



**ADDENDUM TO THE
WARRANTY, SUPPORT, AND LICENSE AGREEMENT**

This Addendum to the Warranty, Support and License Agreement ("Addendum") is made as of July 27, 2010 ("Addendum Effective Date") by and between Hart InterCivic, Inc., a Texas corporation ("Hart"), and Fort Bend County ("Client"), a governmental subdivision of the State of Texas.

WHEREAS, Hart and Client entered into a Warranty, Support, and License Agreement on or about July 1, 2005, (the "Agreement"); and

WHEREAS, Hart and Client desire to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, Hart and Client hereby agree to amend certain of the provisions of the Agreement as follows:

1) **Definitions.** The following terms shall have the following respective definitions. Capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement for such term.

- a) "Base Year" means 2010. (\$124,767.00)
- b) "Initial Term Commitment Period" means 5 years.
- c) "Revised Termination Date" means June 30, 2015.
- d) "Second Term Commitment Period" means three (3) years.
- e) "Anniversary Date" means the annual date payment is due.

2) **Initial Term Commitment.** The term of the Agreement shall be extended by the Initial Term Commitment Period such that it now ends on the Revised Termination Date. The Annual Fee for each year of the Initial Term Commitment Period shall be equal to the Annual Fee for the Base Year.

3) **Second Term Commitment.** After the Initial Term Commitment Period, Client may elect to renew for a period equal to the Second Term Commitment Period by sending written notice to Hart. For the Second Term Commitment Period, Hart may increase the Annual Fee one time at the beginning of such period by a maximum of four percent (4%) of the Annual Fee for the Base Year, and such adjusted fee shall apply for the remainder of the Second Term Commitment Period.

4) **Post-Commitment.** After the Initial Term Commitment Period and, if elected by the Client pursuant to Section 3 above, the Second Term Commitment Period, the Agreement may be renewed for subsequent one (1) year renewal terms at Client's discretion pursuant to the renewal provisions set forth in the Agreement. For each such one (1) year period, the Annual Fee may be increased in Hart's discretion subject to any maximum increase limits set forth in the Agreement.

5) **Applicability and Additional Equipment.** This Addendum and the services provided pursuant thereto apply only to the Hart Voting System version 6.x. Notwithstanding the rest of this Addendum, to the extent that Client purchases additional equipment or software during the Revised Term or thereafter, Client's Annual Fee will be increased accordingly pursuant to the Agreement and as mutually agreed upon by and between Client and Hart.



6) **Termination.** In the event that the Agreement is terminated prior to the end of the Revised Term either by Client for any reason other than as a result of Hart's default as defined in the Warranty, Support and License Agreement or as a result of Client non-appropriation of funds or by Hart as a result of Client's breach, Client shall pay to Hart a termination fee equal to the Annual Fee determined in accordance with Section 1 above, multiplied by the number of years remaining in the Revised Term for which the Annual Fee has not yet been paid. In addition, Client shall not be entitled to any refund or credit for Annual Fee payments made prior to such termination. In the event that public funds are not appropriated for the performance of Client's obligations under this contract, then this contract shall automatically expire on the next anniversary date without penalty to Client. Client must provide thirty (30) days written notice to Hart prior to the anniversary date of the non-appropriation of public funds. It is expressly agreed that Client shall not activate this non-appropriation provision for its convenience, substitution for another voting system, voting solution, or election-related services or to circumvent the requirements of this contract in any way, but only as an emergency fiscal measure during a substantial fiscal crisis which affects generally its governmental operations. Upon contract expiration or termination Client shall immediately cease all use of Hart equipment, Hart software or any other component or part of the Hart Voting System.

7) **Representations.** Each party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Addendum and to perform and carry out its obligations hereunder, (ii) the persons executing this Addendum on its behalf have express authority to do so, and, in so doing, to bind the party thereto; and (iii) the execution, delivery, and performance of this Addendum does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the party.

8) **General.** This Addendum supersedes the relevant provisions of the Agreement and any prior amendments thereto. All unaffected provisions of the Agreement are and shall remain valid and binding in accordance with the terms of the Agreement. This Addendum is governed by the laws of the State of Texas without regard to principles of conflict of laws. This Addendum may be executed in multiple counterparts. Facsimile signatures shall be valid and binding. Client is responsible for payment of any taxes related to the license and support fees referenced in this addendum.

IN WITNESS WHEREOF, the parties have entered into this Addendum to the Agreement as of the Addendum Effective Date.

Agreed and Accepted:

Client

Name: Fort Bend County
Address:

Primary Phone:
Facsimile:
E-mail:

Executed By:

Name: Robert Hebert
Title: County Judge

A handwritten signature in black ink, appearing to read 'Robert Hebert', written over a horizontal line.

Hart

Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, Texas 78728
Attn.: Phillip W. Braithwaite

800-223-4278
800-831-1485
pbraithwaite@hartic.com

Phillip W. Braithwaite
Senior Vice President & General Manager

A large, stylized handwritten signature in black ink, appearing to read 'Phillip W. Braithwaite', written over a horizontal line.

This Addendum is not effective until executed by both parties.

Renewal Date 7/1/2010

For estimation purposes only.

Taxes are not included in these calculations.

Enter Annual Increase

4.0%

5 Year Commitment**Business As Usual**

| | |
|-------|---------------|
| 2010 | \$ 124,767.00 |
| 2011 | \$ 129,757.68 |
| 2012 | \$ 134,947.99 |
| 2013 | \$ 140,345.91 |
| 2014 | \$ 145,959.74 |
| 2015 | \$ 151,798.13 |
| Total | \$ 702,809.45 |

| | |
|-------|---------------|
| 2016 | \$ 157,870.06 |
| 2017 | \$ 164,184.86 |
| 2018 | \$ 170,752.25 |
| Total | \$ 492,807.17 |

Five Year Commitment

| | |
|-------|---------------|
| 2010 | \$ 124,767.00 |
| 2011 | \$ 124,767.00 |
| 2012 | \$ 124,767.00 |
| 2013 | \$ 124,767.00 |
| 2014 | \$ 124,767.00 |
| 2015 | \$ 124,767.00 |
| Total | \$ 623,835.00 |

5 Year Savings \$ 78,974.45

| | |
|-------|---------------|
| 2016 | \$ 129,757.68 |
| 2017 | \$ 129,757.68 |
| 2018 | \$ 129,757.68 |
| Total | \$ 389,273.04 |

3 Year Savings \$ 103,534.13

Total Savings \$ 182,508.58

3 Year Commitment**Business As Usual**

| | |
|-------|---------------|
| 2010 | \$ 124,767.00 |
| 2011 | \$ 129,757.68 |
| 2012 | \$ 134,947.99 |
| 2013 | \$ 140,345.91 |
| Total | \$ 405,051.57 |

| | |
|-------|---------------|
| 2014 | \$ 145,959.74 |
| 2015 | \$ 151,798.13 |
| 2016 | \$ 157,870.06 |
| Total | \$ 455,627.93 |

Three Year Commitment

| | |
|-------|---------------|
| 2010 | \$ 124,767.00 |
| 2011 | \$ 124,767.00 |
| 2012 | \$ 124,767.00 |
| 2013 | \$ 124,767.00 |
| Total | \$ 374,301.00 |

3 Year Savings \$ 30,750.57

| | |
|-------|---------------|
| 2014 | \$ 129,757.68 |
| 2015 | \$ 129,757.68 |
| 2016 | \$ 129,757.68 |
| Total | \$ 389,273.04 |

3 Year Savings \$ 66,354.89

Total Savings \$ 97,105.47

**eSLATE™ WARRANTY, SUPPORT, AND LICENSE AGREEMENT****(SIGNATURE PAGE)**

This eSlate™ Warranty, Support, and License Agreement ("Agreement") is entered into by and between Hart InterCivic, Inc., a Texas corporation ("Hart"), and Fort Bend County ("Client"), a body corporate and politic under the laws of the State of Texas. This Agreement is entered into in connection with an eSlate™ Agreement dated Month & day, 2005, between Hart and Client under which Client has purchased eSlate™ Hardware. This Agreement sets forth terms between Hart and Client applicable to Client's ownership and use of the eSlate™ Hardware and license from Hart of Hart Proprietary Software (including Firmware), including warranty, support, license, and other terms. Defined terms used in this Agreement will have the meanings specified in Section 13, Definitions, or as otherwise set forth herein.

The following Schedules are attached to this Agreement and made a part hereof:

| | |
|------------|-----------------------------|
| Schedule A | Support Contact Information |
| Schedule B | Hart Proprietary Software |
| Schedule C | Non-Hart Software |
| Schedule D | Initial Annual Fee |

Client acknowledges it has read and understands this Agreement (including all Schedules) and is entering into this Agreement only on the basis of the terms expressly set forth in this Agreement and the eSlate Agreement to which this Agreement is attached as Exhibit A.. There are no oral agreements, representations, or warranties. The Effective Date of this Agreement is 7/1, 2005.

Agreed and Accepted:

Client
Name: Fort Bend County, Texas
Address: 4520 Reading Road, Suite A
Rosenberg, Texas 77471

Primary Contact: Steve Raborn
Primary Phone: 281-341-8670
Facsimile: 281-341-4418
E-mail: sraborn@cofort-bend.tx.us

Executed By:
Name: Robert E. Hebert
Title: County Judge

Hart
Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, Texas 78728

Linda Herod *cell 817 603-6020*
800-223-4278
800-831-1485
lherod@hartic.com

Ted Simmonds
Vice President/CFO

This Agreement is not effective until executed by both parties.

In consideration for the agreements set forth herein, the parties agree as follows:

1. **WARRANTY TERMS**

1.1 eSlate™ Hardware Limited Warranty. Hart warrants that during the warranty period the eSlate Hardware purchased by Client will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Hart Precinct Voting System Operator's Manual for the eSlate Hardware. The hardware warranty period is three (3) years from the Installation Date. Hart will, at Hart's sole discretion, replace or repair any eSlate Hardware that does not comply with this warranty, at no additional charge to Client. To request warranty service, Client must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at Client's site, Hart's facility, or any other location specified by Hart. Any replacement eSlate Hardware provided to Client under this warranty may be new or reconditioned. Hart may use new and reconditioned parts from the manufacturer in performing warranty repairs and building replacement products. Hart owns all replaced eSlate Hardware and all parts removed from repaired products. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the eSlate Electronic Voting System and the Exclusions from Warranty and Support Coverage set forth in Section 1.3. This warranty does not cover any eSlate Hardware that has had the original identification marks and/or numbers removed or altered in any manner by Client.

1.2 Hart Proprietary Software Limited Warranty. Hart warrants that during the term of this Agreement, the Hart Proprietary Software will perform according to the then-current functional specifications described in the BOSSTM, Tally™, Rally™, and Ballot Now™ Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, Client must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and be accompanied with sufficient detail to enable Hart to provide a remedy or suitable workaround. Hart will make commercially reasonable efforts to remedy or provide a suitable workaround for defects, errors, or malfunctions covered by this warranty that have a significant adverse affect upon operation of the Hart Proprietary Software, at no additional charge to Client. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the eSlate Electronic Voting System and the Exclusions from Warranty and Support Coverage set forth in Section 1.3.

1.3 Exclusions from Warranty and Support Coverage. The warranties under this Section 1 and Software Support under Section 2 do not cover defects, errors, or malfunctions that are caused by any external causes not related to Hart, its employees or contractors, including, but not limited to, any of the following: (a) Client's failure to follow operational, support, or storage instructions as set forth in applicable Hart documentation; (b) the use of noncompatible media, supplies, parts, or components; (c) modification or alteration of the eSlate Electronic Voting System, or its components, by Client or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions as set forth in applicable Hart documentation; (g) negligence, accidents, abuse, neglect, misuse, or tampering; (h) use in a manner not authorized by this Agreement or use inconsistent with Hart's specifications and instructions; (i) use of software on Non-Hart Equipment that is not in good operating condition; (j) acts of Client, its agents, servants, employees, or any third party; (k) servicing or support not authorized by Hart; or (l) Force Majeure. After written notice to Client and upon Client's consent, Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses.

and for replacements at Hart's list prices caused by these exclusions from warranty and support coverage.

1.4 Performance Warranties. Hart warrants to the Client that: (1) Hart has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Hart will apply that skill and knowledge with care and diligence to ensure that the Equipment and Software and related services provided under this Agreement will be performed and delivered in accordance with the professional standards and in accordance with industry standards, and (2) upon acceptance the Equipment and Software will conform materially to the specifications in this Agreement. Hart specifically warrants that as to any Equipment and Software or related service such Equipment and Software or related service shall (a) be free from material errors caused by Hart's failure to fulfill its obligations under this Agreement, and (b) materially conform to all requirements and specifications contained in this Agreement. Hart further warrants that upon acceptance, the Equipment and Software will comply with all applicable laws and regulations of the State of Texas regarding electronic voting systems and related certifications upon acceptance. During Hart's support obligation, Hart will maintain Hart Proprietary Software in accordance with all applicable laws and regulations of the State of Texas regarding electronic voting systems and related certifications.

1.5 Non-Hart Equipment and Non-Hart Software Excluded. HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART TO CLIENT, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO CLIENT "AS IS." HART HAS NO RESPONSIBILITY OR LIABILITY FOR NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO CLIENT. If Hart sells, licenses, or sublicenses any Non-Hart Equipment or Non-Hart Software to Client, Hart will pass through to Client, on a nonexclusive basis and without recourse to Hart, any third-party manufacturer's warranties covering the equipment or software. Client agrees to look solely to the warranties and remedies provided by the manufacturer or third-party licensor.

1.6 Disclaimer. THE WARRANTIES IN THIS WARRANTY TERMS SECTION GIVE CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). HART'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN ESLATE™ HARDWARE AND HART PROPRIETARY SOFTWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY TERMS SECTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 1 OF THIS AGREEMENT, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SALE OF ESLATE™ HARDWARE AND LICENSE OF HART PROPRIETARY SOFTWARE, AND (B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY FOR ALL EQUIPMENT, SOFTWARE, AND SERVICES. THE EXPRESS WARRANTIES EXTEND SOLELY TO CLIENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

1.7 Warranties Cumulative. Hart's warranties provided in this Article 1 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to

be given full force.

2. SOFTWARE SUPPORT SERVICES

2.1 Description of Software Support Services. Subject to the terms and conditions of this Agreement, Hart will provide Client the Software Support Services described below. Software Support Services under this Section 2 do not cover any of the exclusions from warranty and support coverage as described under Section 1.3. If Hart, in its discretion, provides Software Support Services in addition to the services described under this Section 2, Client will pay Hart for such services on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices, unless otherwise agreed in writing by Hart and Client.

2.1.1 General Software Support. *General Software Support* will consist of assisting the Client in the design and production of elections, including pre-election and post-election testing and general operation of the eSlate™ Electronic Voting System.

2.1.2 Software Support Services. Software Support Services will consist of periodic updates and any software "bug" corrections to Hart software. A software "bug" is any malfunction that prevents the Hart software from performing substantially as described in the then-current operator's manual for such software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Hart reserves the right to determine whether any reported, claimed software malfunction is in fact a "bug." Software "bugs" must be reported in writing and be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable workaround. The exclusions from warranty coverage under Section 1.3 also are exclusions from Software Support Services under this Section 2.1.2.

2.1.3 Hardware Enhancement(s)/Upgrade(s). Hart will develop and provide to Client upgrades to the eSlate™ Hardware to implement a voter verifiable paper record if required by State and/or Federal law. Such hardware upgrades are not provided free-of-charge, and are dependent on the Client having paid all necessary annual Software Support and Maintenance fees for the Hart Software and Support. Based on Hart's current design for such a product feature add-on, the price is estimated to be approximately \$1,250.00 per unit, not including the cost of retrofitting existing units. This price may change depending on any specific standards mandated by State or Federal law.

2.1.4 Client Suggestions and Recommendations. Client may propose, suggest, or recommend changes to the Software at any time in writing to Hart. Such proposals, suggestions, or recommendations will become Hart's property. Hart may include any such proposals, suggestions, or recommendations, solely at Hart's option, in subsequent periodic Software updates. Hart is under no obligation to change, alter, or otherwise revise the Software according to Client's proposals, suggestions, or recommendations.

2.2 Software Support Services Contact Information. Support contact information is set forth in Schedule A, Support Contact Information.

3. SOFTWARE LICENSES AND SUBLICENSES

3.1 Licenses and Sublicenses. Subject to the terms and conditions of this Agreement, Hart grants to Client a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary Software and a personal, nonexclusive, nontransferable, and limited sublicense to use the Sublicensed

Software. Hart will provide Client, and Client will be permitted to use, only the run-time executable code and associated support files of the Software for Client's internal data processing requirements as part of the eSlate™ Electronic Voting System. The Software may be used only in the United States at the Licensed Location specified on Schedule B on the Equipment or other computer systems authorized by Hart in writing. Client may temporarily transfer the Software to a backup computer system at an alternative location within Client's county of operation if the Equipment or other authorized computer system is inoperative or the Licensed Location is temporarily unavailable, provided Client must promptly give Hart written notice of such temporary transfer, including a description of the backup computer system and the alternative location. Hart will provide Client with an installation CD containing installation programs for the licensed Hart Proprietary Software. These installs will be password protected and the Client will need to contact Hart prior to the installation of any Hart Proprietary Software from the CD. Such an installation is deemed to be for temporary purposes only and due to equipment failure. Following the emergency use, Hart will assist the Client in de-installing the Hart Proprietary Software. Client's use of the Software will be limited to the number of Licenses specified in Exhibits B and C. Only Client and its authorized employees may use or access the Software. Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. Client agrees that Hart, the licensors of Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, Equipment, and appropriate records of Client to verify Client's compliance with the terms of the licenses and sublicenses granted to Client.

3.2 Delivery and Installation. Hart will deliver and install the Software at the Client's site on the date specified in Schedule F.

3.3 Training and Documentation. Hart will provide the training specified in Schedules D and E to the eSlate Agreement. In addition, Hart will provide standard user-level documentation in electronic form for the Software and standard operational training before the first election for which the Software will be used. Charges for additional training or support services beyond that specified in Schedules D & E will be invoiced to Client at Hart's then-current hourly rates, plus travel, communication, and other expenses. Any nonstandard or additional training or support services will be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

3.4 Protection of Software.

(a) The eSlate Hardware and Hart Proprietary Software are designed to be used only with each other and the agreed-upon Non-Hart Software and Non-Hart Equipment. To protect the integrity and security of the eSlate™ Electronic Voting System, without the express written consent of Hart, (i) Client shall use the Software and Equipment only in connection with the eSlate™ Electronic Voting System; (ii) Client shall not install or use other software on or with the Equipment or Software or network the Equipment or Software with any other hardware, software, equipment, or computer systems not provided by Hart; and (iii) Client shall not modify the Equipment or Software. If Client does not comply with any provisions of the preceding sentence, then (i) the Limited Warranties under Section 1 will automatically terminate; (ii) Hart may terminate its obligation to provide Support Services under Section 2; (iii) Hart will have no further installation obligations under Section 3.2 (Delivery and Installation), and (iv) Hart will have no further obligations under Section 3.3 (Training and Documentation). Furthermore, if Client uses the Software and Equipment in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license

granted to Client under Section 3, Hart reserves its rights to enforce its patents with respect to those claims.

(b) Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software. Client shall not use any Software for application development, modification, or customization purposes, except through Hart.

(c) Client shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau. This restriction does not preclude or restrict Client from contracting for election services for other local governments located within Client's jurisdictional boundaries. Client shall not modify, copy, or duplicate the Software; provided, during the term of the Software licenses and sublicenses, Client may have in its possession one (1) copy of the Software for inactive archival or backup purposes. All copies of the Software, in whole or in part, must contain all of Hart's or the third-party licensor's titles, trademarks, copyright notices, and other restrictive and proprietary notices and legends (including government-restricted rights) as they appear on the copies of the Software provided to Client. Client shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Client regarding any unauthorized possession or use of the Software.

(d) Upon termination of Client's license or sublicense of Software, Client shall immediately discontinue all use of the Software and return to Hart or destroy, at Hart's option, the Software (and all related documentation (electronic and hard copy) and Confidential and Proprietary Information) and all archival, backup, and other copies thereof, and provide certification to Hart of such return or destruction.

(e) Client shall not publish any results of benchmark tests run on any Software.

(f) Although the Hart Proprietary Software and Sublicensed Software are protected by copyright and/or patents, they may be unpublished, and constitute Confidential and Proprietary Information of Hart and the third-party licensor, respectively. Client shall maintain the Software in confidence and comply with the terms of Section 6, Protection of Confidential and Proprietary Information, with respect to the Software.

(g) This Section 3.4 will survive the termination or cancellation of this Agreement.

(h) All of Client's obligations related to confidentiality and non-disclosure in this Agreement shall be subject to the requirements of Texas Government Code Chapter 552, otherwise known as the Texas Public Information Act.

3.5 No Transfer of Title. This Agreement does not transfer to Client title to any Software, intellectual property contained in any Software, or Confidential and Proprietary Information. Title to Hart Proprietary Software and all copies thereof, and all associated intellectual property rights therein, will remain in Hart. Title to Non-Hart Software and all copies thereof, and all associated intellectual property rights therein, will remain in the applicable third-party licensor.

3.6 Inherently Dangerous Applications. The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. Client shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

4. ANNUAL FEE

4.1 Amount of Annual Fee. The Annual Fee is a combined licensing, sublicensing, and support fee. Client will pay Hart an Annual Fee upon execution of this Agreement and annually thereafter before each Anniversary Date. The amount of the Initial Annual Fee, payable upon execution of this Agreement, is the amount specified as the "Initial Annual Fee" on Schedule D, Initial Annual Fee. Subsequent Annual Fees are due annually before each Anniversary Date of this Agreement. After the second year Hart may adjust the amount of the Annual Fee payable on each Anniversary Date by notifying Client of any price changes with the invoice in which the adjustment is made. Such adjustments in the amount of the Annual Fee shall be limited to the greater of the CPI or 5% for the next four (4) years (years 3 through 6 of this Agreement). Unless adjusted by Hart, each Annual Fee will be the same as the immediately preceding Annual Fee.

4.2 Invoices. Hart will invoice Client annually ninety (90) calendar days before the due date of the Annual Fee.

4.3 Payments. Client must pay each invoiced Annual Fee before the Anniversary Date immediately following the date of invoice. If Client elects not to or fails to timely pay an Annual Fee, this Agreement and the licenses, sublicenses, and software support services will automatically terminate on such Anniversary Date. All payments are to be made to Hart at its principal office in Austin, Texas, as set forth on the Signature Page or to such other location as may be designated by Hart in a written notice to Client.

4.4 Additional Charges. Additional charges may apply to services rendered outside contracted hours or beyond normal coverage at Client's request, e.g., travel expenses, and premium and minimum charges. Any additional charges must be mutually agreed to by Hart and Client and documented in an amendment to this Agreement. Normal coverage is per Schedule G (Hart Support Policy).

4.5 Payment Disputes. If any dispute exists between the parties concerning the amount due or due date of any payment, Client shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Client or Hart of any of their respective legal rights and remedies against each other.

4.6 Taxes. If Client is tax-exempt, Client will provide Hart with proof of its tax-exempt status. If Client is not tax-exempt, (a) Client will pay any tax Hart becomes obligated to pay in connection with this Agreement, exclusive of taxes based on the net income of Hart and (b) Client will pay all personal property and similar taxes assessed after shipment. If Client challenges the applicability of any such tax, Client shall pay the tax and may thereafter seek a refund.

4.7 Suspension of Performance. If any payment due to Hart under this Agreement is past due more than thirty (30) days, Hart may suspend performance under this Agreement until all amounts due are current.

5. CLIENT RESPONSIBILITIES

5.1 Independent Determination. Client acknowledges that it has had the opportunity to review Schedule H and subsequently Schedules D through G of the eSlate Agreement and based on such review it has independently determined that the eSlate™ Electronic Voting System meets its

requirements.

5.2 Cooperation. Based on Schedule F Client agrees to cooperate with Hart and promptly perform Client's responsibilities under this Agreement. Client will (a) provide adequate working and storage space for use by Hart personnel near Equipment; (b) provide Hart full access to the Equipment and Software and sufficient computer time, subject to Client's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely access to key Client personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

5.3 Site Preparation. Client shall prepare and maintain the installation site in accordance with written instructions provided by Hart. Hart shall notify client of the requirements in sufficient time for Client to perform the necessary work to comply with the requirements of Schedule F. Client is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Unless a delay is the result of action or inaction by Hart, any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.

5.4 Site Maintenance: Proper Storage. Client shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Equipment and Software and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Equipment and Software to operate properly. Client shall properly store the Equipment and Software when not in use.

5.5 Use. Client is exclusively responsible for supervising, managing, and controlling its use of the eSlate™ Electronic Voting System, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making daily backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. Client will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the eSlate™ Electronic Voting System and that the Equipment and Software are used in accordance with applicable manuals, instructions, and specifications. Client shall comply with all applicable laws, rules, and regulations with respect to its use of the eSlate™ Electronic Voting System.

5.6 Backups. Client will maintain backup data necessary to replace critical Client data in the event of loss or damage to data from any cause.

6. PROTECTION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

6.1 Confidentiality. Client will keep in confidence and protect Confidential and Proprietary Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. Client shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Equipment and Software and the other Confidential and Proprietary Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. Client shall keep the Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable Client to use the Software. Client acknowledges that unauthorized disclosure of Confidential and Proprietary Information may cause substantial economic loss to Hart or its suppliers and licensors. Each permitted copy of Confidential and Proprietary Information, including its storage media, will be marked by Client to include all notices that appear on the original. Title, copyright, and all other proprietary rights in and to the Software at all times remains vested exclusively in Hart or, as applicable, third-party licensors.

6.2 Return of Confidential and Proprietary Information. Upon termination or cancellation of this Agreement or, if earlier, upon termination of Client's permitted access to or possession of Confidential and Proprietary Information, Client shall return to Hart all copies of the Confidential and Proprietary Information in Client's possession (including Confidential and Proprietary Information incorporated in software or writings, electronic and hard copies).

6.3 Intellectual Properties. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, bug fixes, upgrades, and trade secrets developed by Hart personnel (alone or jointly with Client) in connection with Confidential and Proprietary Information, eSlate Hardware, and Hart Proprietary Software will be the exclusive property of Hart.

6.4 Support Materials. Client acknowledges that all support materials are the property of Hart and include Confidential and Proprietary Information of Hart. Client agrees that it will not permit anyone other than Hart installation and support personnel and authorized County employees to use such materials.

6.5 Client Employees. Client will inform its employees of their obligations under this Section 6 to ensure that such obligations are met.

6.6 License Back. If Client possesses or comes to possess a licensable or sublicensable interest in any issued patent with claims that read upon the eSlate™ Electronic Voting System, its method of operation, or any component thereof, Client hereby grants and promises to grant an irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims.

6.7 Limitation. The Agreement imposes no obligation on Client with respect to Hart's Confidential Information that Client can establish by legally sufficient evidence: (a) was, prior to receipt from Hart, in the possession of, or rightfully known by Client, without an obligation to Hart or any third party to maintain its confidentiality; (b) is or becomes generally known to the public or comes into the public domain without violation of the Agreement or without a violation of an obligation of confidentiality owed to Hart or any third party or (c) is obtained by Client in good faith and without an obligation of confidentiality from a third party having the right to disclose it without an obligation of confidentiality to Hart. For purposes of this

Section. a disclosure of Confidential Information will not render the Confidential Information "generally known to the public" when the (i) disclosure is enjoined by Hart, (ii) disclosure is the subject of a written settlement agreement between Hart and a third party resolving a dispute between Hart and such third party as to the alleged wrongful disclosure of the Confidential Information, provided that such information remains confidential pursuant to the terms of the settlement, or (iii) disclosing party is held liable to Hart for damages in an action alleging wrongful disclosure or misappropriation of the Confidential Information.

6.8 **Survival.** This Section 6 will survive termination or cancellation of this Agreement.

The rest of this page intentionally left blank.

7. TITLE; RISK OF LOSS

7.1 Software.

(a) *Hart Proprietary Software:* Title to Hart Proprietary Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in Hart including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(b) *Non-Hart Software:* Title to Non-Hart Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in the applicable third-party licensor including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(c) *Risk of Loss:* Unless such loss is caused by the action or inaction of Hart, risk of loss to Software will pass to Client upon delivery.

7.2 Confidential and Proprietary Information. Title to Hart's Confidential and Proprietary Information will remain in Hart. Title to Confidential and Proprietary Information of Hart's suppliers and licensors will remain in the relevant suppliers and licensors.

7.3 Proprietary Rights. Client acknowledges and agrees that the design of the eSlate Electronic Voting System, design of the eSlate Hardware, Hart Proprietary Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, information, and material, are the property of Hart. Client agrees that the sale of eSlate Hardware and license of Hart Proprietary Software to Client does not grant to or vest in Client any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the eSlate™ Electronic Voting System, eSlate Hardware, and Hart Proprietary Software, are the sole and absolute property of Hart and no interest therein is being vested in Client by the execution of this Agreement or the sale of the eSlate Hardware or license of the Hart Proprietary Software to Client. Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software or Equipment. Client will have no authority or right to copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. The provisions of this Section 7.3 will survive the termination or cancellation of this Agreement.

8. TERM OF AGREEMENT; TERMINATION

8.1 Term. The initial term of this Agreement and the licenses granted herein is one (1) year commencing on the Effective Date and expiring on the first Anniversary Date.

8.2 Renewal Terms. Except as otherwise provided in this Agreement, Client may renew this Agreement before its expiration or termination by paying the Annual Fee invoiced by Hart, as provided in Section 4.2, before the Anniversary Date immediately following the date of invoice, as provided in Section 4.3. Each renewal term will be a one-year (1-year) term, commencing on the expiration of the prior term and expiring on the immediately following Anniversary Date.

8.3 Defaults. The following events will be deemed to be defaults:

(a) A party committing a material breach of any term of this Agreement or the

eSlate™ Agreement if such breach has not been cured within thirty (30) days after written notice of such breach has been given by the nondefaulting party to the defaulting party;

(b) A party filing bankruptcy, becoming insolvent, or having its business placed in the hands of a receiver, assignee, or trustee, whether by voluntary act or otherwise; or

(c) A party failing to comply in any material respect with any federal, state, or local laws applicable to a party's performance under this Agreement or the eSlate™ Agreement.

8.4 Termination.

(a) This Agreement will automatically terminate at the end of its then-current term if Client has elected not to or has failed to timely make full payment to Hart of the invoiced Annual Fee required to renew the term, as provided in Sections 4.3 and 8.2.

(b) Hart may terminate Software Support Services under Section 2 on ninety (90) days prior written notice to Client if Hart determines that any alterations, attachments, or modifications not made by Hart or the failure to install a software or hardware release will interfere with the provision of support.

(c) A party may terminate this Agreement before expiration of its term for default by the other party. If default occurs, the parties will have all remedies provided in this Agreement and otherwise available by statute, law, or equity.

8.5 Survival. Section 1.1 will survive the termination or expiration of this Agreement until the end of the warranty period stated therein. Sections 3.4(b), 3.4(c), 3.4(d), 3.4(e), 3.4(f), 6, 7.3, 8.5, 9, 11, and 12 will survive the termination or expiration of this Agreement.

9. LIMITATION OF DAMAGES

9.1 EXCLUSIVE REMEDY. HART DOES NOT ACCEPT ANY LIABILITY FOR WARRANTIES BEYOND THE REMEDIES SET FORTH HEREIN. HART'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS CONCERNING THE ESLATE HARDWARE PROVIDED TO CLIENT BY HART OR ITS DISTRIBUTORS, THIS AGREEMENT, AND SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE SET FORTH HEREIN.

9.2 DISCLAIMER. CLIENT IS RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CLIENT DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CLIENT DATA.

9.3 LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART, HART'S LICENSORS, AND ANY PARTY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF THE EQUIPMENT, SOFTWARE, AND PERFORMANCE OF SERVICES UNDER THIS AGREEMENT WILL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE EQUIPMENT, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO CLIENT FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE EQUIPMENT, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO HART UNDER THIS AGREEMENT. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS.

SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO CLIENT.

9.4 Referrals. Hart may direct Client to third parties having products or services that may be of interest to Client for use in conjunction with the Equipment and Software. Notwithstanding any Hart recommendation, referral, or introduction, Client will independently investigate and test non-Hart products and services and will have sole responsibility for determining suitability for use of non-Hart products and services. Hart has no liability with respect to claims relating to or arising from use of non-Hart products and services, including, without limitation, claims arising from failure of non-Hart products to provide proper time and date functionality.

10. INFRINGEMENT INDEMNITY

10.1 Indemnity. Hart, at its own expense, will defend and indemnify Client against claims that the eSlate Hardware or Hart Proprietary Software infringe a United States patent, copyright, or misappropriate trade secrets protected under United States law, provided Client (a) gives Hart prompt written notice of such claims; (b) permits Hart to control the defense and settlement of the claims; and (c) provides all reasonable assistance to Hart in defending or settling the claims.

10.2 Remedies. As to eSlate Hardware or Hart Proprietary Software that is subject to a claim of infringement or misappropriation, Hart may (a) obtain the right of continued use of the eSlate Hardware or Hart Proprietary Software for Client or (b) replace or modify the eSlate Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, Client will cease using the applicable eSlate Hardware and Hart Proprietary Software, Client will return to Hart all applicable eSlate Hardware and return or destroy all copies of the applicable Hart Proprietary Software, and Client will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give Client a credit for the price paid to Hart for the returned or destroyed eSlate Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence.

10.3 Exclusions. Hart will not defend or indemnify Client if any claim of infringement or misappropriation (a) is asserted by an affiliate of Client; (b) results from Client's design or alteration of any eSlate Hardware or Hart Proprietary Software; (c) results from use of any eSlate Hardware or Hart Proprietary Software in combination with any non-Hart product unless approved in writing by Hart in advance, except to the extent, if any, that such use in combination is restricted to the eSlate™ Electronic Voting System designed by Hart; (d) relates to Non-Hart Software or Non-Hart Equipment alone; or (e) arises from Client-specified customization work undertaken by Hart or its designees in response to changes in Hart Proprietary Software or Non-Hart Software that are made in response to Client specifications.

10.4 EXCLUSIVE REMEDIES. THIS SECTION 10 STATES THE ENTIRE LIABILITY OF HART AND CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT AND TRADE SECRET MISAPPROPRIATION.

11. DISPUTE RESOLUTION

11.1 Disputes and Demands. The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), on a confidential basis according to the following process, which either party may start by delivering to the other party a written notice describing the dispute and the amount involved ("**Demand**").

11.2 Negotiation and Mediation. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed-upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may start mandatory nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("AAA") or such other mediation process as is mutually acceptable to the parties.

11.3 Injunctive Relief. Notwithstanding the other provisions of this Section 11, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section 11.

11.4 Time Limit. Neither mediation under this section nor any legal action, regardless of its form, related to or arising out of this Agreement may be brought more than two (2) years after the cause of action first accrued.

12. GENERAL PROVISIONS

12.1 Entire Agreement. This Agreement and the attachments, schedules, and exhibits hereto are the entire agreement and supersede all prior negotiations and oral agreements. Hart has made no representations or warranties with respect to this Agreement or the eSlate™ Electronic Voting System and its components that are not included herein. Client acknowledges and agrees that Hart has no responsibility or liability under the eSlate Agreement except to the extent, if any, that Hart is a party to the eSlate Agreement. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.

12.2 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern and the conflicting terms and conditions in the preprinted form will be void and of no effect. The terms and conditions of this Agreement, including, but not limited to, this Section 12.2, cannot be amended, modified, or altered by any conflicting preprinted terms or conditions in a preprinted form.

12.3 Interpretation. This Agreement will be construed according to its fair meaning and not for or against either party. Headings are for reference purposes only and are not to be used in construing the Agreement. All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.

12.4 GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS, UNLESS CLIENT IS A GOVERNMENTAL SUBDIVISION OF ANOTHER STATE, IN WHICH CASE THE LAWS OF THE STATE IN WHICH CLIENT IS A GOVERNMENTAL SUBDIVISION WILL CONTROL. Exclusive jurisdiction and venue of any actions arising out of, or relating to or in any way connected with the Agreement, its negotiation or termination, or the Equipment and Software and related services provided or to be provided by Hart, will be in Fort Bend County, Texas if in state court, and in the Southern District of Texas, Houston Division if in Federal Court.

12.5 Severability. Whenever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law; but if any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof will be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, or unenforceable provision. If it is not possible to modify the provision to render it legal, valid, and enforceable, then the provision will be severed from the rest of the Agreement and ignored. The invalidity, illegality, or unenforceability of any provision will not affect the validity, legality, or enforceability of any other provision of this Agreement, which will remain valid and binding.

12.6 Delays. Hart is not responsible for failure to fulfill its obligations when due to causes beyond its reasonable control, including the failure of third parties to timely provide Software, Equipment, materials, or labor contemplated herein. Hart will notify Client in writing of any such delay, and the time for Hart's performance will be extended for a period corresponding to the delay. Hart and Client will determine alternative procedures to minimize delays.

12.7 Force Majeure. "Force Majeure" means a delay encountered by a party in the performance of its obligations under this Agreement that is caused by an event beyond the reasonable control of the party, but does not include any delays in the payment of monies due by either party. Without limiting the generality of the foregoing, "Force Majeure" will include, but is not restricted to, the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities (other than, with respect to Client's performance, the Client, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; and strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a period of time necessary to overcome the effects of the Force Majeure.

12.8 Compliance with Laws. Client and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Equipment and Software. Equipment and Software provided under this Agreement may be subject to U.S. and other government export control regulations. Client shall not export or re-export any Equipment or Software.

12.9 Assignments. Hart shall not assign this Agreement without the express written consent of Client, such consent not to be unreasonably withheld, conditioned or delayed. Client shall not assign this Agreement without the express written consent of Hart, such consent not to be unreasonably withheld, conditioned or delayed. In the event of any permitted assignment of this Agreement, the assignee shall assume the liabilities and responsibilities of the assignor, in writing.

12.10 Independent Contractors. Client and Hart are independent contractors and are not agents

or partners of each other. Hart's employees, agents, and subcontractors will not be entitled to any privileges or benefits of Client employment. Client's employees, agents, and contractors will not be entitled to any privileges or benefits of Hart employment.

12.11 Notices. Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth on the Signature Page for the party to whom the notice is given, or on the fifth business day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at their address set forth on the Signature Page. Each party may change its address for notice by giving written notice of the change to the other party.

12.12 Trademarks. eSlate™, eSlate 3000™, Judge's Booth Controller™, JBC1000™, Disabled Access Unit™, DAU5000™, Mobile Ballot Box™, Ballot Origination Software System™, BOSS™, Tally™, Rally™, FUSION™, and Ballot Now™ are trademarks of Hart.

13. DEFINITIONS

"Agreement" has the meaning set forth on the Signature Page.

"Anniversary Date" means each anniversary of the Effective Date.

"Annual Fee" means the combined annual license, sublicense, and support fees payable by Client to Hart as described in Section 4.

"Client" has the meaning set forth on the Signature Page.

"Confidential and Proprietary Information" means Software, firmware, diagnostics, documentation (including operating manuals, user documentation, and environmental specifications), designs and configurations of Equipment, Software and firmware, trade secrets and related documentation, and any other information confidential to Hart or its suppliers or licensors.

"DAU™" means the Disabled Access Unit (DAU5000™) created by Hart as an add-on component to an eSlate that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from specialized switch mechanisms, such as head switches, breath switches, and panel switches that facilitate interaction with disabled voters, as needed.

"Effective Date" has the meaning set forth in the Signature Page and indicates the date this Agreement becomes effective.

"Equipment" means the eSlate Hardware and Non-Hart Equipment.

"eScan™" means the eScan™ device created by Hart, consisting of a precinct digital ballot imaging device single-feed scanner that transports and scans both sides of a ballot simultaneously, and a base that provides for secure ballot storage and transport.

"eSlate™" means the eSlate 3000™ created by Hart and consisting of hardware including an electronically configurable, network-capable voting station that permits a voter to cast votes by direct

interaction, which voting station in its present configuration created by Hart comprises an electronically configurable liquid crystal display (LCD) panel for use in displaying ballot images, a rotary input device for use in ballot navigation, and various buttons that facilitate voter options for selecting ballot choices and casting a ballot.

"eSlate™ Agreement" means the agreement, between Client and Hart or Hart's authorized distributor of eSlate Hardware, under which Client has purchased the eSlate Hardware. The eSlate Agreement is identified on the Signature Page.

"eSlate™ Electronic Voting System" means the Equipment and the Software.

"eSlate™ Hardware" means the eSlate™ units, JBC™ units, and DAU™ units purchased by Client pursuant to the eSlate Agreement.

"Firmware" means the Hart Proprietary Software embedded in eSlate voting devices that allows execution of the software functions, but does not allow access to or modification of the software by an end user.

"Force Majeure" has the meaning set forth in Section 12.7.

"Hart" means Hart InterCivic, Inc., a Texas corporation.

"Hart Proprietary Software" means the run-time executable code and associated support files of the Ballot Origination Software System (BOSS™) Software, Tally™ Software, Rally™ Software, Ballot Now™ Software, computer code, and software resident in the eSlate Hardware and other support software utilities as specified on Schedule B, consisting of computer programs and computer code owned by Hart that are licensed to Client pursuant to this Agreement, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications, including any custom modifications, to such computer programs and code that are provided to Client, and all copies of the foregoing. Hart Proprietary Software also includes all documentation provided by Hart to Client with respect to these computer programs and code and all copies of the foregoing.

"Initial Annual Fee" means the first Annual Fee, in the amount specified as the "Initial Annual Fee" on Schedule D, which is payable upon execution of this Agreement.

"Installation Date" means, with respect to eSlate Hardware, the date of delivery to Client and, with respect to Hart Proprietary Software, the date Hart completes delivery and installation of the Hart Proprietary Software.

"JBC™" means the Judge's Booth Controller (JBC1000™) created by Hart that is a local area network controller capable of interacting with one or more eSlate devices or DAU devices by transmitting and receiving signals that manage or control an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

"Licenses" means one instance of an application on one computer.

"Non-Hart Equipment" means the equipment, if any, not consisting of eSlate Hardware that was sold to Client by Hart or Hart's distributor for use with, and in connection with the sale of, the eSlate

Hardware.

"Non-Hart Software" means the run-time executable code and associated support files of computer programs owned by third parties that are identified on Schedule C and sublicensed by Hart to Client pursuant to this Agreement or licensed directly by the third-party licensor to Client, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications to such computer programs and code that are provided to Client, and all copies of the foregoing. Non-Hart Software also includes all documentation provided to Client with respect to these computer programs, and all copies of the foregoing.

"Software" means the Hart Proprietary Software and Firmware, and Non-Hart Software.

"Sublicensed Software" means Non-Hart Software that is identified on Schedule C as being sublicensed by Hart to Client pursuant to this Agreement.

"VBO™" means the Voter Verifiable unit used in conjunction with the eSlate™ for a *Voter Verifiable Paper Audit Trail*.

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SCHEDULE A**SUPPORT CONTACT INFORMATION**

The following contact information is to be used by Client for submitting Support requests to Hart InterCivic, Inc.:

| | |
|------------------------------------|--|
| Client Support Center: | 1-800-750-HART (4278) |
| Client Support Center Fax: | 1-800-396-HART (4278) |
| E-mail Address: | hartsupport@hartic.com |
| Hart InterCivic, Inc. Switchboard: | 1-800-223-HART (4278) |
| Client Support Manager: | |

The following contact information is to be used by Hart for contacting Client on Software Support Service requests:

| | |
|---------------------------------------|-------|
| Primary Client Contact Point ("CCP"): | _____ |
| First Alternate CCP: | _____ |

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SCHEDULE B**HART PROPRIETARY SOFTWARE**

| QUANTITY | MODEL | DESCRIPTION | UNIT PRICE | NUMBER OF LICENSES | INITIAL LICENSE FEE |
|----------|--------------|--|-------------|--------------------|---------------------|
| One (1). | BOSS™. | Ballot Origination Software System (BOSS™) software. | \$25,000.00 | One (1). | \$25,000.00 |
| One (1). | Tally™. | Tabulation and Reporting (Tally™) software. | \$25,000.00 | One (1). | \$25,000.00 |
| One (1). | Ballot Now™. | Ballot On Demand (Ballot Now™) software. | \$50,000.00 | One (1). | \$50,000.00 |
| One (1). | SERVO™. | Equipment and data management software. | Included. | One (1). | No Charge. |

Licensed Location: **Fort Bend County, Texas.**

NOTE: Hart and Client will update this Schedule as appropriate if Hart releases new Hart Proprietary Software that is made available to Client under the eSlate™ Warranty, Support, and License Agreement.

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SCHEDULE C**NON-HART SOFTWARE**

Non-Hart Software Sublicensed to Client:

| QUANTITY | MODEL | DESCRIPTION | UNIT PRICE | NUMBER OF LICENSES | TOTAL PRICE |
|----------|----------------------------------|------------------|------------|--------------------|-------------|
| Four (4) | Sybase Embedded Runtime Program. | Database Engine. | No Charge. | Four (4) | No Charge |

NOTE: Hart and Client will update this Schedule as appropriate if Hart provides new or different Non-Hart Software to Client under this Agreement.

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SCHEDULE D

INITIAL ANNUAL FEE

Initial Annual Fee: **\$ 81,100.00**

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