

**PREMIER ELECTION SOLUTIONS, INC.
POST WARRANTY
HARDWARE MAINTENANCE SERVICES, SOFTWARE LICENSE, AND SOFTWARE
SUPPORT AGREEMENT**

THIS HARDWARE MAINTENANCE SERVICES, SOFTWARE LICENSE, AND SOFTWARE SUPPORT AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Premier Election Solutions, Inc., a Delaware corporation, authorized to do business in Texas ("PES") and **El Paso County, Texas** ("Customer").

RECITALS:

- A. PES has sold to Customer the proprietary voter tabulation equipment and licensed the software described on Attachment 1, and Customer now desires to obtain maintenance services for such equipment and license and support services for such software.
- B. PES has agreed to provide such services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

ARTICLE I

GENERAL

1. **Term; Termination.** This Agreement for Hardware Maintenance and Support and Software License and Support services shall be in effect for the coverage period as described in Attachment 1 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period") until this Agreement is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the effective date of the termination; (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after PES notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to PES under this Agreement. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to PES, or (if requested by PES) destroy the Software and Documentation and certify in writing to PES that such destruction has occurred. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to PES hereunder and shall only entitle Customer to a prorated refund of any fees already paid to PES in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for PES' agreement to provide Hardware Maintenance and Support and Software License and Support services under this Agreement, Customer shall pay to PES the Hardware Fees and Software Fees set forth on Attachment 1 for the Initial Term.

Unless otherwise specified on Attachment 1, the Hardware Fees and Software Fees for any renewal period shall be the then current fees in effect and are due and payable no later than 30 days prior to the beginning of such renewal period. The Software License and Support Fee shall be comprised of (i) a fee for the License and Support of the PES Firmware, and (ii) a fee for the License and Support for all other PES Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If Customer elects to receive Software and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, PES will charge an incremental fee for such license and services. In the event Customer terminates this Agreement through no fault of PES and later desires to subscribe for a license and support plan, or otherwise changes its license and support plan with PES during the Initial Term or any renewal thereof, PES will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, license and support coverage.

ARTICLE II

HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the PES equipment listed on Attachment 1 is set forth on Attachment 1 (the "Products") and shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** A PES Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once every even year during the Initial Hardware Maintenance Term or any renewal thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any PES Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, cancellation stamps, ink pads, ink cartridges or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Hardware Maintenance Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within thirty (30) days after invoice date. At the request of Customer, PES shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. PES will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided either at Customer's Designated Location or at a PES-designated depot facility ("Depot"), as determined by the parties. Customer shall pay all costs associated with shipping Hardware to a PES-designated Depot, including insurance. PES shall pay the return shipping costs, including insurance.

b. **Remedial Maintenance Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify PES, and PES shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by PES pursuant to this Subsection 1(c)(i) are referred to herein as "Remedial Maintenance Services". PES shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial

Maintenance Services are required for 10 or more Products at any given time, Customer may elect to have such services provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at Customer's Designated Location. Customer acknowledges that the Product(s) identified on Attachment 1 as "depot repair only" may only be repaired at a Depot. Customer shall pay all costs associated with shipping Hardware to a PES-designated Depot, including insurance. PES shall pay the return shipping costs, including insurance.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by PES, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by PES or (3) causes beyond the reasonable control of PES or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, or if Customer does not notify PES within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay PES for the Remedial Maintenance Services at PES' then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by PES and Customer. If Customer requires PES to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services that are provided within 48 hours after Customer notifies PES of the need therefore), and such emergency Remedial Maintenance Services are not needed as a result of an action, error or omission by PES, Customer shall pay a surcharge, as set forth on Attachment 1.

iv. **Loaner Unit.** At Customer's request and if such product is available, PES shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 1(c)(ii) above, Customer shall pay PES for the use of the Loaner Unit at PES' then-current rates including the cost of shipping.

c. **Exclusions.** PES has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, cancellation stamps, ink pads, ink cartridges or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, PES may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, PES shall no longer be required to provide Hardware Maintenance Services for such Product. PES shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware

Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective twelve (12) month period within the Initial Maintenance Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective twelve (12) month period with such Initial Maintenance Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than a PES Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Maintenance Term or any Renewal Period is in effect. Customer shall provide PES Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Maintenance Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to PES and (b) the granting to PES of access to the Products. PES requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary purpose for which they are to be used, normal wear and tear expected ("Normal Working Condition"). The cost of such inspection will be at the current published PES rate and shall be due from Customer within thirty (30) days of its receipt of PES' invoice therefore. If any of the Products is not in Normal Working Condition, PES, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any parts used in such repairs or replacements and with respect to PES' Out-Of-Pocket Expenses, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Agreement, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by PES employees or authorized representatives ("PES Representatives") who are required to travel to Customer's Designated Location to provide services. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires PES to perform the Hardware Maintenance Services. Customer's Designated Location is specified on Attachment 1.

ARTICLE III **LICENSE OF SOFTWARE**

1. **Grant of License.** Subject to the terms and conditions of this Agreement, PES hereby grants to Customer an annual nonexclusive, nontransferable license to use the Software and all related operating instructions, user manuals and training materials supplied by PES (collectively the "Documentation") in **El Paso County, Texas**, ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating

and reporting election results in the Jurisdiction. The license does not permit Customer to take any of the following actions:

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

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

c. Cause or permit any change to be made to the Software without PES' prior written consent.

d. Cause or permit any copying, reproduction or printing of any output generated by the Software in which PES owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2. **Term of License.** The license granted in Section 1 shall commence upon payment of the license fee set forth on Attachment 1, and shall continue until the first to occur of the following: (a) expiration of the Initial Term; (b) Customer ceases to use the Software; (c) Customer fails to pay the consideration due for the license; or (d) Customer breaches any material provision of this Article III.

3. **Proprietary Rights.** Customer acknowledges and agrees that PES owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. PES likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential and proprietary trade secrets of PES which are protected by law and are of substantial value to PES. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

4. **Indemnification For Intellectual Property Infringement.** Subject to Section 5 below, PES will indemnify and hold Customer harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys fees) (collectively "Adverse Consequences") arising out of or relating to a claim that the Software infringes upon any third party's United States patent existing as of the date hereof or United States copyright, trademark or trade secret (a "Third Party Infringement Claim"). Customer shall notify PES immediately if it becomes aware of any Third Party Infringement Claim. Customer hereby gives PES full and complete authority, and shall provide such information and assistance as is necessary (at PES' expense with respect to reasonable out-of-pocket costs), to enable PES to defend, compromise or settle a Third Party Infringement Claim. In addition, if Customer is prevented by a Third Party Infringement Claim from using the Software in substantially the manner contemplated by this Agreement, PES shall, at its sole option and expense, procure for Customer the right to continue such use or replace or modify the infringing item. If neither option is commercially reasonable, PES may direct Customer to cease use of the Software and shall refund the depreciated cost thereof (as determined in accordance with United States generally

accepted accounting principles) to Customer. ES&S shall have no obligation to indemnify the Customer under this section in the event the Third Party Infringement Claim results from (a) the use of the Software in combination with other equipment, hardware or software not meeting PES' specifications for use with the Software; (b) Customer's modification or alteration of the Software without the prior written consent of PES; or (c) Customer's election not to receive, or to terminate, the Software Support Services **THE FOREGOING STATES PES' ENTIRE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT ARISING UNDER THIS AGREEMENT.**

ARTICLE IV SOFTWARE SUPPORT SERVICES

1. **Services Provided.** PES shall provide support services ("Software Support") for the PES Software and PES Firmware (collectively, "PES Software"). Software Support services to be provided by PES, and each party's obligations with respect to such services, are set forth on Attachment 1.

2. **Conditions.** PES shall not provide Software and Support for any item of PES Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by PES, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by PES, (c) causes beyond the reasonable control of PES or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by PES, (e) Customer's failure to notify PES within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. Any such Software Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 4 or as a result of Customer's actions or inactions shall be billable to Customer at PES' then current rates.

3. **Proprietary Rights.** PES shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Fees, PES hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that PES actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be PES Software for purposes of this Agreement. Except and to the extent expressly provided herein, PES does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

4. **Reinstatement of Software License and Support.** If the Initial License and Support Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software and Support upon (a) notification to PES, (b) payment of all fees, including a reinstatement charge, which would have been due to PES had the Initial License Term or any Renewal Period not expired, and (c) the granting to PES of access to the PES Software, so that PES may analyze it and perform such review as may be necessary before resuming the Software License and Support.

ARTICLE V
MISCELLANEOUS

1. **Taxes; Interest.** Customer will provide PES with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse PES for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by PES' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to PES will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2. **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. PES' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to PES hereunder. Any action by Customer against PES shall be commenced within the applicable statutory limitations period after the cause of action has accrued. PES will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate, the Hardware Maintenance Services and Software and Support Services.

3. **Excusable Nonperformance.** If PES is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including, but not limited to, natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, communications or transportation disruptions, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. PES agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

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

5. **Entire Agreement.** This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, USA. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of PES to a successor who has asserted its intent to continue the business of PES, neither party may assign or transfer this Agreement without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. PES may engage duly qualified subcontractors to perform certain of the Hardware Maintenance Services, but shall remain fully

responsible for such performance.

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

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

PREMIER ELECTION SOLUTIONS, INC.
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

EL PASO COUNTY, TEXAS 500
E. San Antonio – Room 402 EI
Paso, TX 79901
Fax No.: (915) 546-2220

By _____
Name: _____
Title: _____
Date: _____

County Judge Veronica Escobar – 8/22/11

PRICING SUMMARY AND PAYMENT TERMS

Sale Summary:		
Description	Refer to	Amount
PES Hardware Maintenance Fees	Attachment 1	\$88,290.00
PES Firmware License and Support Fees	Attachment 1	\$6,695.00
PES Software License and Support Fees	Attachment 1	\$13,467.00
Total Maintenance, License, and Support Fees:		\$108,452.00
Terms & Conditions:		
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.</p> <p>Note 2: Invoicing and Payment terms are as follows:</p> <ul style="list-style-type: none"> • Please note that The Software License and Support Fee in the amount of \$13,467.00 was paid by Customer on October 1, 2010 in furtherance of the services hereunder. Therefore, a remaining balance of \$94,010.00, for Hardware Maintenance and Firmware License and Support Fees, is due upon Contract Execution for the coverage dates of October 1, 2010 through September 30, 2011. • Total License, and Support Fees SHALL REMAIN THE SAME for the first renewal period, October 1, 2011 through September 30, 2012, unless this Agreement is not renewed or is terminated. 		

Attachment 1

PES HARDWARE MAINTENANCE DESCRIPTION AND FEES

HARDWARE

Qty	Description	Coverage Period	Maintenance Fee Per Unit	Maintenance Fee In Total
4	AccuVote OS	10/1/2010 through 9/30/2011	\$135.00	\$540.00
1,350	AccuVote TSX	10/1/2010 through 9/30/2011	\$65.00	\$87,750.00
Maintenance Fees for the Period October 1, 2010 through September 30, 2011				\$88,290.00
Maintenance Fees for the Period October 1, 2011 through September 30, 2012 SHALL REMAIN THE SAME for the first renewal period, October 1, 2011 through September 30, 2012, unless this Agreement is not renewed or is terminated.				

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit during the twenty-four month period Customer shall be pay 90% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Remedial Maintenance Services shall be 150% of the then current maintenance fee per unit.

Note 3: Location of Services – See Article II, Section 1(a)

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

Hardware Maintenance Services Provided by PES Under the Agreement

1. Telephone support
 - PES will provide Hardware support on procedural questions of a specific nature not covered in PES' Hardware User Manuals;
 - PES will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution (to be provided on a limited basis)
 - PES will provide Hardware issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Equipment User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing PES Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
3. PES will provide Technical Bulletins on a schedule to be determined by PES regarding specific issues the Customer may be experiencing.
4. Routine Maintenance Services.
 - Maintenance inspection scheduled once every even year . The inspection includes:
 - o Service performed by a PES trained and certified technician.
 - o Performing factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - o Worn or defective parts are replaced with new or remanufactured certified parts.
 - o The technician will run a final test and verify that the unit is working according to manufacture's specification.
 - o Maintenance records are kept.
3. Remedial Maintenance Services.
 - Customer receives coverage for interim repair calls.
 - o Interim calls may be scheduled during the regular Routine Maintenance Services event if they are not election critical.

- o A Product may be sent to PES' Depot location for repairs at a time to be mutually agreed upon by PES and Customer.

4. Priority Services.

- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified PES parts inventory.

Note: Except for those Hardware Maintenance Services specifically set forth herein, PES is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

**PES GEMS SOFTWARE LICENSE AND SUPPORT DESCRIPTION
AND FEES**

Please check the GEMS Software Products for which Software Support will be provided:

GEMS SOFTWARE PRODUCT -- SUPPORT PROVIDED		
GEMS Application Software	--	YES

Hardware Products for which Software Support will be provided:

HARDWARE PRODUCT	NUMBER OF UNITS
AccuVote OS	4
AccuVote TSX	1350 (1035 R6 units & 315 R7 units)

PES Software License and Support Fees for the Initial Term shall be as follows:

Coverage Period	PES GEMS Software License and Support Fees	PES Firmware License and Support Fees
10/1/2010 through 9/30/2011	\$13,467.00	\$6,695.00
Total Fees Due for the Initial Term	\$0 (pd in full 10/1/2010)	\$6,695.00
If this Agreement is renewed for the period 10/1/2011- 9/30/12	\$13,467.00	\$6,695.00

Software Support Services Provided by PES Under the Agreement

1. Telephone support

- PES will provide Software support on procedural questions of a specific nature not covered in PES' Software User Manuals;
- PES will verify the appropriate steps to take to resolve issues identified by the Customer.

2. Issue Resolution (to be provided on a limited basis)

- PES will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing PES Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.

3. PES will provide Technical Bulletins on a schedule to be determined by PES regarding specific issues the Customer may be experiencing.

Note: Except for those Software Support services specifically set forth herein, PES is under no obligation and shall not provide other Software and support services to the Customer unless previously agreed upon by the parties.

Software Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer's current software and hardware operator shall have completed a full GEMS training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change batteries on the TS/TSX system. Any other changes made by the customer must be pre-approved in writing by PES.
 - Customer shall have the ability to store equipment in accordance with PES requirements.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. Customer shall be responsible for integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer VR system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise
7. Customer shall be responsible for Customer Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of PES software or hardware.
9. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.