



SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is made on the 1st day of March, 2018 (“Effective Date”) BETWEEN

DOMINION VOTING SYSTEMS, INC., having its principal office at 1201 18th Street, Suite 210, Denver, CO 80202 (“Licensor”)

AND

COUNTY OF EL DORADO, having its principal office at 330 Fair Lane, Placerville, CA 95667-8001 (“Licensee”)

WHEREAS The Licensee wishes the Licensor to grant to it a license to use the Software as defined in this agreement and the Licensor is agreeable to granting such a license subject to the following terms and conditions:

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions.

1.1. “Party” or “Parties” Licensor and Licensee may hereinafter be referred to individually as a Party and collectively as the Parties.

1.2. “Software” means software and firmware licensed by Licensor hereunder, in object code form, including all documentation therefore.

1.3. “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.

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

2. **Term.** This Agreement is effective as of the Effective Date and expires on February 28, 2020 (“Initial Period”), unless earlier terminated or extended as provided herein. After the Initial Period, Licensee may extend the effectiveness of this Agreement for one (1) additional year (“Software Renewal Term”) by paying the Annual Software License Fee set forth in Schedule A of the Agreement within thirty (30) days of receiving an invoice from Licensor. The period during which this Agreement is in effect is referred to herein as the “Term”. On expiration of the Term (a) the licenses granted in this Agreement will automatically terminate, (b) Licensee shall cease any further use of the Software, and (c) return the Software pursuant to Section 12 herein. Notwithstanding such expiration or termination, Section 4 (Payment) to the extent any payment is due and Section 7 (Confidential Information) will survive any expiration or termination of this Agreement in accordance

to their respective terms. The terms of this Agreement that do not survive expiration or termination will nonetheless be effective in determining the Parties' rights and obligations for events taking place before such expiration or termination.

3. License Terms.

3.1. License to Software. Subject to the terms of this Agreement, Licensor grants Licensee a non-exclusive, non-transferrable license to use the Software solely for the Licensee's own internal business purposes and solely in conjunction with the Software and hardware. This License shall only be effective during the Term and cannot be transferred or sublicensed. This License includes the types and numbers of copies specified in Schedule A of the Software identified therein.

3.2. Print Copyright License. Subject to the Print Copyright License terms and conditions as defined in Schedule B to this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable print copyright license as defined in Schedule B.

3.3. Third-Party Products. Subject to the terms of this Agreement and when applicable, Licensor agrees to sublicense any software that constitutes or is contained in Third-Party Products, in object code form only, to Licensee for use during the Term as part of the System for the purposes described in Section 3.1 of this Agreement. This sublicense is conditioned on Licensee's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which such software is provided.

3.4. No Other Licenses. Other than as expressly set forth in this Agreement, (a) Licensor grants no 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. Without limiting the foregoing sentence, Licensee agrees to use each copy of the Software outlined in Schedule A hereto, with which the copy is supplied, agrees not to use any 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 any Software. The Licensee shall have no power to transfer or grant sublicenses for the Software. Any use of all or any portion of the Software not expressly permitted by the terms of this Agreement is strictly prohibited.

4. **Payment.** In consideration of the grant of the license, the Licensee shall pay Licensor the Annual Software License Fee set forth in Schedule A of the Agreement within thirty (30) days of receiving an invoice from Licensor. Licensee is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Agreement. If Licensee is exempt from such taxes or duties, Licensee shall provide Licensor with a tax exemption certificate.

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

5.1. Upgrades. In the event that Licensor, at its sole discretion, certifies a software upgrade under the applicable provisions of the election laws and regulations of the

Licensee's State, Licensor may make the certified software upgrade available to the Licensee. The Licensee shall bear the costs and labor of installing the software upgrade.

5.2. **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 Licensee's State.

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

6.1 **Software.** Licensor warrants that the Software, for a period of one (1) year following delivery to the Licensee, will function substantially in accordance with the Specification. If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications, 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 Licensee's exclusive remedy under this warranty shall be, at Licensor's sole option (a) return of the Annual Software License Fee set forth in Schedule A paid by the Licensee (if any) for the Software, or (b) Licensor shall use reasonable efforts to correct the material failure of the Software. 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 material failure 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 in this Section 6 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.** 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.

7. **Confidential Information.** Licensee acknowledges that the Software and related documentation (collectively, the "Information") (i) constitutes confidential and proprietary trade secrets, disclosure of which would materially injure Licensor's business and competitive position, and (ii) is exempt from disclosure under, the terms of any applicable freedom of information, open public records act or similar statute ("FOIA Statute") unless otherwise required to disclose by law. Licensee therefore agrees, to the maximum extent permitted by law, to keep confidential and not to disclose any of the Information to any other person or entity, or use such Information for any purpose other than as expressly permitted by this Agreement. Licensee shall limit disclosure to employees of Licensee having a need to know to perform their duties to Licensee who have agreed in writing to be bound by the restrictions of this Section 7. In the event Licensee receives a request for Information under the FOIA Statute, Licensee shall inform Licensor of such request within ten (10) days of Licensee's knowledge or such shorter period as necessary under the FOIA Statute to avoid prejudice to Licensor's ability to oppose disclosure. In the event Licensee is nonetheless required by law to disclose any of the Information, Licensee shall give written notice to Licensor at the earlier of (i) up to twenty (20) business days prior to disclosure or (ii) such longer period as may be required by applicable law.

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

8.1. 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;

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

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

8.4. 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.

9. Limitation of Liability. Licensor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement and in connection with the Software 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 License fee paid by the Licensee to Licensor under this 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 special or consequential loss or damage whatsoever, howsoever arising, incurred by either 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.

10. Force Majeure. Licensor's obligations hereunder will be suspended so long as its performance is impeded or prevented by causes beyond Licensor's reasonable control, including natural disasters, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities.

11. Termination for Cause. If either Party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Agreement as of a termination date specified in that notice or in a subsequent notice delivered within the 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the Party receiving the notice begins curative action within the 30-day period and thereafter proceeds with diligence and in good faith to cure the breach as soon as practicable.

12. 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, if so requested by Licensor, destroy all such Software from any electronic media, and certify in writing to Licensor that it has been destroyed.

13. Miscellaneous.

13.1 Assignment. Neither Party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other Party; provided that Licensor may subcontract Services upon 30 days' prior written notice to Licensee. Any attempted assignment in violation of this Section 13.1 will be null and void.

13.2 Severability. If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law.

13.3 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

13.4 Governing Law. This Agreement will be construed under the laws of the Customer's state identified on Page 1 of this Agreement, and the state and federal courts within the Customer's state shall have non-exclusive jurisdiction for all actions to enforce this Agreement.

13.5 Waiver. No waiver or failure by a Party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.

13.6 Notices. All notices under this Agreement will be delivered personally, email, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the addresses set forth on Page 1. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier or such mailing by U.S. mail. The County Officer or employee with responsibility for administering this Agreement is William Schultz, Recorder Clerk - Registrar of Voters, as County Contract Administrator, or his successor.

13.7 Interpretation. This Agreement, including all Schedules, is the complete and final expression of the Parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the Parties regarding such subject matter. In the event of any conflict between these Terms and Conditions and any provisions set forth in any other part of this Agreement, these Terms and Conditions will prevail. No amendment or supplement to this Agreement is effective unless in writing and signed by both Parties' authorized representatives. The word "include" (or any of its derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Agreement.

13.8 No Third Party Beneficiaries. Licensor and Licensee agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

DOMINION VOTING SYSTEMS, INC.

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

DOMINION VOTING SYSTEMS, INC.

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

COUNTY OF EL DORADO, CA

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

SCHEDULE A

PRICING AND PAYMENT SCHEDULE

Annual Software License Fee

Product Description	2018 Price	2019 Price	2020 Price
EWA-GEMS Software License	\$6,624.58	\$6,823.32	\$7,028.02
EWA Security Key Card Tool	\$1,022.02	\$1,083.34	\$1,115.84
Total Price	\$7,646.60	\$7,906.66	\$8,143.86

2018 Annual Software License Fee – Not to exceed \$7,646.60, for 3/1/18-2/28/19

2019 Annual Software License Fee – Not to exceed \$7,906.66 for 3/1/19 – 2/28/20

2020 Annual Software License Fee – Not to exceed \$8,143.86, for an extended year; 3/1/20-2/28/21

Payment Terms:

1. Licensee shall pay the amounts indicated within 30 days from receipt of Licensor's invoice.
2. The total amount of this Agreement shall not exceed \$23,697.12.

SCHEDULE B

PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

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

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 or any Derivative Works (collectively the "Materials") pursuant to the terms and conditions of this Schedule B.
- 2.2. Copyright License Use. Other than as expressly set forth herein, (a) Licensor grants no other licenses, expressly or by implication, (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, and (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. 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.