

## **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (“Agreement”), dated this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between Election Systems & Software, LLC. (“ES&S”), a Delaware limited liability company, with offices at 11208 John Galt Blvd., Omaha, Nebraska 68137, and \_\_\_\_\_, a Voting System Examiner (“Recipient”) for the Board of Elections for Venango County, Pennsylvania (the “Board”). ES&S and Recipient are referred to herein individually as a “party” and together, as the “parties.” For the purposes of this Agreement, a party includes all representatives or affiliates of that party.

1. In order for Recipient to evaluate information for the purpose of performing an audit of the May 17, 2011 Venango County Election (the “Audit Review”), Recipient shall execute and deliver this Agreement to ES&S and the Board.

2. All technical and non-technical information about ES&S, including, but not limited to, trade secrets, code, know-how and proprietary information, firmware, designs, schematics, techniques, plans or any other information relating to any research product, work in process, future development, scientific, engineering, manufacturing, marketing or business plans or financial or personnel matters relating to ES&S or its present or future products, sales, suppliers, customers, employees, investors or affiliates and disclosed or otherwise furnished by ES&S or its Representatives (as defined below), whether under or in contemplation of this Agreement, and regardless of the manner in which it is furnished, together with all analyses, compilations, studies, summaries, extracts or other documents, whether prepared by ES&S or others, which contain or otherwise reflect such information is referred to in this Agreement as “Confidential Information”. All information delivered or provided to Recipient shall be presumed to be Confidential Information. As used in this Agreement, the term “person” shall be broadly interpreted to include, without limitation, any corporation, institution, company, partnership or individual. As used in this Agreement, “Representatives” of any party means, collectively, its affiliates and the directors, officers, employees, agents, advisors and controlling persons of such party and its affiliates.

3. Recipient agrees that each of its Representatives to whom any Confidential Information may be provided as part of Recipient’s performance of the Audit Review, must separately execute with ES&S a Confidentiality and Non-Disclosure Agreement in the form hereof prior to Recipient’s delivery of any Confidential Information to such Representative(s). Recipient shall effect the execution and delivery of such additional agreements to ES&S.

4. Recipient agrees (a) except as required by law (including a court order), to keep all Confidential Information confidential and not to disclose or reveal any Confidential Information to any person other than those employed by Recipient or acting on Recipient’s behalf and directly participating in the performance of the Audit Review and who need to know the Confidential Information for the purpose of performing the Audit Review, (b) to use reasonable best efforts to cause Recipient’s Representatives to observe the terms of this Agreement and (c) not to use or disclose Confidential Information for any purpose other than in connection with the performance of the Audit Review. Upon expiration or any termination of this Agreement by either party, Recipient shall promptly deliver to ES&S or destroy all of the

Confidential Information, including all copies thereof, in Recipient's possession or in the possession of any of Recipient's Representatives, and will promptly certify such destruction in writing.

6. Recipient assumes full responsibility for all conclusions Recipient derives from the Confidential Information.

7. Nothing contained in this Agreement or in any discussions undertaken or disclosures made hereunder is intended to grant to Recipient or any of its Representatives any license, patent, copyright or any other form of right or claim in or to any of ES&S' Confidential Information disclosed hereunder or in or to any of ES&S' intellectual property.

8. Without prejudice to the rights and remedies otherwise available to ES&S, ES&S shall be entitled to equitable relief by way of temporary and/or permanent injunction if Recipient or any of Recipient's Representatives breach or threaten to breach any of the provisions of this Agreement.

9. This Agreement contains the entire agreement between the parties concerning confidentiality of the Confidential Information. No modifications of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of the parties. It is further understood and agreed that no failure or delay by ES&S in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the extent possible. The terms of this Agreement shall survive the term of Recipient's engagement by the Board to perform the Audit Review.

11. At no time shall Confidential Information be used for (1) purposes of patent mining or reverse engineering; (2) preparation or development of any derivative or competing technologies; or (3) preparation or development of any public comments, presentations, publications, or scholarly work of any kind or nature.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2011, by their respective representatives, each thereunto duly authorized.

ELECTION SYSTEMS & SOFTWARE, LLC.

By: \_\_\_\_\_, \_\_\_\_\_,  
Title: \_\_\_\_\_ Recipient.

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