3.36 of this Agreement.
- All business data shall be stored in at least two physical servers at the datacenter.
- Daily differential backups will be retained for 7 days.
- Weekly backups will be retained for 13 weeks.
- Replication between the primary database and the standby database will be performed on an on-demand basis, with differential logs being applied every 15 minutes.

3. Data Center

General Facility Features

- Subfloor Cable Management and Power Distribution
- Conditioned AC Power
- 24/7/365 Network Operations Center

Security Systems

- Biometric Fingerprint Readers
- Card/PIN Access
- Combination Lock Cabinets
- 24/7/365 Monitored Video Surveillance

Environmental Controls/Redundancy

- Redundant Backup Power with Multiple UPSs and Generators
- Redundant Network Infrastructure
- Controlled Temperature and Humidity Via HVAC Units
- Dry Pipe/Gas Dual-action Fire Suppression System
- Geographic Diversity/Redundancy via Other Peak 10 Data Centers



Internet/Access Options

- Burstable up to 100 Mbps or More
- Diverse Fiber Entry Points
- Redundant Internet with Multiple Tier 1 providers

Data Center Certifications

- SAS 70 Type II
- Health Insurance Portability and Accountability Act (HIPAA/HITECH)
- Payment Card Industry (PCI) Data Security Standard (DSS)
- Sarbanes-Oxley (SOX)
- ISO 27001 (formerly ISO 17799)
- Gramm-Leach-Bliley (GLBA)

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SCHEDULE D-3
ES&S Acceptable Use Policy (“AUP”)

This Acceptable Use Policy sets forth guidelines relating to the types of content that the Customer may upload to ES&S servers under this Agreement.

- 1. Acceptable Use.** The following constitute violations of this Acceptable Use Policy:
 - (a) Using the Services to transmit or post any material that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder.
 - (b) Using the Services to control devices in a manner that can be dangerous to individuals or personal property.
 - (c) Using the Services to monitor sensors or devices without the consent of the sensor or devices' owners.
 - (d) Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of ES&S or another entity's computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data.
 - (e) Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
 - (f) Reselling the Services without the prior written authorization of ES&S.
 - (g) Using the Services for any activity that adversely affects the ability of other people or systems to use the Services or the Internet. This includes but is not limited to “denial of Service” (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited.

- 2. Cooperation with Investigations & Legal Proceedings.** ES&S may, without notice to Customer (a) report to the appropriate authorities any conduct that it believes violates applicable criminal law, and (b) provide any information it has about any Customer in response to a formal or informal request from a law enforcement or government agency, or in response to a formal request in a civil action that on its face meets the requirements for such a request.



EXHIBIT E
Third Party Products

If additional new software products or enhancements, as outlined in Exhibit C, Section 4(b) or Exhibit F, are licensed that require additional third party products, ES&S will outline associated costs on a change order for the Customer's review and payment.

Customer will purchase SSL Certificates required to operate ES&S Software and transfer the Certificates to ES&S to be installed by ES&S into the hosting environments.

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EXHIBIT F
Additional Services

1. **SYSTEM ENHANCEMENTS.** From time to time, the Customer may request enhancements to the system. Enhancements can be requested due to changes in state or federal law, as well as modifications the state or county would like to the system. When an enhancement is needed, it should be requested through the ES&S helpdesk as they will log an enhancement into the ES&S' tracking system. Thirty days prior to ES&S scoping the next general release, the state enhancement list will be submitted to the state administrators. The state administrators will prioritize the enhancement request, notate the ones that are being requested specifically for the next general release, and return the list within thirty days of receipt. ES&S will then evaluate the enhancement list, estimate the level of effort, and formulate a plan for release inclusion. A change order will then be presented to the State for signature that outlines the work level for each enhancement.

2. **SERVICE FEES.** Additional Services may be requested by Customer from time to time under this Agreement. All additional changes will be presented through the change order process. Customer shall only pay for those services which Customer requests and for which services are performed.

3. **INVOICING.** The number or hours outlined in the financial impact of the change order along with the total price, based on the rates below, will be invoiced to the Customer once the agreed upon enhancement or additional service is installed by ES&S in the TEST environment and has been validated and determined to be functioning by Customer. ES&S will contact the Customer to arrange for install into the TEST, TRAINING, and PRODUCTION environments.

4. **RATES.**

Title	7/1/2017 – 6/30/2018	7/1/2018 – 6/30/2019	7/1/2019 – 6/30/2020	7/1/2020 – 6/30/2021	7/1/2021 – 6/30/2022
Systems Analyst	\$170.00	\$175.00	\$180.00	\$185.00	\$191.00
Developer	\$175.00	\$180.00	\$185.00	\$191.00	\$197.00
Quality Assurance	\$150.00	\$155.00	\$160.00	\$165.00	\$170.00
Network Engineer	\$175.00	\$180.00	\$185.00	\$191.00	\$197.00
DBA	\$175.00	\$180.00	\$185.00	\$191.00	\$197.00
Documentation Writer	\$125.00	\$129.00	\$133.00	\$137.00	\$141.00

*Rates are stated in Per Hour increments.

** ES&S reserves the right to increase the individual rates set forth above by not more than six percent (6%) of the most recent fees paid by the Customer for any Renewal Term hereunder

EXHIBIT G
Insurance Requirements

ES&S shall not commence work under this Agreement until all the insurance required hereunder has been obtained and such insurance has been approved by the Customer. ES&S shall maintain all required insurance for the life of this Agreement and shall ensure that the Customer has the most current certificate of insurance throughout the life of this Agreement. If ES&S will be utilizing any Subcontractors, ES&S is responsible for obtaining the certificate(s) of insurance required herein under from any and all Subcontractor (s). ES&S is also responsible for ensuring Subcontractor(s) maintain the insurance required until completion of the agreement requirements. ES&S shall not allow any Subcontractor to commence work on any Subcontract until all similar insurance required of the Subcontractor has been obtained and approved by ES&S. Approval of the insurance by Customer shall not limit, relieve, or decrease the liability of ES&S hereunder.

If by the terms of any insurance a mandatory deductible is required, or if ES&S elects to increase the mandatory deductible amount, ES&S shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Insurance coverages shall function independent of all other clauses in the Agreement, and in no instance shall the limits of recovery from the insurance be reduced below the limits required by this paragraph.

1. WORKERS' COMPENSATION INSURANCE

ES&S shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this Agreement and, in case any such work is sublet, ES&S shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of Customer. The amounts of such insurance shall not be less than the limits stated hereinafter.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

ES&S shall take out and maintain during the life of this Agreement such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect ES&S and any Subcontractor performing work covered by this Agreement from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Agreement, whether such operation be by ES&S or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include Customer as Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by Customer shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

3. INSURANCE COVERAGE AMOUNTS REQUIRED



COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Damage to Rented Premises	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3 rd Party Fidelity	\$1,000,000
CYBER LIABILITY	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$10,000,000
SUBROGATION WAIVER	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
LIABILITY WAIVER	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary and any insurance or self-insurance carried by the State shall be considered excess and non-contributory."	

4. EVIDENCE OF COVERAGE

ES&S shall provide the Customer a certificate of insurance coverage complying with the above requirements, which shall be submitted to the attention of Customer.

Secretary of State
Attn: General Counsel
1445 K Street, Suite 2300
Lincoln, NE 68509

402-471-3237 These certificates or the cover sheet shall reference the Agreement number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If Customer is damaged by the failure of ES&S to maintain such insurance, then ES&S shall be responsible for all reasonable costs properly attributable thereto. Notice of cancellation of any required insurance policy must be submitted to Customer, Attn: General Counsel when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.