

APPENDIX I TO
CONTRACT FOR A STATEWIDE VOTING SYSTEM
CONTRACT No., GTA000040
BETWEEN DIEBOLD ELECTION SYSTEMS
AND THE STATE OF GEORGIA

EXTENDED WARRANTY AGREEMENT

DESI Hardware	Number of Units	Warranty Fee
AccuVote-OS Hardware	400	\$135/unit
AccuVote-TS Hardware	19015	\$80/unit

In consideration of the promises set forth herein, and pursuant to the terms and conditions set forth herein, Diebold Election Systems, Inc., ("DESI") hereby agrees to provide an extended warranty ("Extended Warranty") to the State of Georgia acting through the Secretary of State or its County(ies) ("Customer") for the DESI Hardware identified above. Defined terms used herein have the same meaning as in the Contract No. GTA000040. The parties hereto acknowledge and agree that this Extended Warranty is an Appendix to Contract No. GTA000040 for a State of Georgia Voting System, which contract resulted from a competitive bid process, and that terms and conditions of this Extended Warranty are incorporated into Contract GTA000040 only to the extent that they do not conflict with terms and conditions contained on the face of Contract GTA000040.

1. **Extended Warranty.** At the option of the Customer, DESI agrees to extend the hardware warranties as described in Sections 6.1, 6.2 and 6.3 of Contract No. GTA000040 and in Section 2.5.5 of the RFP and Proposal for the term of this Extended Warranty Agreement. The foregoing warranty and any restrictions or limitations to such warranty shall not, in any way, disclaim, restrict or limit any other warranty made in Contract No. GTA000040, including but not limited to warranties made by Contractor in its response to RFP No. GTA000040. Nothing in this section shall serve to relieve DESI of any obligation, including any promise, representation or warranty made in Contract No. GTA000040.

2. **Term of Warranty Agreement.** The term of the initial Extended Warranty Agreement shall be one year, beginning on the first anniversary of State-wide acceptance ("Anniversary"). Thereafter, the State or any other Customer may renew this Extended Warranty Agreement, annually, for successive one year terms, by paying the annual warranty fee ("Warranty Fee").

3. **Fees.**
 - 3.1. The Warranty Fee, at the time of execution of this Extended Warranty Agreement, is as stated above. DESI has the right to adjust Warranty Fees beyond the Option Years. For the 6 years Extended Warranties beginning after the final Option Year, DESI may adjust the Warranty Fees annually, providing however that such adjusted Warranty Fee shall be consistent with Section 2.1 of Contract No. GTA000040.

3.2. DESI may invoice Customer for the Warranty Fee at least sixty (60) days in advance of the Anniversary but the State and Customer will determine whether to extend the warranty at their discretion. If electing to extend, Customer shall give notice of the extension before the Anniversary and shall pay such invoice on or before the Anniversary.

3.3. DESI shall invoice Customer for work provided pursuant to Paragraph 4 for which additional fees are due as such work is done.

4. Warranty Work.

4.1. If, during any term of this Extended Warranty Agreement, any item of DESI Hardware identified above fails to satisfy the Extended Warranty articulated in Paragraph 1 of this Extended Warranty Agreement DESI shall, at DESI's option, either provide full and complete repair or provide a replacement of said item identified above. The following conditions apply:

4.1.1. Customer shall bear the shipping costs to return the malfunctioning item of DESI Hardware to DESI and DESI shall bear the shipping costs to return the repaired or replaced item to Customer;

4.1.2. Customer may request on-site support. If DESI agrees to provide on-site support, support will be provided on a time and material basis, plus portal to portal expenses; and

4.1.3. 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 DESI Hardware ("Loaner"). DESI shall, if the need is for an impending election, deliver a Loaner, if available, for the Customer to use for said election activity until the covered item is repaired or replaced at no cost to Customer.

4.2. The following services are not Warranty Work, and DESI shall invoice Customer at DESI's then current time and material rates for:

4.2.1. The replacement of consumable items (such as batteries, paper rolls, ribbons, clock chips, smart cards, floppy disks, disks on chips, etc.);

4.2.2. The repair or replacement of hardware damaged by accident, abuse, improper usage, or as a result of improper service modification by anyone other than DESI or its authorized agent or service representative; or

4.2.3. Other similar work which Customer requests, and which DESI agrees to perform.

5. Limitation of Liability.

5.1. THE WARRANTIES CONTAINED IN PARAGRAPHS 1 AND 4 ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. DESI's liability under this Extended Warranty Agreement for damages, regardless of the form or action, shall not exceed the

fees and other charges paid by the Customer under this Extended Warranty Agreement. IN NO EVENT SHALL DESI BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, REMOTE OR CONSEQUENTIAL DAMAGES, as defined under Georgia law WHETHER BASED ON CONTRACT, TORT, OR OTHER LEGAL THEORY.

5.2. The warranty set forth in this Extended Warranty Agreement shall not apply if the Hardware is subject to unauthorized repair or modification, improper application, improper installation, accidental damage, negligence in use, improper storage (as described by DESI in Contract No. GTA000040), acts of God, electrical power damage, equipment malfunction, or abnormal operating conditions. In the event of the foregoing, Customer may elect to pay DESI's then standard charges for any repairs, replacements, or services performed by DESI, not to exceed an estimate of costs provided in good faith by DESI to Customer.

6. Confidential Information.

6.1. DESI Confidential Information. In addition to anything that may be Confidential Information pursuant to an associated Agreement, DESI Hardware design, and any written documentation associated therewith, are confidential and trade secret information ("Confidential Information") and are the exclusive property of DESI, and DESI will clearly mark and identify the material when tendering it, with a written explanation as described in Section 12.1 of Contract GTA000040.

6.1.1. Customer shall treat DESI's Confidential Information as confidential within its organization, and shall disclose it therein only on a need-to-know basis.

6.1.2. Customer shall not disclose any Confidential Information to any other entity or use such items for any purpose not expressly authorized in this Extended Warranty Agreement, unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. DESI shall be given the ability to defend the confidentiality of its Confidential Information to the maximum extent allowable under the law prior to disclosure by the Customer of such Confidential Information.

6.1.3. Customer shall implement such safeguards and control as may be necessary to protect against the unauthorized uses or disclosures of the DESI Hardware or its documentation.

7. Termination.

7.1. The Secretary of State may terminate this Extended Warranty Agreement for any reason.

8. Force Majeure. Neither Party will be held to exact performance when delay is caused by act of God, war, riot, fire, explosion, accident, flood, sabotage, national defense requirements or any other like event beyond the reasonable control of either Party.

9. Survival. The provisions of Paragraphs and Subparagraphs 3.2, 3.5, 5, 6, 8, 10, 11, 12, and 14 shall survive the expiration or termination of this Extended Warranty Agreement.

10. **Legality and Severability.** If a court or administrative tribunal strikes any part of this Extended Warranty Agreement, the remainder will continue in effect, and a court may reform the invalid provisions to conform as closely as possible to the parties' original intent, but in each case only if the Secretary of State determines that the substantial purposes of both parties can still be accomplished in fairness to each.

11. **Choice of Law.** This Extended Warranty Agreement shall be governed by and construed in accordance with Georgia law, excepting any conflicts of law provision directing its enforcement or construction to laws or forums of another jurisdiction. Any suit between the Parties respecting or related to the Extended Warranty Agreement must be brought in the state or superior court in Fulton County, Georgia, and Contractor irrevocably submits to the jurisdiction of such courts and waives any objection it may now or later have to venue. This Extended Warranty Agreement does not waive the 11th Amendment immunity of the State of Georgia, its officers, departments or instrumentalities.

12. **Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Extended Warranty Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by either Party of any Breach of any provision of this Extended Warranty Agreement shall not be construed as a waiver of any continuing or succeeding Breach of such provision, a waiver of the provision itself, or a waiver of any right under this Extended Warranty Agreement.

13. **Assignment and Right to Subcontract.** Contractor may not assign any right under this Extended Warranty Agreement, in whole or in part, without the prior written consent of the Secretary of State, and any assignment without such consent will be null and void and a breach of this Extended Warranty Agreement. For the purposes of this Section 13, sale or transfer of an equity interest greater than or equal to fifty percent (50%) in, or substantially all of the assets of, Contractor will be deemed an assignment for which the Secretary of State's consent is required, unless such sale or transfer is part of a corporate restructuring.

14. **Entire Agreement/Modifications.** The provisions of this Extended Warranty are intended to extend representations and warranties within Contract No. GTA000040, including but not limited to representations made as part of the proposal submitted by DESI in response to RFP No. GTA000040. To the extent that the provisions set out herein conflict with provisions set out in other parts of Contract No. GTA000040, Customer shall be entitled to elect which of such conflicting provisions shall prevail.

IN WITNESS WHEREOF, Customer and DESI have caused this Agreement to be executed by their duly authorized officers as of the date set forth below.

DIEBOLD ELECTION SYSTEMS, INC.:

THE STATE OF GEORGIA:

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date