

HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT

This **Rental, Software License and Services Agreement** (hereafter the “Agreement”) dated this 24th day of July, 2017 (hereafter the “Effective Date”) is made by and between the **The Corporation of the Town of Kingsville**, ON, located at 2021 Division Road North, Kingsville, ON N9Y 2Y9 (hereafter “Customer”) and **Dominion Voting Systems Corporation**, located at 215 Spadina Avenue, Toronto, ON, M5T2C7 (hereafter “Dominion”). This Agreement may refer to Dominion and Customer together as the “Parties,” or may refer to Dominion or Customer individually as a “Party.”

1. **Composition of Agreement.** Exhibit A is attached and incorporated herein by reference and forms a part of this Agreement. This Agreement consists of the general terms and conditions contained in the following Sections, together with Exhibit A:

Exhibit A: Hardware Rental, Software License and Services Agreement

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

- 2.1. "Dominion Software" means software licensed by Dominion to the Customer.
- 2.2. "Hardware" means Dominion’s proprietary voting system hardware as specified in Exhibit A herein.
- 2.3. "Licensed Software" means the Dominion Software and Third-Party Software, collectively, together with any user manuals or other associated documentation as described in Section 6 herein.
- 2.4. “Specifications” means descriptions and data regarding the features, functions and performance of the Dominion Software, as set forth in user manuals or other applicable documentation provided by Dominion.
- 2.5. "Third Party Software" means manufacturer supplied software, or firmware owned by third parties, which Dominion provides to Customer pursuant to sublicenses or end user license agreements with the owners of such Third Party Software.

3. **Term of Agreement.** The “Term” of this Agreement shall begin on the Effective Date and shall expire 12/31/2018. The payment terms of Section 5, to extent of any payments are still due, shall survive any expiration or termination of this Agreement in accordance with their respective terms.

4. **Dominion's Responsibilities.**

- 4.1. Dominion shall provide the Customer with the licensed hardware and software, and the services described in Exhibit A (Hardware Rental, Software Licenses and Services Agreement).
- 4.2. Dominion shall grant to the Customer a non-exclusive, non-transferable, license ("License") to use the Dominion Software and Hardware provided by Dominion pursuant

to Section 6 of this Agreement.

5. Customer's Responsibilities.

- 5.1. In consideration for the products, licenses and services described in this Agreement, Customer shall pay the amounts specified in Exhibit A. Customer 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 Customer is exempt from such taxes or duties, Customer shall provide Dominion with a tax exemption certificate.
- 5.2. Customer shall provide Dominion with physical accommodations reasonably required for Dominion to perform its obligations, including premises access, electrical power, and data connectivity.
- 5.3. Customer is solely responsible for assuring all relevant federal, provincial, and local laws, ruling and ordinances are complied with in regard to the use of Dominion's system for any Customer election, including all associated election guidelines and applicable election due dates. Notwithstanding any other provision in this Agreement to the contrary, Customer shall defend, indemnify and hold Dominion harmless from and against any and all claims, demands, damages, injuries, expenses (including reasonable attorneys' fees and court costs) and liability arising in connection with the Customer's responsibility pursuant to this Section 5.3.

6. Software and Hardware Rental, License and Use.

- 6.1. Hardware. Dominion agrees to rent the Hardware to Customer during the Term as described in Exhibit A herein.
- 6.2. License. Subject to the terms of this Agreement, Dominion grants Customer a non-exclusive, non-transferrable license to use the Software and Hardware solely for the Customer's own internal business purposes. This License shall only be effective during the Term and cannot be transferred or sublicensed.
- 6.3. No Other Licenses. Other than as expressly set forth in this Agreement, (a) Dominion grants no licenses, expressly or by implication, and (b) Dominion's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party. Without limiting the foregoing sentence, Customer agrees to use the Dominion Software outlined in Exhibit A herein, and agrees not to use any Dominion Software as a service bureau for elections outside the Customer's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of any Dominion Software. The Customer shall have no power to 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.
- 6.4. Prohibited Acts. The Customer shall not, without the prior written permission of Dominion:

- 6.4.1. Transfer or copy onto any storage device or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;
 - 6.4.2. Reverse engineer, disassemble, decompile, decipher or analyze the Software or Hardware in whole or in part;
 - 6.4.3. Alter or modify the Software or Hardware in any way or prepare any derivative works of the Software or any part of parts of the system;
 - 6.4.4. Alter, remove or obstruct any copyright or proprietary notices from the Software or Hardware, or fail to reproduce the same on any lawful copies of the Software.
- 6.5. Proprietary Rights. Customer acknowledges and agrees that Dominion owns the Dominion Hardware, Dominion Software, all documentation and training materials provided by Dominion, the design and configuration of the Dominion Hardware and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the Dominion Hardware. Customer has the right to use the aforementioned items to the extent specified in this Agreement. Dominion likewise owns all patents, trade-marks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Dominion which are protected by law and are of substantial value to Dominion.

7. Limited Warranties.

- 7.1. Dominion Software and Hardware. Dominion warrants that, during the term of this agreement, the Software and Hardware will function substantially in accordance with the Specification. If the Customer believes that the Software or Hardware is not functioning substantially in accordance with the Specifications, the Customer shall provide Dominion with written notice of the material failure within ten (10) days of discovering the material failure, provided that the Customer can reproduce the material failure to Dominion. Dominion shall use reasonable efforts to correct the material failure of the Software or Hardware. The foregoing warranty shall be void in the event of the Software or Hardware (i) has been modified by any party other than Dominion or its licensors or (ii) has been used by the Customer for purposes other than those for which the Software or Hardware was licensed.
- 7.2. NO OTHER WARRANTIES. DOMINION 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.

- 8. Indemnification.** Each party to this Agreement shall indemnify, defend, and hold harmless the other party and its officers, directors, agents, employees, and owners from and against any and all demands, claims, damages to persons or property, losses, and liabilities, including reasonable

attorneys' fees (collectively, "Claims"), arising out of or caused by the indemnifying party's gross negligence or willful misconduct in connection with the services contemplated by this Agreement. 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, rented and/or leased under this Agreement, in the manner so designated by Dominion.

9. 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.

10. Liquidated Damages. Dominion shall not be liable for liquidated damages of any kind.

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. Confidential Information includes all Dominion Software source and object code and written documentation associated therewith.

11.2. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.

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, provincial, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court.

11.4. Each Party shall be given the ability to defend the confidentiality of its Confidential Information to the maximum extent allowable under the law prior to disclosure by the other Party of such Confidential Information.

12. Termination.

- 12.1 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.
- 13. Risk of Loss Insurance.** Customer shall bear the entire risk of loss or damage to the Hardware and Software after Customer receipt of the Hardware and Software. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees prescribed under this Agreement. Customer may, at its own expense and option, obtain and maintain property and casualty insurance for the Hardware and Software against all risks of loss or damage. The amount of such insurance shall not be less than the replacement cost of the Hardware and Software. All policies for such insurance shall (i) designate Dominion as a named insured and Dominion and Customer as loss payees, as their interests may appear and (ii) contain a provision that entitles Dominion to at least fifteen (15) days' written notice prior to cancellation or modification of such insurance policy Customer shall provide Dominion with a certificate of insurance with respect to such policy on or before the time of delivery of the System. Customer shall not be relieved of the obligation to reimburse Dominion for the costs associated with damage or loss to the Hardware and/or Software by failing to obtain the insurance coverage as described above.
- 14. Assignment and Right to Subcontract.** Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party.
- 15. Governing Law.** This Agreement will be construed under the laws of the Province of Ontario, and the courts within the Province of Ontario shall have non-exclusive jurisdiction for all actions to enforce this Agreement.
- 16. Survival.** The provisions of Sections and Subsections 1, 2, 3, 7, 8, 9, 10, 11, 15, 16, 18, and 20 shall survive the expiration or termination of this Agreement.
- 17. 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 Dominion or Customer. Dominion shall not be liable under this Agreement for any loss or damage to the Customer due to such delay or performance failures. Notwithstanding the foregoing, 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.

- 18. Legality and Severability.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, provincial 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.
- 19. Waiver.** Any failure of a Party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any provisions herein.
- 20. Notices.** All notices required or permitted to be given hereunder shall be given in writing and shall be deemed to have been given when emailed, 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 Corporation
Attn: Office of General Counsel
215 Spadina Avenue
Toronto, ON M5T2C7

If to the Customer:

The Corporation of the Town of Kingsville
2021 Division Road North
Kingsville, ON N9Y 2Y9

- 21. No Third Party Beneficiaries.** Dominion and the Customer 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.
- 22. Entire Agreement.** This Agreement and its Exhibits incorporated herein by reference constitute the entire agreement, understanding and representations between Dominion and the Customer, and supersede and replace all prior agreements, written or oral. No modifications or representations to the Agreement shall be valid unless made in writing and signed by duly authorized representatives of both the Customer and Dominion, and incorporated as an Addendum hereto.

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

DOMINION VOTING SYSTEMS CORPORATION

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

THE CORPORATION OF THE TOWN OF KINGSVILLE, ONTARIO

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

EXHIBIT A
HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT
THE CORPORATION OF THE TOWN OF KINGSVILLE, ONTARIO

ELECTION SERVICES, DELIVERABLES AND PRICING, PAYMENT SUMMARY

Service or Product Provided	Associated # of Units or Days	Unit Price	Extended Price
Voting Technologies			
Ballot Tabulators			
<ul style="list-style-type: none"> ▪ Vote-by-Mail Ballot Tabulator <ul style="list-style-type: none"> ○ Includes PC Computer provided by Dominion to drive each Tabulator 	2 units	\$2,900	\$5,800
<ul style="list-style-type: none"> ▪ ImageCast Ballot Marker Device <ul style="list-style-type: none"> ○ For Accessible Voting at central location, for voters who cannot negotiate a paper ballot ○ Marks a paper ballot, for subsequent tabulation. ○ Includes headset, hand-held vote selector, paddles assistive device, sip-and-puff assistive device (with 10 disposable mouthpiece straws) 	1 unit	\$4,060 (i.e. \$2,000 for Programming, plus \$2,060 per unit)	\$4,060
Subtotal			\$9,860

Democracy Suite Software			
Election Management System (EMS) License <i>Includes the following components:</i> - Election Event Definition Module License <ul style="list-style-type: none"> ▪ Module hosted by Dominion - Results Tally and Reporting Module License <ul style="list-style-type: none"> ▪ Module installed on one of the tabulator driver PC computers deployed by Dominion at your location ▪ Standard results reports (PDF, Excel, etc.) 	Flat Rate Charge	\$3,700	\$3,700
Optional Enhanced Results Display <ul style="list-style-type: none"> ▪ Configured with your logo and colours ▪ Allows real-time result updates as results are released by your officials on Election Night ▪ For projection at City Hall, display on websites, feeding to television, etc. 	Flat Rate Charge	\$2,300 (Optional)	You have decided not to implement this optional feature.
Subtotal			\$3,700

Professional Services			
Implementation Services <ul style="list-style-type: none"> ▪ Dominion Labour for Project Planning, Coding, System Configuration, Pre-Ship Testing, Delivery, and Project Execution 	Flat Rate Charge		\$5,200
Training <ul style="list-style-type: none"> ▪ In person train-the-trainer session conducted by Dominion staff 	1 Onsite Session	\$1,600	\$1,600
Election Day Onsite Support <ul style="list-style-type: none"> ▪ Dominion Support Representative for Onsite Support on Election Day 	1 day	\$1,600	\$1,600
Shipping <ul style="list-style-type: none"> ▪ Equipment (delivery and return) 	Flat Rate	\$550	\$550
Subtotal			\$8,950

Dominion Lease Total			\$22,510 plus tax
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Note:

- The above pricing involves the **lease** of the tabulators and software for the election event.
- The above pricing does not include applicable taxes, which will be charged extra.
- The above pricing is for ballot tabulation equipment and services only, and does not include vote-by-mail ballot kits, voter list products or services, various consumable election supplies, etc. Please contact your vote-by-mail ballot kit provider for pricing on vote-by-mail kits (i.e. DataFix).
- The Shipping flat rate charge shown above is based on Dominion's standard shipping plan and schedule for equipment. Any extra shipping charges incurred due to the customer causing a deviation from Dominion's standard shipping plan and schedule will be charged extra.
- After the election, the Customer must repackage the tabulators and peripheral equipment in the same manner as which they were delivered, for pickup by the Dominion shipper. This includes packing equipment in their respective boxes. If the equipment was delivered via skids, the Customer will place the equipment back on the same skids and wrap the skids with shrink wrap. Dominion reserves the right to charge the Customer extra if equipment is not repackaged for pickup in the same way it was delivered.
- Election Day Onsite Support will be provided by a Dominion-trained support representative. This representative will have a general knowledge of different aspects of

- your election system, and will serve as initial support for any issues that may arise, and this representative will utilize the Dominion Election Day Phone Support Hotline to obtain direct phone instruction from top Dominion engineers who are experts in each component of your election system.
- Dominion is happy to discuss the sharing of training and Election Day support resources between you and your neighbouring municipalities who also choose Dominion, to provide cost savings for all the municipalities involved. In such a scenario, the training session for your system would be performed at a central location in your region, and attendees from the various local municipalities would attend. In addition, Election Day support can be regionally-based and shared between municipalities, so that the Dominion support rep can be based in the region and respond to individual municipalities as needed. Please advise us if this cost-saving shared support option is of interest to you and your neighbouring municipalities.
 - Above pricing does not include any onsite Logic and Accuracy Test support by Dominion personnel. In most cases, municipal staff can complete the tabulator testing process, using Dominion's written instructions, and Dominion phone support if needed. However, if the Municipality prefers to have a Dominion support rep onsite to oversee the testing process performed by your staff, this can be arranged, at our normal rates.

PAYMENT TERMS

- 40% of total system price plus tax at January 15, 2018.
- 40% of total system plus tax upon delivery of the 2018 tabulators.
- 20% of total system plus tax upon completion of the 2018 election.