

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES (hereinafter referred to as "Contract" or "Agreement") is made this 21 day of MARCH, 2017 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the (Election System of the Virgin Islands) (hereinafter referred to as "Government" or "Customer") and (Election Systems & Software, LLC.) (hereinafter referred to as "Contractor" or "ES&S").

WITNESSETH:

WHEREAS, the Government is in need of voter registration services and voter tabulation equipment, software and services for use in the Territory of the Virgin Islands and has agreed to purchase/license such voter tabulation equipment, software and services from Contractor all in accordance with the terms of this Agreement and the Addendums attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing the voter tabulation equipment, software and services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. PRODUCTS AND SERVICES

The Contractor will provide the voter registration services, voter tabulation equipment, software and services described in the Addendums attached hereto and made a part of this contract.

2. TERM

This Contract shall commence on January 1, 2016 and shall terminate on December 31, 2017 ("Initial Term"). The parties acknowledge and agree that there are separate coverage periods during the Initial Term for Voter Registration and Voter Tabulation Services as set forth in the Addendums attached hereto. Upon the expiration of the Initial Term and subject to Section 16 of this Contract, this Contract shall automatically renew for two (2) one-year periods (each a "Renewal Term") until this Agreement is terminated as set forth herein.

3. COMPENSATION

The Government in consideration of the satisfactory delivery of the equipment and software and the performance of the services described in the Addendums, agrees to pay Contractor the sum of **(Two Hundred Ten Thousand Eight Hundred Fifty Dollars and Ten Cents) (\$210,850.10)** for the Initial Term in accordance with the payment terms and provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.



Handwritten signature and date: 2/15/17 C.F.

4. TRAVEL EXPENSES

Included with the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract. The foregoing travel expenses shall in no event exceed \$750 per person, per day for each day of any authorized trip up to a maximum amount of \$44,500.00 for the Initial Term and \$22,250.00 for any Renewal Term of the Contract.

5. RECORDS

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, program documents, printouts and memoranda of every description derived therefrom specifically provided by Contractor under this Contract and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

[Handwritten signature]
3-13-12
C. H.

10. INDEMNIFICATION

Contractor agrees to investigate, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent Contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This Contract, including all Addendums attached hereto and incorporated herein by this reference, constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold those specific payments due to Contractor associated with the work which has not been performed in accordance with the terms of the Contract, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy any claims resulting from Contractor's failure to perform the work in accordance with the terms of the Contract. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

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No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

16. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

17. TERMINATION

This Contract may be terminated as follows:

a. By either party if the other party breaches any material provision hereof and fails to cure such breach within thirty (30) calendar days after receiving written notice thereof from the nonbreaching party; or

b. By either party with or without cause; provided such party provides thirty (30) days written notice to the other party specifying the date of termination. In the event the Government terminates this Contract in accordance with the foregoing, the Government shall pay Contractor for all deliverables provided and services performed up through the effective date of termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may, be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

20. CONFLICT OF INTEREST

a. Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

b. Contractor further covenants that it is:

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1. not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
2. a territorial officer or employee and, as such, has:
 - i. familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - ii. not made, negotiated or influenced this Contract, in its official capacity;
 - iii. no financial interest in the Contract as that term is defined in section 1101 (1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

22. NOTICE

Any notice required to be given, by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Randolph Bennett
 Commissioner
 Department of Property and Procurement
 No. 3274 Estate Richmond
 Christiansted, St. Croix, Virgin Islands 00820

Caroline F. Fawkes
 Supervisor of Elections
 Election System of the Virgin Islands
 #92 AB Sunny Isles Annex, Suite 4
 P.O. Box 1499, Kingshill, 00851-1499
 Christiansted, Virgin Islands 00823

CONTRACTOR

Eric Anderson, Esq.
 Election Systems & Software, LLC. (ES&S)
 11208 John Galt Blvd.
 Omaha, NE 68137
 Attn.: Office of General Counsel

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23. LICENSURE

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

24. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

25. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make, or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

26. DEBARMENT CERTIFICATION

By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

27. OTHER PROVISIONS

Addendum I to Addendum XI are attached hereto and made a part of this Contract and are incorporated herein by reference. In the event of a conflict between the terms and conditions of the general provision of this Contract as set out in Section 1 through 27 of this Contract, and the terms and provisions of any Addendum or Attachment to this Contract, the terms and provisions of said general provisions of the Contract shall prevail.

CJ
DJ
10/26/16

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

[Signature]

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]

for Randolph Bennett, Commissioner
Department of Property & Procurement

1/27/07
Date

[Signature]

Caroline F. Fawkes

Caroline F. Fawkes
Supervisor of Elections
Election System of the Virgin Islands

10/31/16
Date

CONTRACTOR

[Signature]

[Signature]

Richard J. Jablonski, VP of Finance
Election System & Software, LLC
(Corporate seal)

10/26/2016.
Date

APPROVED:

[Signature]

Date: _____

KENNETH E. MAPP
GOVERNOR OF THE VIRGIN ISLANDS

Date: 3-21-17

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:

[Signature]
Deputy Sol. Gen.

Date: 3/17/2017

MED NO.

ACCOUNT CODE NO.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of
Contract No. [] entered into between
The Department of Property and Procurement and
Election System & Software, LLC

Randolph Bennett, Commissioner
Department of Property and Procurement

[Handwritten initials]
10/26/16