

MANAGED SERVICES AGREEMENT  
BY AND BETWEEN  
HAMILTON COUNTY, TN, HAMILTON COUNTY ELECTION COMMISSION, AND  
DOMINION VOTING SYSTEMS, INC.

This Managed Services Agreement (the "Agreement"), dated 1<sup>st</sup> day of March 2020 (the "Effective Date"), is made by and between Hamilton County, TN and Hamilton County Election Commission (jointly defined as "Customer") and Dominion Voting Systems, Inc., ("Dominion"). This Agreement may refer to Dominion and the Customer together as the "Parties," or individually as a "Party."

WHEREAS, the Customer desires to purchase voting system services, and software use licenses; and

WHEREAS, Dominion designs, manufactures, licenses, and provides services for its 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 furnish the System (as defined herein) to the 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.

Exhibit A: Pricing and Payment 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 variations thereof, means the successful completion by the 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") maintains as trade secrets or confidential and which are disclosed to a another Party (the "Receiving Party") in tangible form conspicuously 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<sup>®</sup> system hardware as more specifically described in Exhibit A.

- 2.4. "Dominion Software" means software and firmware programs licensed to the Customer by Dominion and any associated documentation as more specifically described in Exhibit A.
- 2.5. "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.
- 2.6. "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, 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 February 29, 2028 unless sooner terminated or extended by the Parties.
- 4. **Dominion's Responsibilities.** Dominion shall:
  - 4.1. Deliver the System and services as described in Exhibit A - Pricing and Payment Summary and Deliverables Description.
  - 4.2. Provide the Customer with a Dominion Software use License as described in Exhibit B - Software License Terms.
  - 4.3. Assign a Dominion project manager ("Dominion Project Manager") to oversee the general operations of the project. The Dominion Project Manager will be the primary contact for all project needs. The Dominion Project Manager will be responsible for all deliverables and services including, resource planning and coordination, product delivery, issue resolution and for all administrative matters such as invoices and payments.
  - 4.4. Assist in the Acceptance testing process as required by Section 8 herein.
  - 4.5. Provide Customer with one (1) reproducible electronic copy of the documentation.

- 4.6. 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 this Section 5 are exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar form demonstrating its exempt status.
- 5.2. Assign a Customer project manager ("Customer Project Manager"), who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel and equipment. The Customer Project Manager shall 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. Customer shall provide reasonable access and entry into all Customer property required by Dominion to perform the services described in this Agreement. All such access and entry shall be provided at Customer's expense.
- 5.5. When applicable, for election setup and database creation services as 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, then 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. Title to the System, or any portion thereof, excluding software and firmware, will pass to Customer upon delivery.

6.2. Software. Dominion Software and other software is licensed, not sold. The original and any copies of the Dominion Software, or other software, in whole or in part, including any subsequent upgrades, 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 delivered to the 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 Testing. After delivery of Dominion Software or Dominion Hardware, the Customer will conduct Acceptance testing of such units, in accordance with the Acceptance criteria developed and updated, from time to time, by Dominion. 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 Subsections 8.1, upon completing the installation of the System, the Customer will conduct system acceptance testing, according to the Acceptance test procedures developed and updated, from time to time, by Dominion. 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, Customer will notify Dominion in writing within ten

(10) business days. 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.

## **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.
- 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 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 during the Agreement Term.
- 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. The following services are not covered by this Agreement, but may be available at Dominion's current time and material rates:
    - 9.4.1.1. Replacement of consumable items including but not limited to batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices, scanner rollers, disks, etc.;
    - 9.4.1.2. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;
    - 9.4.1.3. Repair or replacement of Dominion Hardware modified by any person other than those authorized in writing by Dominion;
    - 9.4.1.4. 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. 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. Notwithstanding the foregoing, both Parties shall use their 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.

**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) arising out of a claim, suit or action that the System infringes, violates, or misappropriates a Third Party's patent, copyright, trademark, trade secret or other intellectual property or proprietary rights.

**12. Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT, AND TO THE EXTENT ALLOWED BY TENNESSEE STATE LAW, 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 FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, 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 their respective organizations 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 the Customer's public record laws ("PRL"), 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 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 the 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, 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 a 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 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 and in good faith to cure the breach as soon as practicable.

**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 Tennessee, and the courts of competent jurisdiction located in the State of Tennessee 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. Independent Contractor.** Dominion and its agents and employees are independent contractors performing professional services for the Customer and are not employees of the 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 the Customer as a result of 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.

**21. 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 18<sup>th</sup> St., Ste. 210  
Denver, CO 80202

If to the Customer:

Hamilton County Election Commission  
Attn: Administrator of Elections  
700 River Terminal Road  
Chattanooga, TN 37406

With Copy to:

Hamilton County County Attorney's Office  
Attn: Rheubin Taylor  
625 Georgia Avenue, Suite 204  
Chattanooga, TN 37402



**22. 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 Addendum hereto.

**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.

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

2/25/20 20  
\_\_\_\_\_  
DATE

**HAMILTON COUNTY ELECTION COMMISSION**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

MICHAEL S. WARDEN  
\_\_\_\_\_  
PRINTED NAME

Chairman  
\_\_\_\_\_  
TITLE

3.3.20  
\_\_\_\_\_  
DATE

**HAMILTON COUNTY, TENNESSEE**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Jim M. Copping  
\_\_\_\_\_  
PRINTED NAME

County Mayor  
\_\_\_\_\_  
TITLE

3-12-20  
\_\_\_\_\_  
DATE

## **EXHIBIT A**

### **HAMILTON COUNTY, TN VOTING SYSTEM AND MANAGED SERVICES AGREEMENT PRICING SUMMARY AND DELIVERABLES DESCRIPTION**

#### **1. Pricing/Payment Summary and Descriptions**

- 1.1 Pricing and Payment Summary.** The total annual managed service contract pricing shall equal **\$997,253.00** total for the eight (8) years. 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 in U.S. Dollars. Pricing include shipping.

**1.1.1 Year 1: 3/1/2020 – 2/28/2021: \$104,434.00** invoice will be issued on 2/1/2020

**1.1.2 Year 2: 3/1/2021 – 2/28/2022: \$109,656.00** invoice will be issued on 2/1/2021

**1.1.3 Year 3: 3/1/2022 – 2/28/2023: \$115,139.00** invoice will be issued on 2/1/2022

**1.1.4 Year 4: 3/1/2023 – 2/29/2024: \$120,896.00** invoice will be issued on 2/1/2023

**1.1.5 Year 5: 3/1/2024 – 2/28/2025: \$126,940.00** invoice will be issued on 2/1/2024

**1.1.6 Year 6: 3/1/2025 – 2/28/2026: \$133,287.00** invoice will be issued on 2/1/2025

**1.1.7 Year 7: 3/1/2026 – 2/28/2027: \$139,952.00** invoice will be issued on 2/1/2026

**1.1.8 Year 8: 3/1/2027 – 2/28/2028: \$146,949.00** invoice will be issued on 2/1/2027

2. **System Description** - Prices of equipment, technical facilities, software, and other related services for voting, vote counting, and result processing.

DESCRIPTION	QTY
<b>Central Scanning Solution: Absentee / Central Count</b>	
ImageCast Central Kit: Includes Canon Model DR-G1130, Computer w/ 23" Monitor, Keyboard & Mouse, One 8GB USB Flash Drive & One I-Button, patch cable, scanner	1
Canon Model DR-G1130 scanner (ONLY)	1
<b>In-Person Voting Solution: Polling Location Hardware</b>	
Mobile Ballot Printing (MBP) Kit (Standard): Includes OKI 332dn, Dell e3480 laptop, USB printer	4
Mobile Ballot Printing (MBP) Kit (Portable high volume): Includes OKI C712dn, Dell e3480 laptop, USB printer cable	16
Mobile Ballot Printing (MBP) Kit (In-Office high volume): Includes OKI C931e, Dell e3480 laptop, USB printer cable	1
<b>Election Management Hardware</b>	
EMS Standard Server Kit (R630)	1
EMS Client Workstation Configuration Kit	1
Adjudication Workstation Configuration Kit	1
<b>Software</b>	
Adjudication Application – Initial License Fee	1
Automated Test Decks – Initial License Fee	1
Mobile Ballot Printing – Initial License Fee	1
<b>Implementation and Training</b>	
Project Management	5
Training	5
<b>Annual Software Licenses</b>	
Democracy Suite EMS License	1
ICC Adjudication Application License	1
Automated Test Deck Application License	1
Mobile Ballot Printing Application License	1
ICC Annual Firmware License	2
ICP Annual Firmware License	130
<b>Annual Hardware Warranty</b>	
ImageCast Central (ICC)	2
Mobile Ballot Printing (Standard): OKI 332dn	4
Mobile Ballot Printing (Portable high volume): OKI C712dn	16
Mobile Ballot Printing (In-Office high volume): OKI C931e	1
ImageCast Precinct (ICP)	130

### 3. Detailed Deliverables Description

- 3.1 **ImageCast Central Scanner (ICC).** Each ImageCast Central Scanner includes the following components:
- 3.1.1 Canon DR-G1130 high speed document scanner
  - 3.1.2 Workstation with pre-loaded software
  - 3.1.3 iButton Security Key
  - 3.1.4 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® Software.** The Parties will enter into software licenses for the ImageCast software, substantially in the form of Exhibit B to this Agreement. The Dominion software includes, without limitation:
- 3.2.1 **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 **ImageCast Adjudication Application.** The Adjudication application is a client and server application used to review and adjudicate ImageCast Central Scanner 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 eliminates the need to physically rescan ballots, which can potentially damage the originals and cause chain-of-custody concerns.
- 3.4 **Mobile Ballot Printing** is an application used to search, preview and print ballots via a local printer device. The application makes use of ballot information and PDFs produced by the Election Event Designer application and information provided through the customer voter registration system.
- 3.5 **Travel and Expenses included.** All costs of Dominion transportation, lodging and meal expenses are included at no additional costs during the Agreement Term.
- 3.6 **Ongoing telephone support.** Telephone support shall be available for Customers during the Term of the Agreement at no additional costs.
- 3.7 **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.

## 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 the Software License fee, on a pro-rate basis. 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, Licensors may provide upgrades to Licensee under the following terms and conditions.

4.1. Upgrades. In the event that Licensors, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the Customer's State, Licensors 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, Licensors 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 Customer's State.

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

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 Licensors all Software in its possession or control, or destroy all such Software from any electronic media, and certify in writing to Licensors that it has been destroyed.

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

7.1. Software Warranty Terms. Licensor warrants that the Software will function substantially in accordance with the Specifications during the Term. The Licensor also warrants that the Software will comply with the voting system certification requirements and laws of the Customer's State (collectively the "Requirements") in effect as of the date the Software is certified by the certification authority of the Customer's State. This provision applies to the initially installed Software as well as any subsequent upgrades pursuant to Section 4 herein. However, the Licensor 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 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 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 Licensor's investigative and remedial work at Licensor'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 Licensor 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 Licensor. The Licensor shall correct the deficiencies, at no additional cost to the Licensee and incorporate such corrections into the next version certified by the Customer's State.

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