

MOBILE BALLOT PRINTING SYSTEM AND LICENSE AGREEMENT
BY AND BETWEEN
DOMINION VOTING SYSTEMS, INC.
AND THE COUNTY OF MONTEREY

This Mobile Ballot Printing System and License Agreement (“Agreement”), dated August 1, 2020 (the “Effective Date”), is made by and between the County of Monterey (the “Customer”), and Dominion Voting Systems, Inc. (“Dominion”). This Agreement may refer to Dominion and Customer together as the “Parties” or may refer to Dominion or Customer individually as a “Party.”

WHEREAS, Customer desires to purchase a mobile ballot printing system, licenses and related services from Dominion; and

WHEREAS, Dominion designs, licenses, and provides services for its mobile ballot printing systems and is willing and able to provide a such system and licenses to Customer.

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 furnish the System (as defined herein) to Customer.

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

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

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

- 2.1. “Acceptance” (and any variations thereof) means the successful completion by Customer of the Acceptance testing performed on each component of Dominion Hardware and Software, after delivery, in accordance with testing criteria developed and agreed to by the Parties, or the occurrence of other events defined in Section 8.
- 2.2. “Confidential Information” means those materials, documents, data, and technical information, specifications, business information, customer information, or other information of a Party (the “Disclosing Party”) maintained as trade secrets or confidential and which are disclosed to a another Party (the “Receiving Party”) in tangible form marked as “confidential,” or with words having similar meaning, which includes, without limitation, Dominion Software and associated documentation.
- 2.3. “Dominion Hardware” means the ImageCast® system hardware as more specifically described in Exhibit A.
- 2.4. “Dominion Software” means software programs licensed to Customer by Dominion and any associated documentation as more specifically described in Exhibit A.

- 2.5. “Election” means a single election event administered by Customer including any absentee, early or vote-by-mail voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event including, without limitation, run-offs or recall and replacement elections. Any follow-on event shall be considered an Election in and of itself.
- 2.6. “Election Management System Hardware” or “EMS Hardware” means third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.
- 2.7. “License” has the meaning set forth in Section 7.
- 2.8. “System” means the combination of Dominion Software, Dominion Hardware and EMS Hardware.
- 2.9. “Third Party Software” means manufacturer supplied software, 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 and report writing subroutines.

3. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall continue until December 31, 2025, unless sooner terminated as provided herein (the “Term”).
4. **Dominion’s Responsibilities.** Dominion shall:
 - 4.1. Deliver to Customer the System and services as described in Exhibit A - Pricing Summary and Deliverables Description.
 - 4.2. Provide Customer with a Dominion Software use License as described in Exhibit B - Software License Terms and Conditions.
 - 4.3. Assist in the Acceptance testing process as required by Section 8 herein.
 - 4.4. Provide Customer with one (1) reproducible electronic copy of the Dominion California Use Procedures, product manuals, and user guides.
 - 4.5. Provide invoices to Customer pursuant to the payment schedule in Exhibit A and the payment terms described in Section 5.1 herein.
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.

- 5.1.1. Dominion shall issue invoices to Customer pursuant to the invoice schedule listed in Exhibit A.
- 5.1.2. Payments specified in Exhibit A are exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which (other than income taxes) shall be reimbursed by Customer. If Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar form demonstrating its exempt status.

- 5.2. Conduct Acceptance testing process as required by Section 8.

6. Title and Risk of Loss.

- 6.1. Title to the System. Title to the System, or any portion thereof, excluding Dominion Software and Third Party Software, will pass to Customer upon delivery.
- 6.2. Software. Dominion Software and Third Party Software 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 thereto, shall remain the property of Dominion or any third party that owns such other 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 delivered to 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 twenty (20) 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 Customer 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 Customer, and 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 and Conditions 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, not including any payment terms and conditions.

8. Acceptance.

- 8.1. **Dominion Software or Dominion Hardware Testing.** After delivery of Dominion Software or Dominion Hardware, Customer will conduct Acceptance testing of such units, in accordance with the Acceptance criteria developed and updated, from time to time, by Dominion and 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 such Dominion Software or Dominion Hardware.
- 8.2. **System Acceptance Testing.** To the extent not tested as part of the testing pursuant to Subsection 8.1, upon completing the installation of the System, Customer will conduct System Acceptance testing, according to the Acceptance test procedures developed and updated, from time to time, by Dominion and 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 agreed upon by Customer, Customer will notify Dominion in writing within five (5) business days. In such event, Dominion will, at its own expense, repair or replace the rejected Dominion Software, Dominion Hardware, or System within thirty (30) 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.
- 8.4. **System Conformance.** Customer will not refuse to grant Acceptance of the System, in whole or in part, solely for the reason that it fails to conform with the specifications, requirements and functions set forth in the System documentation if such failure is in a manner that does not materially affect the overall performance of the System, in whole or in part, but Dominion shall provide a plan of action to cure such non-conformity with reasonable dispatch.

9. Warranties.

- 9.1. **Dominion Software Warranty.** The Dominion Software warranty is subject to the terms and conditions of Exhibit B - the Software License Terms and Conditions.
- 9.2. **Third Party Products.** The warranties in this Section 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 Terms.** 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 until one year after Acceptance or through any annual warranty period.

9.4. **Dominion Hardware Warranty Services.** If any Dominion Hardware component fails to operate in conformity with its specifications during the warranty period, 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's 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 the requested inspections date. Dominion shall perform the annual PM and will replace any and all parts that fail due to normal use during the warranty period at its sole cost. If Customer requests any maintenance prior to or after the scheduled PM, those additional on-site services will be available at Dominion's then current time and material rates. Regardless of whether services are provided during the scheduled PM or outside of the scheduled PM, there are no 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 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; and
- 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 WARRANTIES, AND REPRESENTATIONS, 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. Insurance.

10.1 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:

<u>Insurance</u>	<u>Minimum Limit</u>
Umbrella Liability	\$5 million per occurrence
Professional Liability	\$5 million per occurrence \$10 million aggregate
Worker's Compensation	Statutory
Employers Liability	\$1 million
Commercial General	
• Personal/Bodily Injury	\$2 million per occurrence \$5 million aggregate
• Property Damage	\$2 million per occurrence \$5 million aggregate
Commercial Automobile Liability (non-owned vehicles)	
• Bodily Injury/Property Damage	\$2 million combined single limit per occurrence

10.2 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.

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. Each Party shall treat the other Party's Confidential Information as confidential within its respective organization and 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.
- 13.2. Subject to the requirements of Customer's public record laws ("PRL"), neither Party shall disclose the other Party's Confidential Information to any person outside its respective organization 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.
- 13.3. Any specific information that Dominion claims to be confidential must be clearly marked or identified as such by Customer. To the extent consistent with PRL, Customer shall maintain the confidentiality of all such information marked by Dominion as confidential. If a request is made to view such Confidential Information, Customer will notify Dominion of such request 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, Customer may release the requested information on or after the date so 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 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 serve written notice upon the violating Party of termination, and seek legal remedies for breach of contract as allowed hereunder. If the violation 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 and in good faith to cure the violation as soon as practicable.

15.2 For Non-Appropriation of Funds. Customer shall not be obligated for payments hereunder for any future fiscal year unless or until Customer appropriates funds for this Agreement in Customer's budget for that fiscal year. If funds are not appropriated, then this Agreement may be terminated by Customer at the end of the last fiscal year for which funds were appropriated. Termination of this Agreement by Customer under this Section 15.2 shall not constitute a breach of this Agreement by 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. If Customer notifies Dominion that sufficient funds have not been appropriated or if sufficient funds have not been appropriated to compensate Dominion in accordance with the payment terms of 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 extent permitted by law.

17. Survival. The provisions of Sections 2, 9, 11, 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 only courts of competent jurisdiction located in the State of California will have jurisdiction to hear and determine disputes under or 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. 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; pandemics; 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. Notwithstanding the foregoing, both Parties shall use commercially reasonable efforts to minimize the adverse consequences of any such circumstances. This Section shall not operate to excuse any Party from paying amounts that are owed pursuant to this Agreement.

21. Independent Contractor. Dominion and its agents and employees are independent contractors performing professional services for Customer and are not employees of Customer. Dominion and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Customer vehicles, or any other benefits afforded to employees of Customer as a result of Customer's entering into this Agreement. Dominion acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

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 delivered personally 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 Customer:

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

23. Third-Party Beneficiary. No person shall be a third-party beneficiary pursuant to this Agreement. No obligation of Dominion or Customer may be enforced against Dominion or Customer, as applicable, by any person not a party to this Agreement.

24. Entire Agreement. This Agreement and its Exhibits, which are incorporated herein by this reference, constitute the entire agreement, understanding and representations between Dominion and 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 Customer and Dominion, and must thereafter be incorporated as an addendum or 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

John Poulos

PRINTED NAME

President & CEO

TITLE

06/23/2020

DATE

COUNTY OF MONTEREY

• DocuSigned by:

Michael R. Derr

-367942F6F649429

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

10/12/2020 | 7:35 PM PDT

DATE

EXHIBIT A
TO THE MOBILE BALLOT PRINTING SYSTEM AND LICENSE AGREEMENT
BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.
AND THE COUNTY OF MONTEREY

PRICING AND PAYMENT SUMMARY

1. Pricing Summary - 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	UNIT PRICE	EXTENSION
In-Person Voting Solution: Polling Location Hardware			
Mobile Ballot Printing (MBP) Kit Oki Data C712 includes: MBP printer, dell laptop, cables	2	\$ 5,800.00	\$ 11,600.00
Mobile Ballot Printing Software Application License	1	\$ 4,000.00	\$ 4,000.00
Training per day	1	\$ 2,000.00	\$ 2,000.00
Purchase Total:			\$ 17,600.00

ANNUAL FEES

ANNUAL LICENSE FEE*			
Mobile Ballot Printing License Fee	1	\$ 800.00	\$ 800.00
Mobile Ballot Printing Hardware Warranty Fee	2	\$ 375.00	\$ 750.00
Annul Fees Total:			\$ 1,550.00

2. Payment Schedule - Dominion shall provide invoices to Customer as described below. Customer shall pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. Payments specified in this Exhibit are exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which taxes (other than income taxes owed by Dominion) shall be reimbursed by Customer.

ID	Payment Invoice Detail	Payment Amount
1	System Acceptance	\$ 17,600.00
2	Annual Fees*	\$ 1,550.00

* Beginning August 1, 2021 and each year thereafter, Dominion reserves the right to adjust the Annual Fees within five percent (5%) of the then current fee.

EXHIBIT B

SOFTWARE LICENSE TERMS AND CONDITIONS

This Exhibit B is part of the Agreement between Dominion and Customer to which it is attached.

1. Definitions. Capitalized terms used herein have the meaning given in the Agreement unless otherwise defined herein.

1.1. **“Agreement”** means the agreement between the Parties for the use of the licensed Software to which this Exhibit B is attached and incorporated into.

1.2. **“Licensee”** means Customer, as the term is defined in the Agreement.

1.3. **“Licensor”** means Dominion Voting Systems, Inc.

1.4. **“Software”** means Dominion Software, as the term is defined in the Agreement.

1.5. **“Specifications”** means descriptions and data regarding the features, functions and performance of the Software, as set forth in user manuals or other applicable documentation provided by Licensor.

1.6. **“Third-Party Products”** means any software or hardware obtained from third-party manufacturers or distributors and provided by Licensor hereunder.

2. License Terms.

2.1. **License Limitations.** Licensee’s use of the Software pursuant to the License granted in the Agreement is subject to the terms herein. Licensee may only use the Software for its own internal business purposes and conducting elections and solely in conjunction with the EMS Hardware. The License shall only be effective during the Term and cannot be transferred or sublicensed.

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. **Third-Party Products.** When applicable, Licensor hereby sublicenses any software that constitutes or is contained in Third-Party Products, in object code form only, to Licensee for use during the Term.

2.4. **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 as a service bureau 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.

2.5. **Intellectual Property Infringement Indemnification.** If a third party claims that the Software or System infringes any United States patent, copyright, trade secret or similar

intellectual property right, Dominion shall defend Licensee against such claim at Dominion's expense and pay all damages that a court finally awards against Licensee. If such a claim is made or appears possible, Dominion shall, within sixty (60) days of such claim, and at its option: (a) secure for Licensee the right to continue to use the infringing portion of the Software or System; or (b) modify or replace the Software and System so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Dominion shall require Licensee to return the Software or System, and Dominion shall refund Licensee amounts calculated pursuant to Section 15.4 of the Agreement. The foregoing notwithstanding, Dominion shall have no obligation to indemnify Licensee for any infringement claim based on Licensee's modification or misuse of the Software, if the claim would have been avoided had the Software not been modified or misused.

3. Payment. In consideration of the grant of the license, the Licensee shall pay the license fees set forth in the Agreement and Exhibit A of the Agreement.

4. Upgrades and Certification. During the Term, Licenser may provide upgrades to Licensee under the following terms and conditions.

4.1. **Upgrades.** In the event that Licensor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the State of California, Licensor shall make the certified Software upgrade available to the Licensee at no additional cost.

4.2. **Certification Requirement.** Notwithstanding any other terms of this Agreement, Licensor shall not provide, and shall not be obligated to provide under this Agreement any upgrade, enhancement or other software update that has not been certified under the applicable provisions of the election laws and regulations of the State of California.

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

5.1. 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;

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

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

5.4. 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.

6. Return of Software. Upon termination or expiration of this Agreement, Licensee shall 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.

7. Warranties. The following warranties will apply to all Software during the Term.

7.1. **Software Warranty Terms.** Lessor warrants that the Software will function substantially in accordance with the Specifications during the Term. The Lessor also warrants that the Software shall comply with the State of California certification requirements and election laws (collectively the "Requirements") in effect as of the date the Software is certified by the State of California. This provision applies to the initially installed Software as well as any subsequent upgrades pursuant to Section 3 herein. However, the Lessor will not be required to make modifications to the Software or System as a result of changes in the Requirements. The foregoing warranty will be void in the event of the Software (i) having been modified by any party other than Lessor or (ii) having been used by the Licensee for purposes other than those for which the Software was designed by Lessor. If Lessor establishes that a failure of the foregoing warranty that is reported by Licensee is not covered by the foregoing warranty, the Licensee shall be responsible for the costs of Lessor's investigative and remedial work at Lessor's then current rates.

7.2. **Corrections.** If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications or Requirements, the Licensee shall provide Lessor with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Licensee can reproduce the material failure to Lessor. The Lessor shall correct the deficiencies, at no additional cost to the Licensee and incorporate such corrections into the next version certified by the State of California.

7.3 **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, Lessor shall pass through to Licensee all warranties such manufacturers make to Lessor regarding the operation of such Third-Party Products.

7.4. **NO OTHER WARRANTIES, EXCEPT AS SET FORTH IN THE AGREEMENT AND HEREIN, LICENSOR 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. For the purposes of this Agreement, the following are defined terms:

- 1.1. "Derivative Works" means 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" means any ballot created for use with any voting system owned or licensed by the Licensor.

2. Print Copyright License and Use.

- 2.1. **Copyright License Grant.** Licensor grants to the Licensee a non-exclusive, non-transferable copyright license to print, reproduce, distribute or otherwise copy the Licensor's Voting Systems' Ballots and any Derivative Works (collectively the "Materials") pursuant to the terms and conditions of this Schedule A.
- 2.2. **Copyright License Use.** Other than as expressly set forth herein, (a) Licensor grants no other licenses, expressly or by implication, and (b) Licensor's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Licensor to Licensee or any third party, (c) the copyright license granted herein cannot be transferred or sublicensed and the Voting Systems' Ballots or Derivative Works cannot be reproduced by any third party without the prior written consent of the Licensor, including without limitation:
 - (i) any commercial or non-commercial printer
 - (ii) any third party vendor using ballot on demand system.
- 2.3. **Rights and Interests.** All right, title and interest in the Material, including without limitation, any copyright, shall remain with the Licensor.

3. No Copyright Warranties. EXCEPT AS SET FORTH HEREIN, LICENSOR DISCLAIMS ALL 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.