

VOTING EQUIPMENT AGREEMENT

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date")

BETWEEN: Diebold Election Systems ("Contractor")

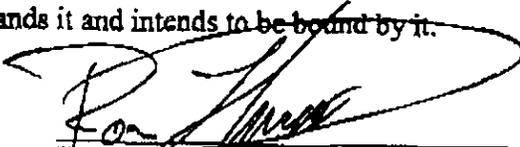
AND: Kansas Secretary of State ("KSOS").

Contractor agrees to sell its voting equipment and related products and services listed in this agreement to any County that selects Contractor, and KSOS agrees to purchase voting equipment and related products and services from Contractor if Contractor is selected by a Kansas County to provide such in the State of Kansas. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the terms and conditions set forth below.
- Represents and warrants to the other party that as of its signature date indicated below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.


 Diebold DAVE BOYD, VP BUSINESS OPERATIONS

11/28/05
 Date


 KSOS

11-28-05
 Date *by [initials]*

DEFINITIONS:

The parties hereby define the following terms as used in this Agreement:

1. "Agreement" and "Contract" mean the agreement outlined in this document, including all attachments and exhibits.
2. "Contractor" means the party to this contract who agrees to sell and provide voting equipment and related products and services to the State of Kansas and Kansas counties.
3. "County" means a county within the state of Kansas who receives or purchases voting equipment and related products and services from Contractor.
4. "Customer" means either the Kansas Secretary of State or the Kansas County purchasing the voting equipment and related products and services from Contractor.
5. "HAVA-compliant voting equipment" means voting equipment and related products and services that comply with the "Help America Vote Act of 2002."
6. "KSOS" means the Kansas Secretary of State.
7. "Non-HAVA voting equipment" means voting equipment and related products and services for purchase from Contractor that are not paid for with federal funds under the "Help America Vote Act of 2002."

TERMS AND CONDITIONS

1. Contract Elements, Order of Precedent: The following exhibits are incorporated into, and constitute an integral part of, this agreement. Any conflict in this contract and the documents incorporated by reference shall be determined by the following priority order:

X		This Agreement executed on _____
X	Attachment 1	County Purchase Order Form
X	Exhibit A	Best and Final Offer, including BAFO Price Summary
X	Exhibit B	Master Preferred Escrow Agreement dated July 3, 2003
X	Exhibit C	Questions/Answers, 3 rd Series
X	Exhibit D	Questions/Answers, 2 nd Series
X	Exhibit E	Questions/Answers, 1 st Series
X	Exhibit F	RFP Response
X	Exhibit G	RFP
X	Exhibit H	Form DA-146a, Rev. 1-01

2. Term of Contract: The term of this contract is from the effective date (as defined above) until five years from the effective date, with five additional one-year renewal periods.

3. County Purchases: Kansas counties are permitted to use this state contract to purchase HAVA-compliant voting equipment. The terms and conditions of this contract shall apply to any county purchase of HAVA-compliant voting equipment pursuant to this contract. Kansas

counties may purchase additional non-HAVA voting equipment using this state contract, and, except as follows, any such purchases using this contract shall be subject to the terms and conditions of this contract. However, use of this state contract for county purchases of non-HAVA voting equipment is not required, and county contracts for non-HAVA voting equipment are subject to re-negotiation and modification by the counties. In such case, the county shall enter into a separate contract with Contractor, which will govern such purchase of additional non-HAVA voting equipment.

4. Quarterly Reports: The Contractor shall submit quarterly reports to KSOS listing all purchases of voting equipment, products and services made by the Counties, whether from this contract or a separate contract. The report should include as a minimum the County name and the quantity, description (including software/firmware version, equipment serial numbers), and amount of purchase.

5. Termination for Cause: KSOS may terminate this contract as to all transactions by one or more Kansas counties under this contract, for cause under any one of the following circumstances:

- a. the Contractor fails to make delivery of equipment, goods or services as specified in this contract; or
- b. the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

KSOS shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within twenty (20) days from the receipt of the notice, or such longer period as KSOS may authorize in writing, the State Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice if sent to Contractor by certified U.S. mail.

In the event of termination under this section, the terms and conditions contained in sections 13, 14, 22, 24 and 32 of this agreement, and applicable payment obligations, shall survive in relation to voting equipment, products and services already installed in accordance with their respective terms.

6. Termination for Convenience: Either Contractor or KSOS may terminate performance of work under this contract in whole or in part whenever, for any reason, either the Contractor or the KSOS and the Director of Purchases shall determine that the termination is in the best interest of the Contractor or the State of Kansas. In the event that the contract is terminated pursuant to this provision, the terminating party shall provide the other party written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

In the event of termination under this section, the terms and conditions contained in sections 13,

14, 22, 24 and 32 of this agreement, and applicable payment obligations, shall survive in relation to voting equipment, products and services already installed in accordance with their respective terms.

7. Governing Law: This contract shall be governed by Kansas law and shall be deemed executed at Topeka, Shawnee County, Kansas. Contractor represents to Customer that the equipment, products, and services provided, and any updates, comply with all applicable requirements of state and federal law at the time of delivery, including the 2002 federal election standards and state certification (including testing by a qualified independent testing authority). Contractor will not provide, and will not be obligated to provide, under this contract any products or services that have not first been fully certified by the State of Kansas. Each party shall comply with all applicable federal, state and local laws, including statutes, regulations, ordinances and codes in connection with its performance under this agreement. Contractor's staff shall perform their duties in accordance with Kansas state policies, procedures and requirements, using state specifications and standards.

8. Jurisdiction: The parties shall bring any and all legal proceedings arising hereunder against the State of Kansas in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party. Any legal claim arising hereunder brought against the County shall be filed in the State of Kansas, District Court of that county.

9. Subcontractors: The Contractor is responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any equipment, products or services provided by any subcontractor. Contractor shall provide KSOS with a copy of any agreement(s) with its subcontractor(s). Upon request, Contractor shall provide KSOS with written evidence of its timely payments to subcontractors and shall indemnify Customer against any claims, suits or actions brought by any subcontractor for nonpayment of fees or expenses alleged to be owed by Contractor to such subcontractor(s).

10. Purchase Order Process: KSOS shall place County orders for HAVA-compliant voting equipment, products and services with Contractor through State Fiscal Year 2006 (June 30, 2006). Each such order will be signed by the ordering County and, by its express terms, bind the County and the Contractor to this contract. Thereafter, Counties shall place all orders for voting equipment, products and services directly with Contractor. The purchase order process through FY 2006 shall be as follows:

- a. The purchasing County shall send its Purchase Order to KSOS for HAVA-compliant voting equipment, and KSOS will submit the County Purchase Orders to Contractor.
- b. All communications relating to the Purchase Orders for HAVA-compliant voting equipment shall occur between Contractor and KSOS. Contractor and KSOS shall each provide the name and contact information for its representative responsible for communications between the parties regarding purchase orders.
- c. The delivery due date shall be agreed upon by Contractor and KSOS at the time of acceptance

of the Purchase Order.

- d. KSOS shall provide Contractor information necessary to allow Contractor to properly bill KSOS and the Counties for their appropriate portion of the costs.
- e. Contractor shall submit to KSOS a complete and detailed inventory list (including firmware/software versions) of all equipment, products and services delivered to each County, including the price paid for each. The inventory list shall be delivered to KSOS at the time that the equipment, products and services are delivered to the County.

11. Staffing Requirements. Contractor shall designate a single customer representative (“Key Personnel”) who shall be responsible for coordination of all orders, delivery, installation, training, and performance of all professional services. Contractor shall not reassign, terminate or add key personnel without prior written consent from Customer. In the event that, in Customer’s reasonable determination, Contractor’s key personnel is failing to satisfactorily perform the work required of him or her under this agreement, Customer may request that Contractor replace such key personnel. If Customer makes such a determination, Customer shall meet with Contractor’s project manager to review and discuss the alleged performance deficiencies. If the parties agree that it is necessary to replace such personnel, Contractor shall provide Customer with a staff-experience statement for such personnel for Customer’s prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Contractor’s employees assigned to perform this agreement shall have adequate knowledge of systems operations and development environments, techniques, and tools. Contractor’s employees assigned to perform this agreement shall have broad knowledge of business operations, internal control concepts, and application processing controls. Contractor’s supervisors assigned to perform this agreement shall have adequate supervisory, communications, and project management skills.

Neither Contractor nor Contractor’s employees shall be deemed to be employees of the State or County. Contractor is providing equipment, products and services as an independent contractor and shall not be deemed to be a “state actor” for purposes of 42 U.S.C. § 1983. Contractor shall take appropriate measures to ensure that its employees are adequately covered by any and all employer-related taxes and insurance in accordance with applicable law. Contractor shall at all times comply with applicable employment laws applicable to their employees.

12. Delivery and Installation of Equipment, Products and Services; Acceptance; and Updates.

a. Delivery. Contractor shall deliver and install at its expense the voting equipment, products and services purchased under this agreement at the County premises, which shall be specified by the County. Delivery due dates shall be agreed to by the Contractor and Customer at the time of acceptance of the purchase order. Contractor shall either (a) deliver and install any updates at the County’s premises, or (b) deliver such updates to the County via courier and/or install such updates remotely. Title, rights of ownership and risk of loss with respect to the equipment, products and services, or any individual element thereof, shall pass to the County upon delivery.

Contractor shall submit to KSOS following acceptance of delivery a complete and detailed inventory list (including firmware/software versions and equipment serial numbers) of all equipment, products and services delivered to each County (HAVA-compliant and non-HAVA), including the price paid for each. The inventory list shall be delivered to KSOS at the time that the equipment, products and services are delivered to the County.

b. Acceptance; Payment; Change Order Process. Contractor and the County shall conduct and perform acceptance testing to determine if the delivered equipment, products and services meet the requirements of this agreement. Acceptance testing shall be conducted by Contractor and County in accordance with Acceptance Testing Criteria to be jointly developed and agreed upon by Contractor and KSOS.

c. Payment Terms. Contractor shall invoice KSOS for costs associated with equipment, products and services listed on the purchase order for "HAVA-compliant voting equipment" which is equal to or less than the County's spending authority for HAVA funds. Contractor shall invoice the County for cost associated with equipment, products and services listed on the purchase order for "HAVA compliant voting equipment" that exceeds the County's spending authority for HAVA funds, and any equipment, products and services listed on the purchase order for "Non HAVA voting equipment" applicable price set forth in Exhibit A. Contractor shall submit each invoice upon acceptance of each deliverable (defined above) in accordance with this agreement. Customer shall pay within thirty (30) calendar days all amounts due in United States dollars at Contractor's address set forth on the invoice, which shall be an address within the United States. If agreeable to both parties, payment by the KSOS may be made by electronic means through the State of Kansas STARS electronic deposit program. Any invoice remaining unpaid for more than thirty (30) days from receipt of said invoice(s) shall accrue interest at the rate set forth in the Kansas Prompt Payment Act (K.S.A. 75-6403).

d. Pricing: All charges shall be billed in accordance with the price summary incorporated into this contract. Except annual fees for renewal of license and maintenance and renewal fees for extended hardware maintenance prices shall not change for a period of 5 years from the effective date of this Agreement unless a written amendment to the award is negotiated between Contractor and KSOS.

e. State Credit Card: If agreed by the Contractor, the State may use a State of Kansas Business Procurement Card (Visa) in lieu of a state warrant to pay for some of its purchases. No additional charges shall be allowed for using the card.

f. Change Order Process. Contractor or Customer may propose changes to the scope of the equipment, products or services described herein. Changes shall be made according to the procedures outlined below.

Process

(i) To propose a Change, Contractor's Project Manager or Customer's Project Manager shall deliver a written proposal (the "Change Order Proposal") to the Project Manager of the other party specifying the proposed Change specifically identifying the change in circumstances giving rise to a change order, and

- (a) the objective or purpose of such Change;
 - (b) the requirements and specifications of the deliverables to be delivered pursuant to such Change; and
 - (c) the requested prioritization and schedule for such Change.
- (ii) Customer and Contractor shall cooperate with each other in discussing the scope and nature of the Change Order Proposal, the availability of Contractor personnel, expertise and resources to provide such Change and the time period in which such change will be implemented. Within ten (10) business days, or another period of time as agreed by the parties, Contractor shall prepare a written assessment of the proposal (the "Change Assessment"):
- (a) describing any changes in products, services, assignment of personnel and other resources that Contractor believes will be required;
 - (b) estimating the increase or decrease in Contractor charges that would be required due to such Change;
 - (c) specifying how the proposed Change would be implemented;
 - (d) describing the effect, if any, such Change would have on this Contract, including, but not limited to, time for performance;
 - (e) estimating all resources required to implement such Change;
 - (f) describing the delivery risks and associated risk mitigation plans; and
 - (g) providing such other information as may be relevant to the proposed Change.
- (iii) To the extent that a proposed Change is of such magnitude or complexity that it is not feasible for Contractor to produce a detailed Change Assessment within ten (10) business days, Contractor shall prepare a summary Change Assessment outlining such details regarding the prospective Change as Contractor can ascertain within ten (10) business days, and the parties shall agree upon a schedule for the production of a more detailed Change Assessment.

Time for Approval.

Customer shall review the Change Assessment and respond within ten (10) business days, or another period of time as agreed by the parties, indicating whether Customer desires Contractor to implement the Change pursuant to the Change Assessment and, if so, the parties will execute a change order based upon the Change Assessment.

13. Updates and New Products.

a. Updates. During the Warranty Period (as defined in Section 14), Contractor shall provide new releases, upgrades or maintenance patches to Contractor's software generally released during such time, along with appropriate documentation ("updates") at no additional charge; provided that all such items have first been certified by KSOS. All updates to software shall be deemed to be Contractor's software for purposes of this agreement upon delivery. Customer shall timely install all updates in accordance with Contractor's recommended instructions and may request that Contractor install the updates at an additional charge that is mutually agreed upon. Contractor may charge Customer to provide maintenance and support on the voting equipment, products and services which are required as a result of Customer's failure to timely install an update with respect to any software. If Customer proposes changes in the Contractor software to Contractor, such proposals will become Contractor's property. Contractor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. Upon the termination of the Warranty Period, Customer shall be entitled to receive the updates to software described in this agreement if Customer pays the applicable annual fee for renewal of licenses and maintenance services.

Customer shall pay Contractor for the costs of any update that is required due to a change in state or federal law.

Contractor shall notify Customer of any defects or problems that arise in any of its equipment, products or services immediately after discovering such defects or problems. Any remedy or fix proposed or developed by Contractor to address or solve the defect or problem shall be provided to Customer at no charge during the Warranty Period and, thereafter, so long as applicable maintenance terms are in effect.

b. New Software Products. From time to time, Contractor may offer new software products that are not currently included within the Contractor software licensed hereunder to Customer and do not use the current code base of the Contractor software and its updates ("new products") to Customer. Customer may, after such new products have been fully certified by KSOS, elect to license a new product upon the payment of an applicable license fee to Contractor. Unless any such license is effectuated pursuant to a separate license agreement, the new product shall be deemed to be part of the Contractor's software upon payment of such license fee. Each new product which is deemed to be part of the Contractor software will be subject to the warranty set forth below upon acceptance, and Customer may thereafter elect to receive Maintenance Services upon the expiration of the Warranty Period.

14. Warranties. Contractor warrants that for one (1) year after the acceptance date (the "Warranty Period"), it will repair or replace any of its voting equipment, products or services, including software, which, while under normal use and service: (a) fails to perform in accordance with this agreement or its documentation in all material respects, or (b) is defective in material or workmanship. "Acceptance date" as defined for this section means use by the Counties for a federal, general election.

After the Warranty Period, the foregoing warranties will continue to apply (a) with respect to software, so long as Customer renews software licenses and maintenance by payment of the

applicable annual fee and (b) with respect to hardware, so long as Customer renews extended hardware warranty services by payment of the applicable annual fee. Further terms regarding such software and hardware maintenance are set forth in Attachment 1 and Attachment 2 to this contract.

Contractor agrees that, following the Warranty Period, so long as the applicable annual renewal fees are paid, it shall continue to produce and maintain parts and services necessary to maintain the then current versions of voting equipment, products and services purchased pursuant to this agreement in good working condition for the life of the agreement.

Contractor warrants that Contractor's equipment, products and services will operate in conjunction with all third-party hardware or software contemplated for use therewith, as set forth in the Contractor's documentation, whether provided by Contractor or procured by Customer (the "Third Party Items"), provided that the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. If any of Contractor's products fail to operate in conjunction with the applicable Third Party Items, Contractor will repair or replace the applicable Contractor product. Other than this warranty of compatibility, Contractor makes no warranties, express or implied, with respect to any Third-Party Items. Customer shall provide Contractor with copies of all documentation and warranties for the Third Party Items which are provided to Contractor.

CONTRACTOR DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS EXPRESSED IN THE RFP AND CONTRACTORS' RESPONSE TO THE RFP AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

15. Indemnification by Contractor. a. Intellectual Property Infringement. Contractor shall indemnify and hold Customer harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys fees) (collectively "Adverse Consequences") arising out of or relating to a claim that any of its equipment, products or services, including software (but excluding any Third Party Items), infringes upon any third party's United States patent existing as of the date hereof or United States copyright, trademark or trade secret (a "Third Party Infringement Claim"). Customer shall notify Contractor immediately if it becomes aware of any Third Party Infringement Claim. Customer hereby gives Contractor full and complete authority, and shall provide such information and assistance as is necessary (at Contractor's expense with respect to reasonable out-of-pocket costs), to enable Contractor to defend, compromise or settle a Third Party Infringement Claim. In addition, if Customer is prevented by a Third Party Infringement Claim from using any of Contractor's equipment, products or services in substantially the manner contemplated by this agreement, Contractor shall, at its expense (i) first attempt to procure for Customer the right to continue such use, or (ii) if Contractor is unable to procure such right, then replace or modify the infringing item.

b. Timely Performance. If, due to Contractor's negligence, (i) Contractor fails to provide any equipment, product or service by a specified date, and (ii) such failure has or will result in a material detrimental impact on Customer's ability to meet the requirements of federal or state law, define and conduct elections or to tabulate or report election results in a satisfactory manner or on a timely basis, Customer may pass to Contractor the direct and reasonable out-of-pocket expenses incurred by Customer in working to cure such failure. Customer shall submit to Contractor an itemized statement setting forth the charges for said expenses. Upon Contractor's request, Customer shall also provide Contractor with copies of invoices and other supporting information necessary to confirm the itemized expenses. Customer will, accept a credit against future payments to Contractor or accept a cash payment as payment by Contractor under this section. Customer shall take all reasonable steps to mitigate the expenses incurred by Customer hereunder. Failure to deliver equipment, products and services by the agreed upon delivery date shall result in 10% reduction of the total cost for those products and services not timely provided, and such cost shall be further reduced by an additional 10% for each week that passes after the agreed upon delivery date until delivery occurs. Further, failure to complete delivery installation and training in any County by June 1, 2006 shall result in 10% refund of the total cost for those voting equipment, products and services purchased by the County from the Contractor but not yet delivered.

16. Indemnification by Customer. Customer shall indemnify and hold harmless Contractor to the extent allowed under the Kansas Tort Claims Act from and against any and all adverse consequences arising out of or relating to the following:

- a. Any Third Party Infringement Claim resulting from (i) Customer's failure to timely or properly install and use any update provided to it by Contractor; (ii) the use of any Contractor equipment or software in combination with other equipment, hardware or software not meeting Contractor's specifications for use with such voting equipment or software; or (iii) Customer's modification or alteration of any item of voting equipment or software without the prior written consent of Contractor;
- b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items;
- c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and
- d. Customer's decision not to receive, or to terminate the hardware maintenance services or support.

Contractor shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this section, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

17. Insurance. Attached to this agreement is Contractor's certificate of insurance that sets forth its current insurance coverages. Contractor shall notify KSOS at least 30 days before reducing any insurance coverage set forth on such certificate.

18. Force Majeure. Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes (other than labor disputes with such party's own employees), transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. Contractor agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

19. Taxes. KSOS and Kansas counties are tax-exempt entities.

Customer shall not be liable for taxes imposed on or measured by Contractor's income.

All payments made to Contractor pursuant to this agreement shall be paid to a business entity domiciled in the United States, subject to taxation by its home state and the U.S. government.

20. Confidentiality. During the course of Contractor's performance for Customer, each party may be given access to information (in hardcopy and/or electronic form) that relates to or constitutes the other's past, present, and future research, development, business activities, products, services, and technical knowledge, and is identified by the discloser as confidential ("Confidential Information"). In connection therewith, subject to the Kansas Open Records Act, the following subsections shall apply:

- a. The confidential information of the discloser may be used by the receiver only in connection with the Services;
- b. Each party agrees to protect the confidentiality of the confidential information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such confidential information.
- c. The confidential information may not be copied or reproduced without the discloser's prior written consent, however, Customer has permission to copy deliverables for internal purposes;
- d. All confidential information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (a) completion of the services or (b) request by the discloser, unless the receiver is otherwise allowed to retain such Confidential Information, however, Customer has permission to retain deliverables for internal purposes;
- e. Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously

known to it without an obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this agreement; and

f. If either party receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information of the other party, it shall promptly notify the other of such receipt in order to enable the disclosing party to seek an appropriate protective order. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to the extent permitted by law and not otherwise protected under any protective order obtained by the disclosing party.

g. Any subcontractor employed by or partnering with Contractor shall be subject to this provision.

21. Proprietary Rights. Contractor owns the software, all documentation and training materials provided by Contractor, the design and configuration of the voting equipment and the format, layout, measurements, design and all other technical information (except for State or County supplied information such as election information) associated with the ballots to be used with the voting equipment. Customer has the right to use the aforementioned items to the extent specified in this agreement. Contractor also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items.

Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the voting equipment or software.

Customer shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the voting equipment, the software, the documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

22. License. Contractor grants to Customers who purchase its equipment, products and services a nonexclusive, nontransferable license (the "License"), during the initial term of this contract and thereafter so long as applicable annual license and maintenance fees are paid, to use Contractor's software and related documentation. Customer may request such license to be transferred; however such transfer is subject to Contractor's sole written approval. The license allows Customer to use and copy the software (in object code only) and the documentation solely for managing the voting equipment and related products and services, defining and conducting elections and tabulating and reporting election results, and other election-related activities. Customer may not take any of the following actions with respect to the software or its documentation:

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

- b. Cause or permit any change to be made to the software without Contractor's prior written consent; or
- c. Cause or permit any copying, reproduction, or printing of any output generated by the Contractor's software in which Contractor owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent), including but not limited to any ballots, ballot shells or code stock.

23. Term of License. The License shall commence as of the Acceptance Date defined in Section 12 and subject to the terms and conditions of this agreement, shall be a nonexclusive, nontransferable license. The license shall survive the termination of all other obligations under this agreement, and shall continue in effect so long as the County pays the annual license and maintenance fee when due. Upon the termination of the license, Customer shall immediately return the software and the related documentation (including any and all copies thereof) to Contractor, or if requested by Contractor, destroy the software and documentation and certify in writing to Contractor that such destruction has occurred.

24. Source Code. The license does not permit Customer to use the source code for Contractor's software. Contractor shall place the source code in escrow with its third party escrow agent in accordance with the terms of the Master Preferred Escrow Agreement dated July 3, 2003 between Contractor and DSI Technology Escrow Services, Inc. (Predecessor to Iron Mountain Intellectual Property Inc.) ("Escrow Agreement") attached hereto as Exhibit B, and will, within 30 days after the date of this contract, execute and deliver such documents as necessary to make KSOS a beneficiary thereunder and will likewise place in escrow the source code for all updates and new products provided to Customer. So long as the licenses under this contract remain in effect, should Contractor cease operations or become unable or unwilling to maintain and support any of its software, updates, or new products provided to Customer while under an obligation to do so, Customer may obtain the source code for such item(s) for the sole purpose of enabling the continuing maintenance of such item(s) in accordance with this agreement. The source code will remain the property of Contractor and may not otherwise be used by Customer. The cost of using an alternative third party escrow agent shall be borne by Customer.

25. Custom Programming. From time to time after the effective date of this agreement, and upon the written acknowledgement of Contractor; Contractor and Customer may enter into a written agreement for Contractor to provide custom programming to Customer. For purposes of clarity, custom programming shall not include any software, or firmware previously developed by Contractor. Custom programming shall be created, delivered, installed and tested as mutually agreed upon in advance in writing by the Customer and Contractor. Such agreement shall be in the form of an addendum to this agreement which is executed by both parties. All custom programming shall be deemed to be part of the Contractor's software, and shall be covered by the warranty set forth in this agreement for a one (1) year period following its acceptance by the Customer. Contractor retains the right to make any custom programming available to other customers. In the event that Customer pays Contractor for any custom programming and such custom programming results in a New Product(s) for Contractor which Contractor sells or licenses to other customers, Customer shall receive a royalty in the amount of ten percent (10%) of revenues received by Contractor from the sale or licensure of such New Product(s) and,

through the payment of such royalty, shall reimburse Customer up to the amount paid by Customer for such custom programming (exclusive of any additional software maintenance and support fees which Customer may pay in connection with such custom programming)

26. Limitation of Liability. Contractor will not be liable under this contract for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this contract during the 12-month period preceding the event or events giving rise to liability.

27. Assignment. Neither party may assign or transfer this agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. The restriction on assignment in this section shall not impede the right of Kansas counties to use this contract to obtain or purchase voting equipment and related products and services.

28. Care of Government Property: The Contractor shall be responsible for the proper care and custody of any state or county owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor shall reimburse state or county for such property's loss or damage caused by Contractor, normal wear and tear excepted.

29. Severability. If any provision of this agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, the remaining provisions of this agreement shall remain in full force and effect. The unenforceable or invalid provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

30. Notice. Any legal notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid. All communications sent to Contractor or KSOS shall be addressed as follows:

Diebold Election Systems, Inc.
P.O. Box 1019
Allen, TX 75013
Attn.: Contracts Department
FAX: 214-383-1596

Kansas Secretary of State
120 SW 10th Avenue
Topeka, KS 66612-1594
Attn.: Legal Counsel
FAX: 785-368-8032

Legal notice to the County shall be addressed to the County Election Official at his or her official address.

31. Disputes.

a. Payment Disputes

(i). **Payment of Undisputed Amounts.** In the event of a dispute between Contractor and Customer regarding (1) a product or service for which payment has not yet been made to Contractor, (2) the amount due to Contractor for any product or service, or (3) the due date of any payment, Customer may withhold the disputed amount until such dispute has been resolved in accordance with subsection b below, but shall timely pay all other undisputed amounts to Contractor. Such payment shall not constitute a waiver by Customer or Contractor of any of its rights and remedies against the other party. In the event that Customer has accepted, but not yet paid for, a particular deliverable, and the parties mutually determine that one or more other deliverables dependent upon the previously accepted deliverable are not acceptable, Customer may withhold payment for such accepted deliverable and such withheld payment shall not be subject to interest in accordance with the Kansas Prompt Payment Act (K.S.A. §75-6403) until such dispute has been resolved in accordance with subsection b below and payment therefor has become due.

(ii). **Remedies for Past Due Undisputed Payments.** If any undisputed payment to Contractor is past due more than sixty (60) days, Contractor may suspend performance under this agreement until such amount is paid. Contractor hereby reserves a security interest in the third-party items which will not be satisfied until Contractor has been paid for the Contractor software and third-party items. Customer shall, upon request by Contractor, execute financing statements deemed necessary or desirable by Contractor to perfect such security interest. Customer authorizes Contractor to file a copy of this agreement or a financing statement with the appropriate authorities at any time after the effective date in order to perfect Contractor's security interest. A financing statement may be filed by Contractor without Customer's signature on the basis of this agreement where permitted by law.

b. Dispute Resolution Process. Time is of the essence in resolving disputes. Contractor's designated representative shall be Dave Byrd, Vice President, Business Operations. KSOS's designated representative shall be the Assistant Secretary of State, Janet Chubb, and County's designated representative shall be a person named by the County Election Official. These representatives shall be responsible for overseeing the parties' respective administration and performance of this agreement and shall also serve as the primary point of contact in the event that any dispute(s) arise during the performance of this agreement. The initiating party shall notify the responding party's designated representative of any dispute, including all relevant information (e.g. the nature of the dispute, dates, times, persons involved). The responding party's representative shall respond to the notification within five (5) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. Notwithstanding anything in this section to the contrary, either party may apply to any court having jurisdiction over the subject matter of the dispute for a temporary restraining order, preliminary injunction, or other appropriate legal remedy at any time.

32. Press Releases. In the event that either the Contractor or Customer desires to issue any press release or other public statement or communication respecting the relationship of the parties, this agreement or the equipment, products and services to be provided and performed hereunder, such party's designated communications/press representative shall first obtain the prior written approval by the other party's designated communications/press representative of such press release or other public statement, which approval shall not be unreasonably withheld or conditioned, nor unduly delayed.

33. ADA/Accessibility Issues: Contractor agrees to make available to the Counties voting equipment, products and services pursuant to this agreement that meet all accessibility requirements given in HAVA and the Americans with Disabilities Act (ADA). Such requirements include, but are not limited to those listed in the RFP:

- a. Audible features for voters with visual impairment, which audio features shall be capable of working simultaneous with the visual display;
- b. Access to the system by use of stylus, head stick, mouth stick or any other device, and durability of the system to withstand use of these accommodations;
- c. Portability of system for curbside voting;
- d. Adjustability of screen, font, color, language and other parts of the system for ease of use by voters with disabilities.

Contractor shall notify KSOS, 30 days in advance if possible, of any scheduled training or demonstration program that Contractor provides to a County, election official, election workers or the public relating to accessibility or compliance with the ADA. KSOS or the State ADA Coordinator may attend such training programs.

ATTACHMENT 2

Software License And Maintenance Services

1. Software Maintenance Term. This Attachment 1 is effective as of the signing of the contract in which this Attachment 1 is incorporated (the "Effective Date") and, if not extended as provided herein, expires on the last day of the Warranty Period, as defined in the contract. Customer may thereafter extend the effectiveness of this Attachment 1 for up to five successive one-year renewal periods (each, a "Software Renewal Term") by paying, for each Software Renewal Term, the annual software license and maintenance fee set forth in Exhibit A of the contract at least 30 days before such Software Renewal Term begins. The period during which this Attachment 1 is in effect is referred to herein as the "Software Maintenance Term." On expiration of the Software Maintenance Term (a) the licenses granted in this Attachment 1 will automatically terminate, (b) Customer shall cease any further use of the software or firmware provided under the contract ("Contractor Software") and (c) the Contractor may cease performing the maintenance services set forth in this Attachment 1.
2. Payment. The total initial investment specified in Exhibit A of the contract includes payment in full, for the Warranty Period, for the licenses, maintenance and support described in this Attachment 1. Each annual software license and maintenance fee constitutes payment in full, for the duration of the applicable Software Renewal Term, for the licenses, maintenance and support described in this Attachment 1.
3. License to Contractor Software. Subject to the terms of this Attachment 1 and the contract, the Contractor grants each County that chooses to purchase Contractor equipment, products and services under the contract a non-exclusive license, without the right to transfer or sublicense, to use, during the Software Maintenance Term, for the purpose of preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within such County, the numbers of copies specified in Exhibit A of the Contractor Software applications identified therein. This license may be exercised by Customer officials, employees and volunteers authorized by Customer to conduct the above-described elections.
4. Third-Party Products. Subject to the terms of this Attachment 1 and the contract, the Contractor will sublicense to Customer software included in products provided by Contractor under the contract from third-party manufacturers or distributors ("Third Party Products"), in object code form only, for use during the Software Maintenance Term with Contractor's products and services for the purposes described in Section 3 of this Attachment 1. This sublicense is conditioned on Customer's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which such software is provided.
5. No Other Licenses. Other than as expressly set forth in this Attachment 1, (a) the Contractor grants no licenses, expressly or by implication, and (b) the Contractor's entering into and performing the contract (including this Attachment 1) will not be deemed to license or assign any intellectual property rights of the Contractor to Customer or any third party. Without limiting the forgoing sentence, each County purchasing Contractor's AccuVote touch-screen or optical scan devices agrees to use each copy of the AccuVote TSx firmware, or AccuVote OS firmware, only on the AccuVote TSx unit, or AccuVote OS unit, with which the copy is supplied, agrees not to use any Contractor Software as a service bureau for elections outside such County.
6. Contractor Software Maintenance
 - 6.1. During the Software Maintenance Term, the Contractor shall maintain the Contractor Software

so that it operates in conformity at all times with the warranties set forth in the contract. The Contractor shall correct any reproducible error affecting the Contractor Software. Suspected error conditions will be investigated and corrected by Contractor personnel at the Contractor office to the extent possible. Repair or replacement under this Attachment 1 will be the exclusive remedy of Customer for any defects in the operation of the Contractor Software.

6.2. If a problem cannot be resolved using remote diagnostics, upon Customer's prior authorization, the Contractor will send a specialist to the Customer's premises under the following terms:

6.2.1. If the problem lies solely with Contractor Software, the Contractor is responsible for all expenses associated with the resolution of the problem, provided that Customer has incorporated all error corrections or changes to the Contractor Software within ten days after receiving them from the Contractor.

6.2.2. If the problem is due to acts or omissions by Customer or a third party, including by the failure to incorporate all error corrections or changes in a timely manner, Customer is responsible for all fees and expenses at the Contractor's then-current consulting service rate. Such problems include those that arise from the failure of Third-Party Products, installation of the Contractor Software on hardware that was not approved by the Contractor, or improper use of the Contractor Software or the hardware upon which it is installed.

6.3. As is reasonably necessary for the Contractor to provide maintenance and support, Customer shall provide access to its personnel and premises, be responsible for maintaining all necessary computer hardware (other than Warranted Hardware), communications equipment, telephone lines, cabling and modems, and make available paper, disk packs and other similar supplies.

7. Enhancements and Upgrades.

7.1. During the Software Maintenance Term, Contractor may release upgrades, modifications, improvements, extensions, updates and other revisions to the Contractor Software (together with their Documentation, "Upgrades"). Contractor shall make all Upgrades released by Contractor during the Software Maintenance Term available to Customer at no additional charge.

7.2. During the Software Maintenance Term, Contractor may develop bug-fixes, enhancements, error corrections, patches and other special additions or modifications to the Contractor Software that Contractor determines are required for the proper operation of the Contractor Software (together with any Documentation therefor, "Enhancements"). Customer shall promptly implement all such Enhancements that Contractor indicates are necessary for the proper operation of Contractor's products. Contractor shall make all Enhancements released by Contractor during the Software Maintenance Term available to Customer at no additional charge. Upon installation, each Upgrade and Enhancement will be treated as part of the original Contractor Software for purposes of this Attachment 1.

7.2. Notwithstanding any term of this Attachment 1 to the contrary, Contractor shall not provide and shall not be obligated to provide under this Attachment 1 any Update, Enhancement or other software to Customer that has not been fully certified under any and all applicable provisions of Kansas election laws and regulations.

ATTACHMENT 3

Hardware Warranty Services

1. Extended Warranty Term. This Attachment 2 is effective as of the Effective Date and, if not extended as provided herein, expires on the last day of the Warranty Period. Customer may thereafter extend the effectiveness of this Attachment 2 for up to five successive one-year renewal periods (each, a "Warranty Renewal Term") by paying, for each Warranty Renewal Term, the annual extended hardware warranty fee set forth in Exhibit A of the contract at least 30 days before such Warranty Renewal Term begins. The period during which this Attachment 2 is in effect is referred to herein as the "Extended Warranty Term."
2. Payment. The total initial investment specified in Exhibit A of the contract includes payment in full, for the Warranty Period, for the hardware warranty services described in this Attachment 2. Each Annual Extended Hardware Warranty Fee constitutes payment in full for the hardware warranty services described in this Attachment 2 for the duration of the applicable Warranty Renewal Term.
3. Warranted Hardware
 - 3.1. During the Extended Warranty Term, the Contractor shall maintain the items of hardware identified in Attachment 1 and any other items of Contractor hardware for which Customer purchases extended warranty services under this Attachment 2 (collectively, "Warranted Hardware"), so that they operate in conformity at all times with the warranties set forth in the contract. If any item of the Warranted Hardware fails during the Extended Warranty Term to operate in conformity with the warranties set forth in the contract, the Contractor shall fully repair or, at the Contractor's option, replace the Warranted Hardware. The following conditions apply:
 - 3.1.1. Customer shall bear the shipping costs to return the malfunctioning item of Warranted Hardware to the Contractor and the Contractor shall bear the costs for ground-shipping the repaired or replaced item of Warranted Hardware to Customer. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the County's expense.
 - 3.1.2. Customer may request on-site support services. If the Contractor agrees to provide on-site support services, such services will be provided on a time and material basis.
 - 3.1.3. In special or unusual circumstances, Customer may request to borrow a hardware unit that can serve as a temporary replacement for the malfunctioning item of Warranted Hardware ("Loaner"). The Contractor may, at its discretion, provide a Loaner for Customer to use for election activity until the covered item is repaired or replaced. The Contractor and Customer shall agree in advance on the fee for the use of the Loaner.
 - 3.2. For the avoidance of doubt, the following services are among those not covered by the payments identified in Section 2 above, and are available at the Contractor's then current time and material rates.
 - 3.2.1. The replacement of consumable items such as batteries, paper rolls, ribbons, clock chips, smart cards and floppy disks.
 - 3.2.2. The repair or replacement of Warranted Hardware damaged by accident, abuse,

neglect, improper usage or as a result of service modification by anyone other than the Contractor and its authorized service representatives.

- 3.2.3. The repair, refitting or replacement of any Contractor hardware to comply with the changes in any applicable laws or regulations becoming effective after acceptance of such hardware.
4. Gaps in Warranty Coverage. Customer may purchase extended hardware warranty services under this Attachment 2 for items of Contractor hardware for which coverage has lapsed. In such case, in addition to payment of the applicable annual extended hardware warranty fee, Customer will pay at the Contractor's then current time and material rates for inspections and repairs required to bring the items of Contractor hardware up to warranty-level standards.

State of Kansas
 Department of Administration
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/Contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to Contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to Contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the Contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Anti-Discrimination Clause:** The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a Contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this contract on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a Contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

Exhibit B
Master Preferred Escrow Agreement dated July 3, 2003

MASTER PREFERRED ESCROW AGREEMENT

Depositor Company Number 19855

This agreement ("Agreement") is effective July 3, 2003 among DSI Technology Escrow Services, Inc. ("DSI"), Diebold Election Systems, Inc. ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

- A. Depositor and Preferred Beneficiary have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as the "License Agreement").
- B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.
- C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of its business and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.
- D. Depositor and Preferred Beneficiary desire to establish an escrow with DSI to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.
- E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, including the signing of the Acceptance Form, and Exhibit D naming the Initial Account, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement or, if the License Agreement does not identify the materials to be deposited with DSI, then such materials will be identified on Exhibit A. If Exhibit A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. DSI shall have no obligation with respect to the preparation, accuracy, execution, signing, delivery or validity of Exhibit A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3. Escrow Account Name Identification. At the time of execution of this agreement, or when Depositor makes the initial deposit with DSI in accordance with Section 1.2 above,

Depositor shall complete and sign Exhibit D naming the initial account upon which the Deposit Materials are written or stored. Any new deposits referencing new account names made subsequent to the signing of this Agreement, intended by the Depositor to be held in a separate account and maintained separately from the initial account, but made a part of this Agreement, shall be referenced by the Depositor on Exhibit E, and Exhibit E which shall be signed by the Depositor and DSI.

1.4 Acceptance of Deposit. When DSI receives the Deposit Materials, DSI will conduct a visual deposit inspection. At completion of the deposit inspection, if DSI determines that the labeling of the media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor and Preferred Beneficiary. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor and Preferred Beneficiary. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. Delivery of the signed Exhibit B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by DSI. OTHER THAN DSI'S INSPECTION OF THE DEPOSIT MATERIALS, DSI SHALL HAVE NO OBLIGATION TO THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NON-PERFORMANCE OF THE DEPOSIT MATERIALS.

1.5 Depositor's Representations. During the term of this Agreement, Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. With respect to all of the Deposit Materials Depositor has the right and authority to grant to DSI and Preferred Beneficiary the rights as provided in this Agreement, provided further that DSI's or its independent contractor's use of any Deposit Materials is lawful and does not violate the rights of any third parties;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of any liens or encumbrances, however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of DSI under this Agreement;
- d. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement, Exhibit A, or Exhibit B, as the case may be; and
- e. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Deposit Updates. Updates to the Deposit Materials will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and Depositor shall sign the new Exhibit B. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. Any deposit updates shall be held in accordance with Sections 1.2 through 1.5 above. All references

in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.7 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, DSI shall not disclose, transfer, make available, or use the Deposit Materials. DSI shall not disclose the terms of this Agreement to any third party. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order, provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 7.6 below.

2.2 Status Reports. DSI shall provide to Depositor and Preferred Beneficiary a report profiling the account history semiannually.

ARTICLE 3 -- RIGHT TO MAKE COPIES

3.1 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials, including, but not limited to, the hardware and/or software needed. Any copying expenses incurred by DSI as a result of a request to copy will be borne by the party requesting the copies. Alternatively, DSI may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for DSI to perform this Agreement.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, and as to each Preferred Beneficiary, "Release Condition" shall have the meaning set forth in such Preferred Beneficiary's Acceptance form.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Such notice shall be signed by the Preferred Beneficiary and on company letterhead. Unless DSI acknowledges or discovers independently, or through the Parties, its need for additional documentation or information in order to comply with this Section, DSI shall promptly provide a

copy of the notice to Depositor by commercial express mail. Such need for additional documentation or information may extend the time period for DSI's performance under this Section.

4.3 Contrary Instructions. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have sixty (60) calendar days to deliver to DSI contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Contrary Instructions shall be signed by Depositor and on company letterhead. Upon receipt of Contrary Instructions, DSI shall promptly send a copy to Preferred Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to Section 7.4 of this Agreement. Subject to Section 5.2 of this Agreement, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 7.4; or (c) an order from a court of competent jurisdiction.

4.4 Release of Deposit. If DSI does not receive Contrary Instructions from the Depositor, DSI is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expenses will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement. Preferred Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year to year unless (a) Depositor and Preferred Beneficiary jointly instruct DSI in writing that the Agreement is terminated; (b) DSI instructs Depositor and Preferred Beneficiary in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2; or (c) DSI reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing Depositor and Preferred Beneficiary sixty (60) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties to this Agreement. Any party to this Agreement affected by such delinquency shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one (1) month of the date of such notice, then DSI shall have the right to terminate this Agreement at any time

thereafter to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. The obligations of confidentiality with respect to the Deposit Materials;
- b. The obligation to pay DSI any fees and expenses due;
- c. The provisions of Article 7; and
- d. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- DSI'S FEES

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least sixty (60) days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service, including release of any Deposit Materials under Article 4, unless the payment for such service and any outstanding balances owed to DSI are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to

this escrow arrangement except where it is adjudged that DSI acted with gross negligence or willful misconduct.

7.3 **Limitation of Liability.** In no event will DSI be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits) costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of DSI exceed ten times the fees paid under this Agreement. The foregoing limitation of liability does not apply with respect to any acts of gross negligence, personal injury claims, property damage claims (excluding the Deposit), or intellectual property infringement.

7.4 **Dispute Resolution.** Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by, a single arbitrator chosen by the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply Texas law. Unless otherwise agreed by Depositor and Preferred Beneficiary, arbitration will take place in McKinney, Texas, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If, however, Depositor and/or Preferred Beneficiary refuses to submit to arbitration, the matter shall not be submitted to arbitration and DSI may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of arbitration incurred by DSI, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Preferred Beneficiary.

7.5 **Controlling Law.** This Agreement is to be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions.

7.6 **Notice of Requested Order.** If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other duties.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 **Entire Agreement.** This Agreement, which includes the Acceptance Form and Exhibits described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such

License Agreement. DSI's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Exhibit A need not be signed by DSI, Exhibit B need not be signed by Preferred Beneficiary, Exhibit C need not be signed, Exhibit D need not be signed by Preferred Beneficiary or DSI and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices and Correspondence. All notices regarding Articles 4 and 5, and any Deposit Materials, shall be sent by commercial express or certified mail, return receipt requested. All other correspondence including invoices, payments, and other documents and communications shall be sent First Class U.S. Mail and given to the parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of physical and e-mail addresses. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services.

8.3 Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

8.6 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

8.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement (whether in contract, tort, or both), the prevailing party who has proven in court by court decree, judgment or arbitrator's determination that the other

party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgment.

8.8 No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

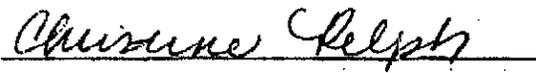
8.9 Authority to Sign. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. DSI will be able to perform its obligations under this agreement once DSI has received a fully executed agreement.

8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

DIEBOLD ELECTIONS SYSTEMS, INC.
Depositor

DSI Technology Escrow Services, Inc.

By: 

By: 

Name: MIKE RASMUSSEN

Name: CHRISTINE RELPH
CONTRACT ADMINISTRATOR

Title: DIRECTOR OF FINANCE

Title: _____

Date: 07-03-03

Date: 7/3/03

Exhibit B
Master Preferred Escrow Agreement dated July 3, 2003

EXHIBIT A

MATERIALS TO BE DEPOSITED

Deposit Account Number 23177

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to DSI shall consist of the following:

Depositor

Preferred Beneficiary

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit B
Master Preferred Escrow Agreement dated July 3, 2003

EXHIBIT C

DESIGNATED CONTACT

Depositor Company Number 19855

Notices, deposit material returns and communications to Depositor should be addressed to:

Invoices to Depositor should be addressed to:

Company Name: DIEBOLD ELECTION SYSTEMS INC. SAME
Address: 1611 WILMETH
MCKINNEY, TX 75069

Designated Contact: Corporate Counsel Contact: _____
Telephone: 972-542-6000
Facsimile: _____ P.O.#, if required: _____
E-mail: _____

Verification Contact:
Susan Wilkerson
Telephone/E-mail:
972-542-6000 X107

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee.

DSI has two Operations Centers to serve you. Agreements, Deposit Materials and notices to DSI should be addressed to: (select location)

All invoice fee remittances to DSI should be addressed to:

θ Attn: Client Services
9265 Sky Park Court, Suite 202
San Diego, CA 92123
Telephone: (858) 499-1600
Facsimile: (858) 694-1919
E-mail: clientservices@dsiescrow.com

DSI Technology Escrow Services, Inc.
PO Box 27131
New York, NY 10087-7131

or

θ Attn: Client Services
2100 Norcross Parkway, Suite 150
Norcross, GA 30071
Telephone: 770-239-9200
Facsimile: 770-239-9201
E-mail: clientservices@dsiescrow.com

Date: 07-03-03

Exhibit B

Master Preferred Escrow Agreement dated July 3, 2003

EXHIBIT D

**NAME OF INITIAL MASTER PREFERRED
ESCROW ACCOUNT**

Depositor Company Number 19855

DIEBOLD ELECTION SYSTEMS, INC. ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

The initial account will be referenced by the following name: Diebold Electronics Systems, Inc.

Deposit Account Number 23177

Depositor
By: 
Name: MIKE RASMUSSEN
Title: DIRECTOR OF FINANCE
Date: 07-03-03

Exhibit B
Master Preferred Escrow Agreement dated July 3, 2003

EXHIBIT E

**ADDITIONAL ESCROW ACCOUNT
TO MASTER PREFERRED ESCROW AGREEMENT**

Depositor Company Number 19855

New Deposit Account Number _____

_____ ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the initial account. By execution of this Exhibit E, DSI will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name: _____

Depositor hereby agrees that all terms and conditions of the existing Master Preferred Escrow Agreement previously entered into by Depositor and DSI will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

_____	DSI Technology Escrow Services, Inc.
Depositor	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit B
Master Preferred Escrow Agreement dated July 3, 2003

**PREFERRED BENEFICIARY
ACCEPTANCE FORM**

Diebold Election Systems, Inc. ("Depositor"), the <State Name> Secretary of State ("SOS") and Iron Mountain, Inc., formerly known as DSI Technology Escrow Services, Inc., ("IM") acknowledge that SOS is, by this Acceptance Form, made a Preferred Beneficiary under the Master Preferred Escrow Agreement dated <date> among Depositor, IM and the Preferred Beneficiaries.

Depositor hereby enrolls Preferred Beneficiary to the following account(s):

Account Name	Deposit Account Number
_____	_____
_____	_____
_____	_____

Notices and communications to Preferred Beneficiary should be addressed to:

Invoices should be addressed to:

Company Name: _____
Address: _____

Designated Contact: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Contact: _____
P.O.#, if required: _____

<State Name> Secretary of State
Preferred Beneficiary

Diebold Election Systems, Inc.
Depositor

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Iron Mountain, Inc.

By: _____
Name: _____
Title: _____
Date: _____