



## HARDWARE MAINTENANCE AGREEMENT

**THIS AGREEMENT** is made on the 1st day of January, 2016 (“Effective Date”)

BETWEEN

**DOMINION VOTING SYSTEMS, INC.**, located at 1201 18<sup>th</sup> Street, Suite 210, Denver, CO 80202 (“Dominion”)

AND

**COUNTY OF TULARE, CA**, located at 5951 S. Mooney Blvd., Visalia, CA 93277 (“Customer”)

**WHEREAS** The Customer seeks to purchase hardware maintenance services from Dominion and Dominion is agreeable to providing such services subject to the following terms and conditions:

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

#### **1. Definitions.**

- 1.1. “Party” or “Parties” Dominion and Customer may hereinafter be referred to individually as a Party and collectively as the Parties.
- 1.2. “Hardware” means the Dominion hardware as described in Section 3.1 herein, including all documentation therefore.
- 1.3. “Specifications” means descriptions and data regarding the features, functions and performance of the Hardware, as set forth in user manuals or other applicable documentation provided by Dominion.
- 1.4. “Third-Party Products” means any software or hardware obtained from third-party manufacturers or distributors and provided by Dominion hereunder.

#### **2. SCOPE OF SERVICE**

2.1 Services. Dominion shall repair or replace the Hardware so that each item thereof operates in conformity in all material respects with its Specifications, so long as such Hardware is operated with its designated software and with Third-Party Products (if applicable) approved by Dominion for use with the Hardware. If any Hardware items listed in Section 3.1 fails to operate in conformity with the Specifications during the Agreement term, Dominion shall fully repair or, at Dominion’s sole option, replace the Hardware.

The following conditions apply to the Services:

2.1.1 Customer shall bear the shipping costs to return the malfunctioning item of Hardware to Dominion, and Dominion shall bear the costs for ground-shipping the repaired or replaced item of Hardware to 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.

2.1.2 Repairs will be conducted and parts replaced at the Dominion repair depot, followed by a preventative maintenance inspection.

2.1.3 The following services are among those not covered by this Agreement, but may be available at Dominion's current time and material rates:

- a. Replacement of consumable items including but not limited to batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices, disks, etc.;
- b. Repair or replacement of Hardware damaged by accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;
- c. Repair or replacement of Hardware modified by any person other than those expressly authorized in writing by Dominion;
- d. Repair or replacement of Hardware products from which the serial numbers have been removed, defaced or changed.

2.1.4 In the event Dominion discovers that the Hardware returned by the Customer is not malfunctioning and is working in compliance with its Specification, Customer shall be responsible for the cost of shipping the item back to the Customer and for repayment of the time and material required to examine the Hardware at Dominion's then current rates.

### **3. HARDWARE ITEMS, PRICE, AND PAYMENT**

3.1 Unit Price. In consideration of the Services listed in Section 2 of this Agreement, the Customer shall pay Dominion the price listed in the table below for the listed Hardware component. This shall be payable in advance and shall be due within 30 days of invoicing. Should the Customer fail to pay billings or other charges as may be called for under this Agreement within thirty (30) days of the submission of the invoice, Dominion may, at its option, refuse to continue service of the equipment.

<b>Item</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Annual Price</b>	<b>3-Year Total</b>
Edge II Extended Warranty	126	\$135.00	\$17,010.00	\$51,030.00
VVPAT Extended Warranty	160	\$50.00	\$8,000.00	\$24,000.00
Optech Insight Extended Warranty	115	\$110.00	\$12,650.00	\$37,950.00
400-C Extended Warranty	3	\$6,000	\$18,000.00	\$54,000.00

<b>3-Year Total (due January, 2016)</b>				<b>\$166,980.00</b>
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3.2 Taxes. 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.

#### **4. TERM AND TERMINATION**

4.1 Term. Subject to earlier termination as described below, and unless otherwise agreed in writing by the Parties, this Agreement shall have a term of three (3) years commencing on the Effective Date of January 1, 2016 and ending on 12/31/2018. The effective dates are January – December 2016, January – December 2017, January – December 2018. The customer may request a one year extension in writing to the company, 30 days prior to anniversary and subject to a price increase.

4.2 Termination. Either Party may terminate this Agreement prior to the expiration of its term if the other Party has materially breached any provision of this Agreement and such breach has remained uncured for at least thirty (30) days following written notice thereof.

#### **5. WARRANTIES DISCLAIMER, LIMITATIONS OF LIABILITY**

5.1 Warranties Disclaimer. Except as specifically described in Section 2.1 of this agreement, Dominion disclaims all warranties whether written, oral, express, implied or statutory with respect to the products or services, including all warranties and conditions of merchantability and fitness for a particular purpose, or arising from a course of dealing, usage or trade practice.

5.2 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.

#### **6. GENERAL PROVISIONS**

6.1 Entire Agreement. This Agreement constitutes the entire agreement between the Customer and Dominion with respect to the Services, and hereby supersedes and terminates any prior agreements or understandings relating to such subject matter. No addendum, waiver, consent, modification, amendment or change of

the terms of this Agreement shall bind either Party unless in writing and signed by the Customer and Dominion.

6.2 Severability. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (i) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties as nearly as may be possible and (ii) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

6.3 Notices. Any notice by a Party under this Agreement shall be in writing and either personally delivered, delivered by email, facsimile or sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested. Notices shall be sent to the address of the Parties set forth in the first paragraph hereof, or in any case to such other address of which either Party may from time to time notify the other in accordance with this Section 6.3. All notices shall be deemed effective on the date of actual receipt.

6.4 Governing Law and Jurisdiction. The validity, construction and interpretation of this Agreement, and the rights and duties of the Parties, shall be governed by and construed in accordance with the laws of the Customer's state identified on Page 1 of this Agreement.

6.5 No Waiver. The waiver by either Party of a breach of a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party.

6.6 Section Headings. Captions and section headings hereof are for reference purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

6.7 Force Majeure. Neither Party shall be liable in damages, or shall be subject to termination of this Agreement by the other Party, for any delay or default in performing any obligation hereunder if that delay or default is due to any force majeure event, including without limitation any natural disaster, act of any government or other authority or statutory undertaking, act of terrorism, industrial dispute, fire, explosion, accident, power failure, flood, riot or war (declared or undeclared); provided that, in order to excuse its delay or default hereunder, a Party shall notify the other of the force majeure event, specifying the nature and particulars thereof and the expected duration thereof; and provided, further, that within fifteen (15) calendar days after the termination of force majeure event, such Party shall give notice to the other Party specifying the date of termination thereof.

**6.8 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.

6.9 Execution in Counterparts. This Agreement may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

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

**DOMINION VOTING SYSTEMS, INC.**

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AUTHORIZED SIGNATURE

\_\_\_\_\_  
John Poulos

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
President & CEO

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**COUNTY OF TULARE, CA**

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

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE