

### E-ROSTER CONTRACT

1. This Contract is entered into between the County of Solano and the Contractor named below:

Election Administrators, LLC  
7531 Ravensridge Road  
Saint Louis, Missouri 63119

(Referred to as "EA" or "Contractor")

2. The Term of this Contract is: **5 years** (Referred to as "Initial Term"); Renewable for an additional **5 years** (referred to as "Renewal Term"). The Initial Term covers the period from May 1, 2013 through April 30, 2018.
3. The maximum amount of this contract is: **\$205,068.**
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of this Contract:
- Exhibit A – Scope of Work
  - Exhibit B – Budget Detail and Payment Provision
  - Exhibit C – General Terms and Conditions
  - Exhibit D – Election Administrator's End User Software License Agreement
5. This Contract is to be executed as of May 1, 2013.

| CONTRACTOR                                                                           |         | COUNTY OF SOLANO                                                                                                                        |       |
|--------------------------------------------------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------|-------|
| Election Administrators, LLC<br>7531 Ravensridge Road<br>Saint Louis, Missouri 63119 |         | Solano County Registrar of Voters<br>675 Texas St.<br>Suite 2600<br>Fairfield, CA 94533                                                 |       |
| Authorized Signature:                                                                | Date:   | Authorized Signatures:                                                                                                                  | Date: |
|   | 3-12-13 |                                                     |       |
| Printed Name and Title:                                                              |         | Birgitta E. Corsello,<br>County Administrator                                                                                           |       |
|                                                                                      |         | <br>3/13/13                                         |       |
|                                                                                      |         | Approved as to Content<br>Ira J. Rosenthal, Registrar of Voters                                                                         |       |
|                                                                                      |         | <br>Approved as to Form<br>Office of County Counsel |       |

CONTRACT MUST BE EXECUTED BEFORE WORK CAN COMMENCE

## **EXHIBIT A** **SCOPE OF WORK**

It is the intent of this Contract that the voter check-in system (referred to as “E-Roster”) to be provided by Contractor includes all items, components, products, equipment, hardware, software and spare parts necessary for conducting and administering voter check-in at elections as required under California Election Code.

### **1. Contractor shall be responsible for the following duties:**

- a. The Contractor shall provide the County with an “E-Roster” which shall contain the following components:
  - i. Touchscreen Tablet with Windows/Android based software;
  - ii. Bluetooth printers that can connect to one tablet at a time;
  - iii. AC Power adapters for each device.
  - iv. Tablet components shall only include the tablet, stylus and 2.0 GB micro SD card.
- b. The Contractor shall provide the County with an “E-Roster” solution which shall perform the following minimum functions:

#### **Pre-Election Functionality:**

- i. The system shall allow programming of the election database by means of uploading a CSV, Tab delimited or other database file;
- ii. Uploading the system shall not include physically adding or replacing components including memory cards, hard drives, or usb drives.
- iii. Uploading the system shall take place by means of wireless (wi-fi) network.
- iv. The end users shall be able to add supplemental information to the database after the initial upload.
- v. End users shall be able to create multiple databases for the system to use within a small election window. The purpose of this is to allow for the creation of a training database within the same time span as an actual election for quick turnaround.
- vi. The pre-election software shall allow for verification of voter counts by precinct, district, party or consolidated precinct.

#### **Election Day Functionality:**

- vii. Provide intuitive, logical sequencing through tabs that are easy to follow;
- viii. Clearly identify the working location and precinct number on screen;
- ix. Allow an end user to search for voter by precinct or jurisdiction wide;
- x. Allow searches to take place by last name, first name, address, or date of birth;
- xi. Allow searches to take place by any combination of the fields above;
- xii. Provide for a list of returns to display based on search criteria;
- xiii. In a primary election, the list of returns shall display voters party.

- xiv. For a selected voter, provide information to determine if the voter has already voted, requested a Vote By Mail Ballot, and if Identification is required (per HAVA);
- xv. Provide ability to capture voters signature directly on the tablet device;
- xvi. Provide method to allow “marking” the voter record to indicate the voter has voted.
- xvii. For a primary election, allow for the voter to be identified as a “cross-over” voter to vote for a party that the voter is not currently registered for.
  - 1. Not all parties allow cross-over voting. The end-user would be able to define this in the election set-up software to prevent cross-over on election day where not allowed.
- xviii. Allow for switching between polling place and county wide searches with easy and intuitive instructions
- xix. Allow issuing a provisional ballot to voters who do not have their vote by mail ballot and/or are at the incorrect location.
- xx. Provisional voters shall be marked as such, and a printout containing the information: Voter Last Name, Voter First Name, Voter middle Initial; Voter Address, City, state and zip code, Voter Date of Birth, Voter ID information (CA Driver’s License or last 4 of SSN), signature line and date.
- xxi. The provisional printout shall contain the voter declaration which must state the following: “I declare under penalty of perjury that I reside at the address listed above and have not previously voted in this election either by Vote-By-Mail Ballot or any other polling place. I declare that I am a U.S. Citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election.”
- xxii. Positive feedback shall be provided on-screen to end user to inform them that a function was completed.
- xxiii. Throughout the day the system shall allow for end-users to print the precinct voted list. California state law requires this information to be printed every hour on Election Day.
- xxiv. The precinct voted list print option should contain a selection field for start time of report.
- xxv. The precinct voted list shall contain the voters’ first name, last name, middle name and full address. The printout should contain the time range of the printout and the total number of voters at the top or the bottom.
- xxvi. The system shall allow for the end user to identify the number of voters processed by the system including the count for regular voters and provisional voters.
- xxvii. The system shall not restrict end-users from processing voters before 7:00am (PST) nor after 8:00pm (PST).

Post-Election Functionality:

- i. The system shall allow for retrieving and consolidating multiple tablet devices after Election Day by means of wi-fi.
- ii. The software shall allow for reports to indicate voter counts by precinct, district, party or consolidated district.

- iii. For a primary election, the software will indicate the count and details of cross-over voting and party crossed into by voter ID.
  - iv. After uploading, a consolidated list of all voter ID's who have voted shall be generated as necessary by the end-user.
  - v. All records shall have a date/time stamp associated with them as part of the permanent record for each voter.
- c. Contractor shall provide for all procurement, ordering and furnishing all of the materials, labor, equipment, and software (including subscriptions and licenses) described in this Exhibit.
- d. Contractor shall provide for installation, testing and startup of the equipment and software described in this Exhibit.
- e. Contractor shall provide remote instruction and training for the County and County staff in the operation and use of all components, equipment, and software.
- f. Contractor shall provide an extended support for the equipment, materials, and software as more fully described and identified in this agreement ("System").
- g. Contractor shall deliver the equipment, material, testing, support and training defined in this contract in accordance with the following schedule:
- Delivery of Tablets and printers – no later than 60 days of contract signing
  - Delivery of Software and applications – base application delivered with the tablets;
    - Primary Cross-Over Programming will be delivered by February 1, 2014.
  - Delivery of Training - TBD by Solano County
- h. Delivery of the system shall be inside delivery to the Registrar of Voters Office located at:
- Attn: John Gardner  
675 Texas St.  
Suite 2600  
Fairfield, CA 94533
- i. Risk of loss or damage and title of each tablet and other hardware shall pass to the County upon delivery to the County at the place of delivery. County is responsible for storing all equipment after receipt. Passage of title and risk of loss will not waive or otherwise limit any rights or remedies of the County including County's right to require repair, replacement and other remedial services.
- j. Contractor shall perform acceptance testing as defined below.

- k. Contractor shall be responsible for items below where defined as a Contractor obligation.

## **2. Acceptance Testing:**

- a. Contractor agrees that all functionality testing and custom software testing shall be conducted by Contractor for each unit, device, and tablet prior to shipment to the County. In addition, any custom interfaces or software specific to the County shall be separately tested by Contractor before shipment.
- b. Contractor, with the assistance of the County, will demonstrate the functionality and operations of each unit upon delivery to the County, including the downloading of the County's precinct registration / voter database.
- c. If any defects are found by the County or Contractor during such approval and testing, the Contractor shall immediately initiate efforts to cure such defects. The term "defects" as used in this paragraph means discrepancies in the particular hardware or software items that inhibit the intended and accurate use of the E-Roster. County shall allow Contractor sufficient time and access to each tablet or system to correct any deficiencies with the understanding that all tablets shall be furnished, tested and operational for the November 5, 2013 Election.
- d. Acceptance testing will be performed within 90 days of contract execution, but no later than 30 days from County's receipt of hardware.
- e. The successful completion of acceptance testing shall require County to pay the associated portion of successfully tested hardware identified in the payment schedule in Exhibit B.

## **3. Technical Support:**

- a. Contractor shall provide appropriate and trained remote technical support throughout the implementation of the System and the Initial Term (and any renewal Term) as necessary to ensure proper installation, training, operation, and use of all equipment, hardware, software, and materials supplied to County.
- b. Contractor agrees that it will continue to have available, during the Initial Term (or any renewal Term), for any goods, equipment, hardware, or software provided pursuant to this Contract, personnel competent to make any needed repairs or replacement of the equipment, hardware, or software, as well as the capability to supply any spare parts which may be required in order to make such repairs or replacements. This provision shall not affect the respective right of the parties set forth under the Warranty below. Contractor also agrees that it will provide, at no charge, all software upgrades for the System during the Initial Term (or any renewal Term). Contractor agrees to provide County, at no cost, software improvements relating to debugging, work-around, or patches in the event such

software improvements are released during the Initial Term (or any renewal Term).

- c. The Contractor shall provide necessary updates during annual maintenance periods to maintain software compliance with any applicable state or federal law.

#### **4. Software License and Documentation:**

- a. Contractor grants to County a non-exclusive and non-transferable license to use the Software and Documentation in connection with Customer's use of the System, which is set forth in this Exhibit.

#### **5. County Responsibilities**

- a. County shall provide access to Contractor to its personnel and premises for the purpose of performing or providing warranty or maintenance services.

**EXHIBIT B**  
**Budget Detail and Payment Provision**

1. County shall compensate Contractor for the E-Roster project as follows:

| <b>HARDWARE</b>                 |                  |               |                 |                   |
|---------------------------------|------------------|---------------|-----------------|-------------------|
|                                 | <i>Unit Cost</i> |               | <i>Quantity</i> | <i>Total Cost</i> |
| EA Tablet                       | \$411            | one time cost | 150             | \$61,650          |
| Bluetooth printers              | \$280            | one time cost | 150             | \$42,000          |
| Secure Carry Bags               | \$45             | one time cost | 150             | \$6,750           |
| Sales Tax                       |                  | one time cost | 1               | \$8,418           |
| <b>Hardware Costs (year 1):</b> |                  |               |                 | <b>\$118,818</b>  |

| <b>SOFTWARE</b>                 |                  |                                                                  |                 |                   |
|---------------------------------|------------------|------------------------------------------------------------------|-----------------|-------------------|
|                                 | <i>Unit Cost</i> |                                                                  | <i>Quantity</i> | <i>Total Cost</i> |
| Requested Development           | \$8,000          | For Provisional Processing and Street Index List (one time cost) | 1               | \$8,000           |
| <b>Software Costs (Year 1):</b> |                  |                                                                  |                 | <b>\$8,000</b>    |

| <b>ANNUAL MAINTENANCE</b>                  |                      |                                                                           |                 |                   |
|--------------------------------------------|----------------------|---------------------------------------------------------------------------|-----------------|-------------------|
|                                            | <i>Per Year Cost</i> |                                                                           | <i>Quantity</i> | <i>Total Cost</i> |
| Annual Software Maintenance                | \$14,850             | \$99 Per unit for one year subscription (per piece of installed software) | 5               | \$74,250          |
| EA Data Converter Maintenance              | \$800                | per license (1) per year                                                  | 5               | \$4,000           |
| <b>Total Maintenance Costs (Year 1-5):</b> |                      |                                                                           |                 | <b>\$78,250</b>   |

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|                             |                  |
|-----------------------------|------------------|
| <b>TOTAL CONTRACT COST:</b> | <b>\$205,068</b> |
|-----------------------------|------------------|

Additional hardware may be purchased at the price above for the duration of the Initial Term of this Contract.

2. "Software" includes the "EA Tablet System" and the "EA Data Converter" as defined in Exhibit D – End User Software License Agreement.
3. The County shall pay all software costs and initial annual maintenance (Year 1) identified in the above table as software and annual maintenance within 30 days of contract execution.

4. Payment for hardware components shall be made upon completion of acceptance testing as defined in the General Terms and Conditions.
5. The County may withhold payment, in whole or in part, to protect the County from loss on account of any of the following until remedied:
  - a. Defective equipment, materials, or work of Contractor, which is not remedied;
  - b. Claims filed by third parties relating to the Contractor's negligent work or services or willful misconduct of Contractor or subcontractors, or to the extent Contractor is required by this Contract to provide indemnification and fails to do so;
  - c. Damage to the County or another person or entity caused by the negligence or willful misconduct of the Contractor or Contractor's subcontractors or material Contractors, to the extent Contractor is required by this Contract to provide indemnification and fails to do so.
6. Upon submission of an invoice by Contractor, and upon approval of County's representative, the County shall pay Contractor monthly in arrears for fees and expenses incurred the prior month, up to the maximum amount provided for on the Contract. Each invoice must specify services rendered, to whom, date of service and the accrued charges.
7. Annual Maintenance as identified in the above table covers the period beginning on May 1, 2013 through April 30, 2014 and is payable annually through the duration of the Initial Term.



**EXHIBIT B**  
**Budget Detail and Payment Provision**

1. County shall compensate Contractor for the E-Roster project as follows:

| <b>HARDWARE</b>    |                  |               |                 |                   |
|--------------------|------------------|---------------|-----------------|-------------------|
|                    | <i>Unit Cost</i> |               | <i>Quantity</i> | <i>Total Cost</i> |
| EA Tablet          | \$411            | one time cost | 150             | \$61,650          |
| Bluetooth printers | \$280            | one time cost | 150             | \$42,000          |
| Secure Carry Bags  | \$45             | one time cost | 150             | \$6,750           |
| Sales Tax          |                  | one time cost | 1               | \$8,418           |

**Hardware Costs (year 1): \$118,818**

| <b>SOFTWARE</b>       |                  |                                                                  |                 |                   |
|-----------------------|------------------|------------------------------------------------------------------|-----------------|-------------------|
|                       | <i>Unit Cost</i> |                                                                  | <i>Quantity</i> | <i>Total Cost</i> |
| Requested Development | \$8,000          | For Provisional Processing and Street Index List (one time cost) | 1               | \$8,000           |

**Software Costs (Year 1): \$8,000**

| <b>ANNUAL MAINTENANCE</b>     |                      |                                                                           |                 |                   |
|-------------------------------|----------------------|---------------------------------------------------------------------------|-----------------|-------------------|
|                               | <i>Per Year Cost</i> |                                                                           | <i>Quantity</i> | <i>Total Cost</i> |
| Annual Software Maintenance   | \$14,850             | \$99 Per unit for one year subscription (per piece of installed software) | 5               | \$74,250          |
| EA Data Converter Maintenance | \$800                | per license (1) per year                                                  | 5               | \$4,000           |

**Total Maintenance Costs (Year 1-5): \$78,250**

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**TOTAL CONTRACT COST: \$205,068**

Additional hardware may be purchased at the price above for the duration of the Initial Term of this Contract.

2. "Software" includes the "EA Tablet System" and the "EA Data Converter" as defined in Exhibit D – End User Software License Agreement.
3. The County shall pay all software costs and initial annual maintenance (Year 1) identified in the above table as software and annual maintenance within 30 days of contract execution.

4. Payment for hardware components shall be made upon completion of acceptance testing as defined in the General Terms and Conditions.
5. The County may withhold payment, in whole or in part, to protect the County from loss on account of any of the following until remedied:
  - a. Defective equipment, materials, or work of Contractor, which is not remedied;
  - b. Claims filed by third parties relating to the Contractor's negligent work or services or willful misconduct of Contractor or subcontractors, or to the extent Contractor is required by this Contract to provide indemnification and fails to do so;
  - c. Damage to the County or another person or entity caused by the negligence or willful misconduct of the Contractor or Contractor's subcontractors or material Contractors, to the extent Contractor is required by this Contract to provide indemnification and fails to do so.
6. Upon submission of an invoice by Contractor, and upon approval of County's representative, the County shall pay Contractor monthly in arrears for fees and expenses incurred the prior month, up to the maximum amount provided for on the Contract. Each invoice must specify services rendered, to whom, date of service and the accrued charges.
7. Annual Maintenance as identified in the above table covers the period beginning on May 1, 2013 through April 30, 2014 and is payable annually through the duration of the Initial Term.

## **EXHIBIT C**

### **GENERAL TERMS AND CONDITIONS**

#### **1. CLOSING OUT**

County will pay Contractor's final claim for payment providing Contractor has paid all financial obligations undertaken pursuant to this Contract. If Contractor has failed to pay all obligations outstanding, County will withhold from Contractor's final claim for payment the amount of such outstanding financial obligations owed by Contractor. Contractor is responsible for County's receipt of a final claim for payment 30 days after termination of this Contract.

#### **2. TIME**

Time is of the essence in all terms and conditions of this Contract.

#### **3. TIME OF PERFORMANCE**

Work will not begin, nor claims paid for services under this Contract until all Certificates of Insurance, business and professional licenses/certificates, IRS ID number, signed W-9 form, or other applicable licenses or certificates are on file with the County's Contract Manager.

#### **4. TERMINATION**

This Contract may be terminated by County or Contractor, at any time, with or without cause, upon 30 days written notice from one to the other. County may terminate this Contract immediately upon notice of Contractor's malfeasance. Following termination, County will reimburse Contractor for all expenditures made in good faith that are unpaid at the time of termination not to exceed the maximum amount payable under this Contract unless Contractor is in default of the Contract.

#### **5. SIGNATURE AUTHORITY**

The parties executing this Contract certify that they have the proper authority to bind their respective entities to all terms and conditions set forth in this Contract.

#### **6. WARRANTY**

- a. Contractor warrants that all software purchased under this Agreement will operate in accordance with the requirements and warranties set out in this Agreement and be free from defects. Contractor shall correct any errors affecting the software at its sole cost and expense for the Term (or any renewal Term). Contractor is not responsible for errors or problems in the software due to acts or omissions by County, including the improper use of the System or installation of software on hardware that was not approved by EA.

- b. Contractor warrants that all hardware and software furnished by Contractor will interface and function properly to provide a working, functional, and operational electronic voter check-in system.

## 7. ADDITIONAL WARRANTIES

Contractor represents, warrants and covenants to County that:

- a. Contractor is an entity duly organized validly existing and in good standing, has the power to engage in the business it presently conducts and to perform its obligations, and is authorized to do business in the State of California.
- b. Contractor warrants that it is financially capable of fulfilling all requirements of this Agreement and that it has the capacity and capability to meet the delivery requirements for providing the System and the required training and support services, regardless of current, pending or future contracts with other counties.
- c. This Agreement does not conflict with any law, agreement, decree or order by which Contractor is bound. This Agreement is a legal and valid obligation of Contractor.
- d. As of the date of signing of this Agreement by Contractor, there are no proceedings or investigations pending or, to the knowledge of Contractor threatened against Contractor, which would result in any material adverse effect on the business, operations or condition of Contractor or Contractor's ability to perform its obligations under this Agreement, including without limitation, the timely delivery, installation, and testing of the System and its components.
- e. Contractor owns or has the right to use all intellectual property, including computer software, necessary to perform its obligations under this Agreement, including without limitation the manufacture, delivery, installation, and operation of the software, hardware, equipment and components for use by County, without conflict with the rights of others.
- f. Neither Contractor nor any of its employees or affiliates has, in violation of law, made, received, or offered any gift or other consideration for the purpose of influencing any person or entity in connection with this Agreement. Contractor warrants that no official or employee of the County whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of this contract. Contractor further warrants that no official or employee of the County, or their governing body and no other public official in Solano County who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall voluntarily acquire any personal interest, directly or indirectly, in this contract.
- g. No individual who owns a controlling interest, defined as 5% or more of the voting stock or other equity interest in the Contractor or who is a corporate officer, , or otherwise involved in the day to day management or operation of the

Contractor, shall have been convicted or pled guilty, whether or not sentence, is imposed, of an election-related offense or felony. If such conviction or plea of guilty occurs during the Term or during any renewal term, the Contractor shall notify the County within twenty-four (24) hours of such conviction or plea; and, this contract may be subject to immediate contract termination in addition to any other remedies available pursuant to this contract.

- h. No software included with the System or any components of the System, when delivered to County, contains (i) any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software code designed to permit access or use of the user's computer system by a unauthorized party, to disable, damage or erase any software or data on the user's system, or to perform any other unauthorized action on the user's system (the foregoing collectively referred to as "Troubled Software"), and/or (ii) any preprogrammed preventative routines or similar devices which could prevent County from exercising any of the rights granted under this Agreement, or from using any such software for the purposes for which it was intended.

## 8. NO WARRANTY CONFLICTS

In the event that any warranty or other provisions in any invoices, purchase orders, or documents whatsoever provided by either party conflicts with the provisions in this Agreement, the provisions of this Agreement shall control. The provisions of this Exhibit C shall control over the terms of any Exhibit attached to this Agreement. In the event that provisions in any invoices or documents whatsoever provided by either party attempt to limit either party's liability or restrict either party's remedies, those provisions shall be inconsistent with this Agreement and shall be void and unenforceable. Without limiting the foregoing, if any term contained in any Order or other form used by County to order goods under this Agreement or in any acknowledgment or other form used by Contractor is inconsistent with any term of this Agreement, this Agreement will take precedence unless County agrees to such inconsistent term by a writing, signed by Contractor and County, that specifically references this Agreement and specifically acknowledges such inconsistency.

This section shall not be deemed a limitation on any rights or remedies which the Contractor may have under any Federal or State laws unless such rights or remedies are expressly waived by Contractor.

## 9. INSURANCE

- a. Without limiting Contractor's obligation to indemnify County, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Contract and the results of that work by Contractor, Contractor's agents, representatives, employees or subcontractors.
- b. Minimum Scope of Insurance Coverage must be at least as broad as:
  - i. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

- ii. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, code1 (any auto).
  - iii. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- c. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- i. General Liability: (Including operations, products and completed operations.) **\$5,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - ii. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
  - iii. Workers' Compensation: **As required** by the State of California.
  - iv. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
- d. If Contractor maintains higher limits than the minimums shown above, County is entitled to coverage for the higher limits maintained by Contractor.
- e. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either:

- i. The insurer will reduce or eliminate such deductibles or self-insured retentions with respect to County, its officers, officials, agents, employees and volunteers; or
  - ii. Contractor must provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- f. Other Insurance Provisions

The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

- i. The County of Solano, its officers, officials, agents, employees, and volunteers must be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to Contractor's insurance policy, or as a separate owner's policy.

- ii. For any claims related to work performed under this Contract, Contractor's insurance coverage must be primary insurance with respect to the County of Solano, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, agents, employees, or volunteers is excess of Contractor's insurance and shall not contribute to it.
  - iii. Each insurance policy required by this clause must be endorsed to state that coverage may not be canceled by Contractor, except after 30 days prior written notice has been provided to County.
- g. Waiver of Subrogation
- i. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
  - ii. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents and subcontractors.
- h. Acceptability of Insurers Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise acceptable to County.
- i. Verification of Coverage
- i. Contractor must furnish County with original certificates and endorsements effecting coverage required by this Contract.
  - ii. The endorsements should be on forms provided by County or, if on other than County's forms, must conform to County's requirements and be acceptable to County.
  - iii. County must receive and approve all certificates and endorsements before work commences.
  - iv. However, failure to do so shall not operate as a waiver of these insurance requirements.
  - v. County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## 10. BEST EFFORTS

Contractor warrants that Contractor will at all times faithfully, industriously and to the best of his/her/its ability, experience and talent, perform to County's reasonable satisfaction.

## 11. DEFAULT

- a. If Contractor defaults in Contractor's performance, County shall promptly notify Contractor in writing. If Contractor fails to cure a default within 30 days after notification, or if the default requires more than 30 days to cure and Contractor

fails to commence to cure the default within 30 days after notification, then Contractor's failure shall terminate this Contract.

- b. If Contractor fails to cure default within the specified period of time, County may elect to cure the default and any expense incurred shall be payable by Contractor to County.
- c. If County serves Contractor with a notice of default and Contractor fails to cure the default, Contractor waives any further notice of termination of this Contract.
- d. If this Contract is terminated because of Contractor's default, County shall be entitled to recover from Contractor all damages allowed by law.

## 12. INDEMNIFICATION

- a. Contractor will indemnify, hold harmless and assume the defense of the County of Solano, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly arising from Contractor's operations or from any persons directly or indirectly employed by, or acting as agent for, Contractor, excepting the sole negligence or willful misconduct of the County of Solano. This indemnification shall extend to claims, losses, damages, injury and liability for injuries occurring after completion of Contractor's services, as well as during the progress of rendering such services.
- b. Acceptance of insurance required by this Contract does not relieve Contractor from liability under this indemnification clause. This indemnification clause shall apply to all damages or a claim for damages suffered by Contractor's operations regardless if any insurance is applicable or not.

## 13. INDEPENDENT CONTRACTOR

- a. Contractor is an independent contractor and not an agent, officer or employee of County. The parties mutually understand that this Contract is by and between two independent Contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.
- b. Contractor shall have no claim against County for employee rights or benefits including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, retirement benefits, Social Security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.
- c. Contractor is solely obligated to pay all applicable taxes, deductions and other obligations including, but not limited to, federal and state income taxes, withholding, Social Security, unemployment, disability insurance, Workers' Compensation and Medicare payments.



- d. Contractor shall indemnify and hold County harmless from any liability which County may incur because of Contractor's failure to pay such obligations.
- e. As an independent contractor, Contractor is not subject to the direction and control of County except as to the final result contracted for under this Contract. County may not require Contractor to change Contractor's manner of doing business, but may require redirection of efforts to fulfill this Contract.
- f. Contractor may provide services to others during the same period Contractor provides service to County under this Contract.
- g. Any third persons employed by Contractor shall be under Contractor's exclusive direction, supervision and control. Contractor shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment.
- h. As an independent contractor, Contractor shall indemnify and hold County harmless from any claims that may be made against County based on any contention by a third party that an Employer-employee relationship exists under this Contract.
- i. Contractor, with full knowledge and understanding of the foregoing, freely, knowingly, willingly and voluntarily waives the right to assert any claim to any right or benefit or term or condition of employment insofar as they may be related to or arise from compensation paid hereunder.

#### 14. RESPONSIBILITIES OF CONTRACTOR

- a. The parties understand and agree that Contractor possesses the requisite skills necessary to perform the work under this Contract and County relies upon such skills. Contractor pledges to perform the work skillfully and professionally. County's acceptance of Contractor's work does not constitute a release of Contractor from professional responsibility.
- b. Contractor verifies that Contractor has reviewed the scope of work to be performed under this Contract and agrees that in Contractor's professional judgment, the work can and shall be completed for costs within the maximum amount set forth in this Contract.
- c. To fully comply with the terms and conditions of this Contract, Contractor shall:
  - i. Establish and maintain a system of accounts for budgeted funds that complies with generally accepted accounting principles for government agencies;
  - ii. Document all costs by maintaining complete and accurate records of all financial transactions associated with this Contract, including, but not limited to, invoices and other official documentation that sufficiently support all charges under this Contract;

- iii. Submit monthly reimbursement claims for expenditures that directly benefit Solano County;
- iv. Be liable for repayment of any disallowed costs identified through quarterly reports, audits, monitoring or other sources; and
- v. Retain financial, programmatic, client data and other service records for 3 years from the date of the end of the contract award or for 3 years from the date of termination, whichever is later.

#### 15. COMPLIANCE WITH LAW

Contractor shall comply with all federal, state and local laws and regulations applicable to Contractor's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment.

#### 16. CONFIDENTIALITY

- a. Contractor shall prevent unauthorized disclosure of names and other client-identifying information, except for statistical information not identifying a particular client.
- b. Contractor shall not use client specific information for any purpose other than carrying out Contractor's obligations under this Contract.
- c. Contractor shall promptly transmit to County all requests for disclosure of confidential information.
- d. Except as otherwise permitted by this Contract or authorized by the client, Contractor shall not disclose any confidential information to anyone other than the State without prior written authorization from County.
- e. For purposes of this section, identity shall include, but not be limited to, name, identifying number, symbol or other client identifying particulars, such as fingerprints, voice print or photograph. Client shall include individuals receiving services pursuant to this Contract.

#### 17. CONFLICT OF INTEREST

- a. Contractor warrants that Contractor and/or Contractor's employees and/or their immediate families and/or Board of Directors and/or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, including separate contracts for the work to be performed hereunder, which conflicts with the rendering of services under this Contract. Contractor shall employ or retain no such person while rendering services under this Contract. Services rendered by Contractor's associates or employees shall not relieve Contractor from personal responsibility under this clause.
- b. Contractor has an affirmative duty to disclose to County in writing the name(s) of any person(s) who have an actual, potential or apparent conflict of interest.

## 18. DRUG FREE WORKPLACE

Contractor warrants that Contractor is knowledgeable of Government Code section 8350 et. seq., regarding a drug free workplace and shall abide by and implement its statutory requirements.

## 19. HEALTH AND SAFETY STANDARDS

Contractor shall abide by all health and safety standards set forth by the State of California and/or the County of Solano pursuant to the Injury and Illness Prevention Program. If applicable, Contractor must receive all health and safety information and training.

## 20. CHILD/ADULT ABUSE

If services pursuant to this Contract will be provided to children and/or elder adults, Contractor warrants that Contractor is knowledgeable of the Child Abuse and Neglect Reporting Act (Penal Code section 11164 et seq.) and the Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code section 15600 et seq.) requiring reporting of suspected abuse.

## 21. INSPECTION

Authorized representatives of County, the state and/or the federal government may inspect and/or audit Contractor's performance, place of business and/or records pertaining to this Contract.

## 22. NONDISCRIMINATION

- a. In rendering services under this Contract, Contractor shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, or other protected status.
- b. Further, Contractor shall not discriminate against its employees, which includes, but is not limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

## 23. SUBCONTRACTOR AND ASSIGNMENT

- a. Services under this Contract are deemed to be personal services.
- b. Contractor shall not subcontract any work under this Contract nor assign this Contract or monies due without the prior written consent of the County's Contract Manager, the County's applicable Department Head or his or her designee and the County Administrator subject to any required state or federal approval.

- c. If County consents to the use of Subcontractors, Contractor shall require and verify that its subcontractors maintain insurance meeting all the requirements stated in Section 7 above.
- d. Assignment by Contractor of any monies due shall not constitute an assignment of the Contract.

#### 24. UNFORESEEN CIRCUMSTANCES

Contractor is not responsible for any delay caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond Contractor's reasonable control, provided Contractor gives written notice to County of the cause of the delay within 10 days of the start of the delay.

#### 25. NOTICE

- a. Any notice necessary to the performance of this Contract shall be given in writing by personal delivery or by prepaid first-class mail addressed as stated on the first page of this Contract.
- b. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

#### 26. NONRENEWAL

Contractor acknowledges that there is no guarantee that County will renew Contractor's services under a new contract following expiration or termination of this Contract. Contractor waives all rights to notice of non-renewal of Contractor's services.

#### 27. COUNTY'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

- a. The County's obligation under this Contract is subject to the availability of authorized funds. The County may terminate the Contract, or any part of the Contract work, without prejudice to any right or remedy of the County, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Contract, or any subsequent Amendment, the County may, upon written Notice to the Contractor, terminate this Contract in whole or in part.
- b. Payment shall not exceed the amount allowable for appropriation by the County Board of Supervisors. If the Contract is terminated for non-appropriation:
  - i. The County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to this Contract that are affected by the termination.

- c. Funding for this Contract beyond the current appropriation year is conditional upon appropriation by the Board of Supervisors of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, this Contract will terminate at the close of the current Appropriation Year.
- d. This Contract is void and unenforceable if all or part of federal or State funds applicable to this Contract are not available to County. If applicable funding is reduced, County may either:
  - i. Cancel this Contract; or,
  - ii. Offer a contract amendment reflecting the reduced funding.

## 28. CHANGES AND AMENDMENTS

- a. County may request changes in Contractor's scope of services. Any mutually agreed upon changes, including any increase or decrease in the amount of Contractor's compensation, shall be effective when incorporated in written amendments to this Contract.
- b. The party desiring the revision shall request amendments to the terms and conditions of this Contract in writing. Any adjustment to this Contract shall be effective only upon the parties' mutual execution of an amendment in writing.
- c. No verbal agreements or conversations prior to execution of this Contract or requested Amendment shall affect or modify any of the terms or conditions of this Contract unless reduced to writing according to the applicable provisions of this Contract.

## 29. CHOICE OF LAW

The parties have executed and delivered this Contract in the County of Solano, State of California. The laws of the State of California shall govern the validity, enforceability or Interpretation of this Contract. Solano County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Contract.

## 30. WAIVER

Any failure of a party to assert any right under this Contract shall not constitute a waiver or a termination of that right, under this Contract or any provision of this Contract.

## 31. CONFLICTS IN THE CONTRACT DOCUMENTS

The Contract documents are intended to be complementary and interpreted in harmony so as to avoid conflict. In the event of conflict in the Contract documents, the parties agree that the document providing the highest quality and level of service to the County shall supersede any inconsistent term in these documents.

## 32. EXECUTION IN COUNTERPARTS

This Contract may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. Facsimile copies shall be deemed to be original copies.

### 33. ENTIRE CONTRACT

This Contract, including any exhibits referenced, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by County or Contractor other than those contained.



election administrators

**END USER SOFTWARE LICENSE AGREEMENT**  
Master Agreement with Applicable Product Agreements Attached

**DEFINITIONS**

1.1 "Bug Fix Release" means an embodiment of the Licensed Product that corrects Errors.

1.2 "Confidential Information" means the Licensed Products, in object and source code form to the extent such exists, and any related technology, idea, algorithm or information contained therein and any trade secrets related to any software code, schematics, designs or Documentation provide to Licensee hereunder and any other information designated as Confidential by any party hereto; provided, however that "Confidential Information" will not include information that: (a) is or becomes generally known or available by publication, commercial use or through no fault of the receiving party; (b) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; or (c) is independently developed by the receiving party or any other party who makes such information public without use of the disclosing party's Confidential Information.

1.3 "Documentation" means any user manuals, reference manuals, release, application and methodology notes, written utility programs and other materials in any form provided for use with the Licensed Product(s).

1.4 "Effective Date" shall mean the date set forth on the executed Product Agreements attached hereto upon which this Agreement becomes effective.

1.5 "Error" means a defect which causes a Licensed Product not to perform in accordance with the specification set forth in the Documentation.

1.6 "Intellectual Property Rights" means all patents, patent rights, copyrights, trade secrets, service marks, maskworks and trademarks, and any applications for any of the foregoing, in all countries in the world.

1.7 "Licensed Product(s)" means collectively the products for which licenses are granted in Section 2, including any Bug Fix Releases provided by EA pursuant to the terms of this Agreement.

1.8 "Termination Date" shall mean the date set forth on the executed Product Agreements attached hereto upon which this Agreement terminates and is of no further force and effect.

1.9 "EA" means Election Administrators, LLC 7531 Ravensridge Rd., Saint Louis, MO 63119

**2. GRANT OF RIGHTS**

Licensee may purchase from EA the following licenses; EA Assistant, EA Pollbook, EA Pollbook Live, EA Data Converter, EA Tablet System, EA Tablet Live System, and the EA Pollbook Manager (to be evidenced by attachment of the applicable Product Agreements hereto). Upon purchase of the applicable license type, as of the applicable effective Date EA grants Licensee a nonexclusive, nontransferable license, without right of sublicense, to use the Licensed Product(s) only: (i) in the quantity authorized on the applicable Product Agreement; (ii) for the term of the license purchased as set forth on the applicable Product Agreement attached hereto; and (iii) in the Use Area. Licensee may make a reasonable number of copies of the Licensed Product(s) for backup and/or archival purposes only. EA hereby grants Licensee a nonexclusive, nontransferable license, without right of sublicense, to use the Documentation in connection with Licensee's use of Licensed Product(s) consistent with this Agreement and as is reasonably necessary for the purposes stated herein. Licensee may also make a reasonable number of copies of the Documentation solely for its own internal business purposes to support Licensee's use of the Licensed Product(s). Licensee acknowledges that the scope of the licenses granted hereunder do not permit Licensee (and Licensee shall not allow any third party) to: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Licensed Product(s) by any means whatever, or disclose any of the foregoing; (ii) distribute, lease, lend, use for timesharing, service bureau, and/or application service provider purposes the Licensed Product(s); (iii) use the Licensed Product(s) for the benefit of third parties or allow third parties to use the Licensed Product(s); (iv) modify, incorporate into or with other software, or create a derivative work of any part of the Licensed Product(s); or (v) use the Licensed Product(s) to develop or enhance any product that competes with a Licensed Product(s). EA may audit, examine and copy all Licensee records and/or systems relevant to a determination of Licensee's compliance (or lack thereof) with the material terms and conditions of this Agreement. Any such audits may be conducted on an annual basis (or as necessary based upon EA's good faith belief that an additional audit is warranted) during Licensee's normal business hours upon not less than five (5) days prior written notice to Licensee. Information to which EA and/or its audit representatives become privy as a result of any such audit shall be treated as confidential information and shall be used only for purposes consistent with this Section 2. EA shall bear the expenses of any such audit unless the audit reveals a material breach of this Agreement, in which case, Licensee shall reimburse EA for all reasonable costs and expenses (including relevant professional fees) associated with any such audit.

**3. OWNERSHIP**

EA own and shall retain all right, title and interest in and to the Licensed Product(s) and Documentation, including all Intellectual Property Rights embodied therein, and Licensee shall have no rights with respect thereto other than the rights expressly set forth in this Agreement. All rights not expressly granted to Licensee in this Agreement are retained by EA. Title, in the media only, shall pass to Licensee upon EA's delivery of the Licensed Product(s).

**4. PAYMENT AND DELIVERY TERMS.**

Licensee's purchase will include the license fees and payment terms as set forth in the applicable Product Agreement for such attached hereto. Licensee agrees to pay EA the license fees as set forth on such Product Agreement and in accordance with the payment terms specified therein. Fees payable to EA under this Agreement are exclusive of any transaction taxes (including sales, use, consumption, value-added and similar transaction based taxes) which may be imposed, in accordance with applicable laws. Licensee agrees to bear or reimburse EA for all such transaction taxes. Upon the execution and delivery of this Agreement by EA and Licensee and payment by Licensee of any amounts owed upon execution, EA shall deliver to Licensee the Licensed Product(s), any license key or passwords and any Documentation, as appropriate, together with any hardware purchased by Licensee.

**5. CONFIDENTIALITY**

Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party, except (i) to employees of such party to whom disclosure is necessary in order to effectuate the purposes of this Agreement; or (ii) in response to a lawful order of a court of competent jurisdiction or other governmental body.

**6. TERMINATION**

This Agreement shall terminate and be of no further force and effect on the Termination Date. Either party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) business days after receipt of written notice from the nondefaulting party or within such additional cure period as the nondefaulting party may authorize. A Licensed Product's failure to substantially conform to the specifications in the Licensed Product's Documentation shall not be deemed a default under this Section 6, but shall be subject to the exclusive remedies provided herein, if any. Upon termination of individual licenses or this Agreement, Licensee shall immediately cease all use of the Licensed Product(s) and Documentation and return all such copies and all portions of the Licensed Product(s) and so certify in writing to EA. Termination will not relieve Licensee or EA from any liability arising from any breach of this Agreement. Neither party will be liable to the other for damages of any sort solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy of either party. The provisions of Sections 3, 5, 7, and 9 shall survive any termination or expiration of this Agreement.

#### **7. ASSIGNMENT**

EA may assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement without the prior written consent of the Licensee.

#### **8. WARRANTY DISCLAIMER**

Neither EA nor its dealers warrant the completeness, accuracy, or content of any information contained in any database, including voter registration information, provided by Licensee or that the use of the Licensed Product(s) will meet your needs or that its use will be uninterrupted or Error free. In instances where the Product includes access to voter registration information, Licensee is responsible for complying with all applicable copyright and privacy laws concerning access and use of the voter registration content. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE PRODUCT IS LICENSED "AS IS," AND EA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT IN ALL JURISDICTIONS WHERE THESE WARRANTIES MAY BE DISCLAIMED IN THE LICENSING OF INTELLECTUAL PROPERTY.

#### **9. PATENT AND COPYRIGHT INFRINGEMENT**

EA agrees, at its own expense, to defend or, at its option, to settle, any claim or action brought against Licensee to the extent it is based on a claim that the Licensed Software as used within the scope of this Agreement infringes or violates any patent, copyright, trademark or trade secret, and EA will indemnify and hold Licensee harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Licensee in a final judgment. Licensee agrees that EA shall be released from the foregoing obligation unless Licensee provides EA with: (i) prompt written notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof; and (iii) all available information, assistance and authority to settle and/or defend any such claim or action. EA will have no liability under this Section 8 for any claim or action where: (i) such claim or action would have been avoided but for modifications of the Licensed Products, or portions thereof, made by anyone other than EA; (ii) such claim or action would have been avoided but for the combination or use of the Licensed Products, or portions thereof, with other products, processes or materials not supplied or specified in writing by EA; or (iii) Licensee continues actual infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement. Licensee will be liable for its own damages, costs, expenses, settlements and attorneys' fees related to any claim of infringement arising as a result of (i)-(iii) above. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EA, AND THE EXCLUSIVE REMEDY OF LICENSEE, IF ANY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE LICENSED PRODUCT(S), DESIGN TECHNIQUES AND DOCUMENTATION PROVIDED HEREUNDER.

#### **10. LIMITATION OF LIABILITY**

EA'S TOTAL LIABILITY FOR DAMAGES ARISING OUT OF OR RELATING TO THE LICENSING OR THE USE OF THE LICENSED PRODUCT(S) AND DOCUMENTATION, OR THE PROVISION OF MAINTENANCE SERVICES HEREUNDER SHALL NOT EXCEED THE AGGREGATE SOFTWARE COST AND ANNUAL LICENSE FEE RECEIVED BY EA FROM LICENSEE FOR THE PARTICULAR LICENSED PRODUCT INVOLVED. UNDER NO CIRCUMSTANCES SHALL EA BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF THE LICENSED PRODUCT AND DOCUMENTATION, HOWEVER CAUSED, WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THE LIMITATIONS ON EA'S LIABILITY SET FORTH IN THIS SECTION 11 SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY OF THE LIMITED REMEDIES SET FORTH IN SECTION 7 ABOVE.

#### **11. GENERAL PROVISIONS**

This Agreement will be governed by and construed in accordance with the laws of the United States and the State of Missouri excepting that body of Missouri law governing conflicts of law. The federal and state courts within Saint Louis County, Missouri shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, such courts and service of process being effected upon it by registered mail and sent to the address of EA. The prevailing party in any action to enforce the Agreement shall be entitled to recover costs and expenses including, without limitation, reasonable attorneys' fees. Neither this Agreement, nor any rights or licenses granted to Licensee hereunder, may be assumed by any party, or assigned or otherwise transferred by Licensee, directly or indirectly, in whole or in part, whether by operation of law or otherwise, without the prior written consent of EA. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any notice, report, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally, by facsimile, or mailed by first-class, registered or certified mail, postage prepaid to the respective addresses of the parties as set forth in this Agreement. The relationship of the parties hereto is that of independent contractors, and nothing contained in this Agreement shall be construed (i) to give either party the power to direct or control the day-to-day activities of the other or (ii) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties agree that a material breach of this Agreement adversely affecting EA's Intellectual Property Rights in the Licensed Product(s) or Documentation would cause irreparable injury to EA for which monetary damages would not be an adequate remedy. EA shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law. Except for the obligation to make payments hereunder, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental action, failure of suppliers, earthquake, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement, including the attached Product Agreements, and any and all supplements, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements or representations, oral or written, regarding such subject matter. Notwithstanding the foregoing, unless otherwise specifically provided herein, any non-disclosure agreement between Licensee and EA in effect as of the Effective Date or during the term of this Agreement shall remain unchanged and in full force and effect. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of both parties.