VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN
DOMINION VOTING SYSTEMS, INC.
AND MONTEREY COUNTY, CA

This Voting Systems and Managed Services Agreement (the "Agreement"), dated August 1, 2017 (the "Effective Date"), for a voting system, licenses and related services is made by and between Monterey County, CA ("Customer") and Dominion Voting Systems, Inc., a corporation organized under the laws of the State of Delaware ("Dominion"). This Agreement may refer to Dominion and the Customer together as the "Parties," or may refer to Dominion or the Customer individually as a "Party."

WHEREAS, The Customer desires to lease voting system services, licenses and related solutions; and

WHEREAS, Dominion designs, manufactures, sells and/or licenses, and provides ongoing solutions for voting systems;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with the terms and conditions set forth herein, Dominion agrees to license and/or sell and furnish to Customer the System (as defined herein), including the products and services described more fully below:

1. **Composition of Agreement.** Exhibits A, B and C are attached and incorporated herein by reference and form a part of this Agreement (the "Agreement"). This Agreement consists of the general terms and conditions contained in the following sections, together with the listed Exhibits below. The total compensation payable under this Agreement shall be in accordance with the item prices incorporated within the Exhibit A attached hereto.

   Exhibit A:    Pricing Summary and Deliverables Description
   Exhibit B:    Software License Terms and Conditions
   Exhibit C:    Administrative Approvals

2. **Definitions.** For the purposes of this Agreement, the following are defined terms:

   2.1.    "Acceptance" and variations thereof, mean the successful completion of the acceptance testing performed on each component of Dominion Hardware and Software, after delivery in accordance with testing criteria developed and updated by Dominion, and mutually agreed upon by Customer, or the occurrence of other events defined in Section 8.

   2.2.    "Dominion Hardware" means the voting system hardware as more specifically described in Exhibit A.

   2.3.    "Dominion Software" means software and firmware programs licensed to the Customer by Dominion and any associated documentation including the following:

2.2.1. "Democracy Suite® Software," Dominion's election management software associated with the ImageCast® voting system as more specifically described in Exhibit A.

2.2.2. "ImageCast® Software," the software/firmware designed for use in the ImageCast® voting system.

2.4. "Election" means a single election event administered by the Customer including any absentee and early voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any follow on event shall be considered an Election in and of itself.

2.5. "Election Management System Hardware" or "EMS Hardware" means third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.

2.6. "License" has the meaning set forth in Section 7.

2.7. "System" means the combination of Dominion Software, Dominion Hardware and EMS Hardware.

2.8. "Third Party Software" means software, manufacturer supplied software, or firmware owned by third parties, which Dominion provides to Customer pursuant to sublicenses or end user license agreements with the owners of such Third Party Software. Third Party Software includes, but is not limited to, various operating systems, software drivers, report writing subroutines, and firmware.

3. **Term of Agreement.** The Term of this Agreement shall begin on the Effective Date and shall continue until 12/31/2023 providing however and subject to possible annual price increases, the Licenses or warranties authorized by this Agreement may extend beyond the Term of this Agreement, according to the terms and conditions of such Licenses or warranty.

4. **Dominion's Responsibilities.** Dominion shall:

4.1. Deliver the System and installation plan services as described in Exhibit A (Pricing Summary and Deliverables Description).

4.2. Appoint a project manager ("Dominion Project Manager") to oversee the general operations of the project. The Dominion Project Manager shall be responsible for arranging all meetings, visits and consultations between the Parties and for all administrative matters such as invoices, payments and amendments. The Dominion Project Manager will provide the Customer with status updates on the progress of tasks as set out in this Agreement and to advise the Customer upon the occurrence of any material change in such plans.

4.3.     Provide the Customer with a Dominion Software License as described in Exhibit B (Software License Terms and Conditions).

4.4.     Provide the Customer with one (1) reproducible electronic copy of the user documentation.

4.5.     Assist in the Acceptance Testing process as required by Section 8 herein.

4.6.     Provide invoices to Customer upon Acceptance of items listed in Exhibit A and pursuant to the payment schedule described in Section 5.1 herein.

4.7      Provide use of the Dominion Democracy Suite 4.14-A.1 with Adjudication 2.4.1.14601 voting system in conjunction with the customer's existing Sequoia WinEDS 3.1.012 AVC Edge voting system as a blended system throughout the duration of the contract. Blended system approved by the Secretary of State on April 17, 2017 as described in Exhibit C.

5.     **Customer's Responsibilities.** Customer shall:

5.1.     Pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. Payments specified in this Section 5 are exclusive of all excise, sale, use and other sales taxes imposed by any governmental authority, all of which taxes shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar in a form demonstrating its exempt status.

5.2.     Appoint a project manager ("Customer Project Manager"), who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel, equipment, vehicles and facilities. The Customer Project Manager shall be empowered to make decisions on behalf of the Customer with respect to the work being performed under this Agreement. The Customer Project Manager shall also have direct access to the Customer's top management at all times for purposes of problem resolution.

5.3.     Conduct Acceptance testing process as required by Section 8.

5.4      For election setup and database creation services as more specifically described in Exhibit A, the Customer shall review and approve or identify issues to all Dominion deliverables related to such service within two (2) business days of receipt by the Customer. In the event the Customer discovers an issue, it shall provide written notice to Dominion immediately following the discovery of any issue and Dominion shall rectify the issue at no additional cost to the Customer. In the event the Customer approves the deliverable and subsequent to such approval, requests that a change be made to the deliverable, Dominion may provide the change at an additional cost based upon Dominion's then current published service rates.

## 6. Title and Risk of Loss.

6.1. Title to the System, Excluding All Software. The System shall be provided by Dominion to the Customer as part of the managed services described herein. Title to the System shall not pass to the Customer and shall remain with Dominion.

6.2. Software. Software, including firmware, is licensed not sold. The original and any copies of the Dominion Software, or other software provided pursuant to this Agreement, in whole or in part, including any subsequent improvements or updates, shall remain the property of Dominion, or any third party that owns such software.

6.3. Risk of Loss. Dominion shall bear the responsibility for all risk of physical loss or damage to each portion of the System until such portion is Accepted by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any loss or damage within ten (10) business days of the receipt of any or all portions of the System, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Dominion.

## 7. Software License and Use.

7.1. License. Upon mutual execution of this Agreement, Dominion grants to the Customer, and the Customer accepts a non-exclusive, non-transferable, license ("License") to use the Dominion Software subject to the terms and conditions of this Agreement and the Software License Terms attached hereto as Exhibit B.

7.2. Third Party Software. The System includes Third Party Software, the use of which is subject to the terms and conditions imposed by the owners of such Third Party Software. Customer consents to the terms and conditions of the third party license agreements by Customer's first use of the System.

## 8. Acceptance.

8.1. Dominion Software or Dominion Hardware. After delivery of Dominion Software or Dominion Hardware, the Customer will conduct Acceptance testing of such units, which testing will include the Acceptance criteria developed and updated by Dominion and mutually agreed upon by Customer. Such Acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after installation.

8.2. System Acceptance Testing. To the extent not tested as part of the testing pursuant to Section 8.1, upon completing the System installation, the Customer will conduct System Acceptance testing, which testing will include the Acceptance test procedures developed and updated by Dominion, and mutually agreed upon by Customer. Such Acceptance testing shall occur at a time mutually agreed upon by the Parties, but no

later than ten (10) business days after installation of the System.

8.3    Acceptance/Rejection. After testing, if the Dominion Software, Dominion Hardware, or the System does not conform to user documentation or Dominion provided Acceptance criteria, as mutually agreed upon by Customer, Customer will notify Dominion in writing within five (5) business days. Dominion will, at its own expense, repair or replace the rejected Dominion Software, Dominion Hardware, or System within twenty (20) days after receipt of Customer's notice of deficiency. The foregoing procedure will be repeated until Customer finally accepts or rejects the Dominion Software, Dominion Hardware, or System in writing in its sole discretion.

## 9.    Warranties.

9.1.    Dominion Software Warranty. The Dominion Software warranty is subject to the terms and conditions of Exhibit B - the Software Terms and Conditions.

9.2.    Third Party Products. The warranties in this Sections 9 do not apply to any third party products. However, to the extent permitted by the manufacturers of third party products, Dominion shall pass through to Customer all warranties such manufacturers make to Dominion regarding the operation of third party products.

9.3.    Dominion Hardware Warranty. Dominion warrants that when used with the hardware and software configuration purchased through or approved by Dominion, each component of Dominion Hardware will be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications as documented by Dominion. The Dominion Hardware Warranty shall remain in effect during the Term of this Agreement.

9.4.    Dominion Hardware Warranty Conditions. If any Dominion Hardware component fails to operate in conformity with its specifications during the Term of this Agreement, Dominion shall provide a replacement for the Dominion Hardware component or, at Dominion's sole option, shall repair the Dominion Hardware component, so long as the Dominion Hardware is operated with its designated Dominion Software and with third party products approved by Dominion for use with the Dominion Hardware. The following conditions apply to the Dominion Hardware warranty:

9.4.1.    Dominion shall perform one (1) on-site preventative maintenance inspection ("PM") per year on Dominion Hardware during the Agreement Term at a time mutually agreed to by the Parties. This on-site PM is expected to be scheduled at least ninety (90) days prior to requested test date. Dominion shall perform the annual PM and will replace any and all parts that fail due to normal use during the warranty period. In the event of a warranty claim outside of the scheduled PM, additional on-site service will be available at Dominion's then current time and material rates. There are no additional charges for parts covered by this warranty.

9.4.2. The following services are not covered by this Agreement, but may be available at Dominion's current time and material rates:

    9.4.2.1. Replacement of consumable items including but not limited to batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices, scanner rollers, disks, etc.;

    9.4.2.2. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;

    9.4.2.3. Repair or replacement of Dominion Hardware modified by any person other than those authorized in writing by Dominion;

    9.4.2.4. Repair or replacement of Dominion Hardware from which the serial numbers have been removed, defaced or changed.

9.5. No Other Warranties. DOMINION DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

**10. Force Majeure.** Should any circumstances beyond the control of Dominion or Customer occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension, or cancelled if performance has been rendered impossible thereby. Such events may include, without limitation, accidents; war, acts of terrorism; natural disasters; labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of both Dominion and Customer. Neither Party shall be liable under this Agreement for any loss or damage to the other Party due to such delay or performance failures. Both Parties shall use commercially reasonable efforts to minimize the adverse consequences of any such event. This section shall not excuse the Customer from paying amounts owed for services received pursuant to this Agreement.

**11. Indemnification.** Dominion, at its sole expense, will indemnify and defend the Customer, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) resulting from third party claims, suits or actions arising out of a) any infringement, violation, or misappropriation a third party's patent, copyright, trademark, trade secret or other intellectual property or proprietary rights or b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to the negligence or misconduct of Dominion.

**12. Limitation of Liability.** Except for the indemnification obligations contained in this Agreement, Dominion's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement, howsoever arising, including without limitation, loss, damage,

costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the Agreement. Neither party shall be liable to the other party for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

**13.  Confidential Information.**

13.1.  For purposes of this Agreement, confidential information ("Confidential Information") is defined as those materials, documents, data, and technical information, specifications, business information, customer information, or other information that the disclosing Party maintains as trade secrets or confidential and which are disclosed to a receiving Party in tangible form conspicuously marked as "confidential," or with words having similar meaning or which are expressly identified in this Section 13.1. Confidential Information includes, without limitation, Dominion Software source code and associated documentation.

13.2.  Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.

13.3.  Subject to the requirements of the California Public Records Act ("CPRA"), neither Party shall disclose the other Party's Confidential Information to any person outside their respective organizations 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.

13.4.  Each Party 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 other Party of such Confidential Information.

13.5.  The parties understand and agree that Customer is a public entity subject to the CPRA. Therefore, any covenant of confidentiality given by the Customer in this Agreement shall be governed by provisions of CPRA.

13.6.  Any specific information that Dominion claims to be confidential must be clearly identified as such by Dominion. To the extent consistent with CPRA, Customer shall maintain the confidentiality of all such information marked by Dominion as confidential.

13.7  If a request is made to view such Confidential Information by any federal, state, or local governmental administrative agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court, Customer will notify Dominion of such request, pursuant to the provisions of Section 22, and

the date the information will be released to the requestor unless Dominion obtains a court order enjoining such disclosure. If Dominion fails to obtain such court order enjoining such disclosure, the Customer will release the requested information on the date specified. Such release shall be deemed to have been made with Dominion's consent and shall not be deemed to be a violation of law or this Agreement

**14.  Assignment.** Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party, providing however that Dominion may assign the proceeds of this Agreement to a financial institution without prior consent of the Customer but with written notice to Customer.

**15.  Termination.**

15.1    For Default. In the event either Party violates any provisions of this Agreement, the non-violating Party may serve written notice upon the violating Party identifying the violation and providing a reasonable cure period. Except as otherwise noted herein, such cure period shall be at least thirty (30) days. In the event the violating Party has not remedied the infraction at the end of the cure period, the non-violating Party may terminate this Agreement, and seek legal remedies for breach of contract as allowed hereunder. If the breach identified in the notice cannot be completely cured within the specified time period, no default shall occur if the Party receiving the notice begins curative action within the specified time period and thereafter proceeds with reasonable diligence to cure the breach as soon as practicable.

15.2    For Non-Appropriation of Funds. The Customer shall not be obligated for payments hereunder for any future fiscal year unless or until the Customer appropriates funds for this Agreement in Customer's budget for that fiscal year. In the event that funds are not appropriated, then this Agreement may be terminated by the Customer as the end of the last fiscal year for which funds were appropriated. Termination of this Agreement by the Customer under this Section 15.2 shall not constitute a breach of this Agreement by the Customer. Customer shall notify Dominion in writing of such non-appropriation at the earliest possible date which, in any event, shall be prior to Dominion performing services during any fiscal year for which an appropriation has not been made. In the event Customer notifies Dominion that sufficient funds have not been appropriated, or if in fact sufficient funds have not been appropriated, to compensate Dominion in accordance with this Agreement, Dominion may suspend Dominion's performance and terminate all Dominion licenses under this Agreement. Suspension of performance and termination of all Dominion licenses by Dominion in accordance with this section 15.2 shall not constitute a breach of this Agreement by Dominion.

**16.  Legality and Severability.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, court orders, and applicable governmental agency orders. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent

permitted by law. The Parties agree that any court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the parties as set forth herein to the fullest extent permitted by law.

**17.** **Survival.** The provisions of Sections 2, 9, 10, 11, 12, 13, 16, 18, and 19 shall survive the expiration or termination of this Agreement.

**18.** **Choice of Law.** Interpretation of this Agreement shall be governed by the laws of the State of California, and the courts of competent jurisdiction located in the State of California will have jurisdiction to hear and determine questions relating to this Agreement.

**19.** **Waiver.** Any failure of a Party to assert any right under this Agreement shall not constitute a waiver or a termination of that right or any provisions of this Agreement.

**20.** **Insurance.**

20.1 Dominion hereby agrees at its own cost and expense to procure and maintain, during the entire term of this Agreement and any extended term therefore, insurance in a sum acceptable to Customer and adequate to cover potential liabilities arising in connection with the performance of this Agreement and in any event not less than the minimum limit set forth as follows:

| Insurance | Minimum Limit |
|---|---|
| Umbrella Liability | $5 million per occurrence |
| Professional Liability | $5 million per occurrence<br>$10 million aggregate |
| Worker's Compensation | Statutory |
| Employers Liability | $1 million |
| Commercial General Liability including Contractual Liability, Operations, Products and Completed Operations | |
| • Personal/Bodily Injury | $2 million per occurrence<br>$5 million aggregate |
| • Property Damage | $2 million per occurrence<br>$5 million aggregate |
| Commercial Automobile Liability (non-owned vehicles) | |
| • Bodily Injury/Property Damage | $2 million combined single limit per occurrence |

20.2. Certificates of Insurance. Complete copies of certificates of insurance for all required coverages including additional insured endorsements, naming the Customer as additional insured, will be provided by Dominion to the Customer.

**21. Independent Contractor.** In all situations and circumstances arising out of the terms and conditions of this Agreement, Dominion is an independent contractor. It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of a partnership, joint venture, or employment with the Customer and Dominion. Dominion is an independent contractor, and it, its employees, agents, subcontractors, and representatives shall not be considered employees, agents or representatives of the Customer. Dominion shall maintain, in all respects, its present control over the means and personnel by which this Agreement is performed. From any amounts due Dominion, there shall be no deduction for federal income tax, FICA payments, state income tax, or for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Dominion.

**22. Notices.** All notices required or permitted to be given hereunder shall be given in writing and shall be deemed to have been given when personally delivered or by nationally recognized overnight carrier or mailed, certified or registered mail, return receipt requested, addressed to the intended recipient as follows:

If to Dominion:

Dominion Voting Systems, Inc.
Attn: Contracts Administrator
1201 18th St., Ste. 210
Denver, CO 80202

If to the Customer:

Monterey County Elections
1441 Schilling Place – North Building
Salinas, CA 93901

**23. Entire Agreement.** This Agreement and its Exhibits incorporated herein by reference constitute the entire agreement, understanding and representations between Dominion and the Customer, and supersede and replace all prior agreements, written or oral. No modifications or representations to the Agreement shall be valid unless made in writing and signed by duly authorized representatives of both the Customer and Dominion, and incorporated as an amendment hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

**DOMINION VOTING SYSTEMS, INC.**

_____
AUTHORIZED SIGNATURE

Michael Frontera
PRINTED NAME

Executive Vice President & General Counsel
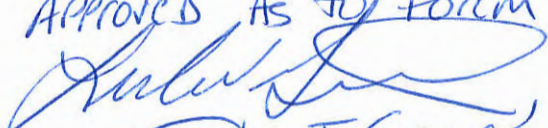TITLE

7/31/2017
DATE

**MONTEREY COUNTY, CA**

_____
AUTHORIZED SIGNATURE

_____
PRINTED NAME

_____
TITLE

_____
DATE

APPROVED AS TO FORM

Leslie J. Girard
Chf Asst. County Counsel

Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey
8-15-17

**EXHIBIT A**
VOTING SYSTEM AGREEMENT
BY AND BETWEEN DOMINION VOTING SYSTEMS
AND MONTEREY COUNTY, CA

**PRICING SUMMARY AND DELIVERABLES DESCRIPTION**

1. Pricing/Payment Summary and Descriptions

   1.1 **Pricing Summary.** The total annual managed service contract pricing shall equal $189,064.79/year for a total of six (6) years.

   1.2 **Payment Summary.** The following is the invoicing schedule for the annual Customer payments. The Customer shall pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. All payments shall be made is in U.S. Dollars.

      1.2.1 Year 1 shall cover the time period from the Agreement Effective Date through 12/31/2018. The Year 1 invoice of $189,064.79 will be issued immediately after System Acceptance by the Customer. The estimate California tax for each annual payment equals $ 10,928.70.

      1.2.2 Year 2: 1/1/2019 – 12/31/19: $189,064.79 invoice will be issued on 1/1/2019

      1.2.3 Year 3: 1/1/2020 – 12/31/20: $189,064.79 invoice will be issued on 1/1/2020

      1.2.4 Year 4: 1/1/2021 – 12/31/21: $189,064.79 invoice will be issued on 1/1/2021

      1.2.5 Year 5: 1/1/2022 – 12/31/22: $189,064.79 invoice will be issued on 1/1/2022

      1.2.6 Year 6: 1/1/2023 – 12/31/23: $189,064.79 invoice will be issued on 1/1/2023

2. System Description - Prices of equipment, technical facilities, software, and other related services for voting, vote counting, and result processing. All pricing in U.S. Dollars.

| DESCRIPTION | QTY |
|---|---|
| Central Scanning Solution: Absentee / Vote By Mail Hardware | |
| ImageCast Central includes:<br>    Canon DR-G1130 high speed document scanner<br>    ImageCast Central Software<br>    Dell Optiplex 7440 All-in-One<br>    iButton programmer and key<br>    Cables | 8 |
| In-Person Voting Solution: Polling Location Hardware | |
| ImageCast X - BMD Accessible (21 inch) includes:<br>    ICX Firmware<br>    Tablet<br>    ATI accessible unit<br>    5 voter activation cards<br>    Printer<br>    Cables | 4 |

| | |
|---|---|
| ICX VA (Voter Activation Station) includes | 1 |
|    Dell Laptop, ICX Activation software | |
|    Smart Card Reader/Writer | |
| ImageCast X Voting Booth | 2 |
| Election Management Hardware | |
| Democracy Suite EMS Standard Server Configuration Kit - Up to 22 clients | 2 |
| EMS Client Workstation Configuration Kit | 2 |
| Adjudication Workstation Kit | 6 |
| EMS Report Printer - E310dw | 1 |
| Software | |
| Democracy Suite (EMS) | 1 |
| ICC Adjudication Application | 1 |
| Support Services | Days |
| Implementation | |
| Project Management | 25 |
| Training includes: | |
|    System Acceptance Testing Training | 1 |
|    Democracy Suite Result, Tally and Reporting | 4 |
|    ICX Operator Training | 1 |
|    ICC Operator Training | 1 |
|    ICC Adjudication Training | 1 |
|    Train The Trainer: Poll worker | 1 |
| Election Support | Elections |
| Election Set Up | 7 |
| 3 Day Election On-Site Support | 2 |
| Annual Licenses | |
| Democracy Suite (EMS) RTR ONLY | 1 |
| ICC Adjudication Application  - Level 5 (125K - 250K) | 1 |
| ICC Annual Firmware License - G1130 | 8 |
| ICX - BMD Accessible (21 inch) Annual Firmware License | 4 |
| Warranty and Maintenance | |
| ImageCast Central Kit: Canon DR-G1130 | 8 |
| ICX - BMD Accessible (21 inch) | 4 |

3. Product Description

   3.1 **_ImageCast® Central Scanner (ICC)_**. Dominion shall provide the ImageCast® Central Scanner for use by the Customer. The ImageCast® Central Scanner is commercial off-the-shelf digital scanners configured to work with the ImageCast® Central Software for high speed ballot tabulation. Each ImageCast® Central Scanner includes the following components:

      3.1.1  Canon DR-G1130 high speed document scanner

      3.1.2  ImageCast® Central Software

3.1.3  OptiPlex 7440 All-in-One Series with pre-loaded software

3.1.4  iButton Security Key

3.1.5  iButton Programmer and iButton Key Switch & Cat5 RJ 45 Cables used with Democracy Suite to transfer security and election information to the iButtons for use with the ICC.

3.2  **ImageCast® Central Scanner Software**.  The Parties will enter into software licenses for the ImageCast Central Scanner software, substantially in the form of Exhibit B to this Agreement.  The Dominion software includes, without limitation:

3.2.1  Audit functionality, known as the AuditMark®. For each ballot that is scanned and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below.

- The top portion of the image contains a scanned image of the ballot.

- The bottom portion consists of a machine-generated type-out showing each mark that the unit interpreted for that particular ballot. This is referred to as an AuditMark®.

3.3  **Democracy Suite EMS Software (Express)** consists of the following components:

3.3.1  Election File and iButton Creation Customer is authorized to create Election Files and iButtons from Democracy Suite to load on the ICX and ICC units.

3.3.2  Results, Tally and Reporting (RTR) Client Application is the application used for the tally, reporting and publishing of election results.

3.4  **ImageCast® Adjudication Application** is a client and server application used to review and adjudicate ImageCast® ballot images. The application uses tabulator results files and scanned images to allow election administrators to make adjudications to ballots with auditing and reporting capabilities. The Adjudication Application examines such voter exceptions as overvotes, undervotes, blank contests, blank ballots, write-in selections, and marginal marks. The application works in two basic modes: election project setup and adjudication. The Adjudication Application can be used in a multi-client environment. Adjudication Application eliminates the need to physically rescan ballots, which can potentially damage the originals and cause chain-of-custody concerns.

3.5  **ImageCast® X Application** is an application used for touchscreen voting on tablets at a voting location, and a Democracy Suite election database. Voting sessions are initiated on the tablet by either a Smart card or the entry of a numeric code based on activation. The ballot is loaded directly onto the standalone device. All voting activity is performed at the tablet, including accessible voting. Accessible voting interfaces connect to the tablet via an adapter that supports most accessible devices, allowing voters to bring their own device. After review and completion of the ballot selections, a paper ballot is created for the voter from a printer in the voting booth, and the ballot is cast after insertion in a ballot box. The paper ballot is the official ballot. The ballots contain a textual representation of the voter's ballot selections for visual review and confirmation, and the ballots are scanned using ImageCast Central Scanner and the results are accumulated in RTR.

4. <u>Implementation and Training Description</u> Dominion shall provide the following training to Customer personnel at no additional cost to Customer.

  4.1 ***Project Management.*** Dominion will provide project management support to oversee the general operations of the project through the Agreement Term. The project manager shall be responsible for arranging all meetings, visits and consultations between the parties and for all administrative matters such as invoices, payments and amendments. The Parties shall develop and finalize a project implementation plan including a training and delivery schedule. The Parties agree that during the course of the implementation, changes to the project schedule may be required. Any changes to the project schedule must be mutually agreed to by both Parties and such agreement shall not be unreasonably withheld.

    4.1.1 <u>System Acceptance Testing Training.</u> Included in the Project Management Support, Dominion will provide a minimum total of two (2) days of direct onsite support for EMS Server installation, configuration & testing.

  4.2 ***System Training.*** Dominion will provide the following training as described herein.

    4.2.1 <u>System Acceptance Testing Training.</u> Dominion will provide direct onsite training for System Acceptance Testing.

    4.2.2 <u>Democracy Suite® EMS System</u>– This training covers the configuration of the Democracy Suite® EMS System along with ICX and ICC election file creation, loading elections, tallying results (including adjudication tally), and generating reports.

    4.2.3 <u>ImageCast® X</u> – This training introduces the ImageCast® X system with an emphasis on the operation of the hardware. Students can expect to learn general operations, logic and accuracy testing, Election Day setup and operation, and troubleshooting.

    4.2.4 <u>ImageCast Central</u> – This training covers all aspects of ICC operations and tally, including general operations, process, adjudication, and reporting.

    4.2.5 <u>Pollworker Train the Trainer</u> – This provides training to the Customer staff on operations of a polling center including the ImageCast® X, voter check-in, system setup, testing and troubleshooting.

  4.3 ***EMS Ballot Definition.*** Dominion shall provide election setup services and support for the election database creation and ballot review for seven (7) elections, including the following components:

    4.3.1 Import of data files into the EMS system.

    4.3.2 Defining election project parameters and assigning templates.

    4.3.3 Assigning tabulators (ICC, tablet).

    4.3.4 Defining ballot structures.

    4.3.5 Creating proofing ballots.

    4.3.6 Creating official ballots.

4.4 **_Election Day Support._** Dominion will provide three (3) days (inclusive of travel) of direct onsite election support for two (2) elections.

4.5 **_Ongoing telephone support_**. Telephone support shall be available for Customers during the Term of the Agreement at no additional costs.

4.6 **_Other Services, Consumables or Equipment._** Any other services, consumables or equipment not specifically identified in this Agreement are available for purchase by the Customer at the then current Dominion list price.

**DOMINION VOTING SYSTEMS**
**SOFTWARE LICENSE TERMS AND CONDITIONS**

## 1. Definitions.

1.1.    "Agreement" shall mean the agreement between the Parties for the purchase and use of the licensed Software.

1.2.    "Licensee" shall mean the Dominion customer defined in the Agreement.

1.3.    "Licensor" shall mean Dominion Voting Systems.

1.4.    "Party" or "Parties" Licensor and Licensee may hereinafter be referred to individually as a Party and collectively as the Parties.

1.5.    "Software" means the Democracy Suite® and/or ImageCast® software licensed by Licensor hereunder, in object code form, including all documentation therefore.

1.6.    "Specifications" means descriptions and data regarding the features, functions and performance of the Software, as set forth in the Licensor's documentation.

1.7.    "Term" shall mean the term period defined in the Agreement.

## 2. License.

2.1.    License to Software. Subject to the terms herein, Licensor grants Licensee a non-exclusive, non-transferrable license to use the Software solely for the Licensee's own business purposes.

2.2.    Print Copyright License. Subject to the Print Copyright License terms and conditions as defined in Schedule A attached hereto, Licensor grants to Licensee a non-exclusive, non-transferable print copyright license as defined in Schedule A.

2.3.    No Other Licenses. Other than as expressly set forth herein, (a) Licensor grants no licenses, expressly or by implication, and (b) Licensor's entering into the Agreement will not be deemed to license or assign any intellectual property rights of Licensor to Licensee or any third party. Licensee agrees not to use the Software for elections outside the Licensee's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of the Software. The Licensee shall have no power to transfer or grant sub-licenses for the Software.  Any use of all or any portion of the Software not expressly permitted is strictly prohibited.

## 3. Upgrades and Certification.  During the Term, Licensor may provide upgrades to Licensee under the following terms and conditions.

3.1.    Upgrades.  In the event that Licensor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the Licensee's State, Licensor may make the certified Software upgrade available to the Licensee at no additional cost.

3.2.   Certification Requirement.  Notwithstanding any other terms herein, Licensor shall not provide, and shall not be obligated to provide under any upgrade or other software update that has not been certified under the applicable provisions of the election laws and regulations of the Licensee's State.

**4.      Prohibited Acts**.  The Licensee shall not, without the prior written permission of Licensor:

4.1.   Transfer or copy onto any other storage device or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;

4.2.   Reverse engineer, disassemble, decompile, decipher or analyze the Software in whole or in part;

4.3.   Alter or modify the Software in any way or prepare any derivative works of the Software or any part of parts of the Software;

4.4.   Alter, remove or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software.

**5.      Return of Software.** Upon termination or expiration of this Agreement, Licensee shall (i) forthwith return to Licensor all Software in its possession or control, or destroy all such Software from any electronic media, and certify in writing to Licensor that it has been destroyed.

**6.      Warranties.** The following warranties shall apply.

6.1.   Software Warranty. Licensor warrants that the Software will function substantially in accordance with the Specification during the Term.  If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications, the Licensee shall provide Licensor with written notice within thirty (30) days.  The foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than Licensor or (ii) having been used by the Licensee for purposes other than those for which the Software was designed by Licensor.  If Licensor establishes that the reported issue is not covered by the foregoing warranty, the Licensee shall be responsible for the costs of Licensor's investigative and remedial work at Licensor's then current rates.

6.2.   Third-Party Products. The warranties herein do not apply to any Third-Party Products.  However, to the extent permitted by the manufacturers of Third-Party Products, Licensor shall pass through to Licensee all warranties such manufacturers make to Licensor regarding the operation of such Third-Party Products.

6.3.   NO OTHER WARRANTIES. DOMINION DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

# SCHEDULE A

## PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

**1. Definitions.**

1.1. "Derivative Works" shall mean any work that is based upon or derived from the Licensor's voting systems' ballots, including without limitation, sample ballots and voting booklets.

1.2. "Voting Systems' Ballots" shall mean any ballot created for use with any voting system owned or licensed by the Licensor.

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(i)     any commercial or non-commercial printer
(ii)    any third party vendor using ballot on demand system.

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EXHIBIT C
Administrative Approvals

**ALEX PADILLA** | SECRETARY OF STATE | STATE OF CALIFORNIA
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT
1500 11th Street | Sacramento, CA 95814 | **Tel** 916.653.7244 | **Fax** 916.653.4620 | www.sos.ca.gov

May 5, 2017

County Clerk/Registrar of Voters (CC/ROV) Memorandum #17045

TO:         All County Clerks/Registrars of Voters

FROM:     /s/ Susan Lapsley
             Deputy Secretary of State and Counsel

RE:         Voting Systems: OVSTA Monthly Update – May 2017

Each month, the Office of Voting Systems Technology Assessment (OVSTA) provides an update on Election Assistance Commission (EAC) and Secretary of State (SOS) activities related to voting technology.

Each update provides information on:

- Voting technology related events that may be of interest.
- Administrative approvals and denials since the prior month's update.
- Administrative approval requests since the prior month's update.
- Voting technology testing and approval at the SOS office.
- Voting system testing and certification at the EAC.
- Defect, failure, and fault reports issued since the prior month's update.
- Ballot printing certification requests since the prior month's update.

## Recent and Upcoming Events

Elections Systems and Software, Inc.'s (ES&S) Unity 3.4.1.0 voting system was approved April 14, 2017. The certificate of approval can be viewed at:
http://votingsystems.cdn.sos.ca.gov//vendors/ess/unity3410/unity-3410-cert.pdf

OVSTA continued with certification testing of ES&S's EVS 5.2.1.0 voting system. Testing will continue through the coming months.

OVSTA began examination and review of Runbeck Election Services' Novus 5.0 ballot duplicating system on April 24, 2017.

OVSTA will begin examination and review of Dominion Voting Systems' Democracy Suite 5.2 voting system on May 15, 2017.

The EAC Standards Board Meeting was held in San Antonio, Texas on April 27-28, 2017. Additional information regarding the meeting can be located at: https://www.eac.gov/events/2017/04/27/standards-board-meeting/

The Global Election Technology Summit (The GET Summit) will be held in San Francisco, California on May 17, 2017. Additional information regarding the summit can be located at: https://www.getsummit.org/#get

The State Certification Testing of Voting Systems national conference will be held in Austin, Texas on June 19-20, 2017. Additional information regarding the confrence can be located at: http://elections.kennesaw.edu/conference-registration-form.php

OVSTA is finalizing the documents for the formal rule making process for the proposed Ballot Printing regulations and Electronic Poll Book regulations.

OVSTA is in the process of updating our website.  You can visit us at: http://www.sos.ca.gov/elections/voting-systems/

## Testing and Approval by the State of California

Application status is now available online at:
Voting Technology Applications Status | California Secretary of State

| System | Type | Applicant | Submission Date | Testing Phase |
|---|---|---|---|---|
| ABVote 4.01 | Remote Accessible Vote by Mail System | Votem | 08/26/2016 | On Hold |
| EVS 5.2.1.0 | Voting System | Election Systems & Software | 9/07/2016 | Testing |
| Prime III | Remote Accessible Vote by Mail System | Prime III | 10/31/2016 | On Hold |
| Democracy Suite 5.2 | Voting System | Dominion Voting Systems | 12/18/2016 | Testing |
| SecureSelect 1.0 | Remote Accessible Vote by Mail System | Democracy Live | 12/19/2016 | Pre-Testing |
| BallotDNA 360 Voting 2.0 | Remote Accessible Vote by Mail System | DemTech | 01/04/2017 | Pre-Testing |
| Novus 5.0 | Ballot Duplicating System | Runbeck | 02/23/2017 | Testing |

## Administrative Approval Requests

California Elections Code section 19216 precludes a voting system or part of a voting system that has been approved by the Secretary of State from being changed or modified until the Secretary of State has determined the change "does not impair its accuracy and efficiency. . . ."

- There were no administrative approval requests in April.

Information on submitting an administrative approval request is in "Requesting Administrative Approval of a Change or Modification to an Approved Voting System."

## Administrative Approvals

- Monterey County's application to use the Dominion Democracy Suite 4.14-A.1 with Adjudication 2.4.1.14601 voting system in conjunction with their existing Sequoia WinEDS 3.1.012 AVC Edge voting system was approved April 17, 2017.

## Testing and Certification at the EAC

The EAC provides a weekly update of voting system testing. As of the last update on May 2, 2017, the current testing and certification status for systems relevant to California is:

**ClearBallot Group ClearVote 1.4.** ClearBallot provided the technical data package to EAC and Pro V&V. Pro V&V and ClearBallot are working on revisions to the test plan based on EAC comments. Related documents can be found on the EAC website.

**Everyone Counts elect Quad Audit 4.4.0.** Everyone Counts requested a suspension of testing on March 16, 2017. They have 90 days (June 14, 2017) to restart testing or this test will be terminated. Related documents can be found on the EAC website.

The EAC's "Voting Systems Under Test" and "Certified Voting Systems" pages provide more specifics on each voting system.

## Defects, Failures, and Faults

Defects, failures, and faults (problem reports) of (1) voting system hardware and software and (2) ballot printing manufacturing and finishing are reported to the Secretary of State.

- There were no defect reports reported to OVSTA for the month of April.

## Ballot Printing Certification Requests & Approvals

- There were no ballot printing certification requests or approvals for the month of April.

A list of certified ballot printers can be found at:
http://elections.cdn.sos.ca.gov//pdfs/approved-vendors-2017-01.pdf

## Ballot on Demand Printing Requests & Approvals

- Runbeck Election Services has applied for approval of a new Sentio ballot on demand system.

A list of certified ballot on demand systems and jurisdictions can be found at:
http://votingsystems.cdn.sos.ca.gov/cert-and-approval/ballots/cert-bod-2015.pdf.

## Electronic Poll Book Certification Requests & Approvals

Application status is now available online at:
Voting Technology Applications Status | California Secretary of State

| System | Type | Applicant | Submission Date | Testing Phase |
|---|---|---|---|---|
| ExpressPoll EZRoster V3.3.1.0 | ePollBook | Election Systems & Software | 08/26/2016 | Application (Review) |
| AskED V.3.4 | ePollBook | Robis | 01/05/2017 | Application (Review) |
| PollPad2 CA | ePollBook | KNOWiNK | 01/30/2017 | Application (Review) |
| EA Tablet System | ePollBook | Election Administrators | 01/30/2017 | Application (Review) |
| EViD ePollBook 16.0.40.0 | ePollBook | VR Systems | 02/01/2017 | Application (Review) |