Office of the City Clerk
City of Ketchikan, Alaska

Kim Stanker, City Clerk
Taylor Lee, Deputy City Clerk

To: Mayor & Council

From: Kim Stanker, City Clerk

Date: December 28, 2022

Subject: Ordinance No. 23-1959 – Approving A Three-Year Extension to the Agreement for Lease of Voting Equipment – Dominion Voting Systems, Inc.

During the 2017 General Government Operating and Capital Budget deliberations, the City Council approved the lease of new voting equipment for the local municipal election. The agreement for the lease spans eight years, expiring in 2025, and required an ordinance to approve the agreement in accordance with the City of Ketchikan Charter Section 5-17.

In 2022 the Ketchikan Gateway Borough Assembly approved a lease with Dominion Voting Systems, Inc. for election equipment through March 31, 2028. It was discovered that these new machines were not compatible with the City of Ketchikan's machines. The 2017 machines the City leased could not be programmed to accept both City and Borough ballot types. To ensure the City could run a successful election, Dominion Voting shipped us three compatible machines in order for the City of Ketchikan to hold a shared local election with the Borough.

Attached is Ordinance No. 23-1959 extending the agreement for the lease of voting equipment with Dominion Voting Systems, Inc. until March 3l, 2028 in order to be compatible with the renewal lease end date with the KGB.

Recommended Motion:

I move the City Council approve Ordinance No. 23-1959 in first ready by extending the lease for a voting system and managed services agreement between Dominion Voting Systems, Inc. and the City of Ketchikan through March 31, 2028; providing for the filing of referendum petitions; and establishing an effective date.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 23-1959

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; APPROVING AN AMENDMENT TO THE CURRENT VOTING SYSTEM AND MANAGED SERVICES AGREEMENT BY AN EXTENSION OF THREE YEARS BETWEEN DOMINION VOTING SYSTEMS, INC. AND THE CITY OF KETCHIKAN; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1. **Amendment (1) one to Voting System and Managed Services Agreement .** An equipment upgrade and a three (3) year extension of the Dominion Voting System and Managed Services Agreement between Dominion Voting Systems, Inc. and the City of Ketchikan for certain voting system services, and a software use license from March 31, 2025 until March 31, 2028, a copy of which is submitted to the City Council by the City Clerk for consideration at its meeting of January 5, 2023. A copy of said Agreement is available for public inspection in the office of the City Clerk,334 Front Street, Ketchikan, Alaska.

Section 2. **Effective Date**. Pursuant to the City of Ketchikan Charter Sections 5-16 and 5-17, if one or more referendum petitions with signatures are properly filed within one (1) month after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until this ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one (1) month after its passage and publication.

PASSED ON FIRST READING_____.

FINAL PASSAGE_____.

_____
David Kiffer, Mayor

ATTEST:

_____
Kim Stanker, MMC
City Clerk

Ordinance No. 23-1959

FIRST AMENDMENT

TO THE VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN
DOMINION VOTING SYSTEMS, INC.
AND CITY OF KETCHIKAN, AK

This First Amendment to the Voting System and Services Agreement ("First Amendment") is made and entered into as of this 15th day of August 2022 (the "First Amendment Effective Date") by and between the City of Ketchikan, AK ("Customer") and Dominion Voting Systems, Inc., a Delaware corporation ("Dominion").

RECITALS

WHEREAS, on April 1, 2017, the Customer and Dominion entered into a Voting System and Managed Services Agreement (the "Agreement"); and

WHEREAS, the Customer and Dominion desire to amend the Agreement; and

THEREFORE, in consideration of the mutual covenants and obligations herein contained, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Customer and Dominion agree as follows:

AMENDMENT

1.   **Recitals Incorporated.** The above recitals are true and correct and incorporated herein by this reference as if fully set forth.

2.   **Term of Agreement**. Paragraph 3 of the Agreement is amended to read as follows:

"**Term of Agreement.** The "Term" of this Agreement shall begin on the Effective Date and shall continue until March 31, 2028."

3.   **Replacement of Exhibit A**. Exhibit A is deleted in its entirety and replaced with Exhibit A-1, attached hereto and incorporated herein by this reference. All references to "Exhibit A" in the Agreement are hereby replaced with references to "Exhibit A-1."

4.   **All Other Terms.** Except as expressly amended in this First Amendment, all other Agreement terms shall remain in full force and effect.

[signatures on following page]

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

CITY OF KETCHIKAN, AK

DOMINION VOTING SYSTEMS, INC.
A Delaware Corporation

_____
AUTHORIZED SIGNATURE

_____
AUTHORIZED SIGNATURE

John Poulos

_____
PRINTED NAME

_____
PRINTED NAME

President & CEO

_____
TITLE

_____
TITLE

_____
DATE

_____
DATE

EXHIBIT A-1

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.
AND CITY OF KETCHIKAN , AK

PRICING AND PAYMENT SUMMARY AND DELIVERABLES DESCRIPTION

1. Pricing/Payment Summary and Descriptions

1.1 **Pricing Summary**. The total price for the managed service contract shall equal $80,769.00, to be paid as described in Section 1.2 over a period of a total of 11 years.

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

1.2.1 Year 1 shall cover the time period from the Agreement Effective Date through March 31, 2018. The Year 1 invoice of $7,364 shall be issued immediately after System Acceptance by the Customer.

1.2.2 Year 2: April 1, 2018 – March 31, 2019: $7,364 invoice shall be issued on April 1, 2018

1.2.3 Year 3: April 1, 2019 – March 31, 2020: $7,364 invoice shall be issued on April 1, 2019

1.2.4 Year 4: April 1, 2020 – March 31, 2021: $7,364 invoice shall be issued on April 1, 2020

1.2.5 Year 5 April 1, 2021 – March 31, 2022: $7,364 invoice shall be issued on April 1, 2021

1.2.6 Year 6: April 1, 2022 – March 31, 2023: $6,461 invoice shall be issued on April 1, 2022

1.2.7 Year 7: April 1, 2023 – March 31, 2024: $6,784 invoice shall be issued on April 1, 2023

1.2.8 Year 8: April 1, 2024 – March 31, 2025: $7,124 invoice shall be issued on April 1, 2024

1.2.8 Year 9: April 1, 2025 – March 31, 2026: $7,480 invoice shall be issued on April 1, 2024

1.2.8 Year 10: April 1, 2026 – March 31, 2027: $7,854 invoice shall be issued on April 1, 2024

1.2.8 Year 11: April 1, 2027 – March 31, 2028: $8,246 invoice shall be issued on April 1, 2024

1.3 **Agreement expiration options.** Upon termination of the Agreement at the end of the eight year managed serves period, the Costumer shall have the option to enter into an

amended managed services agreement for an upgraded, certified voting system and related services provided by Dominion, or return all components of the system to Dominion.

2. **System Description** The following system description is divided into two time periods. The products and services described in the first chart apply to the time period from April 1, 2017 through August 14, 2022. The products and services described in the second chart below apply to the time period from August 15, 2022 through the end of the Agreement Term.

DESCRIPTION Products and Services from April 1, 2017 – August 14, 2022	QTY
Precinct Tabulation Hardware & Software	

ICP Ballot Scanning Tabulator
Each ICP Tabulator includes:
  - Tabulator / Scanner
  - Internal Battery
  - Printer with Paper Roll
  - Two 4G Flash Memory Cards
  - Two I-Buttons
	3

ICP Ballot Box - Plastic	3
Implementation Services	
Equipment Acceptance Testing ICP	1
Election Support Services: Yr 1	
On-site non-election day support contracted 30 days prior	1
Democracy Suite EMS Programming – Base Setup	1
Democracy Suite EMS Programming – Per Precinct	4
Democracy Suite EMS Programming – Per Tabulator	3
Three Day Election Support (Monday arrival, Wednesday departure)	1
Onsite User Training – ICP	1
Election Programming Services (per year)	1
Accessories	
ICP Cleaning Sheet	3
ICP Paper Roll (85')	10
ICP I-Button Security Key - Blue	1
ICP I-Button Security Key - Black	3

[continued on next page]

DESCRIPTION Products and Services from August 15, 2022 through end of Agreement Term	QTY
In-Person Voting: Polling Location Hardware	
ImageCast Precinct 2 Tabulator	3
Power Supply – ICP 2	3
ICE/ICP Power Cord – 15'	3
Consumables/Parts	
ICE/ICP2 Paper Roll (98')	3
SDHC Memory Card 8B - BiCS4	3
Election Support Services	
Election Setup / Ballot Setup (per year)	1
Annual License and Warranties	
ImageCast X Annual Firmare License – Prime	1
ImageCast Precinct Annual Firmware License – ICP 2	3
ImageCast X Annual Hardware Warranty – Prime	1
ImageCast Precinct Annual Hardware Warranty – ICP 2	3

2.1 ***ImageCast® Precinct Scanner and Tabulator (Hardware and Software)*** is a precinct optical scan ballot tabulator designed to scan marked paper ballots, interpret voter marks on the paper ballot, communicate these interpretations back to the voter and upon acceptance by the voter, deposit the ballots into the ballot box. Each ImageCast® provided to the Customer shall consist of the following items:

2.1.1 Two (2) optical imaging scanners for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.

2.1.2 uClinux Operating System

2.1.3 Two (2) Compact Flash memory cards. Compact Flash Memory Cards are placed behind two securable doors (Administrator Door and Pollworker Door). Dominion shall provide a standard securing device for the Administrator Door at no additional cost to the Customer. Any replacement securing devices will be the responsibility of the Customer.

2.1.4 An integrated interactive electronic display in the form of an ultra-high contrast graphical LCD screen, with white background, 5.7" diagonal viewing area, and a built-in touch screen for administration purposes. The LCD display screen is located on the top right side of the machine.

2.1.5 An internal thermal printer and one (1) paper roll for generating reports.

2.1.6 One (1) administrative security key (iButton) used with an integrated

receptacle (physically attached to the top of the unit and electrically connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.

2.1.7 A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast® must be 8.5" wide by a variable length (11", 14", 17" and 22"). The paper feed mechanism is physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.

2.1.8 Power supply module uses 120 Vac, 60 Hz, one phase power. It has a power consumption of 0.07 Amps at 120 Volts AC.

2.1.9 An internal battery which is rated to provide two (2) hours of normal use in the absence of AC power.

2.1.10 Audit functionality, known as the AuditMark®. For each ballot that is scanned, interpreted and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below. These images can be used to audit the unit's interpretation of each individual ballot.

- 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®.

The ImageCast® Precinct Scanner and Tabulator does not include consumable products including, without limitation, pens, seals, replacement batteries, additional paper rolls, additional Compact Flash Memory Cards not specifically itemized in this Agreement, and voting booths.

2.2 **Plastic Ballot Boxes.** The System includes a molded plastic ballot boxes made of a three compartments, designed for use with the ICP.

3. Services Description

3.1 **Implementation Services.** During the implementation phase of the Agreement, Dominion shall provide the following services:

3.1.1 **ICP Acceptance Testing Support.** Dominion will provide direct onsite training and support during the System Acceptance Testing period.

3.1.2 **System Training.** Dominion shall provide direct onsite training for ICP use.

3.1.3 **Election Setup database support.** Dominion shall provide direct support for the Election database creation and ballot review for the first Election during the implementation period.

3.1.4 **On-Site Support during the Election** Dominion will provide direct onsite support for the first Election during the implementation period.

3.2 **Ongoing Services and Consumables.** Dominion shall provide the following services:

3.2.1 ***EMS Ballot Definition.*** In conjunction with EMS training, Dominion shall provide direct service for election event definition, including the following components for 8 Elections throughout the Term:

    3.2.1.1   Import of data files into the EMS system.

    3.2.1.2   Defining election project parameters and assigning templates.

    3.2.1.3   Assigning tabulators (ICC, tablet, mobile ballot printing).

    3.2.1.4   Defining ballot structures.

    3.2.1.5   Creating proofing ballots.

    3.2.1.6   Creating official ballots.

    3.2.1.7   Creating election files and the security keys for the ImageCast®.

3.3 ***Travel and Expenses included.*** All costs of Dominion transportation, lodging and meal expenses are included during the Agreement Term.

3.4 ***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.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 17-1850

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA APPROVING A VOTING SYSTEM AND MANAGED SERVICES AGREEMENT BY AND BETWEEN DOMINION VOTING SYSTEMS, INC. AND THE CITY OF KETCHIKAN; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Voting System and Managed Services Agreement. The Voting System and Managed Services Agreement between Dominion Voting Systems, Inc. and the City of Ketchikan for certain voting system services, and a software use license, a copy of which was submitted to the City Council by the City Manager for consideration at its May 4, 2017 council meeting is hereby approved. A copy of said Agreement is available for public inspection in the Office of the City Clerk, 334 Front Street, Ketchikan, Alaska.

Section 2: Effective Date. Pursuant to City of Ketchikan Charter Sections 5-16 and 5-17, if one or more referendum petitions with signatures are properly filed within one (1) month after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until this ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one (1) month after its passage and publication.

PASSED ON FIRST READING_____May 4, 2017_____.

FINAL PASSAGE_____May 18, 2017_____.

Lew Williams III, Mayor

EFFECTIVE DATE: June 18, 2017			
ROLL CALL	**YEA**	**NAY**	**ABS**
COOSE	X		
GAGE	X		
ZENGE	X		
ISOM	X		
KIFFER	X		
SIVERTSEN	X		
FLORA			X
MAYOR			

ATTEST:

Katherine M. Suiter, MMC
City Clerk

Ordinance No. 17-1850

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN
DOMINION VOTING SYSTEMS, INC.
AND CITY OF KETCHIKAN , AK

This Managed Services Agreement (the "Agreement"), dated April 1, 2017, (the "Effective Date"), for a voting system hardware services, software licenses and related services is made by and between the City of Ketchikan, AK, having its principal office located at 334 Front St. Ketchikan, AK 99901 (the "Customer"), and Dominion Voting Systems Inc., having its principal office located at 1201 18th Street, Suite 210, Denver, CO 80202 ("Dominion"). This Agreement may refer to Dominion and the Customer together as the "Parties," or may refer to Dominion or the Customer individually as a "Party."

WHEREAS, the Customer desires to purchase voting system services, and a software use license; 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 to Customer the System (as defined herein), including the products and services described more fully below:

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/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" means the successful completion of the acceptance testing performed by the Customer on the Dominion Hardware and related Dominion Software, after delivery in accordance with testing criteria developed and updated from time to time by Dominion, or the occurrence of other events defined in Section 8.

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

        2.2.1. "Democracy Suite® Software," Dominion's election management software associated with the ImageCast® voting system which includes Election Event Designer and Results Tally and Reporting.

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

2.3. "Dominion Hardware" means the ImageCast® system hardware as more specifically described in Exhibit A.

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

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

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

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

2.8. "Third Party Software" means software, other than the Dominion Software, which is owned by third parties, and 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 March 31, 2025.

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

4.1. Provide 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. Appoint a Project Manager to oversee the general operations of the project. The project manager shall be responsible for arranging all meetings, visits and consultations between the Parties and for all administrative matters such as invoices, payments and amendments. The project manager shall communicate with the Customer as to the status of information, procedures and progress on the tasks set out in this Agreement and alert of any material change in such plans.

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 the System that Dominion designs, manufactures, and/or licenses, which is certified for use as a voting system in the Customer's jurisdiction.

4.7. 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.
>
> 5.1.3 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. Appoint a Project Manager who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel, equipment, vehicles and facilities. The Project Manager shall be empowered to make decisions on behalf of the Customer with respect to the work being performed under this Agreement. The 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 provide the System and perform the services described in this Agreement. All such access and entry shall be provided at Customer's expense.

6. **Title and Risk of Loss.**

6.1. <u>Title to the System</u>. The System shall be provided by Dominion to the Customer as part of the managed services described herein. Title to the System or any portion thereof, shall not pass to the Customer and shall remain with Dominion.

6.2. <u>Software</u>. 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, shall remain the property of Dominion, or any third party that owns such software.

6.3. <u>Risk of Loss</u>. 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 "ship to" address, except to the extent such damage is caused by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any loss or damage within ten (10) business days of the receipt of any or all portions of the System, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Dominion.

7. Software License and Use.

7.1. <u>License</u>. 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. <u>Third Party Software</u>. 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. <u>Dominion Software or Dominion Hardware</u>. After delivery Dominion Software or Dominion Hardware, the Customer will conduct acceptance testing of such items, 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 delivery.

8.2. <u>System Acceptance Testing</u>. 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.

9. Dominion Software Warranty.

9.1. <u>Dominion Software Warranty</u>. The Dominion Software Warranty is subject to the Software License Terms attached hereto as Exhibit B.

9.2. <u>Third Party Software Warranty</u>. To the extent permitted by the licensor of Third Party Software, Dominion shall pass to Customer all warranties such licensors make available to Dominion regarding the operation of Third Party Software.

9.3. No Other Software Warranties. DOMINION DISCLAIMS ALL OTHER SOFTWARE 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. Hardware Warranty.

10.1. Dominion Hardware Warranty Terms. Dominion warrants that when used with the configuration 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. The Dominion Hardware Warranty shall remain in effect during the Agreement Term.

10.2. Dominion Hardware Warranty Services. Dominion shall repair or replace the Dominion Hardware so that each item thereof operates in conformity with its specifications, so long as such Dominion Hardware is operated with its designated software and third party products (if applicable) approved by Dominion for use with the Dominion Hardware. If any Dominion Hardware item fails to operate in conformity with the specifications during the Agreement term, Dominion shall fully repair or, at Dominion's sole option, replace the Dominion Hardware. The following conditions apply to the Dominion Hardware services:

10.2.1. Dominion shall bear the costs for ground-shipping Dominion Hardware parts or the repaired/replaced item to and from the Customer. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the Customer's expense.

10.2.2. The following services are not covered by the Dominion Hardware warranty, but may be available for purchase at Dominion's then current time and material rates:

a. Except as otherwise provided in Section 3.3 of Exhibit A to this Agreement, replacement of consumable items including but not limited to batteries, pens, paper rolls, seals, printer ink, removable memory devices, etc.;

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

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

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

10.3. <u>EMS Hardware Warranty.</u> To the extent permitted by the manufacturers of the EMS Hardware, Dominion shall pass to the Customer all warranties such manufacturers make available to Dominion.

10.4. <u>No Other Warranties.</u> 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.

11. Confidential Information.

11.1. For purposes of this Agreement, confidential information ("Confidential Information") is defined as those materials, documents, data, and technical information, specifications, business information, customer information, or other information that the disclosing Party maintains as trade secrets or confidential and which are disclosed to a receiving Party in tangible form conspicuously marked as "confidential," or with words having similar meaning or which are expressly identified in this Subsection 11.1.

11.2. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations, and will disclose it only as needed.

11.3. Neither Party shall disclose the other Party's Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court.

11.4. The parties understand and agree that Customer is a public entity that may be subject to Public Record Laws. Therefore, any covenant of confidentiality given by the Customer in this Agreement shall be governed by and superseded by the provisions and limitations of applicable Public Record Laws.

11.5. Any specific information that Dominion claims to be confidential must be clearly identified as such by the Customer. To the extent consistent with Public Record Laws, 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.

12. Limitation of Liability. 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, 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. Indemnification. Each Party shall indemnify and hold harmless the other Party from third party claims arising from, or alleged to arise from, the negligence or deliberate misconduct of a Party in the course of performing under this Agreement. This indemnity extends solely to claims and lawsuits for personal injury, death, or destruction of tangible personal property. In addition, Customer shall indemnify and hold harmless Dominion from any third party claims arising from, or alleged to arise from, Customer's failure to operate properly the System licensed, sold and/or leased under this Agreement, in the manner so designated by Dominion.

14. Assignment. Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party.

15. Termination for Default. In the event either Party violates any provisions of this Agreement, the injured 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 injured Party may serve written notice upon the violating Party of its intent to terminate, 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. Termination for Non-Appropriation of Funds. The Customer shall not be obligated for payments hereunder for any future fiscal year unless or until the Customer appropriates funds for this Agreement in Customer's budget for that fiscal year. In the event that funds are not appropriated, then this Agreement may be terminated by the Customer at the end of the last fiscal year for which funds were appropriated. Termination of this Agreement by the Customer under this Section 16 shall not constitute a breach of this Agreement by the Customer. For the purposes of this Agreement, the fiscal year commences on Jan. 1 and ends on Dec. 31. Customer shall notify Dominion in writing of such non-appropriation at the earliest possible date which, in any event, shall be prior to Dominion performing services during

any fiscal year for which an appropriation has not been made. In the event Customer notifies Dominion that sufficient funds have not been appropriated, or if in fact sufficient funds have not been appropriated, Dominion may suspend Dominion's performance and terminate all Dominion Licenses under this Agreement. Suspension of performance and termination all Dominion Licenses by Dominion in accordance with this Section 16 shall not constitute a breach of this Agreement by Dominion.

17. Survival. The provisions of Sections 2, 11, 12, 13, 19, and 22 shall survive the expiration or termination of this Agreement.

18. 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. Dominion shall not be liable under this Agreement for any loss or damage to the Customer due to such delay or performance failures. Both Parties shall use their best 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.

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

If to Dominion:

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

If to the Customer:

>   City of Ketchikan AK
>   Attn: _City Clerk_
>   334 Front Street
>   Ketchikan, AK 99901

20. Choice of Law. Interpretation of this Agreement shall be governed by the laws of the Customer's State, and the courts of competent jurisdiction located in that State will have jurisdiction to hear and determine questions relating to this Agreement.

21. 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 state 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.

22. 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.

23. 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.

24. 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.

25. 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.

The remainder of this page is left blank intentionally
Signature page follows

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

DOMINION VOTING SYSTEMS, INC.
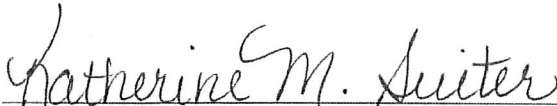
_____
AUTHORIZED SIGNATURE

John Poulos
_____
PRINTED NAME

President & CEO
_____
TITLE

5/22/2017
_____
DATE

CITY OF KETCHIKAN, AK

Katherine M. Suiter
_____
AUTHORIZED SIGNATURE

KATHERINE M. SUITER
_____
PRINTED NAME

City Clerk
_____
TITLE

May 19, 2017
_____
DATE

EXHIBIT A

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.
AND CITY OF KETCHIKAN , AK

PRICING AND PAYMENT SUMMARY AND DELIVERABLES DESCRIPTION

1. Pricing/Payment Summary and Descriptions

   1.1 **Pricing Summary.** The total annual managed service contract pricing shall equal $7,364/year for a total of 8 years.

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

      1.2.1 Year 1 shall cover the time period from the Agreement Effective Date through March 31, 2018. The Year 1 invoice of $7,364 shall be issued immediately after System Acceptance by the Customer.

      1.2.2 Year 2: April 1, 2018 – March 31, 2019: $7,364 invoice shall be issued on April 1, 2018

      1.2.3 Year 3: April 1, 2019 – March 31, 2020: $7,364 invoice shall be issued on April 1, 2019

      1.2.4 Year 4: April 1, 2020 – March 31, 2021: $7,364 invoice shall be issued on April 1, 2020

      1.2.5 Year 5 April 1, 2021 – March 31, 2022: $7,364 invoice shall be issued on April 1, 2021

      1.2.6 Year 6: April 1, 2022 – March 31, 2023: $7,364 invoice shall be issued on April 1, 2022

      1.2.7 Year 7: April 1, 2023 – March 31, 2024: $7,364 invoice shall be issued on April 1, 2023

      1.2.8 Year 8: April 1, 2024 – March 31, 2025: $7,364 invoice shall be issued on April 1, 2024

   1.3 **Agreement expiration options.** Upon termination of the Agreement at the end of the eight year managed services period, the Costumer shall have the option to enter into an amended managed services agreement for an upgraded, certified voting system and related services provided by Dominion, or return all components of the system to Dominion.

2. <u>System Description</u>

DESCRIPTION	QTY	UNIT PRICE	EXTENSION
Precinct Tabulation Hardware & Software			
ICP Ballot Scanning Tabulator (320C)	3	$3,900	$11,700
Each ICE Tabulator includes:			
- Tabulator / Scanner			
- Internal Battery			
- Printer with Paper Roll			
- Two 4G Flash Memory Cards			
- Two I-Buttons			
ICP Ballot Box - Plastic	3	$1,000	$3,000
Sub-Total*:			$14,700
Implementation Services			
Equipment Acceptance Testing			
ICP	1	$2,000	$2,000
Sub-Total:			$2,000
Election Support Services: Yr 1			
On-site non-election day support contracted 30 days prior	1	$2,000	$2,000
Democracy Suite EMS Programming - Base Setup	1	$2,000	$2,000
Democracy Suite EMS Programming - Per Precinct	4	$50	$200
Democracy Suite EMS Programming - Per Tabulator	3	$30	$90
Three Day Election Support (Monday arrival, Wednesday departure)	1	$4,500	$4,500
Onsite User Training - ICP	1	$2,500	$2,500
Sub-Total:			$11,290
Accessories			
ICP Cleaning Sheet	3	$20	$60
ICP Paper Roll (85')	10	$4	$40
ICP I-Button Security Key - Blue	1	$25	$25
ICP I-Button Security Key - Black	3	$25	$75
Sub-Total:			$200
Shipping Services			
Estimated Shipping			$1,848
Sub-Total**:			$1,848

Election Programming Fees: Yr 2 - 8		
Yr2		$2,290
Yr3		$2,290
Yr4		$2,290
Yr5		$2,290
Yr6		$2,290
Yr7		$2,290
Yr8		$2,290
Sub-Total*****:		$16,030

Ongoing Annual Fees:			
Firmware Licenses Per Year			
ICP	3	$228	$684
Extended Warranty Per Year			
ICP	3	$135	$405
Sub-Total*****:			$1,089

Managed Services Program - Annual Fee:	**$7,364**
Managed Services Program - Total Cost of Ownership (8 Years)	**$58,915**

2.1 *ImageCast® Precinct Scanner and Tabulator (Hardware and Software)* is a precinct optical scan ballot tabulator designed to scan marked paper ballots, interpret voter marks on the paper ballot, communicate these interpretations back to the voter and upon acceptance by the voter, deposit the ballots into the ballot box. Each ImageCast® provided to the Customer shall consist of the following items:

2.1.1 Two (2) optical imaging scanners for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.

2.1.2 uClinux Operating System

2.1.3 Two (2) Compact Flash memory cards. Compact Flash Memory Cards are placed behind two securable doors (Administrator Door and Pollworker Door). Dominion shall provide a standard securing device for the Administrator Door at no additional cost to the Customer. Any replacement securing devices will be the responsibility of the Customer.

2.1.4 An integrated interactive electronic display in the form of an ultra-high contrast graphical LCD screen, with white background, 5.7" diagonal viewing area, and a built-in touch screen for administration purposes. The LCD display screen is located on the top right side of the machine.

2.1.5 An internal thermal printer and one (1) paper roll for generating reports.

2.1.6 One (1) administrative security key (iButton) used with an integrated receptacle (physically attached to the top of the unit and electrically

connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.

2.1.7 A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast® must be 8.5" wide by a variable length (11", 14", 17" and 22"). The paper feed mechanism is physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.

2.1.8 Power supply module uses 120 Vac, 60 Hz, one phase power. It has a power consumption of 0.07 Amps at 120 Volts AC.

2.1.9 An internal battery which is rated to provide two (2) hours of normal use in the absence of AC power.

2.1.10 Audit functionality, known as the AuditMark®. For each ballot that is scanned, interpreted and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below. These images can be used to audit the unit's interpretation of each individual ballot.

- 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®.

The ImageCast® Precinct Scanner and Tabulator does not include consumable products including, without limitation, pens, seals, replacement batteries, additional paper rolls, additional Compact Flash Memory Cards not specifically itemized in this Agreement, and voting booths.

2.2 **Plastic Ballot Boxes.** The System includes a molded plastic ballot boxes made of a three compartments, designed for use with the ICP.

3. Services Description

3.1 **Implementation Services.** During the implementation phase of the Agreement, Dominion shall provide the following services:

3.1.1 **ICP Acceptance Testing Support.** Dominion will provide direct onsite training and support during the System Acceptance Testing period.

3.1.2 **System Training.** Dominion shall provide direct onsite training for ICP use.

3.1.3 **Election Setup database support.** Dominion shall provide direct support for the Election database creation and ballot review for the first Election during the implementation period.

3.1.4 **On-Site Support during the Election** Dominion will provide direct onsite support for the first Election during the implementation period.

3.2 **Ongoing Services and Consumables.** Dominion shall provide the following services:

3.2.1 **EMS Ballot Definition.** In conjunction with EMS training, Dominion shall

provide direct service for election event definition, including the following components for 8 Elections throughout the Term:

3.2.1.1   Import of data files into the EMS system.

3.2.1.2   Defining election project parameters and assigning templates.

3.2.1.3   Assigning tabulators (ICC, tablet, mobile ballot printing).

3.2.1.4   Defining ballot structures.

3.2.1.5   Creating proofing ballots.

3.2.1.6   Creating official ballots.

3.2.1.7   Creating election files and the security keys for the ImageCast®.

3.3   **Travel and Expenses included.**   All costs of Dominion transportation, lodging and meal expenses are included during the Agreement Term.

3.4   **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.

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT
BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.
AND CITY OF KETCHIKAN , AK

SOFTWARE LICENSE TERMS AND CONDITIONS

1. Definitions.

1.1. "Licensee" shall mean City of Ketchikan, AK.

1.2. "Licensor" shall mean Dominion Voting Systems, Inc.

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

1.4. "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.

1.5. "Third-Party Products" means any software or hardware obtained from third-party manufacturers or distributers and provided by Licensor hereunder.

2. License Terms.

2.1. 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.

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

2.3. 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.

2.4. 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. 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 by the terms of this Agreement is strictly prohibited.

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

3.1.   Upgrades. In the event that Licensor, at its sole discretion, certifies a software upgrade under the applicable provisions of the election laws and regulations of the Licensee's State, Licensor may make the certified software upgrade available to the Licensee and install the upgrade during a regularly schedule preventive maintenance as described in Exhibit A.

3.2.   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.

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

4.1.   Software. Licensor warrants that during the Term, the Software 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 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.

4.2   Third-Party Products. The warranties in this Section 5 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.

4.3.   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.

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 (i) forthwith return to Licensor all Software in its possession or control, or destroy all such Software from any electronic media, and certify in writing to Licensor that it has been destroyed.

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" 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. <u>Copyright License Grant</u>. 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 A.

    2.2. <u>Copyright License Use.</u> 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. <u>Rights and Interests</u>. 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.