ALBANY COUNTY
BOARD OF ELECTIONS
224 S. Pearl St Albany, NY 12202
(518) 487-5060 • Fax (518) 487-5077
boardofelections@albanycounty.com
www.albanycounty.com/vote

Commissioners
RACHEL L. BLEDI
KATHLEEN A. DONOVAN

Deputy Commissioners
MELISSA KERMANI
DAVID CADY

MEMO

TO:	Joanne Cunningham, Chairwoman of the Legislature
	Dennis Feeney, Majority Leader
	Frank Mauriello, Minority Leader
	Dave Reilly, Commissioner of Management &Budget
	Eitan Goldmeer, Budget Analyst
FROM:	Rachel Bledi, Board of Elections Republican Commissioner
	Kathleen Donovan, Board of Elections Democratic Commissioner
RE:	Contract Approval with NTS voter data system
DATE:	11/06/2024

Please be advised that the Albany County Board of Elections is seeking contract approval with NTS Data Services, LLC, which is the developer and sole point of support and maintenance for the APEX voter registration, WorkFlow, signature digitization, full document imaging and the petitions election management applications currently installed in the Board of Elections. NTS is the only company that can practically and legally maintain our voter registration system. The cost for the agreement is $107,761. The term of the agreement is 1/1/2025 to 12/31/2025.

Annexed hereto is the copy of the quote from the vendor. If you have any questions, please feel free to contact us.

REQUEST FOR LEGISLATIVE ACTION

Contract Approval for Board of Elections
..title
NTS Data Services- Voter Registration Software Program
..body

Date: 11/06/2024   Submitted By: Rachel Bledi
Department: Board of Elections   Title: Commissioner of Elections
Attending Meeting: Rachel Bledi and   Phone: 518-487-5070
Kathleen Donovan

Purpose of Request: Contract Authorization   Enter text.

CONTRACT TERMS/CONDITIONS:
Party Names and Addresses: NTS, 2079 Sawyer Dr., Niagara Falls, NY 14304

Term: (Start/end date or duration)   01/01/2025-12/31/2025
Amount/Raise Schedule/Fee: $107,762

BUDGET INFORMATION:
Is there a Fiscal Impact: Yes ☒ No ☐
    Anticipated in Budget: Yes ☒ No ☐
    Spreadsheet attached: Yes ☐ No ☒

Source of Funding – (Percentages)
Federal: 0   County: 0
State: 0   Local: 100% Enter text.

County Budget Accounts:
Revenue Account and Line:
Revenue Amount:
Appropriation Account and Line: A1450 44919
Appropriation Amount: $107,762

ADDITIONAL INFORMATION:
Mandated Program/Service: Yes ☒ No ☐
If Mandated, Cite Authority: Election Law
Request for Bids / Proposals:
    Competitive Bidding Exempt: Yes ☐ No ☐
    # of Response(s):   Enter text.
    # of MWBE: Enter text.
    # of Veteran Business: Enter text.
Bond Resolution No.:   Enter text.
Apprenticeship Program   Yes ☐ No ☐

Previous requests for Identical or Similar Action:

DESCRIPTION OF REQUEST:

Please be advised that the Albany County Board of Elections is seeking contract approval with NTS Data Services, LLC, which is the developer and sole point of support and maintenance for the APEX voter registration, WorkFlow, signature digitization, full document imaging and the petitions election management applications currently installed in the Board of Elections. NTS is the only company that can practically and legally maintain our voter registration system. The cost for the agreement is $107,761. The term of the agreement is 1/1/2025 to 12/31/2025.

NTS
COUNTY ELECTIONS & SCHOOL VOTES

2079 Sawyer Drive
Niagara Falls, NY 14304
800-458-3820
ntsdata.com

07/25/24

Commissioner Kathleen Donovan
Commissioner Rachel L. Bledi
Albany County Board of Elections

Dear Commissioners,

Over the last 12 months, NTS has made numerous enhancements to the APEX system. We continue to provide upgrades to boards of elections to enhance workflow efficiency. One of the newest, which you will be receiving soon, is a re-imagined dashboard that will provide a wealth of information from voter registration and ballot requests to election workers, petitions, and streets all at the touch of a button.

We can't wait for you to experience the improvements!

With your current contract set to expire on 12/31/24, and this election year being incredibly busy, we felt it was important to provide you with the necessary budget information regarding your 2025 contract. Below, you will find the NTS products included in your current contract as well as one-, three-, and five-year pricing options.

NTS Products	Year	1-Year Agreement	3-Year Agreement	5-Year Agreement
Service & Maintenance for:	2025	$107761.50	$105,802.20	$103,842.90
	2026		$114,266.38	$110,073.47
	2027		$123,407.69	$116,677.88
APEX / IMS, Scanflow (Single-Folder), PACETS	2028			$123,678.55
	2029			$131,099.27

If you have any questions or concerns, please feel free to contact me anytime.
We look forward to a continued partnership with you.

All the best,

Gina L Shields

Gina Shields
Director of Client Services

November 4, 2024

Commissioner Kathleen Donovan
Commissioner Rachel L. Bledi
Albany County Board of Elections
260 South Pearl St.
Albany, NY 12202

Dear Commissioners:

NTS Data Services, headquartered in Niagara Falls, NY, has been a trusted partner for Boards of Elections in New York State for over 40 years. Our team includes former Commissioners and Deputy Commissioners from BOEs across the state, giving us a unique perspective and expertise in New York State Elections. APEX, our Election Management System, is specifically designed to meet the bipartisan requirements of New York State Election Laws and is certified to comply with Cybersecurity and NYSVOTER interface requirements.

With APEX, BOEs can efficiently manage voter registration, ballot requests, petition tracking, elected official management, and more. Our system includes a customizable reporting engine and integrates geospatial data from the Albany County GIS Department for accurate voter jurisdiction assignment. APEX seamlessly works with all NYSBOE-certified Electronic Poll Books and provides a complete view of data sent to and received from the NYSVOTER database.

NTS Data Services is proud to be the sole New York-based company offering a comprehensive NYSBOE-certified election management system, backed by a staff of over 200 years of combined experience in New York State Elections.

Please let me know if you have any questions.

Sincerely,

Gina L Shields

Gina Shields
Director of Client Services

Software License Agreement

This Software License Agreement (this "**Agreement**"), effective as of January 1, 2025 (the "**Effective Date**"), is by and between NTS DATA SERVICES, LLC, with offices located at 2079 SAWYER DRIVE, NIAGARA FALLS, NY 14304 ("**NTS**"), and ALBANY COUNTY BOARD OF ELECTIONS, with offices located at 260 SOUTH PEARL ST., ALBANY, NY 12202 ("**BOARD**"). NTS and BOARD may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, BOARD desires to utilize NTS software and other NTS election-related services to facilitate BOARD's operations;

WHEREAS, NTS desires to license the Software described in **Exhibit A** attached hereto to BOARD; and

WHEREAS, BOARD desires to obtain a license to use the Software for its internal business purposes, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1) **Definitions.**

   a) "**Authorized User**" means an employee or contractor of BOARD who BOARD permits to access and use the Software and Documentation pursuant to BOARD's license hereunder.
   b) "**Documentation**" means NTS Data Services, LLC's [user manuals, handbooks, and installation guides relating to the Software provided by NTS Data Services, LLC to BOARD either electronically or in hard copy form/end-user documentation relating to the Software.
   c) "**Software**" means the product(s) described in **Exhibit A** in object and source code format, including any Updates provided to BOARD by NTS pursuant to this Agreement.
   d) "**Third-Party Products**" means any third-party products described in **Exhibit A** provided with or incorporated into the Software, including any open-source software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open-Source Initiative.
   e) "**Updates**" means any updates, bug fixes, patches, or other error corrections to the Software that NTS generally makes available to all County Boards of Elections with whom NTS has a current and active Agreement.

2) **License.**

   a) Subject to and conditioned on BOARD's payment of Fees and compliance with the terms and conditions of this Agreement, NTS hereby grants BOARD a non-exclusive, non-sublicensable, and non-transferable license during the Term to use the Software solely for BOARD's internal business purposes.
   b) Subject to and conditioned on BOARD's payment of Fees and compliance with the terms and conditions of this Agreement, NTS will provide (at no cost in addition to the Fee) the remote training (but not on-site training) and support services described in **Exhibit A.**
   c) BOARD may use and make a reasonable number of copies of the Documentation solely for BOARD's

internal business purposes in connection with BOARD's use of the Software.   The total number of Authorized Users will not exceed the number of BOE dedicated employees, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.   BOARD may make one copy of the Software solely for backup and disaster recovery purposes. Any such copy of the Software remains NTS's exclusive property.

3) **Use Restrictions.** BOARD shall not use the Software or Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, BOARD shall not at any time, directly or indirectly;
    a) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part;
    b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation;
    c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
    d) remove any proprietary notices from the Software or the Documentation;
    e) utilize the proprietary file structures developed by NTS and necessary for the operation of the Software; and/or;
    f) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

4) **Reservation of Rights.** NTS reserves all rights not expressly granted to BOARD in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to BOARD or any third party any intellectual property rights or other right, title, or interest in or to the Software.

5) **Delivery.** NTS shall deliver to BOARD the Software electronically, on tangible media, or by other means at NTS's sole discretion.

6) **BOARD Responsibilities.**
    a) General. BOARD is responsible and liable for all uses of the Software and Documentation resulting from access provided by BOARD, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.   Without limiting the generality of the foregoing, BOARD is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by BOARD will be deemed a breach of this Agreement by BOARD. BOARD shall make reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software and shall cause Authorized Users to comply with such provisions.
    b) Third-Party Products. NTS may distribute certain Third-Party Products with the Software. For purposes of this Agreement, such Third-Party Products are subject to their own license terms and the applicable flow-through provisions referred to in **Exhibit A**. If BOARD does not agree to abide by the applicable terms for such Third-Party Products, then BOARD should not install, allow to be installed, or use such Third-Party Products.
    c) Open-Source Products. The Software also contains certain open-source software identified on **Exhibit A**. BOARD understands and acknowledges that such open-source software is not licensed to BOARD pursuant to the provisions of this Agreement and that this Agreement may not be construed to grant any such right and/or license.

7) **BOARD Preparation and Maintenance.** BOARD agrees to provide and install all NTS recommended (a) hardware (desktops, servers, etc.) including maintenance and (b) the prescribed licensed operating system software as specified by NTS to support the operation of all BOARD workstations and servers associated with the operation of the Software. In addition, BOARD agrees to provide, install, and maintain, all licensed support and diagnostic software specified by NTS and the State Board of Elections.

   BOARD is solely responsible for the timely execution of the following:
   a) Hardware installation and maintenance
   b) Operating system maintenance, patches, and upgrades on server(s) and workstations
   c) Secure backup of all data housed on the server(s) in compliance with part 6220 of NYS Election Law
   d) SQL upgrades and patches on the database server
   e) Regularly scheduled database maintenance tasks such as shrinking logs and reindexing
   f) Maintaining all server and workstation-based security, including antivirus and firewalls
   g) Networking between the server(s) and workstations

   Before purchasing initial hardware, operating system, support and diagnostic software, and continuing for the Term, NTS shall review and approve all purchases related to the initial and subsequent implementation of the Software. If the NTS hardware and software recommendations are deviated from and problems develop, the time and expenses incurred by NTS to resolve the problems shall be billable to BOARD at the NTS prevailing hourly rate plus the travel and/or materials charges incurred by NTS. The current NTS hourly rate is $195.00 per hour.

   BOARD shall provide means for authorized remote access into BOARD system by NTS to facilitate initial application software installation and support. This remote access may be via Virtual Private Network, LogMeIn, or any other mutually acceptable connection method. NTS shall complete application software installation remotely through this connection and perform software installation and testing. BOARD shall provide the security and access rights to the system required by NTS to complete application software installation by NTS. For the Term, remote access and security rights shall be provided to NTS to facilitate the installation of application software updates and support for BOARD.

8) **Confidential Information**. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**").

   Confidential Information does not include information that, at the time of disclosure, is:
   a) In the public domain;
   b) known to the receiving Party at the time of disclosure;
   c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or
   d) independently developed by the receiving Party.

   The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity except to the receiving Party's employees who have a need to know the Confidential Information

for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required.

On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

9) **Fees and Payment.**
   Fees. BOARD shall pay NTS the fees ("**Fees**") set forth in **Exhibit A** without offset or deduction. BOARD shall make all payments hereunder in US dollars on or before the due date set forth in **Exhibit A**. If BOARD fails to make any payment when due, in addition to all other remedies that may be available:
   a) NTS may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly;
   b) BOARD shall reimburse NTS for all reasonable costs incurred by NTS in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and
   c) if such failure continues for 30 days following written notice thereof, NTS may until all past due amounts; and interest thereon have been paid, without incurring any obligation or liability to BOARD or any other person by reason of such prohibition of access to the Software.

10) **Intellectual Property Ownership**
   a) BOARD acknowledges that NTS owns all rights, title, and interest, including all intellectual property rights, in and to the Software and Documentation and that, with respect to Third-Party Products, the applicable third-party owns all rights, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
   b) If BOARD or any of its employees or contractors sends or transmits any communications or materials to NTS by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), NTS is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. BOARD hereby assigns to NTS on BOARD's behalf, and on behalf of its employees, contractors, and/or agents, all rights, title, and interest in, and NTS is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although NTS is not required to use any Feedback.

11) **Limited Warranties and Warranty Disclaimer.**
NTS warrants that:
   a) The Software will perform materially as described in the specifications available in the most up-to-date Documentation for the Term; and
   b) At the time of delivery, the Software does not contain any virus or other malicious code that

would make it inoperable or incapable of being used in accordance with the Documentation.

THE FOREGOING WARRANTIES DO NOT APPLY TO, AND NTS STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY PRODUCTS.

a) The warranties set forth in Section 12(a) do not apply and become null and void if BOARD breaches any provision of this Agreement, or if BOARD, any Authorized User, or any other person provided access to the Software by BOARD, whether or not in violation of this Agreement: (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by NTS in writing; (ii) modifies or damages the Software; or (iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by NTS in writing.

b) If, during the period specified in Section 12(a), any Software fails to comply with the warranty in Section 12(a), and such failure is not excluded from warranty pursuant to Section 12(b), NTS shall, subject to BOARD's promptly notifying NTS in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that BOARD provides NTS with all information NTS requests to resolve the reported failure, including sufficient information to enable the NTS to recreate such failure; or (ii) refund the Fees paid for such Software, subject to BOARD's ceasing all use of and, if requested by NTS, returning to NTS all copies of the Software. If NTS repairs or replaces the Software, the warranty will continue to run from the Effective Date and not from BOARD's receipt of the repair or replacement. The remedies set forth in this Section 12(b) are BOARD's sole remedies and NTS's sole liability with respect to a breach of the limited warranty set forth in Section 12(a).

c) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND NTS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE.   NTS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NTS MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET BOARD'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE.

12) **Indemnification.**
   a) NTS Indemnification.
   NTS shall indemnify, defend, and hold harmless BOARD from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("**Losses**") incurred by BOARD resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights/US patents, copyrights, or trade secrets, provided that BOARD promptly notifies NTS in writing of the claim, cooperates with NTS, and allows NTS sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, BOARD agrees to permit NTS, at NTS's sole discretion, to:
   a) Modify or replace the Software or Documentation, or component or part thereof, to make it non-infringing; or

b) Obtain the right for BOARD to continue use. If NTS determines that none of these alternatives is reasonably available, NTS may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to BOARD.

This Section 13 (a) will not apply to the extent that the alleged infringement arises from:
1. Use of the Software in combination with data, software, hardware, equipment, or technology not provided by NTS or authorized by NTS in writing;
2. modifications to the Software not made by NTS;
3. use of any version other than the most current version of the Software or Documentation delivered to BOARD; or
4. Third-Party Products.

b) <u>BOARD Indemnification</u>. BOARD shall indemnify, hold harmless, and, at NTS's option, defend NTS from and against any Losses resulting from any Third-Party Claim based on BOARD's or any Authorized User's:
a) negligence or willful misconduct;
b) use of the Software or Documentation in a manner not authorized or contemplated by this Agreement;
c) use of the Software in combination with data, software, hardware, equipment, or technology not provided by NTS or authorized by NTS in writing;
d) modifications to the Software not made by NTS;
e) use of any version other than the most current version of the Software or Documentation delivered to BOARD provided that BOARD may not settle any Third-Party Claim against NTS unless such settlement completely and forever releases NTS from all liability with respect to such Third-Party Claim or unless NTS consents to such settlement, and further provided that NTS will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

13) **Limitation of Liability**. IN NO EVENT WILL NTS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE, FOR ANY:
a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS;
b) LOSS OF GOODWILL OR REPUTATION;
c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY;
d) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE, REGARDLESS OF WHETHER NTS WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

IN NO EVENT WILL NTS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE EXCEED THE FEE FOR ONE CALENDAR YEAR PAID BY BOARD TO NTS.

14) **Term and Termination.**
a) <u>Term</u>. The term of this Agreement begins on the Effective Date and, unless terminated earlier

pursuant to any of the Agreement's express provisions, will continue in effect until December 31, 2025 (the "**Term**").

b) <u>Termination</u>. In addition to any other express termination right set forth in this Agreement:

    a) NTS may terminate this Agreement, effective on written notice to BOARD, if BOARD;

        1. fails to pay any amount when due hereunder, and such failure continues more than 60 days after NTS's delivery of written notice thereof; or

        2. breaches any of its obligations under Section 2(b) or Section 9;

    b) Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach:

        1. Is incapable of cure; or

        2. being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach;

    c) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party:

        1. Becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;

        2. files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;

        3. makes or seeks to make a general assignment for the benefit of its creditors; or

        4. applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business

c) <u>Effect of Expiration or Termination</u>. Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting BOARD's obligations under Section 9, BOARD shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to the NTS that the Software and Documentation has been deleted or destroyed. No expiration or termination will affect BOARD's obligation to pay all Fees that may have become due before such expiration or termination or entitle BOARD to any refund.

d) <u>Survival</u>. This Section 16(d) and Sections 1, 9, 10, 11, 12(c), 13, 15, and 16 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

15) **Miscellaneous**

a) <u>Entire Agreement</u>. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs:

        1. first, this Agreement, excluding its Exhibits;

        2. second, the Exhibits to this Agreement as of the Effective Date; and

        3. third, any other documents incorporated herein by reference

b) <u>Notices</u>. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement. All Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail. Except as otherwise provided

in this Agreement, a Notice is effective only:

        1. upon receipt by the receiving Party, and

        2. if the Party giving the Notice has complied with the requirements of this Section

c) <u>Force Majeure</u>. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, except for any obligations to make payments, if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

d) <u>Amendment and Modification; Waiver</u>. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving except as otherwise set forth in this Agreement. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

e) <u>Severability</u>. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

f) <u>Governing Law; Submission to Jurisdiction</u>. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder may be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of Niagara Falls and County of Niagara. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

g) <u>Export Regulation</u>. The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. BOARD shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation.

h) <u>Equitable Relief</u>. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 9 or, in the case of BOARD, Section 2(b), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

i) <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

NTS DATA SERVICES, LLC   ALBANY COUNTY
                                             BOARD OF ELECTIONS

By:_____   By:_____

Name: _____   Name: _____

Title: _____   Title: _____

                                             By:_____

                                           Name: _____

                                           Title: _____

EXHIBIT A

Software and Services

Albany County Board of Elections

1. **NTS SOFTWARE**

   Upon execution of this Agreement and receipt of the initial annual payment, NTS will install and grant a one-year license to operate APEX, PACETS, Voter Information Center (VIC), and IMS software ("Software") at BOARD. For each succeeding year of a multi-year term agreement, a subsequent one-year license will be granted upon receipt by NTS of the respective annual payment.

2. **TRAINING AND SUPPORT**

   NTS shall provide on-site or remote training to assist BOARD's staff with any issues arising in BOARD's utilization of the Software. Any and all remote training shall be provided by NTS to BOARD at no cost in addition to the Fee. Any and all on-site training shall be billed at the prevailing NTS hourly rate plus any additional travel and/or material charges incurred by NTS during its work performance.

   NTS Hotline Support shall be provided between the hours of 9:00 AM and 5:00 PM, Monday through Friday, exclusive of holidays. NTS Hotline Support shall include general Software application questions/issues, election operation issues, and any other areas relating to NTS support of BOARD. Hotline support shall not exceed six (6) hours in any one month. Hotline support over and above the monthly maximum shall be billed at the prevailing NTS hourly rate plus any additional travel and/or material charges incurred by NTS during its work performance.

   NTS shall provide support on election day starting at 5:00 a.m. until 10:00 p.m. In addition, NTS support staff will be available on call as posted during the election cycle.

3. **FEES**

   Pricing for ongoing license and support services for the APEX, PACETS, Voter Information Center (VIC), IMS software ("Software"), and Street Maintenance is detailed below.

   On January 15, 2025, the BOARD shall make a payment of $107,761.50 to NTS.