

DISCLOSURE ITEMS FOR AMENDED AND RESTATED MASTER AGREEMENT BETWEEN BROWARD COUNTY AND ELECTION SYSTEMS & SOFTWARE, LLC FOR VOTING EQUIPMENT AND SOFTWARE

ISSUE	CONTRACT LANGUAGE	SOE COMMENTS/RESPONSE
Term	The agreement is effective upon signature, but requires ratification by the County Commission no later than 9/8/2026 and approval of the required budget transfer (Section 4.1).	This was required by the County and BCSOE and accepted by ES&S.
Indemnification	The County's standard indemnification clause is included (Section 9.1), but excluded from indemnified claims are claims arising solely by BCSOE's failure to timely or properly install the most recent Update or by BCSOE's election to terminate support services.	This was specifically negotiated and recommended by BCSOE.
Limitation of Liability	The County's standard limitation of liability clause is included but limited to the larger of <i>one time</i> (rather than twice) the maximum compensation specified in Section 5.1 or the applicable insurance requirement (Section 9.3).	The applicable limitations are expected to be more than adequate given the maximum compensation specified in Section 5.1.
Warranties	- ES&S warranties and support only cover ES&S products; ES&S will facilitate BCSOE's access to warranty services for third-party products directly with the third-party manufacturer (Section 3.7). - Except for the limited warranty provided, all other warranties are expressly excluded (Section 3.7).	This is typical for technology agreements, consistent with the historical relationship with ES&S, and accepted by BCSOE.
Fees	- Annual recurring fees are capped at an annual increase of no more than 5%, and will be determined and invoiced 90 days in advance of the due date (Exhibit B). - The prices charged to the County are subject to a most favored nations provisions, which requires that ES&S extend to the County any more favorable pricing provided to any other governmental entity (Section 5.5).	The initial proposal included annual increase capped at 10% for renewal terms, which was negotiated down to a cap of 5%. The 5% cap applies to annual increases during the initial term and the two optional renewal terms. For certain products and certain years during the initial term, annual increases are capped at 0% or 3%. ES&S historical annual increases are typically 3.5% to 5%.
ETS Security	The agreement includes some but not all of the typical security standards recommended by ETS (e.g., SOC 2 Type II) because the voting system is required to be and remain certified by the	This was specifically negotiated and recommended by BCSOE.

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	State of Florida (Sections 3.10 and 7.9; Exhibit C; Section 101.294, Florida Statutes).	
Updates	• Updates are released as determined by Contractor. BCSOE must timely install Updates or may be responsible for additional charges. (Section 3.5)	This is typical for technology agreements, consistent with the historical relationship with ES&S, and accepted by BCSOE.
State Required Changes	• If the State mandates reviews or requires changes to the system, the County will be responsible for a pro-rata portion of ES&S actual costs (i.e., shared among all affected Florida counties, likely ~50 counties) to comply with such State requirements (Section 3.10).	This was specifically negotiated and recommended by BCSOE.
Support and Maintenance	• Routine Maintenance Services are provided once annually at no additional cost; additional routine services may include per-unit fees. (Exhibit D) • Equipment Repair Services are performed as needed at no additional cost, provided the defect is not an excluded defect (e.g., abuse, vandalism, etc.). If the defect is an excluded cause, then-current rates and cost of parts will be charged. (Exhibit D) • Emergency Repair Services (if services are required within 48 hours) will incur a surcharge. (Exhibit D) • If support is terminated by BCSOE and reinstated, an inspection and repair charge may be incurred. (Exhibit D)	This is typical for technology agreements, consistent with the historical relationship with ES&S, and accepted by BCSOE.
Legacy Equipment	• The agreement includes a trade-in credit for legacy equipment being replaced. Contractor will dispose of the legacy equipment securely and in compliance with Florida law and will certify same to County. (Exhibit B)	This was specifically negotiated and recommended by BCSOE. The County will receive a trade-in allowance credit of \$691,900 for the return of the legacy equipment.