

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

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

RECITALS:

- A. Customer desires to license certain of DIMS proprietary software, as described on Attachment 2 (the "Software"), and to obtain maintenance and support services for the Software.
- B. DIMS has agreed to provide such license and services, subject to the terms and conditions of this Agreement.

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

**ARTICLE 1
LICENSE OF SOFTWARE**

1.1 **Grant of License.** Subject to the terms and conditions of this Agreement and Customer's timely payment of all ongoing license and maintenance and support services fees, DIMS hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full-time employees to use the Software and all related operating instructions, user manuals and training materials supplied by DIMS (collectively the "Documentation") in El Dorado County, California, ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of managing the voter registration process and other election-related activities in the Jurisdiction. The license does not permit Customer to take any of the following actions:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the DIMS Software or Documentation by any third party without DIMS' prior written consent; or
- c. Cause or permit any change to be made to the Software without DIMS' prior written consent.
- d. Cause or permit any copying, reproduction or printing of any output generated by the Software in which DIMS owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent).

1.2 **Delivery; Risk of Loss.** DIMS has previously delivered the Software to Customer. Risk of loss with respect thereto passed to Customer upon such delivery to Customer's designated location

1.3 **License Fee.** In consideration for DIMS' grant of the license in Section 1.1, Customer shall pay DIMS the License Fee set forth on Attachment 1.

1.4 **Term of License.** The license granted in Section 1.1 commenced upon delivery of the Software, and shall continue until the first to occur of the following: (a) Customer ceases to use the Software; (b) Customer fails to pay the consideration due for the ongoing license and maintenance and support services; or (c) Customer breaches any material provision of this Article 1. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to DIMS, or (if requested by DIMS) destroy the Software and Documentation and certify in writing to DIMS that such destruction has occurred.

1.5 **Disclaimer of Warranties.** DIMS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

1.6 **Source Code.** The license granted in Section 1.1 does not permit Customer to use the source code for the Software. The source code will remain the property of DIMS and may not otherwise be used by Customer.

1.7 **Add-Ons and New Products.** From time to time, DIMS may offer new features which can be added on to the Software ("Add-Ons") and new software products ("New Products") to Customer. Customer may elect to license an Add-On or New Product upon the payment of an applicable license fee to DIMS. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the DIMS Software upon payment of such license fee.

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

1.9 **Indemnification By Customer.** Customer shall indemnify and hold harmless DIMS from and against any and all Adverse Consequences arising out of or relating to any Third Party Infringement Claim resulting from (a) Customer's failure to timely install and use any Update (as defined below) provided to it by DIMS; (b) the use of the Software in combination with other equipment, hardware or software not meeting DIMS' specifications for use with the Software; (c) Customer's modification or alteration of the Software without the prior written consent of DIMS; or (d) Customer's election not to receive, or to terminate, the Software Maintenance and Support. DIMS shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 1.10, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's

expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

ARTICLE 2 SOFTWARE MAINTENANCE AND SUPPORT

2.1 **Term; Termination.** Software Maintenance and Support (as defined below) will be provided for a one year period beginning on August 1, 2009 (the "Software Maintenance Term"). The Software Maintenance Term shall automatically renew for three (3) successive one year periods unless terminated by the first to occur of the following: (a) a termination of the license for the Software; (b) either party's election to terminate it upon expiration of the Software Maintenance Term or any renewal thereof, written notice of which election shall be given to the other party at least sixty (60) calendar days prior to such annual expiration date, (c) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (d), which will require no notice), or (d) the date which is thirty (30) days after Customer fails to pay any amount due to DIMS under this Agreement. The termination of the Software Maintenance Term shall not relieve Customer of its liability to pay any amounts due to DIMS hereunder.

2.2 **Services.** DIMS shall provide maintenance and support services for the Software ("Software Maintenance and Support") (a) to enable the Software to perform in all material respects in accordance with its Documentation, and (b) to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by DIMS and each party's obligations with respect to such services are set forth on Attachment 3.

2.3 **Updates.** During the Software Maintenance Term and any renewal thereof, DIMS may provide new releases, upgrades or maintenance patches to the Software, along with appropriate Documentation ("Updates"), on a schedule defined by DIMS. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "Software", and shall be subject to the terms and conditions of DIMS' license of the Software, upon delivery. Customer shall install Updates in accordance with DIMS' recommended instructions or may request that DIMS install the Updates. DIMS may charge Customer at its then-current rates to (a) deliver the Updates, (b) install Updates, (c) provide maintenance and support which is required as a result of Customer's failure to timely install an Update, or (d) provide training on the use of the Updates. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by DIMS. If Customer proposes changes in the Software to DIMS, such proposals will become DIMS' property. DIMS may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. Customer shall be responsible to ensure that it has installed and is using only certified version of Software in accordance with applicable law. Customer shall pay DIMS for any Update which is required due to a change in federal, state or local law.

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

2.5 **Conditions.** DIMS shall not be obligated to provide Software Maintenance and Support for any item of Software if such item requires such services due to (a) repairs, changes, modifications or alterations not authorized or approved by DIMS, (b) accident, theft, vandalism, neglect, abuse or use which is not in accordance with instructions or specifications furnished by DIMS, (c) causes beyond the reasonable control of DIMS or Customer, including natural disaster, fire, flood, unusually severe weather or Acts of God, or (d) Customer's failure to install and use the most recent Update provided to it by DIMS. DIMS shall likewise not be obligated to provide Software Maintenance and Support if Customer does not notify DIMS within 24 hours after it knows of the need for such services or is otherwise not in compliance with its obligations under this Agreement. Replacement versions of Software requested by Customer as a result of items set forth in this Section 2.5 or as a result of Customer's actions or inactions shall be billable to Customer at DIMS' then current rates.

2.6 **Fees.** In consideration for DIMS' agreement to provide Software Maintenance and Support under this Agreement, Customer shall pay to DIMS the ongoing License and Software Maintenance Fee set forth on Attachments 1 on a monthly basis in arrears for the Software Maintenance Term. The License and Software Maintenance Fee shall be in addition to any fees or charges separately referred to in any Section of this Agreement. The License and Software Maintenance Fee for the Software Maintenance Term shall be due and payable within thirty (30) day from after execution of the Agreement. The Software Maintenance Fees for any renewal period shall be the then current fees in effect and are due and payable no later than thirty (30) days prior to the beginning of such renewal period. If Customer elects to receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, DIMS will charge an incremental License and Software Maintenance Fee for such services. In the event Customer terminates this Agreement through no fault of DIMS and later desires to subscribe for a maintenance and support plan, DIMS will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, maintenance and support coverage.

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

ARTICLE 3 MISCELLANEOUS

3.1 **Taxes; Interest.** Customer will provide DIMS with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse DIMS for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by DIMS' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to DIMS will bear interest at

the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

3.2 Limitation of Liability. DIMS will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (a) Customer's failure to install and use the most recent Update, or the second most recent update, provided to it by DIMS, or (b) Customer's election not to receive, or to terminate, the Software Maintenance and Support. Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. DIMS' liability to Customer shall be limited to the total amount of license and maintenance fees actually paid hereunder by Customer to DIMS. Any action by Customer against DIMS shall be commenced within 1 year after the cause of action has accrued.

3.3 Excusable Nonperformance. If DIMS is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. DIMS agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.4 Confidentiality. During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the terms of this Agreement, the Documentation, and any other information relating to Customer's or DIMS' operations, services, products, research or development. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons will be informed of and will agree to the provisions of this Section 3.4, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.

3.5 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties.

3.6 **Entire Agreement.** This Agreement, including Attachment 1, Attachment 2 and Attachment 3 (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of DIMS to a successor who has asserted its intent to continue the business of DIMS, neither party may assign or transfer this Agreement without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. DIMS may engage duly qualified subcontractors to perform certain of the Software Maintenance and Support, but shall remain fully responsible for such performance.

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

3.8 **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. DIMS is providing Software and Software Maintenance and Support to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. DIMS will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. DIMS may engage subcontractors to provide certain of the Software or Software Maintenance and Support, but shall remain fully responsible for such performance. The provisions of Sections 1.4, 1.5, 1.6, 1.7, 1.9, 1.10, 2.1, 2.3, 2.7, 3.1, 3.2, 3.4 and this Section 3.8 shall survive the termination of this Agreement, to the extent applicable.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

DATA INFORMATION MANAGEMENT
SYSTEMS, INC.
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1276

EL DORADO COUNTY, CALIFORNIA
2850 Fairlane Court
Placerville CA 95667
Fax No.: (530) 626-5514

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

ATTACHMENT 1
TO SOFTWARE LICENSE/MAINTENANCE AND SUPPORT
AGREEMENT BETWEEN DATA INFORMATION MANAGEMENT SYSTEMS, INC. AND
EL DORADO COUNTY, CALIFORNIA

SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT FEES

Fee Summary:		
Description	Refer To	Amount
License and Maintenance and Support Services (August 1, 2009 to July 31, 2010)	Attachment 3	\$62,400.00
Shipping and Handling	Note 1	
Total Fees for the Software Maintenance Term of August 1, 2009 to July 31, 2010		\$62,400.00
Terms & Conditions:		
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.1. To the extent applicable, premium or rush transportation services incurred in connection with deliverables included in the Total Initial Fees are additive and will be billed as incurred.</p>		
<p>Note 2: <u>Payment terms are as follows:</u></p> <ul style="list-style-type: none"> • \$62,400.00 divided into 12 monthly installments shall be due at the first of the month following the execution of this agreement. The first payment due shall include payment for the months of August through December 2009. Each monthly payment thereafter shall be \$5,200.00 and shall represent payment for the previous month in arrears. Software Maintenance and Support Services for any renewal period shall be billed prior to the expiration of the then current Software Maintenance term shall be due thirty (30) Business Days prior to the beginning of the renewal period. 		

ATTACHMENT 2
TO SOFTWARE LICENSE/MAINTENANCE AND SUPPORT
AGREEMENT BETWEEN DATA INFORMATION MANAGEMENT SYSTEMS, INC. AND
EL DORADO COUNTY, CALIFORNIA
SOFTWARE LICENSE DESCRIPTION

SOFTWARE LICENSES

SOFTWARE DESCRIPTION NUMBER OF LICENSES	DESCRIPTION	LICENSE FEE
1	DIMS Voter Registration Software	Included in Attachment 3

ATTACHMENT 3
TO SOFTWARE LICENSE/MAINTENANCE AND SUPPORT
AGREEMENT BETWEEN DATA INFORMATION MANAGEMENT SYSTEMS, INC. AND
EL DORADO COUNTY, CALIFORNIA

SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT FEES

Period Covered	DIMS Software License and Maintenance and Support Fees
August 1, 2009 to July 31, 2010	\$62,400.00
Total Fee for the Initial Software Maintenance Term	\$62,400.00

Software Maintenance and Support Services Provided by DIMS Under the Agreement

1. Telephone support
 - DIMS will provide support on procedural questions of a specific nature not covered in DIMS' User Manuals;
 - DIMS will verify the appropriate steps to take to resolve issues identified by the Customer.

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

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

Software Maintenance and Support Services NOT Provided by DIMS Under the Agreement

1. Network design, layout or administration
2. Election set up and programming
3. Third Party Interface – Import from non DIMS Voter Registration System
4. Installation of third party hardware or software - User Guides, Installation Instructions are provided for these processes
5. Issue resolution for printers and modems not supported by DIMS applications

6. Issue resolution for requests made by non-DIMS service providers
7. Any services to support the Customers Voter Tabulation System

***Note: DIMS shall assess, and Customer hereby agrees to pay in full upon receipt of an invoice, for any additional charges which DIMS assesses in the event it receives calls or other requests for assistance to perform any of the foregoing services or tasks not included by DIMS in its performance of Software maintenance and support services.**

Software Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed all training session for each product
2. Customer shall have reviewed a complete set of User Manuals