DATA INFORMATION MANAGEMENT SYSTEMS, INC.
SOFTWARE LICENSE AND SUPPORT AGREEMENT

THIS SOFTWARE LICENSE AND SUPPORT AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Data Information Management Systems, Inc., a California corporation ("DIMS") and Monterey County, California ("Customer").

RECITALS:

A. DIMS has licensed to Customer the proprietary software described on Attachment 1 and Customer now desires to obtain license and support services for such software.

B. DIMS has agreed to provide such services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

ARTICLE I
GENERAL

1. **Term; Termination.** This Agreement for Software License and Support services shall be in effect for the coverage period as described in Attachment 1 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period") until this Agreement is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (d), which will require no notice), (c) the date on which software or firmware is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (d) the date which is thirty (30) days after Customer fails to pay any amount due to DIMS under this Agreement. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to DIMS, or (if requested by DIMS) destroy the Software and Documentation and certify in writing to DIMS that such destruction has occurred. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to DIMS hereunder and shall only entitle Customer to a prorated refund of any fees already paid to DIMS in the event that this is Agreement is terminated pursuant to subsection 1(c).

2. **Fees.** In consideration for DIMS' agreement to provide Software License and Support services under this Agreement, Customer shall pay to DIMS the Software License and Support Fees set forth on Attachment 1 for the Initial Term. The Software License and Software Fees shall be increased each July of the Initial Term or any Renewal Period thereof and shall be increased in accordance with the CPI for Los Angeles California. All payments are due and payable in accordance with the payment terms set forth on Attachment 1. If Customer elects to receive Software and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, DIMS will charge an incremental fee for such license and services. In the event Customer terminates this Agreement through no fault of DIMS and later desires to subscribe for a license and support plan, or otherwise changes its license and support plan with DIMS during the Initial Term or any renewal thereof, DIMS will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, license and support coverage.

ARTICLE II
LICENSE OF SOFTWARE

1.   **Grant of License.**   Subject to the terms and conditions of this Agreement, DIMS hereby grants to Customer a nonexclusive, nontransferable license to use the Software and all related operating instructions, user manuals and training materials supplied by DIMS (collectively the "Documentation") in Monterey County, California, ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The license does not permit Customer to take any of the following actions:

    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 use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the DIMS Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without DIMS' prior written consent; or

    c.   Cause or permit any change to be made to the Software without DIMS' prior written consent.

    d.   Cause or permit any copying, reproduction or printing of any output generated by the Software in which DIMS owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.   **Term of License.**   The license granted in Section 1 shall commence upon payment of the license fee set forth on <u>Attachment 1</u>, and shall continue until the first to occur of the following: (a) expiration of the Initial Maintenance Term or any Renewal thereof; (b) Customer ceases to use the Software; (c) Customer fails to pay the consideration due for the license; or (d) Customer breaches any material provision of this Article 1.

3.   **Proprietary Rights.**   Customer acknowledges and agrees that DIMS owns all right, title and interest in and to the Software and Documentation, necessary to license the Software and Documentation set forth herein to the Customer in accordance with the terms of this Agreement. DIMS likewise owns the right to use all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation licensed to the Customer. The Software and Documentation also contain confidential and proprietary trade secrets which are protected by law and are of substantial value to DIMS or the owner thereof, as applicable. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

4.   **Indemnification By Customer.**   Customer shall indemnify and hold harmless DIMS from and against any and all Adverse Consequences arising out of or relating to any Third Party Infringement Claim resulting from (a) the use of the Software in combination with other equipment, hardware or software not meeting DIMS' specifications for use with the Software; (b) Customer's modification or alteration of the Software without the prior written consent of DIMS; or () Customer's election not to receive, or to terminate, the Software Support Services. DIMS shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 4, 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.

ARTICLE III
SOFTWARE SUPPORT SERVICES

1.   **Services Provided.** DIMS shall provide support services ("Software Support") for the DIMS Software and DIMS Firmware (collectively, "DIMS Software"). The specific Software Support services provided by DIMS and each party's obligations with respect to such services are set forth on Attachment 1.

2.   **Conditions.** DIMS shall not provide Software and Support for any item of DIMS Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by DIMS, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by DIMS, (c) causes beyond the reasonable control of DIMS or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Provide any updates, changes, enhancements or modifications to the certified Products or certified component thereof (e) Customer's failure to timely and properly install and use the most recent update provided to it by DIMS, (f) Customer's failure to notify DIMS within 24 hours after Customer knows of the need for such services, or (g) if Customer is otherwise not in compliance with its obligations under this Agreement. Any such Software Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 2 or as a result of Customer's actions or inactions shall be billable to Customer at DIMS' then current rates.

4.   **Proprietary Rights.** DIMS shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Fees, DIMS hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that DIMS actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be DIMS Software for purposes of this Agreement. Except and to the extent expressly provided herein, DIMS does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5.   **Reinstatement of Software License and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Software License and Support upon (a) notification to DIMS, (b) payment of all fees, including a reinstatement charge, which would have been due to DIMS had the Initial Maintenance Term or any Renewal Period not expired, and (c) the granting to DIMS of access to the DIMS Software, so that DIMS may analyze it and perform such review as may be necessary before resuming the Software License and Support.

ARTICLE V
MISCELLANEOUS

1.   **Taxes; Interest.** Customer will provide DIMS with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse DIMS for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by DIMS' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to DIMS will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2.   **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this

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Agreement. DIMS' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to DIMS hereunder. Any action by Customer against DIMS shall be commenced within 1 year after the cause of action has accrued. DIMS will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate, the Software License and Support Services.

3. **Excusable Nonperformance.** If DIMS is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including, but not limited to, natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, communications or transportation disruptions, Acts of God, labor disputes and governmental regulations, 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. DIMS 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.
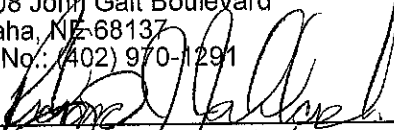
4. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed facsimile transmission, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or facsimile numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

5. **Entire Agreement.** This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of California , USA, without regard to its conflicts of laws principles. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of DIMS to a successor who has asserted its intent to continue the business of DIMS, neither party may assign or transfer this Agreement without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. DIMS may engage duly qualified subcontractors to perform certain of the Services, but shall remain fully responsible for such performance.

6. **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

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IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

DATA INFORMAITON MANAGEMENT SYSTEMS, INC.
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

_____
Signature

_____
Name (Printed or Typed)

_____
Title

_____
Date   3/6/14

MONTEREY COUNTY, CALIFORNIA
1370-B South Main Street
Salinas, CA 93901
Fax No.: (831) 755-5485

_____
Signature

_____
Name (Printed or Typed)

_____
Title

_____
Date

APPROVED AS TO FORM

SR. DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY
3/18/14

Reviewed as to fiscal provisions

_____
Auditor/Controller
County of Monterey
3-18-14

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PRICING SUMMARY AND PAYMENT TERMS

Sale Summary:		
Description	**Refer to**	**Monthly Amount**
DIMS Software License and Support Fees	Attachment 1	$7,173.11

Terms & Conditions:

Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.

Note 2: Invoicing and Payment terms are as follows: The fees set forth above are on a monthly basis and are due and payable within thirty (30) days of receipt of an invoice from DIMS. The fees reflected on such invoice shall be for the preceding month of services. The monthly fees shall be adjusted annually each July during the Initial Term or any Renewal Period thereof as set forth in Section 2 of Article I.

Attachment 1

DIMS SOFTWARE LICENSE AND SUPPORT DESCRIPTION
AND FEES

Initial Term: _____

Number of Licenses	Description	Monthly License and Support Fee
1	DIMS Voter Registration Software	$7,173.11

Software License and Support Services Provided by DIMS Under the Agreement

1. Telephone support

   - DIMS will provide Software support on procedural questions of a specific nature not covered in DIMS' Software User Manuals;

   - DIMS will verify the appropriate steps to take to resolve issues identified by the Customer.

2. Issue Resolution (to be provided on a limited basis)

   - DIMS will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing DIMS Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.

3. DIMS will provide Technical Bulletins available on the DIMS Customer Portal on a schedule to be determined by DIMS regarding specific issues the Customer may be experiencing.

Note: Except for those Software Support services specifically set forth herein, DIMS is under no obligation and shall not provide other Software and support services to the Customer unless previously agreed upon by the parties.

Software License and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Network design, layout or administration

2. Election set up and programming

3. Third Party Interface – Import from non DIMS Voter Registration System

4. Installation of third party hardware or software – User Guides, Installation Instructions are provided for these processes

5. Issue resolution for printers and modems not supported by DIMS applications

6. Issue resolution for requests made by non-DIMS service providers

7. Any services to support the Customers Voter Tabulation System

8. DIMS-NeT Enhancements
   a. If a customer requests an enhancement to DIMS-NeT, those enhancements are reviewed, discussed, and evaluated by a team of people within the DIMS organization. In many cases, those enhancements will be added to the DIMS-NeT system for a charge.

9. Custom Reports and Custom Report Changes
   a. DIMS will modify a small set of reports for each customer during the installation of DIMS-NeT. Changes to these reports in the future, or new custom report requests, are billable at the current rates.

10. Data Fixes
    a. If a customer's data requires scripts to fix a problem, the time required to develop, test, and implement that script is billable. However, if the data problem was caused by a defect in the software, the fix will not be billable.

11. Hardware Support