

**AGREEMENT  
BETWEEN THE  
OHIO SECRETARY OF STATE  
AND  
ELECTION SYSTEMS & SOFTWARE, LLC**

**SECRETARY OF STATE CONTRACT NUMBER 2013-004**

THIS AGREEMENT (together with exhibits and schedules, the "Agreement") is between the Ohio Secretary of State, 180 East Broad Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215 ("Secretary of State"), and Election Systems & Software, LLC, a Delaware limited liability company, 11208 John Galt Blvd., Omaha, Nebraska 68137 ("Consultant").

The parties agree as follows:

**I. NATURE OF AGREEMENT**

A. Consultant shall be engaged as an independent contractor, to fulfill the terms of this Agreement and to act as a consultant to the Secretary of State. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Secretary of State is the sole judge of the adequacy of such services.

B. The Secretary of State enters into this Agreement in reliance upon Consultant's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Consultant warrants that it does possess the necessary expertise and experience.

C. Consultant shall perform the services to be rendered under this Agreement and the Secretary of State shall not hire, supervise, or pay any assistants to Consultant in its performance of services under this Agreement. The Secretary of State shall not be required to provide any training to Consultant to enable it to perform services required hereunder.

D. Consultant acknowledges that if funding for this Agreement is subject to the approval of the Controlling Board of the State of Ohio (the "Controlling Board"), the Secretary of State may not sign the Agreement until such approval is obtained.

**II. TERM**

A. The term of this Agreement shall commence as of the date of the Secretary of State's signature and shall expire on the date the work described in Exhibit A is completed to the satisfaction of the Secretary of State and Consultant is paid in accordance with Article IV ("Compensation"), or on the date terminated as provided in Article VI ("Suspension and Termination"), whichever is sooner (the "Term"), provided that the Term shall expire no later than June 30, 2013.

B. None of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the provisions of Ohio Revised Code ("R.C.") § 3517.13, R.C. § 127.16, or R.C. Chapter 102.

### III. STATEMENT OF WORK

During the Term, Consultant shall perform the services described in Exhibit A ("Statement of Work").

### IV. COMPENSATION

A. Subject to the terms and conditions of this Agreement, and in consideration of the services described in Exhibit A (the "Services"), the Secretary of State shall pay Consultant the fees described in Exhibit A.

B. Consultant shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.

C. Consultant shall submit invoices for the services performed. Each invoice shall meet the requirements of Ohio Admin. Code 126-3-01(A)(5) and shall reference the Secretary of State and its billing address (as set forth below), Consultant's name and address, the contract number set forth at the top of this Agreement, the invoice number, a description of the date of the rendering of service, an itemization of services furnished, including dates of service and total hours worked, if required by Exhibit A, the location or address of where the Services were performed, and the sum due at that time pursuant to the Agreement. Consultant shall send the invoice for review and approval either to [Payables@ohiosecretaryofstate.gov](mailto:Payables@ohiosecretaryofstate.gov) or to the following address:

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

No invoice shall be due earlier than thirty (30) days following the Secretary of State's receipt of a valid invoice. Subject to the terms and conditions of this Agreement, the Secretary of State shall make payment consistent with the provisions of Ohio Admin. Code 126-3-01.

D. In the event that any customer of Consultant, after the Effective Date of this Agreement, negotiates a lower fee structure for the same Services to be provided by Consultant hereunder as set forth in Exhibit A, Consultant shall promptly notify the Secretary of State and shall extend the lower negotiated rate to the Secretary of State for any prospective services to be provided by Consultant under this Agreement.

### V. CERTIFICATION OF FUNDS

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant

statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. § 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board, or in the event that grant funds are used, until such time that the Secretary of State gives Consultant notice that such funds have been made available to the Secretary of State by the Secretary of State's funding source.

## **VI. SUSPENSION AND TERMINATION**

A. The Secretary of State may, at any time prior to the completion of the Services by Consultant under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Consultant.

B. Consultant, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Secretary of State, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting there from, and any other matters the Secretary of State requires.

C. Consultant shall be paid for services rendered up to the date Consultant received notice of suspension or termination, less any payments previously made, provided Consultant has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Secretary of State for which Consultant has not rendered services shall be refunded.

D. In the event that this Agreement is terminated prior to its completion, Consultant, upon payment as specified, shall deliver to the Secretary of State all work products and documents which have been prepared by Consultant in the course of providing services under this Agreement. All such materials shall become, and remain the property of, the Secretary of State, to be used in such manner and for such purpose as the Secretary of State may choose.

E. Consultant agrees to waive any right to, and shall make no claim for, additional compensation against the Secretary of State by reason of such suspension or termination.

F. Consultant may terminate this Agreement upon sixty (60) days prior written notice to the Secretary of State.

## **VII. RELATIONSHIP OF PARTIES**

A. Consultant shall be responsible for all of its own business expenses, including, but not limited to, travel, computers, email and internet access, software, phone service and office space. Consultant shall also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

B. While Consultant shall be required to render services described hereunder for the Secretary of State during the Term, nothing herein shall be construed to imply, by reason of Consultant's engagement hereunder as an independent contractor, that the Secretary of State shall have or may exercise any right of control over Consultant with regard to the manner or method of Consultant's performance of services hereunder.

C. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

D. It is fully understood and agreed that Consultant is an independent contractor and neither Consultant nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Secretary of State or the State of Ohio.

## **VIII. RECORD KEEPING**

A. During performance of this Agreement and for a period of three (3) years after its completion, Consultant shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the Secretary of State as the Secretary of State may reasonably require.

B. Consultant shall permit authorized representatives of the Secretary of State to inspect those portions of Consultant's facilities in which Consultant performs work for the Secretary of State and in which Consultant stores the Secretary of State's materials during normal business hours where the Services are performed, and to perform such further audit or examination as the Secretary of State may reasonably request to assure the Secretary of State of the security of its data and the proper performance of the Services. Such inspection, audit and examination may be made at any time as determined by the Secretary of State during Consultant's normal business hours.

## **IX. RELATED AGREEMENTS**

A. Consultant shall not enter into any subcontract without the express prior written consent of the Secretary of State. All work subcontracted shall be at Consultant's expense. Consultant shall furnish to the Secretary of State a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract. Consultant shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractors, and shall not agree to any provision which seeks to bind the Secretary of State to terms inconsistent with, or at variance from, this Agreement.

B. Consultant warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Secretary of State, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

**X. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE**

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

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

C. Consultant represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio ethics and conflicts of interest laws. Consultant further represents, warrants, and certifies that neither Consultant nor any of its employees will do any act that is inconsistent with such laws.

**XI. NONDISCRIMINATION IN EMPLOYMENT**

A. Pursuant to R.C. § 125.111 and the Secretary of State's policy, Consultant agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.

B. Consultant further agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

C. Consultant represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to R.C. § 125.111(B) and has filed an Affirmative Action Program Verification form with

the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

## **XII. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

A. The Secretary of State retains all right, title and interest in and to all proprietary information provided to Consultant. The Secretary of State grants to Consultant a limited license in the Secretary of State's proprietary information to the extent necessary for Consultant to provide the Services.

B. Consultant retains its existing right, title and interest in and to its intellectual property embodied or to be embodied in the applications, software, materials, and Consultant's proprietary information and technology used by Consultant or provided to the Secretary of State in connection with the Services.

C. Consultant grants to each Ohio county board of elections a nonexclusive license to reproduce and use the software application(s) created by Consultant pursuant to Exhibit A as necessary for the internal business purposes of each BOE, which licenses shall survive the Term. The license granted to each BOE is perpetual and irrevocable.

## **XIII. CONFIDENTIALITY**

A. The Secretary of State may disclose to Consultant written material or oral or other information that Secretary treats as confidential ("Secretary of State's Confidential Information"). Title to the Secretary of State's Confidential Information and all related materials and documentation the Secretary of State delivers to Consultant shall remain with the Secretary of State. Consultant agrees to treat the Secretary of State's Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the Secretary of State, or individuals or organizations about whom the Secretary of State keeps information. By way of example and by no means by way of limitation, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. Such also includes police and investigative records, files containing personal information about individuals or employees of the Secretary of State, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

B. Consultant may disclose to the Secretary of State written material or oral or other information that Consultant considers to be trade secret ("Consultant's Confidential Information"). Title to Consultant's Confidential Information and all related materials and documentation that Consultant delivers to the Secretary of State shall remain with

Consultant. The Secretary of State agrees to treat Consultant's Confidential Information as secret if it is so marked or otherwise identified as such.

C. Consultant's Confidential Information and the Secretary of State's Confidential Information are referred to collectively as the "Confidential Information."

D. The parties agree not to disclose any Confidential Information to third parties and to use it solely to perform the Services or in connection with this Agreement. The parties shall restrict circulation of Confidential Information within their respective organizations and then only to people in the parties' organizations that have a need to know the Confidential Information. The parties shall be liable for the disclosure of such information whether the disclosure is intentional, negligent or accidental, unless otherwise provided below.

E. Neither party shall be liable for any unintentional disclosure of Confidential Information that results despite the party's exercise of at least the same degree of care as it normally takes to preserve and safeguard its own non-public information, except when the party's procedures are not reasonable given the nature of the Confidential Information or where the disclosure nevertheless results in liability to the other party.

F. Consultant shall not incorporate any portion of the Secretary of State's Confidential Information into any work or product, other than a deliverable described in Exhibit A, and shall have no proprietary interest in any of the Secretary of State's Confidential Information. Furthermore, Consultant shall cause or shall have caused all of its employees who have access to the Secretary of State's Confidential Information to execute a confidentiality agreement incorporating obligations the same as those in this Agreement.

G. Consultant's obligation to maintain the confidentiality of the Secretary of State's Confidential Information shall not apply where such: (1) was already in Consultant's possession prior to disclosure by Secretary of State, and such was received by Consultant without obligation of confidence; (2) is independently developed by Consultant; (3) is or becomes publicly available without breach of this Agreement; (4) is rightfully received by Consultant from a third party without an obligation of confidence; (5) is disclosed by Consultant with the prior written consent of the Secretary of State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that Consultant: (a) notifies the Secretary of State of such order immediately upon receipt of the order, and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. Consultant shall return all originals of any Confidential Information and destroy any copies it has made upon termination or expiration of this Agreement.

H. The Secretary of State's obligation to maintain the confidentiality of Consultant's Confidential Information shall not apply where such: (1) was already in Secretary's possession prior to disclosure by Consultant, and such was received by Secretary without obligation of confidence; (2) is independently developed by the Secretary of State; (3) is

or becomes publicly available without breach of this Agreement; (4) is rightfully received by the Secretary of State from a third party without an obligation of confidence; (5) is disclosed by the Secretary of State with the prior written consent of Consultant; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Secretary of State: (a) notifies Consultant of such order immediately upon receipt of the order, and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Secretary of State shall return all originals of any Confidential Information and destroy any copies it has made upon termination or expiration of this Agreement.

I. Consultant may disclose the Secretary of State's Confidential Information to its subcontractors on a need-to-know basis, but they will be bound to the requirements of this Article.

J. Consultant acknowledges that all of the Secretary's obligations with regard to confidentiality are subject to Ohio's Public Records Act, R.C. § 149.43.

#### **XIV. WARRANTIES**

Consultant hereby warrants and represents to the Secretary of State as follows:

A. Each of Consultant's employees assigned to perform services under this Agreement shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be performed in accordance with this Agreement.

B. Consultant warrants that, in performing the Services: (1) Consultant shall comply with the descriptions and representations as to the Services (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements) set forth in this Agreement or in any Exhibit hereto; (2) Consultant shall render the Services in a workmanlike manner consistent with the standards in the industry using appropriately trained personnel; and (3) the Services shall not be in violation of any applicable law, rule or regulation, and Consultant shall have obtained all permits required to comply with such laws and regulations.

C. If the Secretary of State provides written notice to Consultant that any of the Services were rendered in an un-workmanlike manner, or otherwise were not in accordance with the requirements set forth in this Agreement or in any exhibit hereto, then, at the Secretary of State's option, Consultant shall either cause the Services at issue to be performed from the beginning in a workmanlike manner and in accordance with the requirements set forth in this Agreement within thirty (30) calendar days of the Secretary of State's written notice, or, within the same thirty (30) day period, refund to the Secretary of State all fees paid for such Services.



## **XV. INDEMNITY AND LIMITATION OF LIABILITY**

A. Consultant shall indemnify, defend and hold the Secretary of State and its employees harmless from and against any and all liabilities, obligations, losses, claims, damages, costs, charges or other expenses of any kind (including, but not limited to, reasonable attorneys' fees and legal costs) (collectively, "Claims") which arise out of or result from any breach or alleged breach of any representation or warranty made by Consultant hereunder or any Claim that any of the Services or any portion thereof violates any copyright, patent, trademark, trade secret, license, or other proprietary right of any third party. Consultant shall reimburse the State for any judgments for infringement of patent or copyright rights. Consultant shall also indemnify, defend and hold the Secretary of State and its employees harmless from and against any and all Claims for personal injury or damage to property arising out of the furnishing, performance or use of the Services provided hereunder as well as any Claim for payment of compensation or salary asserted by an employee or subcontractor of Consultant. The Secretary of State shall provide Consultant with written notice of any Claim which the Secretary of State believes falls within the scope of this Article XV. The Secretary of State expressly reserves the sole right, at the Secretary of State's option, to control the defense of any such Claim and, in such event, in addition to Consultant's other obligations in this Article XV, Consultant agrees to provide reasonable assistance to the Secretary of State, at Consultant's expense, in the defense of any such Claim. Consultant shall not settle any Claim without the prior written consent of the Secretary of State.

B. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

## **XVI. COMPLIANCE WITH LAWS**

A. Consultant, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

B. Consultant affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If, at any time during the Term, Consultant, for any reason, becomes disqualified from conducting business in the State of Ohio, Consultant shall immediately notify the Secretary of State in writing and shall immediately cease performance of activities under the Agreement.

## **XVII. DRUG FREE WORKPLACE**

Consultant shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places. Consultant shall make a good faith effort to ensure that none of its employees, and none of its permitted subcontractors that are engaged in the work being performed hereunder, shall purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

## **XVIII. CAMPAIGN CONTRIBUTIONS**

Consultant hereby certifies that neither Consultant nor any of Consultant's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. 3517.13, including contributions to the Husted for Ohio campaign committee.

## **XIX. ENTIRE AGREEMENT/WAIVER**

A. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

B. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

C. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

## **XX. NOTICES**

All notices, consents, and communications hereunder shall be given in writing (and may be given via facsimile), shall be deemed to be given upon receipt thereof, and shall be sent to the following addresses.

Notices to the Secretary of State shall be sent to:

The Office of the Ohio Secretary of State  
General Counsel  
180 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
Facsimile: (614) 485-7699

Notices to Consultant shall be sent to:

Office of General Counsel  
Election Systems & Software, LLC  
11208 John Galt Blvd.  
Omaha, Nebraska 68137  
Facsimile: (402) 970-1291

Either party may change the address to which notices should be sent, by written notice to the other party.

#### **XXI. HEADINGS**

The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

#### **XXII. SEVERABILITY**

The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

#### **XXIII. CONTROLLING LAW**

This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Consultant consents to the exclusive jurisdiction and venue of courts located in Franklin County, Ohio for the adjudication of all disputes arising hereunder.

#### **XXIV. SUCCESSORS AND ASSIGNS**

Neither this Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by Consultant, without the prior written consent of the Secretary of State.

#### **XXV. FINDINGS FOR RECOVERY**

Consultant warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is found to be false, this Agreement is void *ab initio* and Consultant shall immediately repay to the Secretary of State any funds paid under this Agreement.

#### **XXVI. DEBARMENT**

Consultant represents and warrants that it is (A) not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant

to either R.C. 153.02 or R.C. 125.25, and (B) not excluded from, or ineligible for, federal assistance programs and thereby is not on the federal government's list of suspended or debarred entities. If these representations and warranties are found to be false, this Agreement is void *ab initio* and Consultant shall immediately repay to the Secretary of State any funds paid under this Agreement.

**XXVII. DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE  
TO A TERRORIST ORGANIZATION**

[intentionally omitted]

**XXVIII. ANTITRUST ASSIGNMENT**

Consultant assigns to the Secretary of State all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

**XXIX. EXECUTION**

This Agreement is not binding upon the Secretary of State unless executed in full.

**XXX. COUNTERPARTS**

A. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

B. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

**XXXI. CONFLICT**

In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

**XXXII. USE IN ADVERTISING OR MARKETING MATERIAL**

Consultant shall not identify the Secretary of State in any of Consultant's advertising or marketing material, sales presentations, or scholarly papers or presentations without the Secretary of State's prior written consent.

**XXXIII. SURVIVAL OF CERTAIN PROVISIONS**

The rights and responsibilities set forth in Articles VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII,

XXXI, XXXII, and XXXIII shall survive suspension, termination, or the expiration of the Term.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**ELECTION SYSTEMS & SOFTWARE,  
LLC**

By: 

Name: Richard J. Laback

Title: VP Finance

Date: 9/18/2012

**OHIO SECRETARY OF STATE**

By: 

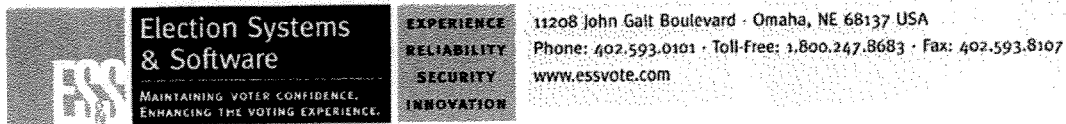
Name: Scott Borgemenke

Title: Assistant Secretary of State

Date: September 19, 2012

***EXHIBIT A***  
***Statement of Work***

**ES&S ERM Results Export Program (EXP) / Ohio Statement of Work**



Ohio Secretary of State

**ES&S ERM RESULTS EXPORT PROGRAM (EXP) ENHANCEMENT  
CUSTOM DEVELOPMENT STATEMENT OF WORK**

September 18, 2012

**Prepared by:**

Shari Little

Director of Software Product Management & User Experience

Bill Malone

Systems Analyst - Software

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## 1 OVERVIEW

### 1.1 Document Scope

This Statement of Work (SOW), attached as Exhibit A to Contract Number 2013-004 (the "Agreement") between Election Systems & Software, LLC (ES&S) and the Ohio Secretary of State ("Customer"), describes the activities to be performed and the deliverables to be provided by ES&S to meet Customer's requirements for the following:

- High-level enhancements to ES&S' election reporting software that extend beyond the current features and functionality of the software to facilitate a custom-developed State Election Results Reporting File.
- Specified services and support.

### 1.2 Special Software/Hardware and Industry Standard Requirements

The ES&S Election Reporting Manager's (ERM) Results Export Program (EXP) is a stand-alone singularly focused application designed to enable users the ability to enter custom codes and interface with the ERM results database to produce a precinct-level, candidate, election results file for all state requested offices. EXP transforms the county election night results stored in the ERM database into pre-defined file formats not supported in ERM.

EXP must reside on each county's computer where ERM is installed. EXP does not aggregate the county results into statewide results or provide connectivity to the state's system. The current EXP version 2.0.6.0 supports ERM versions 7.1.2.x.

The EXP version must be compatible with the installed ERM. Different ERM versions require a particular Liant RM/COBOL runtime version. Therefore, the EXP version must be compatible with the installed ERM and the Liant RM/COBOL runtime version. For example, ERM version 7.1.2.x requires the Liant RM/COBOL runtime version 7.5.1. Therefore, a compatible version of EXP (for example, version 2.0.6.0) must be installed on the county's ERM computer.

EXP was developed to meet the U.S. Elections Assistance Commission's 2002 Voting Systems Standards (Volumes 1 and 2, April 30, 2002; VSS-2002) but has not been submitted to a Voting System Testing Laboratory (VSTL) to date. Because Customer is requiring only functional testing of EXP, EXP will not require federal or state certification for Customer Acceptance testing or for use in any election in Ohio.

### 1.3 The Offering

This offering involves the delivery of a comma separated values (CSV) election results file that contains state defined election data. The file will be created by EXP – which is a singularly focused application designed to enable users the ability to enter custom codes and interface with the Unity Election Reporting Manager's (ERM) results database to produce a precinct-level, candidate, election results file for all requested offices.

This offering proposes the current ES&S ERM Results Export Program (EXP) product version 2.0.6.0 be used as the baseline solution and modified to meet the Customers request. The current feature functionality of ERM Results Export Program (EXP) version 2.0.6.0 shall be modified (as specified in

Sections 2 and 3) to meet the Customers requirements. The enhancements will produce a comma separated values election results file as defined in Appendix B.

Two EXP versions (2.0.7.0 and 3.0.1.0) shall be produced:

- EXP 2.0.7.0 shall be compatible with ERM 7.1.2.1 (RM COBOL 7.5.1) of Unity 3.0.1.1
- EXP 3.0.1.0 shall be compatible with:
  - ERM 7.5.4.0 (RM COBOL 11.01) of Unity 3.2.0.0 Revision 3
  - ERM 7.5.7.0 (RM COBOL 11.01) of Unity 3.2.1.0
  - ERM 7.8.0.0 (RM COBOL 11.01) of Unity 3.4.0.0.

A statewide election night reporting system is not scoped in this effort. Any additional requests for enhancements outside the scope of this SOW may be added in a subsequent product release and will require a separate mutually agreed upon SOW, contract and cost proposal. This SOW does not contemplate the additional cost of services, software license agreements, purchasing ES&S hardware, and licensing Unity or ElectionWare software or any other hardware or software purchases and/or licenses required to successfully run an election.

As a standard practice, ES&S reviews all requests received from customers and subsequently determines whether a customer request fits into one of the four following categories: 1) General Product Enhancement, 2) Custom Request, 3) Outside Product Direction, and 4) Legislative Mandates

- General Product Enhancements are enhancements that ES&S believes benefit the product as a whole and may be considered not billable to the Customer.
- Custom Request enhancements are enhancements that ES&S determines does not benefit the product as whole, and are customer-specific and therefore typically considered billable to the Customer.
- Outside Product Direction are Customer requested enhancements that ES&S determines does not fit within the overall product strategy and will not be considered for inclusion in the product. These items are detailed in section 5 Out of Scope / Constraints.
- Legislative Mandates are similar to Custom Requests and are enhancements that are required in order to comply with state or federal requirements. Such enhancements are still considered customer-specific, and may be billable to the Customer.

## **1.4 Implementation**

1.4.1 The current feature functionality of the EXP version 2.0.6.0 consists of:

- Assign state issued precinct codes
- Assign state issued contest codes
- Assign state issued candidate codes
- Produce hardcopy report cross-referencing state precinct codes to county precinct codes
- Produce hardcopy report cross-referencing state contest and candidate codes to county office and candidate codes
- Enter the state county code for inclusion in the State Election Reporting file
- Produce a State Transfer XML file containing election results with the state assigned county code, precinct codes, and contest and candidate codes
- Save the State Transfer XML file to the ERM drive

- Save the State Transfer XML file to a user selected removable device.

1.4.2 The following applications and installations are required to meet the requirements for requested enhancements to the current feature functionality:

1.4.2.1 Election Reporting Manager (ERM). The ERM must be installed on the county workstation. If a county does not have ERM, the individual county or Customer will be responsible for paying ES&S a license fee for ERM in order to use the ERM Results Export Program (EXP).

1.4.2.2 ES&S ERM Results Export Program (EXP). The EXP (compatible version) must be installed on the county workstation where ERM is installed. EXP is the program that transforms the ERM data into the file format that is imported into the State's Election Results Reporting System (SERRS).

1.4.2.3 Liant RM/COBOL Runtime version. This software platform is an integral software program to facilitate the function of ERM and EXP. The Liant RM/COBOL Runtime version must be compatible with the ERM and EXP version installed on the county workstation.

1.4.2.4 State's Election Results Reporting System (SERRS). SERRS is Customer's state managed system that will accept the file created by EXP.

1.4.2.5 Connectivity/Upload Capability. Customer must provide the counties with connectivity and file upload capability.

## 2 PROJECT SCOPE

### 2.1 Customer Request

ES&S shall deliver a solution for the creation of a file that contains election results data that can be processed by Customer's State Election Results Reporting System (SERRS). ES&S shall develop Customer's requested enhancements to the current feature functionality of EXP as detailed in Section 1.4.1. In addition, the enhancements shall be provided in two EXP versions as follows:

- EXP version 2.0.7.0 shall include the requested enhancements and be compatible with ES&S Unity 3.0.1.1 with ERM version 7.1.2.1, running under Liant RM/COBOL runtime version 7.5.1.
- EXP version 3.0.1.0 shall include the requested enhancements and be compatible with ES&S Unity 3.2.1.0 with ERM version 7.5.7.0, Unity 3.2.0.0 Revision 3 with ERM version 7.5.4.0, and Unity 3.4.0.0 with ERM 7.8.0.0, all running under Liant RM/COBOL runtime version 11.01.

### 2.2 Requested Enhancements-Specifications

#### 2.2.1 Ohio State Election Results Reporting File

The Ohio State Election Results Reporting File shall be produced in the industry standard comma separated values (CSV) format. Appendix B presents the complete Ohio State Election Results Reporting File specification.

**2.2.2 Ohio EXP User Interface format.**

The current EXP User Interface shall be modified as follows:

- Accommodate Ohio SOS state assigned precinct code format.
- Accommodate Ohio SOS state assigned candidate code format.

**3 DELIVERABLES**

The primary deliverables for this SOW are two EXP versions (2.0.7.0 and 3.0.1.0) both including the current ERM Results Export Program (EXP) version 2.0.6.0 feature functionality, enhanced with the Ohio State Election Results Reporting File enhancements (section 2.2.1) and the Ohio EXP User Interface enhancements (section 2.2.2). These enhanced EXP versions (2.0.7.0 and 3.0.1.0) along with the corresponding ES&S Unity 3.0.1.1, 3.2.1.0, Unity 3.2.0.0 Revision 3, and Unity 3.4.0.0 features shall produce the Ohio State Election Results Reporting File from each of the 39 ES&S Unity user Ohio counties, containing appropriate identification for all of the Customer's requested offices and candidates, for input to the State Election Results Reporting System. The following are the deliverables for this project:

- 3.1 Two ERM Results Export Program versions 2.0.7.0 and 3.0.1.0 that meet the scope outlined in this SOW.
- 3.2 Ohio State Election Results Reporting File format as described by Appendix B of this SOW. Both EXP version 2.0.7.0 and 3.0.1.0 shall produce this Ohio State Election Results Reporting File format. A sample Ohio State Election Results Reporting File format is presented in Appendix A.
- 3.3 EXP Product documentation - The User Guides and Help files (in PDF format). The User Guides and Help files will be provided with the delivery of the both EXP version's executables/installs.
- 3.4 EXP Product Installation Package - The EXP installation file set and User Installation Instructions (in PDF format).

For each EXP version 2.0.7.0 and 3.0.1.0, upon receipt of all of the deliverables noted above, customer will execute a separate *Customer Acknowledgment of Product Delivery* (attached hereto as Schedule 1 to Exhibit A).

**4 EFFORT TIME LINE**

If SOW is accepted, project development shall start according to a mutually defined and acceptable schedule. Expeditionary agreement on the SOW is essential to the timely completion of the scope of work.

**5 OUTSIDE THE SCOPE OF WORK / CONSTRAINTS**

The following items are outside the scope of this SOW:

- 5.1 Automated uploading or sending of the State Election Results Reporting File to any system. It is a manual process to upload or send the results file.
- 5.2 State level reporting by ERM. All state level aggregation is done outside of the ES&S software products.
- 5.3 Exception handling of unexpected precinct and candidate codes.
- 5.4 Coordination of statewide Customer Acceptance testing of EXP.
- 5.5 Modification of any ES&S election management products other than EXP.

## 6 ASSUMPTIONS / UNDERSTANDING

The following are critical assumptions and understandings of this SOW.

- 6.1 EXP will not be required to have VSTL certification for the Customer Acceptance testing or actual election use.
- 6.2 Customer must functionally test EXP.
- 6.3 Under the direction of Customer, each county will be responsible for implementation of any security protocols.
- 6.4 Customer and ES&S will designate primary Point Of Contacts for the duration of the project.
- 6.5 Customer will provide ES&S with access to resources and appropriate subject matter experts (SMEs) to accomplish the project as described in the SOW.
- 6.6 Customer's SMEs and other technical staff resources will respond to ES&S's questions within 24-hours.
- 6.7 The project development will be conducted at the offices of ES&S.
- 6.8 The proposed work will not begin until the parties have executed the SOW and any other applicable agreements.
- 6.9 Customer will be solely responsible for functional testing of EXP and the output file, unless Customer expressly contracts with ES&S to perform such services.
- 6.10 Customer may elect, at an optional cost, to engage the services of ES&S to provide training state and county staff on EXP functionality.
- 6.11 Any changes identified after the SOW has been fully executed will be addressed as a Change Order and may be billable to Customer and require renegotiation of the project scope and timelines.
- 6.12 Other than the ES&S EXP product, this SOW does not contemplate any enhancement to ES&S Unity 3.0.1.1, Unity 3.2.1.0, Unity 3.2.0.0 Revision 3, and Unity 3.4.0.0 system components or any other ES&S product.
- 6.13 ES&S is the final authority in user interface and screen design, format, and implementations.
- 6.14 Election Night processing of the Ohio State Election Results Reporting File created by EXP is the responsibility of Customer or Ohio County Level Software or IT Staff.
- 6.15 County will be responsible for installation and cost of installation of ERM and EXP at the county site unless expressly contracted with ES&S to perform such services.
- 6.16 The EXP product delivery time line will be mutually defined after the SOW has been fully executed.

- 6.17 All precinct codes are assigned by Ohio counties. Customer is responsible for any exception handling for Ohio State Election Results Reporting File elements with an unexpected precinct code.
- 6.18 Within a county's EXP definition, EXP assumes a precinct's code is unique.
- 6.19 Customer shall assign and issue all candidate numbers for candidates whose results are to be reported. Customer is responsible for any exception handling for Ohio State Election Results Reporting File elements with an unexpected candidate number.
- 6.20 Within a county, EXP assumes a candidate's assigned number is unique.
- 6.21 Customer will assign a unique County Number to each county. The state assigned county number shall be contained in the Ohio State Election Results Reporting File. Customer is responsible for any exception handling for Ohio State Election Results Reporting File elements with an unexpected county number.

## **7 CUSTOMER ACCEPTANCE- PRODUCT DELIVERY AND FUNCTIONALITY TESTING**

Testing is a vital part of the success of any project. ES&S shall complete the Quality Assurance phase testing at ES&S offices. Customer shall conduct and complete Customer Acceptance of Functionality Testing. The testing is required to ensure the process and EXP are functioning and the Ohio State Election Results Reporting File format is as described in this SOW.

### **7.1 Start of Testing**

Upon product delivery, Customer shall execute Customer Acknowledgment of Product Delivery, attached as Schedule 1 to Exhibit A. On a date to be mutually agreed upon by the parties, Customer shall begin testing to ensure that EXP is capable of performing the functions set forth in a mutually defined and acceptable test plan.

### **7.2 End of Testing**

Customer shall have thirty (30) calendar days from the date testing starts to complete the testing. If Customer does not complete testing within that 30-day period, Customer is deemed to have accepted EXP for functionality testing on the thirty-first (31) calendar day following the start of testing. The date on which Customer accepts EXP shall be known as the "Acceptance Date."

### **7.3 Test Plan**

The test plan will be defined after the SOW has been executed by both parties. It is important to note that expeditious agreement on this document is essential to the timely completion of the work set forth in such document. Any delay in executing the test plan will delay implementation completion.

### **7.4 Issue Resolution**

If an issue arises with the functionality as defined in this SOW, ES&S will attempt to resolve such issue during the Customer Acceptance Test period. If ES&S is unable to resolve such issue, ES&S will provide a schedule for the fix and reschedule Customer Acceptance Functionality Testing. Such efforts to resolve such issues shall not result in any additional costs.

If an issue is found and such issue is not associated with the functionality set forth in previous sections or is not otherwise a requirement defined in this SOW, such issue shall not be addressed by

ES&S during the Customer Acceptance testing. These issues shall be considered a Change Order and will not be cause for non-acceptance by Customer.

## 8 FEES & COST

The project costs to perform the work outlined in this SOW are detailed below.

### 8.1 SOW Fees

The fees for the work set forth in this SOW shall be a maximum of \$19,899. The project will be managed strictly and ES&S will invoice the customer upon delivery of the functionality developed under this SOW.

If scope changes are necessary or requested by Customer, no work involving such changes shall commence until the parties have executed a written amendment to the Agreement.

### 8.2 Optional Fixed Costs

The following are Optional services and the associated costs that may be elected by Customer. Customer shall not be obligated to engage ES&S for such services, and any such services and costs would be subject to further negotiation between the parties and would be described in a written amendment to the Agreement.

#### 8.2.1 Installation

An ES&S representative can install EXP in any or all of the ES&S Unity customer Ohio counties. If Customer opts to contract for such services, Customer understands and acknowledges that the following fixed costs apply, and is a fixed per county cost in addition to the fixed costs stated in section 8.1 above.

Task	Cost/County
Installation of EXP by ES&S Representative per county:	
Counties with a Software Maintenance and Support Agreement	\$1,500
Counties without a Software Maintenance and Support Agreement	\$2,000

*Customer may use its own or county staff and employees to install EXP in any or all of the ES&S Unity customer Ohio counties with assistance of the ES&S Help Line at no additional charge.*

#### 8.2.2 Web Ex Training

Web Ex training of EXP can be provided by an ES&S Representative. ES&S will provide one Web Ex Training overview at no charge to the appropriate Ohio SOS staff. Should the State desire county level training, ES&S will target the session(s) to the counties that require them. If accepted the optional fixed cost below is applicable. Customer understands and acknowledges that the following is a fixed per session cost and is in addition to the fixed costs stated in section 8.1 above.

Each session is not to exceed 12 participants per session.

Task	Cost/Session
Web Ex Training of EXP by ES&S Representative per session	\$1,000



If the Customer wishes to contract with ES&S for additional Web Ex training of EXP, for one or more sessions, the total cost and schedule will be negotiated separately from this SOW.

#### 8.2.3 Onsite Training

An ES&S Representative can provide on-site training of EXP. If accepted the optional fixed cost below is applicable. Customer understands and acknowledges that the following is a fixed per day cost and is in addition to the fixed costs stated above. Each session is not to exceed 20 participants per session.

Task	Cost/Day
On-site Training of EXP by ES&S Representative per day	\$1,575

If the Customer wishes to contract with ES&S for On-site training of EXP for one or more days, the total cost and schedule will be negotiated separately from this SOW.

#### 8.2.4 Custom Request Development

Additional custom request development for the EXP outside of the enhancements listed in this SOW may be provided by ES&S. If accepted, the optional fixed cost below is applicable. Customer understands and acknowledges that the following is a fixed per hour cost and is in addition to the fixed costs stated elsewhere in this SOW.

Task	Cost/Hour
Custom Request Development per hour	\$187.50

If Customer wishes to contract with ES&S for custom request development, the total cost and schedule will be negotiated separately from this SOW.

#### 8.2.5 Onsite Consultation

If Customer requests to have an ES&S associate present on site, a consultation fee of \$1,575 per day will be charged.

### 9 Conclusion and Matters Not Covered

If a matter or issue encountered during the SOW is not covered by this SOW, the parties' respective project manager shall notify the other as needed to resolve. No amendment or modification of this SOW will be valid or binding upon the parties unless made in writing and signed by each party.



**SCHEDULE 1 TO EXHIBIT A**

**Customer Acknowledgment of Product Delivery**

The Ohio Secretary of State hereby acknowledges receipt of the ERM Results Export Program (EXP) deliverables as described in this SOW, subject to its acceptance of functionality testing.

Product Delivery Acknowledgement of ERM Results Export Program (EXP)

(Place a check mark in the appropriate EXP version)

☐ ERM Results Export Program (EXP) Version 2.0.7.0

☐ ERM Results Export Program (EXP) Version 3.0.1.0

For Ohio Secretary of State

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

## Appendix A – Sample EXP Ohio State Election Results File

### Sample EXP Ohio State Election Results Reporting File

The EXP Ohio State Election Results Reporting File is an industry standard comma separated values (CSV) formatted file. Data values for County Number, Precinct Codes, and Candidate Export Ids/Codes are Ohio State defined codes and will be communicated to all parties involved in election coding and definition for each election and must be used by the county and/or vendor during election coding and definition. The County Number and Precinct Codes, and Candidate Export Ids/Codes are alphanumeric data type.

The file is saved in the current ERM drive of the Election Reporting Manager in the "<ERM Drive>:\elecdata\" directory and a user defined secondary drive. The standard Ohio State Election Results Reporting File naming convention is as follows.

- Two character county number
- ERM election name
- File extension is ".txt"

#### **Example: 01GOHADAM.txt**

Where "01" is Adams' County number. "GOHADAM" is the ERM Election name, and ".txt" is the file extension.

(The samples below are representative of an EXP created Ohio State Election Results Reporting File)

#### **Sample Results.txt (Totals):**

"73","D Pres Delegates at Large","DEM","Barack Obama","73BObama1","Total",10  
"73","D For U.S. Senator","DEM","Sherrod Brown","73SBrown1","Total","Total",210  
"73","D 2ND CONGRESSIONAL","DEM","David Krikorian","73DKrikorian","Total",0

#### **Sample Results.txt (Precincts):**

"73","D Pres Delegates at Large","DEM","Barack Obama","73BObama1","Total","AAA","1  
PORTSMOUTH 1-A",10  
"73","D For U.S. Senator","DEM","Sherrod Brown","73SBrown1","Total","AAA","1 PORTSMOUTH 1-A",22  
"73","D 2ND CONGRESSIONAL","DEM","David Krikorian","73DKrikorian","Total","AAA","1  
PORTSMOUTH 1-A",3  
"73","D 2ND CONGRESSIONAL","DEM","William R. Smith","73WSmith2","Total","AAA","1  
PORTSMOUTH 1-A",5  
"73","D Justice Supreme Court 1-1-13","DEM","Robert W. Price","73RPrice1","Total","AAA","1  
PORTSMOUTH 1-A",7

**Appendix B - ES&S Ohio Election Results Reporting File Format**

**Version # 1.0**

**Date: 07/23/2012**

The Ohio Election Results Reporting File is an industry standard comma separated values (CSV) format file. The format for the Ohio Election Results Reporting File is presented below.

The table below identifies the data fields that must be present in the Ohio Election Results Reporting File.

For the file's record format described below:

1. The first table column titled, **"Ohio System Field Name"**, identifies the Ohio SOS receiving system field name.
2. The second table column titled, **"Max Size"**, identifies the maximum size output by the EXP system. Field lengths shall not exceed this value.
3. The third table column titled, **"Description"**, provides the common election business field definition.
4. The fourth table column titled, **"ERM Matching Field Name"** identifies the ES&S Election Reporting Manager (ERM) database source field name.

<b>Results.txt</b>			
<b>Ohio System Field Name</b>	<b>Max Size</b>	<b>Description</b>	<b>ERM Matching Field Name</b>
OH SOS County Number	2	OH SOS County Number	County Number Examples: "01", "13", "25", etc.
Race Name	40	Contest Name	Office Title Example: "US Representative 2ND CONGRESSIONAL"
Party	3	Candidate Party Code	Party Example: REP, DEM, LIB
Candidate Name	40	Candidate Name	Candidate Full Name Example: William J Malone
Ohio SOS Candidate Export ID	22	Ohio SOS unique code assigned to this candidate.	Alternate Candidate ID Example: "01WMalone2"
"Total" literal	5	Text string "Total". Literal generated by EXP at file creation.	None. Literal generated by EXP at file creation. Example: "Total"
Ohio SOS Precinct Code	3	Ohio SOS unique code assigned to this precinct	Alternate Precinct ID Example: "AAA", "AAB", etc.
Precinct Name	24	Precinct Name	ERM Precinct Name Example: "Cedarville 1", "Precinct 1",

**ES&S ERM Results Export Program (EXP) / Ohio Statement of Work**

<b>Results.txt</b>			
<b>Ohio System Field Name</b>	<b>Max Size</b>	<b>Description</b>	<b>ERM Matching Field Name</b>
Vote Count	6	Contest total Candidate Votes for "Total" type file. Contest Precinct Candidate Votes for "Precinct" type file.	ERM Candidate Vote Count at file creation. Example: 1187, 274, etc.