

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: MicroVote General Corp. ("Contractor")

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

Contractor agrees to sell its voting equipment and related products and services listed in this agreement 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.

MicroVote


JAMES M RIES

10/27/05
Date

KSOS


11-16-05
Date

Mandy Miller
Notary Public
514990
Expiration 3/8/10

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 is not required to comply with 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 11/16/05
X		SOS-created Purchase Order Form
X	Exhibit A	Form DA-146a, Rev. 1-01
X	Exhibit B	Source Code Escrow Agreement
X	Exhibit C	Best and Final Offer, including BAFO Price Summary
X	Exhibit D	Questions/Answers, 3 rd Series
X	Exhibit E	Questions/Answers, 2 nd Series
X	Exhibit F	Questions/Answers, 1 st Series
X	Exhibit G	RFP Response
X	Exhibit H	RFP

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 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.

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, or any part of 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.

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

6. Termination for Convenience: KSOS may terminate performance of work under this contract in whole or in part whenever, for any reason, the KSOS and the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the contract is terminated pursuant to this provision, the KSOS shall provide the Contractor 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 shall survive in relation to voting equipment, products and services already installed.

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). 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). 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 and equipment serial numbers) 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 and acceptance (defined below) by the County. Contractor shall submit to KSOS 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. The date on which the acceptance testing has been completed shall be the "Acceptance Date" for purposes of passing title of ownership and risk of loss.

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 costs associated with equipment, products and services listed on the purchase order for "HAVA-compliant voting equipment" that exceed the County's spending authority for HAVA funds, and any equipment, products and services listed on the purchase order for "Non-HAVA voting equipment." 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. Prices shall not change during the term of the award unless a written amendment to the award is negotiated between Contractor and Customer.

e. State Credit Card: 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 Contractor shall provide new releases, upgrades or maintenance patches to Contractor's voting equipment, products and services, along with appropriate documentation ("updates") without additional charge. 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 no additional charge. 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. 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 Maintenance Services described in this agreement if Customer purchases such 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 provide any updates required due to future amendments to the federal "Help America Vote Act of 2002" at no additional cost to Customer.

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.

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 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 all parts necessary to maintain the voting equipment, products and services in good working condition, free of charge, for a period of 18 months after receipt and acceptance by County. All parts supplied by Contractor shall be new standard parts and shall be substituted and exchanged for the old parts which shall become the property of Contractor. Support services shall be provided by Contractor free of charge during the warranty. "Acceptance date" as defined for this section means use by the Counties for a federal, general election.

Contractor agrees that, following the warranty period, it shall continue to produce and maintain parts and services necessary to maintain the 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 the Third Party Items during the Warranty Period, provided that (i) Customer has installed and is using the most recent update, or the second most recent update, provided to it by Contractor, and (ii) 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. In the event of a breach of this warranty, Contractor will repair or replace the item that is causing such breach to occur. Contractor shall provide Customer with copies of all documentation and warranties for the Third Party Items which are provided to Contractor.

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, 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 may, at its option, either 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 a 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 a complete refund of the total cost for the voting equipment, products and services purchased by the County from Contractor.

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 and/or software 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 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 perpetual, nonexclusive, transferable license (the "License") to use Contractor's software and related documentation. 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 perpetual, nonexclusive, transferable license. The license shall survive the termination of all other obligations under this agreement, and shall be a perpetual license; provided, however, that Contractor may terminate the license if Customer fails to pay the license 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. Contractor shall place the source code in escrow with its third party escrow agent in accordance with the terms of the Escrow Agreement with Recall T.I.M. dated November 16, 2001 ("Escrow Agreement") attached hereto as Exhibit B, and has named KSOS as a beneficiary thereunder and will likewise place in escrow the source code for all updates and new products provided to Customer. 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 use 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, Contractor and Customer may enter into a written agreement for Contractor to provide custom programming ("Custom Work Product") to Customer. Custom Work Product 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. Customer shall own all Custom Work Product. If KSOS enters into such agreement, Contractor shall surrender as sole property to KSOS; if County enters into such agreement, Contractor shall surrender as sole property to County: all Custom Work Product, Custom Kansas Code, original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software and/or software code and related intellectual property developed and which KSOS or County paid for as Custom Work Product.

Customer hereby grants to Contractor a perpetual, transferable, worldwide, irrevocable, royalty-free, fully paid-up license to use, copy, modify and prepare derivative works of the Custom Work Product (including, without limitation, the right to make, have made, use, import, offer for sale and sell or otherwise provide or dispose of products and services using or incorporating the same) or to practice any process in connection therewith, with the right to sublicense the same.

The Custom Work Product ownership provisions of any subcontract or any task order issued pursuant to this contract for custom work product shall be substantially similar to the provisions of this section.

Nothing in this Contract will preclude Contractor from marketing, developing or using for itself or others, services or products that are the same as or similar to those provided to Customer by Contractor pursuant to this Contract. Furthermore, Contractor will continue to be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired or used in the course of providing the Services.

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.

26. 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.

27. 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.

28. 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.

29. 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:

MicroVote General Corporation
6366 Guilford Avenue
Indianapolis, IN 45220
Attn.: Office of General Counsel
FAX:

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.

30. 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 James Ries. 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.

31. 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.

32. ADA/Accessibility Issues: Contractor agrees to provide Customer any updates to support use of sip and puff at no cost to Customer. Customer shall be responsible for any costs associated with purchasing the consumable sip and puff instrument as listed on Contractor's price summary.

Contractor agrees that any voting equipment, products and services purchased and delivered pursuant to this agreement meets 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.

E. ESCROW AGREEMENT FOR VOTING SYSTEMS SOFTWARE SOURCE CODE

Enclosed for review is a current software escrow agreement. The proposed agreement with the State of Kansas can utilize the same vendor, Recall Total Information Management. Recall is the global leader in total information management, with operations in over 200 locations in 23 countries across five continents. Their services cover the management of physical and electronic documents throughout their entire life cycles, from creation to secure destruction. At all times during the cycle, they provide complete security and reliable, convenient access. Their experience in vertical markets allows them to add significant value in specialized applications. Based on the following requirements, MicroVote can provide:

- Software source code in two formats (one human readable and one machine readable) to the designated escrow agent;
- Provide the software documentation to the same escrow agent;
- Provide a statement to the KSSOS that if anything happens to MicroVote or the company decides that it cannot or will not complete the terms and conditions of the contract, the state of Kansas shall, within one week, receive full access to the source code and unlimited rights to continue using and supporting the software, at no cost to the state of Kansas;
- MicroVote will stipulate that the state of Kansas shall gain full access to the source code to resolve an election related challenge, such as, but not limited to election tampering, etc;
- MicroVote will agree to send a letter to the ITA that qualified the system, giving the state of Kansas full access to "final build", records and test results related to the qualification tests at no cost to the state of Kansas; and
- MicroVote will agree that the escrow will stay in place throughout the contract and option year periods, as well as the warranty and post-warranty periods.



VIA PRIORITY MAIL

November 16, 2001

Mr. James M. Ries
President
MICROVOTE GENERAL CORPORATION
6366 Guilford Avenue
Indianapolis, IN 46220

COPY

RE: ESCROW #1771

Dear Mr. Ries:

This will acknowledge the establishment of Multiple Licensee Escrow #1771 between MicroVote as Licensor and Brambles NSD, Inc. (doing business as "Recall Total Information Management") as Escrow Agent. A copy of the fully executed Agreement is included herein for your files. Please note the following account number, "Escrow #1771", on all future correspondence relating to this Agreement.

Per the terms of the Agreement, Recall expects to receive the initial deposit of materials into the escrow within thirty (30) days of the execution of the Agreement. This would put the expected delivery date at no later than December 13, 2001. I have included a sample Exhibit A which may help you catalog the deposit. If you have any questions regarding how to prepare the deposit or how the deposit will be acknowledged, please do not hesitate to contact me.

Once the materials are received into escrow, you may begin to register Licensees of Record. To assist you in registering Licensees, I have included a customized Licensee of Record Acceptance and a brief instruction sheet detailing this process.

For reference purposes, I have included herein a contact sheet so your organization can designate their functional contacts for this escrow. Please return this sheet to me at your convenience. The final requirement for establishing this escrow account is payment of the initial acceptance fee. To this end an invoice is enclosed herein.

Thank you for the opportunity to serve as MicroVote's Escrow Agent. If there is any way I can be of further assistance, please do not hesitate to call.

Sincerely,

Monica Roscelli
Escrow Officer

MDR/gg
enc.

RECALL AMERICAS 2109 BERKELEY DRIVE SAN JOSE, CA 95131 U.S.A.	TEL (408) 453-2753 FAX (408) 441-6826
AMERICAS - EUROPE - AUSTRALASIA - ASIA	

**THREE BASIC REQUIREMENTS FOR ESTABLISHING
A TWO PARTY ESCROW**

1) THE AGREEMENT

Two originals should be signed by both Licensor and Escrow Agent, with one being retained by the Licensor (Developer) and the other held by Recall Total Information Management ("Recall"). The standard Agreement references two exhibits, Exhibit A for Materials, Exhibit B for Licensees. Exhibit A is detailed below. As for Licensees, following is our suggestion for maintaining a comprehensive record of your participating customers. When enrolling a customer into the Escrow, provide them with a copy of the signed Agreement and a Licensee of Record Acceptance form. These forms are provided to you by Recall upon opening the escrow. They are printed on plain paper so that Licensors may copy them on to their own company letterhead. Ask the Licensee to return the signed Acceptance to you. Upon receiving the signed Acceptance, make a copy for your files. We suggest that the Licensor maintain a copy of Exhibit B with their files. Thus, when you advise Recall to add your customer to the Escrow, forward a copy of Exhibit B as well. We can then confirm your Licensee list with our files to insure that no Licensees (Customers) are being omitted. Upon receiving this documentation, we will acknowledge to both parties the addition of that Licensee into the escrow .

2) MATERIALS (DOCUMENTATION)

Reference the contract for the schedule of deposits of materials. The initial deposit is detailed in Section 1 of the Agreement. Revisions and Maintenance can be found in Section 2. When delivering source code and/or documentation into escrow, it is most easily done one of two ways. It may be hand delivered upon arrangement with an Escrow Officer, or it may be sent in with a third party courier service. Recall recommends that the courier provide some proof of delivery such as a signature on the receiving end. Once the materials are placed in escrow, Recall will acknowledge their receipt per the conditions contained in the Agreement.

In preparing a deposit, it is helpful to send with it a letter or packing list detailing what is going into escrow. Another option is to maintain an Exhibit A (Documentation) in your files and send it along with the deposit. Upon receipt, the escrow agent can confirm that the items that the Licensor believes are in Escrow are in escrow.

3) FEES

Recall will invoice for the initial fees upon the establishment of the Escrow. Subsequent invoices will be billed periodically to the Licensor. Please reference the Fee Schedule (Exhibit C) for the particulars.

Upon satisfying these three requirements, the Escrow will be complete.

(Licensee of Record Style)

Escrow # 1771

**SOFTWARE DEPOSIT AGREEMENT
BRAMBLES NSD, INC.**

This Agreement ("Escrow Agreement") is executed as of this 13 day of November, 2001 by and between MicroVote General Corporation, a Indiana corporation ("Licensor"), and Brambles NSD, Inc. (doing business as "Recall Total Information Management"), a Delaware Corporation ("RECALL"), as Escrow Agent.

RECITALS

A. Licensor has developed and owns certain proprietary computer software and related support materials (the "Documentation"), as further described in Exhibit A hereto;

B. Licensor licenses the use of said programs to certain Licensees of Record, as identified in Exhibit B hereto ("Licensees"), pursuant to license agreements between Licensor and Licensees ("License Agreements");

C. Continuous availability of such programs and maintenance thereof are critical to Licensees in the conduct of their business;

D. Licensor wishes to protect the integrity of its programs from duplication, theft or other misappropriation by maintaining their Documentation in strict confidence as trade secrets. Licensor performs necessary maintenance and modification of its programs for its Licensees without disclosing such Documentation to Licensees or other persons. However, Licensor hereby enters into this Escrow Agreement in order to grant Licensee access to Documentation under certain circumstances as set forth herein;

E. Licensor wishes to insure that maintenance for Licensor's software is available in the event Licensor fails to fulfill its maintenance obligations as set forth in the License Agreement or in the event Licensor does not remain in business;

F. RECALL is in the business of providing third party software escrow protection by storing, retaining and allowing limited access to proprietary computer software, related media and materials.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. DEPOSIT OF DOCUMENTATION

Licensor agrees to deposit with RECALL a complete copy of the Documentation within thirty (30) days after execution of this Escrow Agreement. The initial deposit of Documentation, including all revisions and additions thereto, deposited with RECALL by Licensor pursuant to this Escrow Agreement shall be referred to herein as the "Documentation".

2. REVISIONS AND MAINTENANCE

(a) Licensor agrees to deposit with RECALL copies of all revisions of and additions to the Documentation within thirty (30) days after said revisions and additions are made available to Licensees.

(b) Upon receipt of a new revision, RECALL agrees to return to Licensor all such Documentation from previous revisions as specified by Licensor in writing to RECALL.

(c) RECALL shall acknowledge receipt of all revisions of and additions to the Documentation by sending written acknowledgment thereof to Licensor and to all Licensees.

3. STORAGE AND SECURITY

(a) RECALL shall act as custodian of the Documentation until the escrow is terminated pursuant to Section 11 of this Escrow Agreement. RECALL shall establish, under its control, a secure receptacle for the purpose of storing the Documentation.

(b) The Documentation shall remain the exclusive property of the Licensor.

(c) RECALL shall not divulge, disclose or otherwise make available the Documentation to any parties other than those persons duly authorized in writing by a competent officer of Licensor, except as provided in this Escrow Agreement.

(d) RECALL shall not permit any person access to the Documentation except as may be necessary for RECALL's authorized representatives to perform under this Escrow Agreement.

(e) Access to the Documentation shall not be granted without compliance with all security and identification procedures instituted by RECALL.

(f) If Licensee desires to inspect the Documentation, Licensor and Recall must be given at least ten (10) days prior written notice. Any such inspection shall be in the presence of an authorized representative(s) of Licensor (unless in writing Licensor elects not to be present),

the Licensee requesting inspection and RECALL. The inspection will occur at RECALL'S facilities.

(g) RECALL shall have no obligation or responsibility to verify or determine that the Documentation does, in fact, consist of those items which Licensor is obligated to deliver under any agreement, and RECALL shall bear no responsibility whatsoever to determine the existence, relevance, completeness, currency or accuracy of the Documentation.

(h) RECALL's sole responsibility shall be to accept, store, and deliver the Documentation, in accordance with the terms and conditions of this Escrow Agreement.

(i) If any of the Documentation shall be attached, garnished or levied upon pursuant to an order of any court, or the delivery thereof shall be stayed or enjoined by an order of any court, or any other order, judgments or decree shall be made or entered by any court affecting the Documentation or any part thereof, RECALL is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case RECALL obeys and complies with any such order, judgment or decree, RECALL shall not be liable to any Licensee, Licensor or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

4. REGISTRATION OF LICENSEE(S) OF RECORD

The Licensor may enroll designated Licensee(s) as a Licensee of Record after such Licensee executes a Licensee of Record Acceptance acknowledging the Licensee's acceptance of the terms and conditions of this Escrow Agreement and providing an indemnification of RECALL. Upon receipt of the Licensee of Record Acceptance from the Licensor, RECALL will provide written acknowledgement of the Licensee's addition into the Escrow to the Licensee directly, with a copy to the Licensor. The Licensor may remove a Licensee of Record from participation in the Escrow by providing RECALL written instructions to terminate the Licensee's participation due to the expiration of that Licensee's License Agreement. Apart from the expiration of the License Agreement, Licensor and Licensee may terminate that Licensee's participation in the Escrow by providing joint written authorization.

5. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an "Event of Default" for purposes of this Escrow Agreement:

(a) Licensor's material failure to support the Documentation and related software in accordance with the License Agreement or applicable maintenance agreement; or

(b) Licensor becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due; or

(c) Licensor applies for or consents to the appointment of a trustee, receiver or other custodian for Licensor, or makes a general assignment for the benefit of its creditors; or

(d) Any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings commenced by or against Licensor; and if such case or proceeding is not commenced by Licensor, it is acquiesced in or remains undismitted for sixty (60) days; or

(e) Licensor ceases active operation of its business or discontinues the maintenance of the Documentation and related software in material breach of the License Agreement or applicable maintenance agreement; or

(f) Licensor takes any corporate or other action to authorize, or in furtherance of, any of the foregoing.

6. RELEASE OF DOCUMENTATION

(a) Upon the occurrence of any Event of Default (as defined in Section 5) any Licensee may notify RECALL in writing as to such Event of Default (a "Notice"), and shall simultaneously provide a copy of any such Notice to Licensor. Upon receipt of such Notice, RECALL will send a confirming copy of said Notice to the Licensor informing Licensor of the filing of an Event of Default. Unless Licensor shall have provided Contrary Instructions to RECALL within ten (10) business days after RECALL's receipt of Licensee's Notice, within five (5) business days following the end of such ten (10) day period, RECALL shall deliver a copy of the Documentation then in escrow to such Licensee; provided, however, that RECALL shall be under no obligation to deliver a copy of such Documentation until such Licensee has first paid to RECALL the cost and expenses of reproduction and delivery of the Documentation. Such delivery to Licensee shall terminate all duties and obligations of RECALL to that Licensee and to Licensor with respect to Licensee and to the copy of the Documentation delivered to that Licensee.

(b) "Contrary Instructions" for the purposes of this Escrow Agreement means a notarized affidavit executed by an official of Licensor stating that the Event or Events of Default specified in the Licensee's Notice have not occurred, or have been cured.

(c) Upon timely receipt of such Contrary Instructions, RECALL shall not release a copy of the Documentation then in escrow, but shall continue to store the Documentation

until otherwise directed by the Licensee and Licensor jointly, or until resolution of the dispute pursuant to Section 7 of this Escrow Agreement, or by a court of competent jurisdiction.

(d) RECALL shall be entitled to receive payment for costs, fees and expenses due it, prior to any release of a copy of the Documentation.

7. DISPUTE RESOLUTION

Licensor and Licensees agree that if Contrary Instructions are timely given by Licensor pursuant to Section 6 hereof, the Licensor and the Licensee giving Notice shall submit their dispute regarding Licensee's Notice to arbitration by a single arbitrator who is a member of the American Arbitration Association, according to its rules and regulations then in effect, at its offices in San Francisco, California. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction, and a copy of such decision shall be delivered immediately to Licensor, Licensee and RECALL. The parties shall use their best efforts to commence the arbitration proceeding within ten (10) business days following the delivery of the Contrary Instructions. The sole question to be determined by the arbitrator shall be whether or not there existed an Event of Default at the time the Licensee delivered the Notice thereof under Section 5. If the arbitrator finds the Notice was properly given by such Licensee, RECALL shall promptly deliver a copy of the Documentation to said Licensee. All fees and charges by the American Arbitration Association and the reasonable attorneys' fees and cost incurred by the prevailing party in the arbitration shall be paid by the non-prevailing party in the arbitration.

8. BANKRUPTCY

Licensor and Licensee acknowledge that this Escrow Agreement is an "agreement supplementary to" the License Agreement as provided in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). Licensor acknowledges that if Licensor as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code rejects the License Agreement or this Escrow Agreement, Licensee may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Bankruptcy Code. Licensor or such Bankruptcy Trustee shall not interfere with the rights of Licensee as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Documentation from RECALL.

9. INDEMNIFICATION

Licensor agrees to defend and indemnify RECALL and hold RECALL harmless from and against any claim, action, loss, cost, liability or expense (including reasonable counsel fees) arising out of or relating to this Escrow Agreement (collectively, "Claims"), except to the extent such Claim is based on (i) RECALL's gross negligence or willful misconduct or (ii) the acts or omissions of any Licensee.

10. GOOD FAITH RELIANCE

RECALL may rely and act upon any instruction, instrument, or signature believed by RECALL in good faith to be genuine, and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with or relating to this Escrow Agreement has been duly authorized to do so.

11. TERMINATION

(a) With the consent of a majority of the Licensees, Licensor may terminate this Escrow Agreement upon (60) days' prior written notice to RECALL, which shall include evidence satisfactory to RECALL of such consents. Licensor shall give each Licensee thirty (30) days written notice of its intent to terminate this Agreement. Licensee may either consent in writing to such termination or shall be considered to have consented to such termination in the event the thirty (30) day notice period elapses without any written response by Licensee that it does not consent to such termination.

(b) RECALL reserves the right to resign as escrow agent upon sixty (60) day's prior written notice to Licensor and all Licensees. Upon resignation, RECALL shall return all of the Documentation then in RECALL's possession to Licensor only after having received payment of its fees and costs pursuant to Section 12 of this Escrow Agreement.

(c) In the event that the sixty (60) day notice period in 11(b) elapses without RECALL having received payment of the remaining fees due, RECALL shall then have the option, without further notice to Licensor or the Licensees, to terminate the Escrow Agreement and to destroy all escrowed Documentation.

12. FEES

(a) In consideration of performing its functions as escrow agent, RECALL shall be compensated by Licensor as set forth in Exhibit C. The fees set forth in Exhibit C will be billed periodically by RECALL to Licensor.

(b) The fees set forth in Exhibit C are for RECALL's ordinary services as escrow agent. In the event RECALL is required to perform additional or extraordinary services as a result of being escrow agent, including intervention in any litigation or proceeding, RECALL

shall receive reasonable compensation for such services and be reimbursed for such cost incurred, including reasonable attorneys' fees.

13. ENTIRE AGREEMENT

This Escrow Agreement, including the Exhibits hereto, constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all previous agreements, either oral or written, between the parties.

14. NOTICE

All notices required or permitted by this Escrow Agreement shall be sufficiently served by mailing the same by certified or registered mail, return receipt requested, to the parties at their respective address as follows:

- (a) BRAMBLES NSD, INC.
Doing Business As: Recall Total Information Management
2109 Bering Drive
San Jose, CA 95131-2014
ATTN: Escrow Officer
Phone: (408) 453-2753
Fax: (408) 441-6826

- (b) LICENSOR:

MicroVote General Corporation
6366 Guilford Avenue
Indianapolis, IN 46220

Phone: 317-257-4900
Date: November 13, 2001

15. COUNTERPARTS

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."