

**FIFTH AMENDMENT TO THE  
CONTRACT FOR A STATEWIDE VOTING SYSTEM  
CONTRACT NO. GTA000040  
BETWEEN  
THE SECRETARY OF STATE OF GEORGIA  
AND  
DIEBOLD ELECTION SYSTEMS, INC.**

**THIS FIFTH AMENDMENT TO THE CONTRACT FOR A STATEWIDE VOTING SYSTEM** (this "Fifth Amendment") is made this 16<sup>th</sup> day of September, 2004, between the **SECRETARY OF STATE** of the State of Georgia (the "Secretary of State"), and **DIEBOLD ELECTION SYSTEMS, INC.**, a corporation organized under the laws of the State of Delaware ("Contractor") (together, the "Parties").

WHEREAS, the Secretary of State and Contractor entered into a certain Contract for the purchase of a Statewide Voting System, Contract No. GTA000040, dated May 3, 2002, as amended, (the "Contract"), under which Contract the Secretary of State purchased an initial deployment and the Secretary of State and local governments have made and are making subsequent purchases;

WHEREAS, the Secretary of State desires that Contractor incorporate into the Statewide Voting System at no additional charge a security adjustment developed by Contractor ("Security Adjustment") and Contractor is willing to do so, including the incorporation of such adjustment in initial purchases and all subsequent purchases by state and local governments for which Contractor has not provided the Security Adjustment prior to delivery;

WHEREAS, the Secretary of State will incur significant expense with respect to post-implementation testing and acceptance, and Contractor is willing to reimburse the Secretary of State for such expenses; and

WHEREAS, the Secretary of State and Contractor desire to make certain, related clarifications to the Contract.

NOW, THEREFORE, in consideration of \$1 and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree to this Fifth Amendment as follows:

1. Contractor agrees to apply for and diligently pursue Georgia certification for the Security Adjustment described in Attachment "A," hereby incorporated; provided that, if Georgia certification of the Security Adjustment is not obtained by 5:00 p.m. ET on December 2, 2004 other than due to Contractor's lack of diligence, either Party may, by notice delivered to the other Party no later than 5:00 p.m. ET on December 2, 2004, terminate Contractor's obligation to install and inspect the Security Adjustment without liability or detriment to the rights of either Party under the Contract. Regardless, Contractor will continue to apply for Georgia certification for the Security Adjustment through April 29, 2005, and if such certification is awarded by 5:00 p.m. ET on April 29, 2005, the Secretary of State may within seven days elect

the State Installation Option of Section 4(b) below. Except as provided in Section 4(b) below with respect to the State Installation Option, Contractor agrees to provide and install the Security Adjustment to the Statewide Voting System without cost to the Secretary of State or any Georgia county under the terms of this Fifth Amendment and otherwise under the Contract. Contractor will provide and perform the Security Adjustment on all purchases under the Contract, whether by the State or counties, for which it was not performed prior to delivery.

2. Contractor's installation obligations hereunder are conditioned upon the Secretary of State's providing, or causing to be provided, all approvals, cooperation and information reasonably within her control and reasonably required for Contractor to complete the installation of the Security Adjustment.
3. The Secretary of State acknowledges that Contractor's installation of the Security Adjustment will require the cooperation of the various Georgia counties, and agrees not to hold Contractor liable for any delays to the extent attributable to acts or omissions of the counties.
4. (a) Contractor shall begin installing the Security Adjustment promptly after December 2, 2004, starting with those preparations and tasks that are not specific to any one County, and shall proceed through each County as the General Election is commenced and completed in such County, according to the plan described in Section 5 below. "General Election" for purposes of this Fifth Amendment means the federal, state, local and other elections, including without limitation the presidential election and any election for judge of the Court of Appeals, presently scheduled for November 2, 2004. If the General Election is not commenced on November 2, 2004, as provided by law, then General Election means the general election commenced in its place. "Completion" of the General Election includes any subsequent recounts, runoffs, and other processes for which the Statewide Voting System is necessary or any administrative or judicially imposed preservations of status or other waiting periods applicable to the Statewide Voting System. The determination that the Statewide Voting System is necessary for such a process or that such a waiting period applies to the Statewide Voting System will be within the reasonable discretion of the Secretary of State.  
  
(b) Contractor shall complete the Security Adjustment in all 159 counties by May 1, 2005 (June 1, 2005, if a statewide runoff is held for the General Election), such date to be postponed as reasonably necessary for counties where the completion of the General Election process has been delayed under paragraph (a) above so as to make completion of the Security Adjustment by May 1, 2005 (June 1, 2005, if a statewide runoff is held for the General Election) impracticable without additional cost to Contractor beyond the cost of the activities specified in the plan described in Section 5 below. Neither postponement of the date of the General Election nor delay in completion of the General Election will relieve Contractor of the undertaking to install the Security Adjustment; provided that, if, in any county or in all or any part of them, (i) for any reason the General Election is commenced (or scheduled to be commenced) after December 31, 2004 or (ii) the completion of the General Election

is delayed beyond July 1, 2005 (or August 1, 2005, if a statewide runoff is held for the General Election), then either Party may, by notice to the other Party in accordance with this paragraph, exercise the State Installation Option as to the remaining counties. "State Installation Option" means (if exercised by a Party) the State's right to receive and install the Security Adjustment deliverables identified in Attachment A and, in exchange, the Contractor's relief from the obligation to install the Security Adjustment with its own forces under this Fifth Amendment. A Party's notice of exercise of the State Installation Option is effective if in writing and delivered anytime after the earliest of (x) the date, if any, on which the postponement of the General Election until after December 31, 2004 is officially determined, (y) January 1, 2005 if the General Election has not commenced before then, or (z) May 1, 2005 (June 1, 2005 if a statewide runoff is held for the General Election) if the General Election is not then complete. At least 30 days prior to commencement of the Security Adjustment, Contractor shall develop and provide to the Secretary of State for review and reasonable approval a deployment and installation plan for performance of the Security Adjustment, consistent with the December 2, 2004 through May 1, 2005 timeline (June 1, 2005, if a statewide runoff is held for the General Election).

5. Contractor agrees to reimburse the Secretary of State for reasonable expenses actually incurred by the Secretary of State for post-implementation testing and acceptance, (plus costs of installation under the State Installation Option) such reimbursable amounts to be paid on invoice to the Secretary of State by Contractor on a monthly basis. Contractor will provide such reimbursement whether Contractor installs the Security Adjustment or the Secretary of State proceeds under the State Installation Option of 4(b). Contractor shall pay on invoice within 30 days after receipt of such invoice; provided that (a) each invoice includes reasonably detailed documentary support for the amounts to be reimbursed, (b) the aggregate amount of such reimbursements will not exceed \$293,000 and (c) Contractor will not be responsible to reimburse any amounts invoiced after August 31, 2005.
6. (a) Contractor warrants to the Secretary of State and to local government purchasers that the software and firmware of the Security Adjustment and the firmware and software of the Statewide Voting System as modified by the Security Adjustment will be, upon its installation, free from material defect and performing in all material respects as intended for its purposes in accord with the requirements of the Contract. Contractor further warrants to the Secretary of State and to local government purchasers that card key readers of the Security Adjustment upon their installation and for one year will be free from material defect and performing in all material respects in the Statewide Voting System as intended for its purposes in accord with the requirements of the Contract. The forgoing warranties do not cover defects affecting the software or firmware of the Security Adjustment, the software or firmware of the Statewide Voting System as modified by the Security Adjustment or the card key readers, in each case, to the extent such defects arise from the installation of the Security Adjustment by parties other than Contractor pursuant to the State Installation Option if exercised in accordance with Section 4(b).

(b) Paragraph 4 of the Third Amendment of the Contract is clarified (and to the extent necessary, amended) to state explicitly that the original warranty of the Contract therein extended is extended through the earlier of the completion of the General Election or April 29, 2005.

(c) The deadline for the State or a County to elect to purchase the Extended Warranty under the Extended Warranty Agreement of Appendix I of the Contract or either extended maintenance Plan of the Software Agreement of Appendix K will be Friday, April 29, 2005. Notwithstanding any lapse in coverage that may have occurred due to expiration of the Contract warranty at the time a notice of an initial purchase of such Extended Warranty or extended maintenance Plan is received by Contractor, such notice will nonetheless be effective to prospectively (but not retroactively) renew coverage if received by Contractor by 5:00 p.m. EDT on April 29, 2005. Notwithstanding any notice requirement or other term of the Contract to the contrary, Contractor will accept notice by facsimile for purposes of this initial purchase of warranty or maintenance coverage. The one-year term of such initial extension will commence when such notice of election is received. Contractor will invoice the State and/or County, as applicable, for the amount due under the Contract for such Extended Warranty and/or maintenance Plan within 30 days after receiving such written election, and the amount due will be paid within 30 days after invoice.

(d) The current Option Year for additional purchases under the Best and Final Offer, Appendix L, is Option Year Two, and it will expire May 2, 2005.

(e) (1) The Voting System Standards of the National Association of Election Directors ("NASED") and the Federal Election Commission (now the Election Assistance Commission) (the Federal Election Commission and Election Assistance Commission are referred to herein collectively as the "FEC/EAC") with which the hardware and software of the Contract are required to comply (software including firmware) are the 1990 Standards, except with respect to certain changes in software, which were made under the 2002 Standards. The 2002 Voting Systems Standards are applicable to the Security Adjustment.

(2) (i) Except as provided below, the Contract will not require the Statewide Voting System to comply with a standard or policy of NASED or the FEC/EAC after the 2002 standard, or with a change in state or federal law or rule after the date of this Fifth Amendment.

(ii) Commencing with the date of this Fifth Amendment, during the period of the Contract, including any warranty or post-warranty maintenance term under the Contract, in the case of a repair, correction, adjustment, upgrade or other change, in software (including firmware), the qualification and certification of such change must occur under the Standard, law or rule, or NASED or FEC/EAC policy, then in effect, to the extent that the Standard, law or rule or policy itself then requires. If it is the policy of NASED, or a policy or rule of the FEC/EAC, that national qualification of a repair, correction, adjustment, upgrade or other change in software (including firmware) requires qualification of all software in the Statewide Voting System, or a

lesser component, such policy or rule will apply to the software (including firmware) of the Statewide Voting System.

(iii) Commencing with the date of this Fifth Amendment, during the period of the Contract, including any warranty or extended warranty under the Contract, if a change in Voting System Standard, law or rule, or if any policy of NASED or the FEC/EAC then applied, requires any modification, correction, addition, change or upgrade to hardware of the Statewide Voting System, notwithstanding any other term of the Contract to the contrary, the remedy of the Secretary of State will be as follows: Until 60 days after the end of the first Georgia General Assembly session which commences after the effective date of the Standard, law or rule (or the publication of the applicable NASED or FEC/EAC policy) imposing such change (as opposed to a later date, if any, on which the applicable hardware change must be implemented), Contractor will be deemed to offer the complying hardware, including any installation or procedure to bring it into effect for the Statewide Voting System, for a price equal to the Contractor's actual and reasonable per unit cost of production and the actual and reasonable cost of direct services of installation or procedure in the field (plus additional amounts, if any, that may be due under subparagraph (iv) below). Within seven days of her request made during such period, Contractor will notify the Secretary of State of such price in writing and provide her a reasonable opportunity, at her office or Contractor's offices in Atlanta, to review and have Contractor explain documentation of such costs; provided that the Secretary of State will not copy such documentation unless she gives Contractor in advance written assurances reasonably satisfactory to Contractor that such cost documentation will not be disclosed or subject to disclosure under any open records act or other similar law. The Secretary of State, or any County, may accept such offer by delivering, no later than 30 days after Contractor provides such pricing, a purchase order under the Contract for all or any part of the required hardware of the Statewide Voting System.

(iv) If (x) federal financial assistance not now available becomes specifically available to the State for payment or reimbursement of the cost of the hardware purchase under Section 7(e)(2)(iii) above plus a reasonable increase for overhead and profit or (y) the required hardware change constitutes a new function not specifically required by the RFP or original Contract (however denominated), then the offer price in either case will be the price stated in Section 7(e)(2)(iii) above plus a reasonable additional amount for overhead and profit. If the total of such overhead and profit exceeds 25% of the total offer price, then Contractor will make available for review by the Secretary of State documentary support for such amount reasonably satisfactory to the Secretary of State. The Secretary of State will be provided a reasonable opportunity, at her office or Contractor's offices in Atlanta, to review and have Contractor explain such documentation; provided that the Secretary of State will not copy such documentation unless she gives Contractor in advance written assurances reasonably satisfactory to Contractor that such cost documentation will not be disclosed or subject to disclosure under any open records act or other similar law.

(v) For the avoidance of doubt, in no event will this Fifth Amendment require the Secretary of State to pay to receive the performance of any warranty, extended



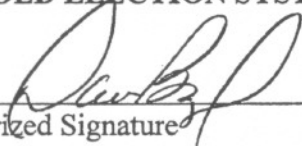
warranty or extended maintenance required under applicable warranty or maintenance terms (except to the extent such warranty or maintenance terms may require updating of hardware solely to comply with State or federal laws or regulations or NASED or FEC/EAC policies, in which case the clarification stated above shall apply).

7. Except as specifically provided in this Fifth Amendment, all terms of the Contract shall remain in full force and effect. Without limiting the foregoing, the Secretary of State acknowledges and agrees that Contractor's agreement under this Fifth Amendment to bear the cost of installing the Security Adjustment, and Contractor's agreement under this Fifth Amendment to reimburse the Secretary of State for costs related to post-implementation testing and acceptance, apply solely to the Security Installation described in Attachment "A" and are not intended and will not be construed as implying or imposing any obligations on Contractor with respect to the installation or testing of any future software updates.
8. On or before March 1, 2005, Contractor shall provide the Election Director of each County, to the election center at Kennesaw State and to the Secretary of State at least one printed manual each of all documentation and adequate training materials necessary to educate and train county and state election officials on the use of the new version of software and firmware installed into the Statewide Voting System. Contractor by then shall also provide to the Secretary of State an editable (not "read only"), electronic copy of the manual in a current Microsoft Word format, on such media as the Secretary of State shall reasonably require. The Secretary of State will have a perpetual license to distribute such number of additional, printed copies of the manual for election administration as reasonably necessary from time to time for the conduct of elections within Georgia. The Secretary of State will ensure that such copies are distributed only to, and used only by, State and County personnel charged with conducting elections within Georgia, and used only in conducting elections within Georgia.

The Parties shall execute this Fifth Amendment initially by electronic facsimile signatures. The Secretary of State will sign and deliver the Fifth Amendment by electronic facsimile to Contractor at (972) 542-6044 (attention: Karen Gantt). Contractor will execute the facsimile signature page and return it fully signed by facsimile to (404) 656-0513 (attention: Laura Meadows). The parties will also promptly exchange duplicate original counterparts of this entire Fifth Amendment with original signatures.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Fifth Amendment as shown below.

**DIEBOLD ELECTION SYSTEMS, INC.**


  
Authorized Signature

DAVE RYAN  
Printed Name

DIRECTOR OF OPERATIONS  
Title

9/15/04  
Date

**SECRETARY OF STATE**

  
Authorized Signature

Laura J. Meadows  
Printed Name

Asst. Sec. of state  
Title

9/16/04  
Date

## ATTACHMENT A

The Security Adjustment consists of:

1. Installation of a new version of the Ballot Station (R-6) firmware (version 4.5.1 or such later version as is nationally qualified and certified by the State of Georgia before the upgrade) with respect to each county's existing inventory of AccuVote TS units;
2. Installation of a new version of the voter card encoder firmware (version 1.3.2 or such later version as is nationally qualified and certified by the State of Georgia before the upgrade) with respect to each county's existing inventory of voter card encoders;
3. Installation of a new version of GEMS (version 1.18.22G or such later version as is nationally qualified and certified by the State of Georgia before the upgrade) to replace each copy of the GEMS application software licensed under this Contract; and
4. Installation of a key card tool (version 1.0.1 or such later version as is nationally qualified and certified by the State of Georgia before the upgrade) and one card reader with respect to each copy of the GEMS application software licensed under this Contract. The card reader is an item of hardware, and the remaining components of the Security Adjustment are software (including firmware).
5. The Secretary of State acknowledges and agrees that Contractor will not be responsible for upgrading any voter access cards or manager / supervisor cards.