

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
HART InterCivic  
FOR FISCAL YEARS 2019 THROUGH 2022**

This Professional Services Agreement (this “PSA” and including all Exhibits hereto and Exhibits, Schedules and Attachments thereto, this “Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and HART InterCivic, a Texas Corporation, hereinafter referred to as “CONTRACTOR,” is made upon the following considerations:

WHEREAS, COUNTY, by and through its County Clerk Recorder, desires to retain a qualified professional to provide voting systems that will meet the certification standards of the California Secretary of State; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to provide and maintain the voting systems required by COUNTY as further described herein.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to provide the services described in, and pursuant to the terms of, the HART InterCivic Verity Master Agreement (the “VMA”), which is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full including all schedules, attachments, and exhibits thereto; except that, as set forth in Section 33 of this PSA, in the event of any conflict in the terms or conditions set forth in the VMA and/or any other agreements in place between the parties hereto and the terms and conditions set forth in this PSA, the terms and conditions set forth herein shall have priority.

In providing such services, CONTRACTOR agrees to reasonably cooperate with the Humboldt County Clerk Recorder, or a designee thereof, hereinafter referred to as the Elections Manager.

2. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect until September 30, 2022, unless sooner terminated as provided herein.

3. TERMINATION:

A. Termination for Cause. Either party may, in its sole discretion, immediately terminate this Agreement, if the other party fails to comply with the terms or conditions of the Agreement and fails to cure such breach within thirty (30) days after written notice of such breach has

been given.

- B. Termination Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONTRACTOR seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation Upon Termination. In the event this Agreement is terminated, CONTRACTOR shall be entitled to compensation for invoices submitted in accordance with this Agreement as well as uncompensated services rendered hereunder, in each case through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to a party due to a breach of this Agreement by the other party.

4. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for services rendered, and costs and expenses incurred, during the first year of the term of the Agreement pursuant to the quotation entered into by and between parties on or about the Effective Date of this Agreement (the "Initial Quote") is eight hundred seventy four thousand two hundred fifty two dollars and eighty six cents. (\$874,252.86). Subject to the terms of this Agreement, CONTRACTOR agrees to perform all services required by the Initial Quote to be performed during the first year of the term of this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may request an amendment to the Initial Quote reducing the scope of services and the maximum amount payable thereunder or terminate this Agreement as provided herein.
- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in the VMA, including each Exhibit A thereto, which is attached hereto and incorporated herein by reference as if set forth in full.
- C. Additional Services. Any additional services not otherwise provided for herein shall not be provided by CONTRACTOR, or compensated by COUNTY, without written authorization by COUNTY. Any and all unauthorized costs and expenses incurred above the maximum payable amount set forth in Section A above shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CONTRACTOR estimates that the maximum payable amount will be reached.

5. PAYMENT:

Payments obligations related to Products, Annual Fees, and Other Services (each as defined in the VMA) are defined by Section 3 of the VMA. Invoices shall be in a format approved by, and shall include backup documentation as specified by, the Elections Manager and the Humboldt County Auditor-Controller. CONTRACTOR shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Except as set forth in Section 3.2 of the VMA, payment for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of undisputed invoices. Any and all invoices submitted by CONTRACTOR shall be sent to COUNTY at the

following address:

COUNTY: Humboldt County Elections  
Attention: Kelly E. Sanders  
Clerk, Recorder & Registrar of Voters  
2426 6<sup>th</sup> Street  
Eureka, CA 95501

6. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Elections  
Attention: Kelly E. Sanders  
2426 6<sup>th</sup> Street  
Eureka, CA 95501

CONTRACTOR: Hart InterCivic, Inc.  
Attention: Julie Mathis, CFO/COO  
15500 Wells Port Drive  
Austin, TX 78728

7. REPORTS:

Upon written request by COUNTY, CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for CONTRACTOR'S compliance with this Agreement. CONTRACTOR shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

8. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. CONTRACTOR hereby agrees to make all such records available during normal

business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.

- C. Audit Costs. In the event of a material non-compliance with the terms and conditions of this Agreement is discovered as the result of an audit pursuant to this Section 8, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY. Except as set forth in this Section 8.C., all audits pursuant to this Section 8 shall be at COUNTY's sole cost and expense.

9. MONITORING:

CONTRACTOR agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR's records, policies, procedures and overall business operations in order to ensure compliance with the terms and conditions of this Agreement, in each case in accordance with Section 8 above. CONTRACTOR will reasonably cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CONTRACTOR's performance hereunder.

10. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this Agreement, CONTRACTOR may receive information that is confidential under local, state or federal law. CONTRACTOR hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws and regulations, which may include, without limitation: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Requirements. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

11. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by local, state, or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2, of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

12. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, CONTRACTOR certifies that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

13. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*), by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section

8355(a)(2), a Drug-Free Awareness Program which informs employees about:

1. The dangers of drug abuse in the workplace;
2. CONTRACTOR's policy of maintaining a drug-free workplace;
3. Any available counseling, rehabilitation and employee assistance programs; and
4. Penalties that may be imposed upon employees for drug abuse violations.

C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services hereunder will:

1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
2. Agree to abide by CONTRACTOR's Drug-Free Policy as a condition of employment.

D. Effect of Non-Compliance. Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

#### 14. INDEMNIFICATION:

A. Infringement and Trade Secret Misappropriation. CONTRACTOR shall defend COUNTY against any claim that the HART Hardware or HART Proprietary Software infringes and issued United States patent, registered United States copyright, or misappropriates trade secrets protected under United States law, and shall indemnify COUNTY against and pay any costs, damages, and reasonable attorneys' fees attributable to such claim that are finally awarded against COUNTY, provided COUNTY (a) gives HART prompt written notice of such claims; (b) permits HART to control the defense and settlement of the claims; and (c) provides all reasonable assistance to HART in defending or settling the claims.

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

CONTRACTOR will not defend or indemnify COUNTY if any claim of infringement or misappropriation (a) is asserted by an affiliate of COUNTY; (b) results from COUNTY's design or alteration of any Hardware or Software; (c) results from use of any Hart Hardware or Hart Proprietary Software in combination with any non-Hart product, except to the extent, if any, that such use in combination is restricted to the Verity system designed by CONTRACTOR; (d) relates to Sublicensed Software or Third Party Hardware alone; or (e) arises from COUNTY-specified customization work undertaken by CONTRACTOR or its

designees in response to changes in Hart Proprietary Software or Sublicensed Software that are made in response to COUNTY specifications.

This Section 14.A. states the entire liability of CONTRACTOR and COUNTY's sole and exclusive remedies for infringement and trade secret misappropriation.

Capitalized terms used but not defined in this Section 14.A. shall have the meaning attributed to such terms in the VMA.

- B. Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all third party claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's grossly negligent performance of, or grossly negligent failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.
- C. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This Section 14 shall apply regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

15. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations set forth herein, CONTRACTOR, and its subcontractors, shall take out and maintain, throughout the term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR and its agents, officers, directors, employees, assignees or subcontractors:
  - 1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit. Hart will carry Umbrella Coverage of Fifteen Million Dollars (\$15,000,000.00).
  - 2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all hired and non-owned vehicles.
  - 3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy

shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.

CONTRACTOR: \_\_\_\_\_  
Julie Mathis Date \_\_\_\_\_  
CFO/COO

4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability regarding the services provided pursuant to the terms and conditions of this Agreement. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.
- B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
    - a. Includes contractual liability.
    - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as “XCU Hazards.”
    - c. Is the primary insurance with regard to COUNTY.
    - d. Does not contain a pro-rata, excess only and/or escape clause.
    - e. Contains a cross liability, severability of interest or separation of insureds clause.
  2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
  3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer’s liability.
  4. For claims related to this Agreement, CONTRACTOR’s General Liability insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR’s insurance and will not be used to contribute therewith.



5. Any failure to comply with the provisions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
  6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
  7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required hereunder shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

CONTRACTOR: Hart InterCivic, Inc.  
Attention: Julie Mathis, CFO/COO  
15500 Wells Port Drive  
Austin, TX 78728

16. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CONTRACTOR shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

17. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party agrees to comply with any and all local, state and federal laws and regulations applicable to its performance pursuant to the terms and conditions of this Agreement.
- B. Licensure Requirements. Each party agrees to maintain any and all licenses, certifications and accreditations required by local, state and federal law for its performance pursuant to the terms and conditions of this Agreement.
- C. Accessibility Requirements. Each party agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated

thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

D. Conflict of Interest Requirements. Each party agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

18. INTENTIONALLY DELETED.

19. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision in its performance hereunder as of the effective date thereof.

20. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

21. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by a party in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

22. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

23. WAIVER OF DEFAULT:

The waiver by either party of any breach of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of CONTRACTOR. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds disbursed to CONTRACTOR which the parties determine were not expended in accordance with the terms of this Agreement.

24. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual

consent of both parties. No waiver of, addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

25. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

26. STANDARD OF PRACTICE:

CONTRACTOR represents that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

27. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all electronic data or information that COUNTY or its registered voters submit to the services described in Section 1 above and documents, information and reports concerning the same subject matter prepared and/or submitted by CONTRACTOR shall become the property of COUNTY. However, CONTRACTOR may retain copies of such documents, information and reports for its records. In the event this Agreement is terminated, CONTRACTOR shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

28. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

29. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet, provided that upon execution of this Agreement, CONTRACTOR may issue a high-level press release announcing the relationship and the manner in which COUNTY will use the services provided by CONTRACTOR hereunder without any additional approval from COUNTY. CONTRACTOR shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Elections Manager in accordance with the notice requirements set forth herein.

30. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all services provided by third-parties under subcontracts, whether approved by COUNTY or not.

31. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

32. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section [ ] – Compensation Upon Termination, Section [ ] – Record Retention and Inspection, Section [ ] – Confidential Information and Section [ ] – Indemnification shall survive the expiration or termination of this Agreement.

33. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in the HART InterCivic Master Agreement and/or any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

34. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

35. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

36. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

37. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby

ratified.

38. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

39. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.


[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

**TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:**

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.


HART InterCivic

By:  \_\_\_\_\_

Date: 10/4/19 \_\_\_\_\_

Name: Phillip Braitwaite \_\_\_\_\_

Title: CEO \_\_\_\_\_

By:  \_\_\_\_\_

Date: 10/4/19 \_\_\_\_\_

Name: Julie Mathis \_\_\_\_\_

Title: CEO/CO \_\_\_\_\_

**COUNTY OF HUMBOLDT:**

By: \_\_\_\_\_  
Rex Bohn  
Chair, Humboldt County Board of Supervisors

Date: \_\_\_\_\_

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

**LIST OF EXHIBITS:**

Exhibit A – Hart InterCivic Verity Master Agreement

**EXHIBIT A  
HART InterCivic Verity MASTER AGREEMENT**



## VERITY

### MASTER AGREEMENT

This Verity Master Agreement (“**VMA**”) is attached as Exhibit A to and forms a part of that certain Professional Services Agreement (“**PSA**”), entered into effective as of \_\_\_\_\_, 2019 (“the **Effective Date**”) by and between Hart InterCivic, Inc., a Texas corporation (“**Hart**”) and the Customer set forth below (“**Customer**”), and sets forth the terms and conditions pursuant to which Customer may procure from Hart certain hardware (“**Hardware**”), software (“**Software**”) licenses and support services (“**Software Support Services**”), warranty services (“**Warranty Services**”), and/or design, engineering, software development, project management, operational training, election event support, and/or other services (“**Professional Services**”), from time to time. Hardware and Software may be referred to as “**Products**” and Warranty Services, Software Support Services and/or Professional Services may be referred to as “**Services**.” Products may be “**Hart Hardware**,” and “**Hart Proprietary Software**,” (i.e. “**Hart Products**”) or “**Third Party Hardware**” and “**Sublicensed Software**” (i.e. “**Third Party Products**”). The foregoing may be referred to together as the “**Verity system**.” Capitalized terms used but not defined herein shall have the meaning attributed to such terms in the PSA.

Hart agrees to sell or provide to Customer Products and Services according to this Agreement, which includes this VMA and all Schedules, Attachments and Exhibits hereto. Customer agrees to all terms and conditions of this Agreement. Pricing and other material terms of Customer’s initial commitment are as set forth in the Schedule A or Customer Signed Quote attached hereto as **Exhibit A**. This Agreement and Hart’s quotations issued hereunder together comprise the complete and exclusive Agreement for the sale of the Products and the provision of the Services. No other terms and conditions sent by Customer shall apply, including any terms or conditions contained in any purchase order, request for quote (RFQ), request for proposal (RFP), communication or other operational form that is in addition to or different than the terms and conditions of this Agreement. Any of Customer’s terms and conditions that are different from or in addition to those contained herein are hereby objected to and shall be of no effect unless specifically agreed to in writing by an officer of Hart. Customer acknowledges it has read and understands this Agreement (including this VMA and all Schedules, Attachments and Exhibits hereto) and is entering into this Agreement only on the basis of the terms set forth in this Agreement (including this VMA and all Schedules, Attachments and Exhibits hereto).

Jurisdiction: \_\_\_\_\_

## 1. ORDERING

Customer may request quotations for Products or Services from time to time. The existence of this Agreement does not obligate Customer to request a quotation or purchase any Products or Services from Hart. Any Customer request for quotation must include the following information: (i) description of requested Product or Services; (ii) unit quantity and/or desired term; (iii) Hart's part number and/or vendor part number, if applicable; (iv) current unit price as provided by Hart, if applicable; (v) correct shipping address, if applicable; and (vi) any other order information required by Hart. Each request for quotation shall identify the address of the shipping destination, if applicable. Customer may only make a request for quotation via facsimile and other Hart approved electronic ordering methods, including email. All quotations are valid for only 30 days unless specifically stated on the front of the quotation. If the quotation is signed by Customer within thirty (30) days, Hart will provide notice of its acceptance via countersignature within fifteen (15) days of the date on which it receives Customer's signature on the Hart quotation. Failure to provide such written acceptance shall be deemed Hart's rejection of the order. Hart reserves the right to accept or reject any order initiated by Customer in Hart's discretion. Only signed quotations will obligate the parties to the terms of such quotations and this Agreement with respect to the applicable Products and/or Services. Each accepted quotation shall be subject to the terms and conditions of this Agreement.

## 2. PRICING

- 2.1. **Products.** Prices for Products shall be specified by Hart in the relevant quotation or proposal and are subject to change without notice, including Prices for backordered Products, however, Prices in quotations or other agreements signed by both Parties are not subject to change. All prices are exclusive of shipping and packing costs, and insurance.
- 2.2. **Annual License and Support Fee.** The "Annual Fee" is the combined fee for licensing (in the case of Hart Proprietary Software), sublicensing (in the case of Sublicensed Software, if any), and support (a "License and Support Subscription"). Pricing for the initial Annual Fee is the amount specified as the "Initial Annual Fee" on **Exhibit A**. Pricing for subsequently ordered License and Support Subscriptions shall be specified on the applicable quotation, and unless otherwise specified, shall be pro-rated so as to be co-terminus with the initially-ordered License and Support Subscriptions. Hart may adjust the amount of the Annual Fee for renewal License and Support Subscription terms by notifying Customer of any price changes with the invoice in which the adjustment is made. Unless adjusted by Hart, each renewal Annual Fee will be the same as the Annual Fee for the renewing License and Support Subscription.
- 2.3. **Other Services.** Pricing for other Services shall be set forth in the applicable quotation, or if not specified, at Hart's then-current hourly rates.
- 2.4. **Additional Charges.** Additional charges may apply to Services e.g., travel, communication and other expenses. There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of other than Hart-recommended equipment purchased by the Customer for use with the Products. Any other additional charges must be mutually agreed to by Hart and Customer and documented in an amendment to this Agreement.
- 2.5. **Taxes.** All prices are exclusive of applicable taxes. All taxes shall be payable by Customer, unless Customer presents Hart with a proper certificate of exemption from such tax. If Customer challenges the applicability of any such tax, Customer shall pay the tax and may thereafter seek a refund. In the event Hart is required to pay any tax at time of sale or thereafter, Customer shall promptly reimburse Hart therefore.

## 3. PAYMENT

- 3.1. **Products.** Except as otherwise provided in Hart's quotation, amounts due for Products shall be billed upon shipment and shall be paid in accordance with Section 5 of the PSA.
- 3.2. **Annual Fee.** The Annual Fee for the initial License and Support Subscription is due upon execution of this Agreement and annually thereafter before expiration thereof. Annual Fees for subsequently ordered License and Support Subscriptions, if any, shall be due upon acceptance of order and unless specified on the applicable quotation, the corresponding Annual Fees for renewals thereof shall be due annually with the renewal of the initially-ordered License and Support Subscription (i.e. shall be pro-rated and become co-terminus). If Customer fails to timely pay an Annual Fee, all Software licenses and Software Support Services will automatically terminate.
- 3.3. **Other Services.** Amounts due for other Services shall be billed upon the earlier to occur of one or more of the following: first election in which the Professional Services are used; receipt of Services acceptance; not later than sixty (60) days after the date of Customer's first election in which any portion of the Hardware and/or Software is used, and shall be paid in accordance with Section 5 of the PSA.



- 3.4. **Payment Mechanics.** Customer will pay all amounts due under this Agreement in U.S. Dollars. All payments are to be made to Hart at its principal office in Austin, Texas, as set forth on the signature page or to such other location as may be designated by Hart in a notice to Customer. Hart reserves the right to require C.O.D. payment, a letter of credit, or other security for payment if it determines that such terms are required to assure payment. Customer shall promptly notify Hart in writing of any change to Customer's name, address, or billing information.
- 3.5. **Late Fees.** Hart may impose interest at the lower of: (1) one and one-half percent (1½%) per month, or (2) the highest rate of interest then permitted by applicable law for all past due balances, compounded monthly and rounded to the next highest whole month. Customer also agrees to pay or reimburse all fees and expenses reasonably incurred by Hart in collecting any amounts due under this Agreement, including, but not limited to, all attorneys' fees associated therewith. Hart shall have the right, in addition to any and all other rights and remedies available at law or in equity, to delay or cancel any deliveries, to reduce or cancel any or all quantity discounts extended to Customer, and/or to suspend the provision of Services if Customer is in default of payments or any other material term of this Agreement.
- 3.6. **Billing Disputes.** If any dispute exists between the parties concerning the amount due or due date of any payment, Customer shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Customer or Hart of any of their respective legal rights and remedies against each other. Customer has no right of set-off.

#### 4. **HARDWARE SPECIFIC TERMS**

- 4.1. **Delivery.** Hart will provide estimated shipment dates upon acceptance of Customer's signed quotation. Shipment dates on Hart quotations are approximate only and Hart will not be subject to liability for late or delayed shipment. In the event Customer is unable to receive the Hardware Products at the time of delivery Hart, at its sole option and convenience, may deliver such products to storage at any suitable location including Hart's facilities. All costs incurred by Hart for the transportation, storage, and insurance of such Hardware Products shall be borne by Customer.
- 4.2. **Hart Voting System Equipment Pick-Up.** If Customer has legacy Hart Voting System (HVS) equipment, Hart will pick up and salvage all HVS voting devices, computers, and peripherals at no cost to Customer. Customer may retain databases and reports stored on such equipment solely to comply with record retention policies. Customer may retain minimal necessary computers and copies of legacy software for access to records retention databases. Customer agrees to remove all HVS software from all retained computers at the close of the records retention period. Upon request, Customer will provide Hart with written certification that such software has been deleted.
- 4.3. **Acceptance.** Customer shall examine all Hardware Products promptly upon receipt thereof. Within ten (10) business days of such receipt, Customer shall notify Hart in writing of any manner in which Customer claims that the Hardware Products fail to conform to their applicable specification, or as to any claimed shortages, or shipments errors. If no written notification is received by Hart within such period, the Hardware Products delivered hereunder shall be deemed accepted by Customer ("**Hardware Acceptance**"). Hardware Product will be deemed conforming if it meets Hart's published specification for such Product, and any specifications identified on the applicable quotation. Upon Customer's Acceptance, any defects in material or workmanship shall be addressed pursuant to the warranty in Section 9 below.
- 4.4. **Installation.** A Hart representative may install the Hardware Products at the Customer's site on a mutually agreed upon date during Hart's normal working hours, within ten (10) business days of delivery, or as soon as is practicable for both parties. Billing will occur on the date the Hardware is shipped to the Customer's site, per Section 3.1 If additional labor and rigging or Customer-specified customization is required for installation due to Customer's special site requirements, Customer will pay those costs including costs to meet union or local law requirements.
- 4.5. **Title and Transportation.** Hardware Products are shipped Ex Works (Incoterms 2010) from Hart's designated shipping point. Title transfer and transfer of risk of loss or damage shall be deemed to occur upon Hart making such Hardware Products available to the carrier at Hart's designated shipping point. Hart reserves the right to select the method and routing of transportation and the right to make delivery in installments unless otherwise specified at the time of quotation acceptance by Hart but in no event will the carrier be deemed the agent of Hart. Notwithstanding the foregoing, if customer chooses a financing option offered by Hart, then title to hardware will pass to Customer according to the terms of the finance agreement.
- 4.6. **Rescheduling and Cancellation.** Except in the event of unreasonable delays beyond the quoted delivery dates or an uncured default of a material term of this Agreement by Hart, Customer shall not have the right to change, cancel, or reschedule an accepted quotation in whole or in part without the prior consent of Hart. In the event Customer requests a rescheduling of any Hardware Product and such request is accepted by Hart, Customer agrees to promptly pay Hart's standard reschedule charge. Hart may not cancel a quotation after it has accepted Customer's signed submission thereof. Customer may not cancel an order after submission to Hart of a signed quotation. Any cancellations following such times will be at the non-cancelling party's sole discretion and upon terms dictated by the non-cancelling party.

#### 5. **SOFTWARE SPECIFIC TERMS**

- 5.1. **License.** Subject to the terms and conditions of this Agreement and for so long as Customer has a current License and Support Subscription in effect, Hart grants to Customer (i) a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary Software (which includes Firmware, meaning the Hart Proprietary Software embedded in any Verity system device that allows execution of the software functions) and (ii) a personal, nonexclusive, nontransferable, and limited sublicense to use the Sublicensed Software, if applicable. With this right to use, Hart will provide Customer, and Customer will be permitted to use, only the run-time executable code and associated support files of the Software for Customer's internal data processing requirements as part of the Verity system. The Software may be used only at the Licensed Location specified as the jurisdiction on the first page of this VMA and only on the hardware or other computer systems authorized by Hart in writing. Customer's use of the Software will be limited to the number of licenses specified in the applicable quotation. Only Customer and its authorized employees, agents or contractors may use or access the Software. For applicable components, Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. To the extent Hart Proprietary Software contains embedded third party software, third party licenses may apply. More information concerning embedded third party software can be found in the application's "Help->About" and is available upon written request. Such embedded third party software is distinguished from "Sublicensed Software" which is stand-alone software not part of Hart Proprietary Software that may be included under this Agreement. See **Exhibit D** for a listing of Hart Proprietary Software and Sublicensed Software.
- 5.2. **Records and Audit.** Customer shall keep clear, complete and accurate books of account and records with respect to the usage of Software and access to the Software licensed hereunder, including without limitation with respect to access thereto. Licensee shall retain such books and records for a period of five (5) years from the date of cessation of any such usage, notwithstanding any expiration or termination of this Agreement. Customer agrees that during the term of this Agreement and such period, Hart, the licensors of any Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, and appropriate records of Customer to verify Customer's compliance with the terms of the licenses and sublicenses granted to Customer. If any such examination discloses unauthorized usage, then Customer, in addition to paying such payment then due and without limiting Hart's remedies, shall pay the reasonable fees for the audit.
- 5.3. **Restrictions**
- 5.3.1. The Hart Hardware and Hart Proprietary Software are designed to be used only with each other and/or the agreed-upon Sublicensed Software (if any) and Third Party Hardware. To protect the integrity and security of the Verity system, Customer shall comply with the following practices and shall not deviate from them without the express written consent of Hart: (i) Customer shall use the Software and Hardware only in connection with the Verity system, and Customer may only use Hart branded or approved peripherals and consumables with the Verity system.; (ii) Customer shall not install or use other software on or with the Hardware or Software or network the Hardware or Software with any other hardware, software, equipment, or computer systems; and (iii) Customer shall not modify the Hardware or Software. If Customer does not comply with any provisions of this Section 5.3, then (i) the Limited Warranties under Section 9 and the licenses and sublicenses granted under Section 5.1 will automatically terminate; (ii) Hart may terminate its obligation to provide Software Support Services under Section 8; (iii) Hart will have no further installation obligations. Furthermore, if Customer uses the Software and Hardware in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license granted to Customer under Section 5.1, Hart reserves its rights to enforce its patents with respect to those claims.
- 5.3.2. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software. Customer shall not use any Software for application development, modification, or customization purposes, except through Hart.
- 5.3.3. Customer shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau serving others outside of the jurisdiction. This restriction does not preclude or restrict Customer from contracting for election services for other local governments located within Customer's jurisdictional boundaries. Customer shall not modify, copy, or duplicate the Software. All use of software and hardware on which the software resides shall take place and be for activities within Customer's jurisdictional boundaries, except for in cases of joint elections conducted cooperatively with neighboring jurisdictions. All copies of the Software, in whole or in part, must contain all of Hart's or the third-party licensor's titles, trademarks, copyright notices, and other restrictive and proprietary notices and legends (including government-restricted rights) as they appear on the copies of the Software provided to Customer. Customer shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Customer regarding any unauthorized possession or use of the Software.
- 5.3.4. Customer shall not publish any results of benchmark tests run on any Software.
- 5.3.5. The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. Customer shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

## 6. DOCUMENTATION

Hart will provide Customer with one (1) electronic copy of the standard user-level documentation and operator's manuals and where applicable, environmental specifications for the Product installed at the Customer's location before the first election for which the Product will be used, following installation.

## 7. PROPRIETARY RIGHTS

7.1. **Reservation of Rights.** Customer acknowledges and agrees that the design of the Products, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, code, updates, trade secrets and material are the property of Hart and its licensors. Customer agrees that the sale of the Hardware and license of the Software does not, other than as expressly set forth herein, grant to or vest in Customer any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the Products, are the sole and absolute property of Hart and its licensors. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Product(s), or copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. Further Customer shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Hart user documentation, operator's manuals, and environmental specifications, and all copies will contain such notices as are on the original electronic media. Intellectual Properties. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, code, updates, and trade secrets developed by Hart personnel (alone or jointly with others, including Customer) in connection with Confidential Information, Verity system, and Hart Proprietary Software will be the exclusive property of Hart.

7.2. **Customer Suggestions and Recommendations.** Customer may propose, suggest, or recommend changes to the Products at any time. Such proposals, suggestions, or recommendations will become Hart's property and are hereby assigned to Hart. Hart may include any such proposals, suggestions, or recommendations, solely at Hart's option, in subsequent periodic Product updates, without restriction or obligation. Hart is under no obligation to change, alter, or otherwise revise the Products according to Customer's proposals, suggestions, or recommendations.

7.3. **License Back** If Customer possesses or comes to possess a licensable or sub-licensable interest in any issued patent with claims that read upon the Verity system, its method of operation, or any component thereof, Customer hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims.

## 8. SOFTWARE SUPPORT SERVICES

8.1. **Description of Software Support Services.** Subject to the terms and conditions of this Agreement and for so long as Customer has the requisite number of License and Support Subscriptions in effect, Hart will provide Customer the Software Support Services described below. Software Support Services under this Section do not cover any of the exclusions from warranty and support coverage as described under Section 9. If Hart, in its discretion, provides Software Support Services in addition to the services described under this Section, Customer will pay Hart for such services on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices, unless otherwise agreed in writing by Hart and Customer.

8.1.1. **Software Support Services.** Software Support Services will consist of assisting the Customer in the use of software for purposes of election administration, including functions related to pre-election and post-election testing and general operation of the Verity system. Assistance is available via phone and email through the Hart Customer Support Center. See **Exhibit B** for Hart Customer Support contact information and hours.

Software Support Services may consist of periodic updates to Hart Proprietary Software, at Hart's discretion. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Software errors or defects must be reported in writing and be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable corrective action. The exclusions from warranty coverage under Section 9.5 also are exclusions from Software Support Services under this Section. There may be consumable, shipping and on-site service charges for update releases of software and there may be feature charges for update or enhancement releases of software.

## 9. WARRANTY AND EXTENDED WARRANTY

9.1. **Certification.** Where applicable, Verity system components that require certification will meet the certification requirements in place on the effective date of this Agreement.

9.2. **Hart Hardware Limited Warranty.** Hart warrants that during the warranty period, the Hart Hardware purchased by Customer will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Verity Operator's Manuals for the Hart Hardware applicable at the time of the installation of the Hardware. The warranty period for new Hart Hardware (other than Consumables) is one (1) year, beginning ten (10) days after the shipping date. The warranty period

for used and/or refurbished hardware is ninety (90) days, beginning ten (10) days after the shipping date. Consumables are warranted only to be free from manufacturing defects for a period ninety (90) days, beginning ten (10) days after the shipping date. Hart will, at Hart's sole discretion, replace or repair any Hart Hardware that does not comply with this warranty, at no additional charge to Customer. To request warranty service, Customer must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at Customer's site, Hart's facility, or any other location specified by Hart. Any replacement Hart Hardware provided to Customer under this warranty may be new or reconditioned. Hart may use new and reconditioned parts in performing warranty repairs and building replacement products. If Hart repairs or replaces Hart Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired Hart Hardware. Hart owns all replaced Hart Hardware and all parts removed from repaired products. Customer acknowledges and agrees that this warranty is contingent upon and subject to Customer's proper use of the Verity system and the Exclusions from Warranty and Software Support Services set forth in Section 9.5. This warranty does not cover any Hart Hardware that has had the original identification marks and/or numbers removed or altered in any manner. This warranty does not include any type of routine maintenance service or preventative maintenance service. This Hardware Limited Warranty may be extended after the initial period under separate Extended Hardware Warranty agreements, subject to the order process contemplated by Section 1. Extended warranties exclude consumable items, including all types of batteries, vDrives and paper ("Consumables"). Renewal of the annual License and Support Subscription does not, in itself, extend the Hardware Limited Warranty. The remedies set forth in this Section are the full extent of Customer's remedies and Hart's obligations regarding this warranty. If the Hart Hardware is required to be reconfigured, modified, or otherwise changed after its sale to and installation at the Customer's location due to the Customer's or a local, state, or federal government certification change(s) or due to any statutory changes or new requirements, Hart will determine the feasibility and cost of the required changes and advise the Customer of the total amount due for those Hart Hardware changes. Upon written approval to move forward with the changes and receipt from the Customer of the stated fees, Hart will complete the required changes to the Customer's Hart Hardware. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY THIRD PARTY HARDWARE.

- 9.3. **Hart Proprietary Software Limited Warranty.** Hart warrants that beginning ten (10) days after the shipping of the Hart Proprietary Software and for so long as Customer has the requisite number of License and Support Subscriptions in effect, the Hart Proprietary Software will perform substantially according to the then-current functional specifications described in the applicable software Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, Customer must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable corrective action (a solution that will allow the software to function appropriately). Hart will make commercially reasonable efforts to remedy or provide a suitable workaround for defects, errors, or malfunctions covered by this warranty that have a significant adverse effect upon operation of the Hart Proprietary Software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Customer acknowledges and agrees that this warranty is contingent upon and subject to Customer's proper use of the Verity system and the Exclusions from Warranty and Support Coverage set forth in Section 9.5. The remedies set forth in this Section 9.3 are the full extent of Customer's remedies and Hart's obligations regarding this warranty. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY SUBLICENSED SOFTWARE.
- 9.4. **Professional Services Warranty.** Hart represents and warrants that any Professional Services shall be performed in a professional and workmanlike manner.
- 9.5. **Exclusions from Warranty and Software Support Services.** The warranties under this Section and Software Support under Section 8 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) Customer's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of incompatible media, supplies, parts, or components; (c) modification or alteration of the Verity system, or its components, by Customer or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions; (g) negligence, accidents, abuse, neglect, misuse, or tampering; (h) improper or abnormal use or use under abnormal conditions; (i) use in a manner not authorized by this Agreement or use inconsistent with Hart's specifications and instructions; (j) use of software on Equipment that is not in good operating condition; (k) acts of Customer, its agents, servants, employees, or any third party; (l) servicing or support not authorized by Hart; (m) Force Majeure; or (n) Consumables, unless expressly set forth in Section 9.2. In any case where Hart Proprietary Software interfaces with third party software, including but not limited to, the Customer's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems, Hart will not be responsible for proper operation of any Software that interfaces with the third party software should such third party software be updated, replaced, modified, or altered in any way. Hart will also not be responsible for the proper operation of any Software running on Customer's computer equipment, should Customer install a new computer operating system on said equipment without advising Hart of such changes and receiving Hart's written approval. Hart will not be responsible for the proper operation of any Software should it be configured or operated in any manner contrary than that described herein. Professional Services and associated costs may be required in those situations where the Customer requests Hart's review and approval of any system changes outside the original system specifications at the time of the original acceptance date of this Agreement. Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices caused by these exclusions from warranty and support coverage.

- 9.6. **Third Party Hardware and Sublicensed Software Excluded.** HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY HART TO CUSTOMER, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO CUSTOMER "AS IS," OTHER THAN AS MAY BE PROVIDED IN ANY PASS-THROUGH WARRANTY DESCRIBED BELOW. HART HAS NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO CUSTOMER. If Hart sells, licenses, or sublicenses any Third Party Hardware or Sublicensed Software to Customer, Hart will pass through to Customer, on a nonexclusive basis and without recourse to Hart, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer. Customer agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor. For a list of Third Party Hardware, see Exhibit A. For a list of Sublicensed Software, see Exhibit D or the applicable order. The disclaimers in this Section 9.6 are not intended to apply to embedded third party software integrated within the Hart Proprietary Software, contemplated by Section 5.1.
- 9.7. **Limited Remedies.** HART'S SOLE RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN PRODUCTS AND SERVICES IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN, AND TO THE EXTENT SET FORTH IN, THIS WARRANTY TERMS SECTION.

## 10. PROFESSIONAL SERVICES

- 10.1. **Professional Services.** Subject to the terms and conditions of this Agreement, Hart will provide Customer (i) operational training and on-site support at the first election in which the Products are used, and (ii) the Professional Services described in each Hart-accepted, Customer-signed quotation. Professional Service days cannot be exchanged for Product fees, Annual Fees, or fees for other Services. If the Professional Services in an applicable quotation are not used prior to 60 days after the date of the Customer's first election in which any portion of the Product is used, Hart's Professional Services obligations shall expire and unused days will be billed to the Customer without recovery of amounts paid in advance for Professional Services.

## 11. REPRESENTATIONS AND WARRANTIES

- 11.1. **Due Organization.** Each party represents that it is duly organized, validly existing, and in good standing in the jurisdiction of its organization, and that it has the requisite power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement.
- 11.2. **Conflicting Agreements.** Each party represents and warrants that it has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.

## 12. CUSTOMER RESPONSIBILITIES

- 12.1. **Independent Determination.** Customer acknowledges it has independently determined that the Products purchased under this Agreement meet its requirements
- 12.2. **Cooperation.** Customer agrees to cooperate with Hart and promptly perform Customer's responsibilities hereunder. Customer will (a) provide adequate working and storage space for use by Hart personnel near the applicable Hardware; (b) provide Hart full access to the Hardware and Software and sufficient computer time, subject to Customer's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely access to key Customer personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.
- 12.3. **Site Preparation.** Customer shall prepare and maintain the installation site in accordance with instructions provided by Hart. Customer is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.
- 12.4. **Site Maintenance; Proper Storage.** Customer shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Products and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Products to operate properly. Customer shall properly store the Products when not in use.
- 12.5. **Use.** Customer is exclusively responsible for supervising, managing, and controlling its use of the Products, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making timely data backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. Customer will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Products and that the Hardware and Software are used in accordance with applicable

manuals, instructions, and specifications. Customer shall comply with all applicable laws, rules, and regulations with respect to its use of the Products.

- 12.6. **Backups.** Customer is solely responsible for timely data backups, and Customer will maintain backup data necessary to replace critical Customer data in the event of loss or damage to data from any cause. Hart is not liable for data loss.

### 13. TERM AND TERMINATION

#### 13.1. Term.

- 13.1.1. *Of Agreement.* Unless earlier terminated as set forth herein, the initial term of this Agreement is as set forth in Section 2 of the PSA.

- 13.1.2. *Of License and Support Subscription.* Unless earlier terminated as set forth herein, the initial term of the License and Support Subscriptions is one (1) year. Unless otherwise provided in the applicable quotation subsequently ordered License and Support Subscriptions shall be pro-rated so as to be co-terminus with the initially ordered License and Support Subscriptions.

- 13.1.3. *Of Hardware Warranty.* Unless earlier terminated as set forth herein, the initial term of new Hardware Warranties is one (1) year.

#### 13.2. Renewals.

- 13.2.1. *Of Agreement.* This Agreement shall automatically renew for successive periods of one (1) year following the initial term unless one party notifies the other of its intent not to renew not less than ninety (90) days prior to the end of the then-current term.

- 13.2.2. *Of License and Support Subscriptions.* Except as otherwise provided in this Agreement, Customer must renew License and Support Subscriptions before their expiration by paying the Annual Fee invoiced by Hart, as provided in Section 2.2, before the anniversary date immediately following the date of invoice. Each renewal License and Support Subscriptions term will be a one (1) year, commencing on the expiration of the prior term and expiring on the immediately following anniversary date.

- 13.2.3. *Hardware Warranties.* Hardware warranties may be extended through a separate Extended Hardware Warranty, ordered in accordance with Section 1. Renewal of this Agreement and the License and Support Subscription do not, in themselves, extend hardware warranties.

#### 13.3. Reserved.

- 13.4. **Effect of Expiration and Termination.** Sections 3, 5.2-5.4, 7, 9.5-9.7, 12, 13.4, and 14-18 shall survive any termination or expiration of this Agreement or the applicable License and Support Subscription and/or Professional Services order.

### 14. CONFIDENTIALITY

- 14.1. **Definition.** "Confidential Information" means any information related to Hart's business or the Verity system, including but not limited to technical data, trade secrets, know-how, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information. Confidential Information includes, without limitation, all Software, the Documentation and support materials, and the terms and conditions of this Agreement.

- 14.2. **Non-Use and Non-Disclosure.** Customer will keep in confidence and protect Confidential Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. Customer shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Hardware and Software and the other Confidential Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. Customer shall keep the Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable Customer to use the Software. Customer acknowledges that unauthorized disclosure of Confidential Information may cause substantial economic loss to Hart or its suppliers and licensors.

- 14.3. **Return of Confidential Information.** Upon termination or expiration of this Agreement or, if earlier, upon termination of Customer's permitted access to or possession of Confidential Information, Customer shall return to Hart all copies of the Confidential Information in Customer's possession (including Confidential Information incorporated in software or writings, electronic and hard copies). Upon termination of Customer's license or sublicense of Software, Customer shall immediately discontinue all use of the Software and return to Hart or destroy at Hart's option, the Software, including Firmware (and all related Documentation (electronic and hard copy)) and all archival, backup, and other copies of Software, Firmware and Documentation, and provide certification to Hart of such return or destruction. Return or destruction may include hard drives and/or component flash drive devices.

14.4. **Customer Employees, Agents and Contractors.** Customer will inform its employees and other agents and contractors of their obligations under this Section 14 and shall be fully responsible for any breach thereof by such personnel.

## 15. RESERVED

## 16. DISCLAIMERS AND LIMITATIONS OF LIABILITY

16.1. **Disclaimer of Warranty.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES APPLICABLE TO THE PRODUCT(S) AND/OR SERVICES SET FORTH IN SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT, AND (B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NONINFRINGEMENT FOR ALL HARDWARE, SOFTWARE, AND SERVICES. CUSTOMER IS SOLELY RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CUSTOMER DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CUSTOMER DATA THE EXPRESS LIMITED WARRANTIES REFERENCED ABOVE EXTEND SOLELY TO CUSTOMER AND DO NOT INCLUDE ANY TYPE OF ROUTINE MAINTENANCE SERVICE OR PREVENTATIVE MAINTENANCE SERVICE. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY.

16.2. **Limitations of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART WILL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO HART UNDER THIS AGREEMENT UNDER THE ORDER FOR THE HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO THE APPLICABLE CLAIM. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CUSTOMER'S NEGLIGENCE OR INTENTIONAL ACTS OR, EXCEPT AS EXPRESSLY SET FORTH HEREIN, FOR ANY CLAIM AGAINST CUSTOMER OR ANYONE ELSE BY ANY THIRD PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, SO THE ABOVE EXCLUSIONS AND/OR LIMITATIONS MAY NOT APPLY TO CUSTOMER. THE PARTIES AGREE THAT THE LIABILITY AND WARRANTY LIMITATIONS SET FORTH IN THIS AGREEMENT ARE A REASONABLE ALLOCATION OF RISK AND LIABILITY CONSIDERING THE RESPECTIVE BENEFITS OBTAINED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

16.3. **Third Party Products, Services and Referrals.** In addition to Third Party Products that may be ordered hereunder, Hart may direct Customer to third parties having products or services that may be of interest to Customer for use in conjunction with the Products or Services. Notwithstanding any Hart recommendation, referral, or introduction, Customer will independently investigate and test non-Hart products and services and will have sole responsibility for determining suitability for use of non-Hart products and services. Hart has no liability with respect to claims relating to or arising from use of non-Hart products and services, including, without limitation, claims arising from failure of non-Hart products to provide proper time and date functionality.

## 17. DISPUTE RESOLUTION

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

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

17.3. **Injunctive Relief.** Notwithstanding the other provisions of this Section 17, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section.

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

## 18. GENERAL PROVISIONS

18.1. **Reserved.**

- 18.2. **Interpretation.** All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.
- 18.3. **RESERVED.**
- 18.4. **Reserved.**
- 18.5. **Reserved.**
- 18.6. **Compliance with Laws.** Products provided under this Agreement may be subject to U.S. and other government export control regulations. Customer shall not export or re-export any Products.
- 18.7. **Reserved.**
- 18.8. **Reserved.**
- 18.9. **Reserved.**
- 18.10. **Trademarks.** Verity Election Office™, Verity Voting™, Verity Scan™, Verity Touch™, Verity Controller™, Verity Access™, Verity vDrive™, Verity Touch Writer™, Verity Ballot™, Verity Layout™, Verity Build™, Verity Count™, Verity Relay™, Verity Key™, and Verity Central™, and such other Product names indicated as trademarked names of Hart are trademarks of Hart.
- 18.11. **Reserved.**
- 18.12. **Equitable Relief.** The parties agree that a material breach of the confidentiality provisions of this VMA or restrictions set forth herein would cause irreparable injury to Hart for which monetary damages alone would not be an adequate remedy, and therefore Hart shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.
- 18.13. **Government Use.** The use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, no matter how received by the United States Government, is restricted in accordance with the terms and conditions contained herein. All other use is prohibited. Further, the Products were developed at Hart's private expense and are commercial in nature. By using or receiving the Products, the Government user agrees to the terms and conditions contained in this Agreement including the terms and conditions contained in this paragraph.



**Exhibit A**

**Schedule A or Customer Signed Quote for Initial Order**



Quote Number

00005151

Account Name

Humboldt County, CA

Grand Total

\$874,252.86

Item	Description	Unit Price	Quantity	Total Price
Verity Scan	Digital ballot scanner	\$6,100.00	55	\$335,500.00
Verity Ballot Box	Ballot box w/ transport bag and privacy screens included with Verity Scan		55	
Verity Touch Writer w/ Access	Ballot marking device with accessibility	\$5,300.00	55	\$291,500.00
Verity Accessible Booth	Wheelchair-accessible voting booth w/ transport bag and privacy screens included with Verity Touch Writer w/ Access		55	
Okidata B432dn Printer	Laser printer w/ starter cartridge included with Verity Touch Writer for ballot printing		55	
Printer Stand	Small table for printer included with Verity Touch Writer		55	
Verity Print	Paper ballot printing unit	\$5,875.00	3	\$17,625.00
Okidata B432dn Printer	Laser printer w/ starter cartridge included with Verity Print for ballot printing		3	
Verity Build	Verity Build software; includes Verity Data	\$40,000.00	1	\$40,000.00
Verity Count	Verity Count software	\$13,500.00	1	\$13,500.00
Verity Central	Verity Central software (server)	\$50,000.00	1	\$50,000.00
Verity Central - Client	Verity Central software (client)	\$12,500.00	1	\$12,500.00
Verity Workstation	Workstation for Verity software w/ 5-year warranty; includes qty 1 backup for Verity Count and qty 1 backup for Verity Central	\$5,900.00	6	\$35,400.00
23" Flat Panel Monitor	Monitor for use with Verity Workstation		6	
Canon DR-G1130 Central Scanner	Central ballot scanner w/ 1-year warranty	\$10,000.00	3	\$30,000.00
Okidata B432dn Printer	Laser printer w/ starter cartridge for report printing	\$380.00	4	\$1,520.00
vDrive	Flash memory card/audio card for use with Verity devices	\$66.00	180	\$11,880.00
Verity Key	Electronic security token	\$109.00	9	\$981.00
Battery Charger, 6 Bay	6-bay charger for Verity voting device battery	\$540.00	2	\$1,080.00
Battery Charger, 1 Bay	1-bay charger for Verity voting device battery	\$185.00	1	\$185.00
AutoBallot Kit	Barcode scanner kit for automatic Verity access code creation from VR/electronic poll book data	\$419.00	58	\$24,302.00
Uninterruptible Power Supply (UPS)	UPS for printer accompanying Verity Touch Writer or Verity Print	\$725.00	55	\$39,875.00
New Implementation Services	Includes training, acceptance testing, project management, and on-site support for the first election on the Verity voting system. Additional services, if required, must be purchased separately.	\$40,000.00	1	\$40,000.00
Shipping and Handling (Estimated)		\$5,475.00	1	\$5,475.00
License and Support	Annual license and support fee	\$41,250.00	1	\$41,250.00



Quote Number 00005151  
 Account Name Humboldt County, CA  
 Grand Total \$874,252.86

Estimated Sales Tax		\$68,489.86	1	\$68,489.86
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Subtotal \$1,061,062.86  
 Special Discount (\$186,810.00)  
 Grand Total \$874,252.86

Bill To	Attn: Purchasing Division Humboldt County, CA 2426 6th St. Eureka, CA 95501	Ship To	Attn: Kelly Sanders Humboldt County, CA 2426 6th St. Eureka, CA 95501
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**Customer Contact**

Contact Name	Kelly Sanders	Email	ksanders@co.humboldt.ca.us
		Phone	(707) 445-7481

**General Information**

Expiration Date	10/11/2019	Instructions	Please fax with signature to or scan and email to <a href="mailto:kclakeley@hartic.com">kclakeley@hartic.com</a> to order.
Payment Terms	Net 30		

**Terms and Conditions**

Hart is offering a plan that will assist the County's transition from Polling Place model to Vote Center Model. This plan includes a Buy Back option and the ability to convert one Verity device to another.

Beginning January 1, 2021, the County may elect to sell up to 40 Verity Scan units back to Hart.

Hart is offering the following plan:

- \$1,840.00/unit if buyback is executed no later than December 31, 2021
- Buybacks executed after December 31, 2021 will be negotiated separately
- Conversion of Verity Touch Writer to Verity Print is available at a cost of \$330.00 per unit

Hart has included Ballot Production Services for first 2 elections (March of 2020 and November of 2020). Additional elections may be supported for a fee.

Subsequent License and Support will be billed annually per contract terms.

Delivery includes removal and salvage of customer's existing voting system at no extra charge.

Pricing subject to inventory availability at time of quote execution and acceptance.

Taxes will be calculated in conjunction with the Customer based on the final approved price list.

**Hart Approval**

Prepared By	Karen Clakeley	Title	Director, Strategic Accounts
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Signature

**Customer Approval**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Customer Approval: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit B

### Hart Customer Support Contact Information and Hours

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

Customer Support Center	1-866-275-4278 (1-866-ASK-HART)
Customer Support Center Fax	1-512-252-6925 or 1-800-831-1485
E-mail Address	<a href="mailto:hartsupport@hartic.com">hartsupport@hartic.com</a>
Hart InterCivic, Inc. Switchboard	1-800-223-HART (4278)
Hours of Operation	7AM-6PM Central Time, M-F
After Hours	Leave Voicemail with contact information for return call

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## Exhibit C

### Definitions

“*Hart*” means Hart InterCivic, Inc., a Texas corporation.

“*Verity Access*™” means the audio tactile interface (ATI) controller created by Hart as an add-on component to a Verity Touch™ that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from adaptive switch mechanisms that facilitate interaction with disabled voters, as needed.

“*Verity Print*™” means the device created by Hart for purposes of on-demand ballot printing; this device creates a blank paper ballot from the poll worker’s selection of the voter’s ballot style or precinct on the Verity Print interface.

“*Verity Controller*™” is a polling place management console capable of interacting with one or more Verity Touch™ devices by transmitting and receiving signals that manage an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

“*Verity Scan*™” means the Verity Scan™ device created by Hart, consisting of an in-person digital ballot imaging device. The single-feed scanner transports and scans both sides of a ballot simultaneously, and it is securely attached to a ballot box that provides for secure ballot storage and transport.

“*Verity Election Office*” means Hart InterCivic’s software platform that can accommodate a variety of election administration applications and is designed for interoperability with Verity Voting Hardware and Software.

“*Verity Touch*™” means the Verity Touch™ electronic voting device created by Hart. Verity Touch devices consist of hardware including an electronically configurable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable touchscreen liquid crystal display (LCD) panel for use in displaying ballot images, and options for tactile input buttons that facilitate voter options for selecting ballot choices and casting a ballot.

“*Verity Touch Writer*™” means the device created by Hart for ballot-marking functions. Touch Writer creates a paper marked ballot from the voter’s selections on the electronic interface or the Verity Access ATI controller.

“*Verity Voting*” means Hart InterCivic’s family of voting system components designed to conform to federal voting system standards.

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