



DEAN C. LOGAN  
Registrar-Recorder/County Clerk

May 05, 2015

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:




Los Angeles County Registrar-Recorder/County Clerk

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

16 May 5, 2015

  
PATRICK OZAWA  
ACTING EXECUTIVE OFFICER

**REQUEST APPROVAL OF AMENDMENT NUMBER EIGHT TO AGREEMENT NUMBER 76010  
WITH  
DATA INFORMATION MANAGEMENT SYSTEMS, LLC FOR VOTER INFORMATION  
MANAGEMENT  
SYSTEM MAINTENANCE & SUPPORT SERVICES  
(ALL DISTRICTS) (3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( )  
DISAPPROVE ( )**

**SUBJECT**

Request Board approval to execute Amendment Number Eight to Agreement Number 76010 (Agreement) with Data Information Management Systems, LLC (DIMS) for Voter Information Management System (VIMS) Maintenance and Support Services, which will expire on May 9, 2015, for an additional three years through May 9, 2018, with six month-to-month optional renewals.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Registrar-Recorder/County Clerk (RR/CC), or designee, to execute Amendment Number Eight to Agreement Number 76010 with DIMS to extend maintenance and support services for VIMS for an additional three (3) years commencing on May 10, 2015 through May 9, 2018, with six month-to-month options to extend, at the discretion of the RR/CC, or designee, and after concurrence from County Counsel.
2. Authorize the RR/CC to increase the Contract Sum under the Agreement by \$2,122,750, for a

total Contract Sum of \$6,509,873 for the entire Agreement Term.

3. Delegate authority to the RR/CC, or designee, to terminate the Agreement for convenience.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to ensure for continued maintenance and support of VIMS, developed by DIMS pursuant to a 1998 Agreement with the County of Los Angeles (County) to replace a system then maintained by ISD. RR\CC utilizes VIMS to maintain the County's official voter registration database and support election operations. Several critical systems tightly integrated with VIMS have been identified (Attachment A) to describe the integral functions they deliver, including automation of candidate filing, election contest definition, ballot layout and design, precinct-street-district GIS operations, election material tracking, online web election services, and pollworker training with VIMS. Under the Agreement, DIMS continues to provide maintenance and support to modify VIMS in response to changes in voter registration and election laws, as well as meet internal RR\CC processing needs. DIMS is the only company qualified to make modifications to VIMS, including implementation of mandated interfaces.

The Amendment to extend the term is necessary to comply with the Secretary of State (SOS) requirements to fully integrate VIMS with the official statewide voter registration system (VoteCal) and not affect the current cost structure. To comply with the Help America Vote Act (HAVA) of 2002, the SOS is in the process of developing and implementing the VoteCal system to create a single, uniform, centralized, computerized statewide voter registration list and to define, maintain, and administer this list at the State level. VoteCal will become the statewide system of record and all 58 county election offices are mandated to connect their existing local voter registration and election management system to VoteCal. VIMS is one of three systems in the State that has been selected to interface with VoteCal. Selecting a new vendor at this juncture will pose a major risk to the upcoming 2016 Presidential Election and incur substantial conversion and implementation costs relative to the continued use of VIMS. After the Presidential Election, RR/CC will start researching the feasibility and viability of replacing VIMS with an alternate solution that's capable of meeting RR/CC's technological and operational requirements. The replacement option may include upgrading VIMS to the most current technological platform. The County is scheduled to join VoteCal in December 2015 with the whole State going live by June 2016.

This extension is critical for the completion of the 2016 election cycle and the processing of the solicitation to establish a new contract.

### **Implementation of Strategic Plan Goals**

This request supports the County Strategic Plan as follows:

Goal No. 1, Operational Effectiveness: Ensure that service delivery systems are efficient, effective, and goal-oriented. The services provided under the Agreement will ensure optimal performance of the County's VIMS and thus ensure critical information is ready and available to conduct Federal, State, and local elections.

### **FISCAL IMPACT/FINANCING**

Funding for the recommended three (3) year extension and six (6) month-to-month term for

continued maintenance and support services for VIMS will increase the contract amount by \$2,122,750 for a total Contract Sum of \$6,509,873.

The recommended increase includes:

- \$1,555,750 - Maintenance and Support Services;
- \$525,000 - Custom Programming/Other Professional Services to provide for any system enhancements legally mandated by HAVA and/or California law, regulation, or statute; and
- \$42,000 - Training Services.

Funding in the amount of \$575,000 has been allocated in the FY 2015-2016 budget, with funding to be included in subsequent fiscal years' budgets. This contract will be funded with Net County Cost.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

RR/CC is responsible for the registration of voters, maintenance of the voter, precincting, absentee voting, petitions, precinct officers, and polling location files, and the conduct of Federal, State, and special elections that affect the County as a whole.

On February 10, 1998, your Board adopted a five (5) year contract with three (3) one-year extension options with DIMS for VIMS. That contract was negotiated through a competitive bidding and evaluation process. VIMS replaced the voter registration and election management system designed and developed in 1976 by ISD. The ISD system operated on the County's IBM mainframe computer system at an annual cost of \$1.05 per registered voter. VIMS' annual maintenance cost is \$0.07 per registered voter. In addition to cost savings, VIMS enabled increased reliability, operational efficiencies, improved service delivery and automated functions. VIMS also allowed for the Board approved partnerships with City of Los Angeles and City of Long Beach for online VIMS access which has helped to improve the quality of the voter data, pollworker and polling place data used by all jurisdictions. A recommendation for any new or continued online access use by the cities will be presented to your Board by way of a separate Board letter.

On January 30, 2007, your Board adopted a Sole Source Agreement with DIMS for a term of five (5) years with three (3) one-year extension options for the continuation of system maintenance and support services for VIMS and future system enhancements legally mandated by the Federal HAVA and or State of California law, regulation, or statute with no changes to the cost structure established under the terms of the prior contract. The Agreement was extended by amendments through May 9, 2015.

The recommendation is to extend the Agreement for an additional period of three (3) years with six month-to-month extensions to ensure the continuation of mission critical services and provision of the necessary resources for any future enhancements needed to interface with the State of California's interim Statewide Voter Registration Database, CALVOTER system and VoteCal, the future Statewide Voter Registration System administered and maintained by the SOS. This process will meet functional, business and legal requirements mandated by State Regulations, California Elections Code, and HAVA.

The County's Chief Information Officer (CIO) reviewed this extension and determined that no CIO Analysis is required because the scope of services has not changed. The requested extension simply adds time to the existing Agreement. The CEO Risk Management Branch has reviewed and concurs with the provisions relating to insurance and indemnification. County Counsel has approved the attached Amendment as to form.

**CONTRACTING PROCESS**

This Amendment Number Eight was developed through contract negotiations with DIMS. There was no additional contracting process conducted. DIMS owns the proprietary software responsible for VIMS' functionality and are the only authorized maintenance and support provider at this time.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the recommendation will ensure uninterrupted service to VIMS which maintains voter recorders for over 6.3 million registered voters and provides quality voter data, pollworker and polling place data.

**CONCLUSION**

Upon approval by your Board, the Executive Office is requested to return one (1) adopted copy of this letter to:

Department of Registrar-Recorder/County Clerk  
Finance and Management Division  
12400 Imperial Highway, Suite 5115, Norwalk, CA 90650  
Attention: Dushyant Bala, Contract Manager  
Email: Dbala@rrcc.lacounty.gov Phone: 562-462-2905

Respectfully submitted,



DEAN C. LOGAN  
Registrar-Recorder/County Clerk

Reviewed by:



RICHARD SANCHEZ  
Chief Information Officer

DCL:RFDB:cp

Enclosures

c: Chief Executive Officer  
County Counsel  
Executive Officer, Board of Supervisors  
Chief Information Officer

**TABLE A**  
**ELECTION SUPPORT SYSTEMS INTEGRATED WITH VIMS**

<b>System</b>	<b>Function</b>
Election Contest and Ballot Management System (ECBMS)	Candidate Filing and Ballot Layout
GIS Single Point Data Entry (SPDE)	Address, Precinct, and District Maintenance
GIS Election Consolidation	Precinct Consolidation
Election Materials	Election labels, rosters, street indexes
Red Ballot Box Scanning and Tracking	Election night ballot box tracking
AskED Election Day Help Desk	Election day troubleshooting and public help desk
Poll worker Online Training	Polling Place worker online election training
Online Poll and Sample Ballot Lookup	Polling place locator and Sample Ballot viewer
Vote By Mail (VBM) Online Application	Public Online VBM ballot application and status lookup
Online Voter Registration Status	Public Online Voter Registration Status Lookup
Roster Reconciliation and Signature Capture	Election canvass voter roster signature and ballots cast reconciliation

**AMENDMENT NUMBER EIGHT  
TO AGREEMENT NUMBER 76010  
BY AND BETWEEN COUNTY OF LOS ANGELES AND  
DATA INFORMATION MANAGEMENT SYSTEMS, LLC**

This Amendment Number Eight (“Amendment Number Eight”) to Agreement Number 76010 (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between County of Los Angeles (“County”), a political subdivision of the State of California, and Data Information Management System, LLC (“Contractor”), a limited liability corporation in the State of California. County and Contractor are sometimes hereinafter referred to collectively as the “Parties” and each individually as a “Party.”

WHEREAS, the Agreement was originally entered into by and between County and Contractor, following approval by the County’s Board of Supervisors, on February 10, 2007;

WHEREAS, pursuant to the terms of the Agreement, on December 14, 2007, the County authorized additional technical enhancements to improve the Data Information Management System (DIMS) Network in an effort to improve the County’s elections process;

WHEREAS, the Parties entered into Amendment Number One to the Agreement, dated October 23, 2009, that among other things described therein, incorporated new and revised County contract provisions as mandated by the County’s Chief Executive Officer;

WHEREAS, the Parties entered into Change Notice Number Two to the Agreement, dated February 3, 2010, that among other things described therein, recognized the purchase of DIMS, Inc. from Diebold to Election Systems & Software (ES&S), and accepted, assigned and delegated all rights and responsibilities to ES&S;

WHEREAS, the Parties entered into Change Notice Number Three to the Agreement dated January 10, 2012, that among other things described therein, recognized the reorganization of DIMS, Inc. to DIMS, LLC. and recognized the change in parent company from ES&S to Government Systems, Software & Services, Inc.;

WHEREAS, the Parties entered into Amendment Number Two to the Agreement dated January 19, 2012, that among other things described therein, extended the term of the Agreement for one year effective February 10, 2012 through February 9, 2013;

WHEREAS, the Parties entered into Amendment Number Three to the Agreement, dated May 29, 2012, that among other things described therein; incorporated into Exhibit A (Statement of Work), Addendum A1 (Online Voter Registration) to develop an interface to County’s Election Management System (EMS) with the State of California Online Voter Registration (COVR) Project; and incorporated

into Exhibit B (Price Matrix), Addendum B1 (Price Matrix – State of California Online Voter Registration Project) to reflect the changes in Exhibit A (Statement of Work);

WHEREAS, the Parties entered into Amendment Number Four to the Agreement, dated July 1, 2012, that among other things described therein, (i) updated the delivery date for the COVR project; (ii) replaced and updated existing insurance language, Sections 20.0-21.4 of the Agreement; and (iii) incorporated County's Defaulted Property Tax Reduction Program into the agreement;

WHEREAS, the Parties entered into Amendment Number Five to the Agreement, dated February 1, 2013, that among other things described therein, extended the term of the Agreement for one year effective February 10, 2013 through February 9, 2014;

WHEREAS, the Parties entered into Amendment Number Six to the Agreement, dated February 10, 2014, that among other things described therein, extended the term of the Agreement for one year effective February 10, 2014 through February 9, 2015;

WHEREAS, the Parties entered into Amendment Number Seven to the Agreement, dated February 10, 2015, that among other things described therein, extended the term of the Agreement on a month-to-month basis for a period not to exceed six months. This extension is effective February 10, 2015 and is exercised at the sole discretion of RR/CC and may be terminated in writing no later than the 30<sup>th</sup> of each respective month;

WHEREAS, this Amendment Number Eight is made pursuant to Paragraph 6.4 (Change Notices and Amendments) of the body of the Agreement; and

WHEREAS, the Parties agree to further amend the Agreement to extend the Agreement through May 9, 2018, with six (6) month-to-month option renewals, increase the contract sum, and to make such other changes described herein, all as further described in, and subject to the terms and conditions of, this Amendment Number Eight.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agreement is hereby amended as follows:

1. Subparagraph 1.3.22 (Extension Years) under Section 1.0 (Agreement and Interpretation), Paragraph 1.3 (Definitions) is deleted in its entirety and replaced with a revised Subparagraph 1.3.22 (Extension Years) under Section 1.0 (Agreement and Interpretation), Paragraph 1.3 (Definitions) to read as follows:

## **1.0 AGREEMENT AND INTERPRETATION**

### **1.3 Definitions**

1.3.22 "Extension Years" as used herein shall have the meaning set forth in Paragraph 5.2 under Section 5.0 (Term).

2. Paragraphs 5.1 and 5.2 under Section 5.0 (Term) of the body of the Agreement are hereby deleted in their entirety and replaced with revised Paragraphs 5.1 and 5.2 under Section 5.0 (Term) to read as follows:

#### **5.0 TERM**

5.1 The "Initial Term" of this Agreement shall be effective on February 10, 2007 or upon approval by County's Board of Supervisors, whichever is later, and shall continue for eight (8) years and three (3) months, through May 9, 2015, unless sooner terminated or extended in whole or in part as provided in this Agreement.

5.2 County authorizes the Registrar, or designee, to exercise, upon notice to the Contractor, the option to extend this Agreement for three (3) additional consecutive years ("Extension Years").

5.4 County further authorizes Registrar, or designee, at sole discretion, to authorize month-to-month extensions for a period not to exceed six (6) months, at the end of the Initial Term or Extension Years, if exercised, Contractor agrees that such extension(s) shall be at the same rate(s), terms and conditions.

3. Paragraph 7.1 under Section 7.0 (Contract Sum) of the body of the Agreement is hereby deleted in its entirety and replaced with a revised Paragraph 7.1 under Section 7.0 (Contract Sum) to read as follows:

#### **7.0 CONTRACT SUM**

7.1 The Contract Sum under the term of this Agreement shall be the total monetary amount payable by County to the Contractor for supplying all services specified under this Agreement and shall be \$4,387,123 for the Initial Term and \$2,122,750 for Extension Years. The total Contract Sum for this Agreement, including applicable taxes, is six million, five hundred and nine thousand, eight hundred seventy-three dollars (\$6,509,873) and shall be allocated as set forth in Exhibit B (Price Matrix).

4. Section 19.0 (Indemnification) of the body of the Agreement is hereby deleted in its entirety and replaced with a revised Section 19.0 (Indemnification) to read as follows:

#### **19. INDEMNIFICATION**

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or



relating to this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

5. Paragraph 21.5 (Technology Errors and Omissions) is incorporated into and added to Section 21.0 (Insurance Coverage Requirements) of the body of the Agreement to read as follows:

## **21. INSURANCE COVERAGE REQUIREMENTS**

### **21.5 Technology Errors and Omissions**

Insurance coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor with limits not less than \$5 million.

6. Section 71.0 (Time Off For Voting) is incorporated into and added to the body of the Agreement to read as follows:

### **71.0 TIME OFF FOR VOTING**

The Contractor shall notify its employees and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than 10 days before every statewide election, every Contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

7. Section 72.0 (Escrow Account For Source Code) is incorporated into and added to the body of the Agreement to read as follows:

### **72.0 ESCROW ACCOUNT FOR SOURCE CODE**

72.1 Establishment of Escrow Account. Contractor shall deposit to a California Secretary of State approved escrow facility pursuant to California Elections Code Sections 2500-2501, the Source Code for all VIMS System Software. Such escrow deposits shall be made in compliance with the timing requirements set forth in the Elections Code, with the first deposit made upon the signing of this Agreement and annually on January

31<sup>st</sup> of each year thereafter. Prior to the first deposit, an escrow agreement shall be executed that is substantially in the form of the sample attached to this Agreement as Exhibit N (Form of Escrow Agreement), and shall be a three party agreement executed by the escrow company, Contractor and County (the "Escrow Agreement"). The provisions of the Escrow Agreement and the maintenance of the Source Code shall comply with the preceding and other relevant regulations promulgated by the California Secretary of State Contractor's duty to deposit, update and maintain the Source Code with a Secretary of State certified escrow company and approved escrow facility shall continue throughout the Term.

72.2 Conditions for Release. The Escrow Agreement shall provide terms and conditions for the release of the Source Code from escrow to County, including the requirement that the Source Code on deposit with the escrow company be released from escrow to County in accordance with the release conditions set forth on Schedule C (Preferred Beneficiary Acceptance Form) to the Escrow Agreement.

8. Exhibit A (Statement of Work) of the Agreement is hereby deleted in its entirety and replaced by a revised Exhibit A (Statement of Work) (Revised February 19, 2015), attached hereto and incorporated herein by reference.
9. Exhibit B (Price Matrix) of the Agreement is hereby deleted in its entirety and replaced by a revised Exhibit B (Price Matrix) (Revised February 19, 2015), attached hereto and incorporated herein by reference.
10. Exhibit C (County's Administration) of the Agreement is hereby deleted in its entirety and replaced by a revised Exhibit C (County's Administration) (Revised February 19, 2015), attached hereto and incorporated herein by reference.
11. Exhibit D (Contractor's Administration) of the Agreement is hereby deleted in its entirety and replaced by a revised Exhibit D (Contractor's Administration) (Revised February 19, 2015), attached hereto and incorporated herein by reference.
12. Exhibit N (Form of Escrow Agreement) is added to the Agreement, which is attached hereto and incorporated herein by reference.
13. Except as otherwise provided under this Amendment Number Eight, including all preambles and recitals set forth herein and therein, shall remain unchanged and remain in full force and effect.

**AMENDMENT NUMBER EIGHT  
TO AGREEMENT NUMBER 76010  
BY AND BETWEEN COUNTY OF LOS ANGELES AND  
DATA INFORMATION MANAGEMENT SYSTEMS, LLC**

**IN WITNESS WHEREOF**, the Board of Supervisors of the County of Los Angeles has caused this Amendment Number Eight to be subscribed on its behalf by the Registrar-Recorder/County Clerk or his/her designee, and the Contractor has subscribed the same through its duly authorized officer as of the day, month and year first above written. The person signing on behalf of Contractor warrants under penalty of perjury that he or she is authorized to bind the Contractor.

**COUNTY OF LOS ANGELES**

**DATA INFORMATION MANAGEMENT  
SYSTEM, LLC**

\_\_\_\_\_  
DEAN C. LOGAN  
Registrar-Recorder/County Clerk

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

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TAXPAYER ID #

APPROVED AS TO FORM:

MARK J. SALADINO  
County Counsel

\_\_\_\_\_  
By: Vicki Kozikoujekian  
Principal Deputy County Counsel

EXHIBIT A  
STATEMENT OF WORK

VOTER INFORMATION MANAGEMENT SYSTEM  
MAINTENANCE AND SUPPORT SERVICES

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**TECHNICAL EXHIBITS:**

- 1 CONTRACT DISCREPANCY REPORT

## **1.0 SCOPE OF WORK**

- 1.1 This Statement of Work (SOW) defines the work to be delivered by Contractor to County under the Agreement. This document also incorporates by reference all Contractor obligations set forth in the body of the Agreement. Capitalized terms used in this SOW shall have the meanings set forth in the body of the Agreement, and if such terms are not defined in the Agreement, they shall have the meaning set forth in this SOW.

Contractor shall provide Voter Information Management System (VIMS or System) Software, Interfaces, and related support and maintenance services to accomplish all of the Tasks and subtasks set forth in the Agreement and in this SOW. Such services shall include the following:

- (1) Provide onsite support and maintenance services for VIMS.
- (2) Develop, test, and implement software modifications and System enhancements to comply with requirements imposed by state, and federal statutes.
- (3) Provide interfaces to systems identified by County to automate and facilitate information exchange.
- (4) Conduct training for database administration staff and end user whenever County requests such training.
- (5) Develop both database-administration and end-user documentation whenever a new feature for function is implemented.

## **1.2 BACKGROUND**

Los Angeles County is the nation's largest and most diverse election jurisdiction, serving approximately 6.3 million registered voters, providing assistance in ten different languages and operating more than 4,500 polling places.

Specifically, the RR/CC is responsible for the registration of voters, maintenance of the voters files, precincting, absentee voting, petitions, and precinct officers/polls maintenance and the conduct of federal, state, local and special elections.

## **2.0 QUALITY CONTROL PLAN (QCP)**

The Contractor must establish and utilize a comprehensive Quality Control Plan to assure the County a consistently high level of service throughout the term of the Agreement. Changes to the quality control plan can be suggested for RR/CC's review and approval. Upon approval of changes, Contractor shall update the Quality Control Plan and resubmit the plan to the County Project Manager. The plan shall include, but may not be limited to the following:

- 2.1 Method of monitoring to ensure that Agreement requirements are being met.
- 2.2 A record of all inspections conducted by the Contractor, any corrective action taken, the time a problem was first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action.
- 2.3 A method of ensuring uninterrupted service to RR/CC in the event of a strike of the Contractor's employees or any other unusual occurrence which would result in the Contractor being unable to perform the contracted work.

### **3.0 QUALITY ASSURANCE PLAN (QAP)**

The County will evaluate Contractor's performance under this Agreement using the quality assurance procedures as defined in Paragraph 23 (County's Quality Assurance Plan) of this Agreement.

#### **3.1 Monthly Meetings – Conference Call**

Contractor is required to schedule and host monthly meetings via teleconference. Failure to schedule and host meeting will cause an assessment of five-hundred dollars (\$500).

#### **3.2 Annual Meeting – In-person**

Contractor is required to schedule and host no less than one (1) meeting per year to be conducted at a location to be agreed upon by both County and Contractor. Failure to schedule and host meeting will cause an assessment of five-hundred dollars (\$500).

#### **3.3 Contract Discrepancy Report**

Verbal notification of a Contract discrepancy will be made to the County Project Manager as soon as possible whenever a Contract discrepancy is identified.

The County Project Manager will determine whether a formal Contract Discrepancy Report (Technical Exhibit 1 to this Exhibit A) shall be issued. Upon receipt of this document, the Contractor is required to respond in writing to the County Project Manager within four (4) hours, acknowledging the reported discrepancies or presenting contrary evidence. A plan for correction of all deficiencies identified in the Contract Discrepancy Report shall be submitted to the County Contract Project Manager within one (1) workday. The problem shall be resolved as soon as possible or within fifteen (15) business days or a time period mutually agreed upon by the County and the Contractor.

### **3.4 County Observations**

In addition to RR/CC contracting staff, other County personnel may observe performance, activities, and review documents relevant to this Agreement at any time. However, these personnel may not unreasonably interfere with the Contractor's performance.

## **4.0 DEFINITIONS**

- 4.1 **"Agreement"** and **"Contract"** are used interchangeable.
- 4.2 **"Core Application Software Upgrades"** – Refers to periodic updates, revisions, or enhancements to Core Application Software. Updates or revisions may result from new laws mandated by state, or federal statutes.
- 4.3 **"CPMR Form (Custom Programming Modification Request Form)"** – Refer to Exhibit J ( Custom Programming Modification Request Form).
- 4.4 **"Custom Programming Modification(s)"** – Refers to software modifications required to implement new features or functions detailed under TASK 4 ( Custom Programming Modification(s)) of this Statement of Work.
- 4.5 **"ETS (Election Tally System)"** – Refers to programmatically tallying election results for an election.
- 4.6 **"DIMS"** - Refers to the RR/CC's Election Management System (EMS) which is a system that manages all voter registration information.
- 4.7 **"Help Desk"** – Refers to resource intended to provide the County's end users with information and support related to Contractor's products and services. The purpose of a help desk is to document, track, and troubleshoot system problems or provide guidance on system use.
- 4.8 **"Help Desk Status Report"** – Refers to reports provided by Contractor containing the date problem was reported, the description, severity level, status, staff person assigned to resolve problem, and date problem resolved.
- 4.9 **"Interface(s)"** – Refers to the hardware and software mechanisms, including source code, object code and related documentation required to complete the interface(s) referred to in SOW.
- 4.10 **SDR (System Design Report)"** – Refers to timely written report provided by Contractor to RR/CC in response to CPMR as set forth in item 7 under Subtask 4.1 (Custom Programming Modifications).
- 4.11 **"Statewide Voter Registration Database"** - A single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.



- 4.12 **“VOTECAL System”** – Refers to the proposed state of California’s Statewide Voter Registration Database.
- 4.13 **“Voter Registration File”** – Also known as Voter File is a file of all voter registration records in Los Angeles County. The file includes a variety of voter types: permanent, declared, military, overseas, foreign language voters, etc.
- 4.14 **“WAN (Wide Area Network)”** – Refers to a collection of data network that covers a broad area (i.e., any telecommunications network that links across metropolitan, regional, national or international boundaries) using leased or privately-owned data links.

**5.0 TASKS AND DELIVERABLES**

Contractor is responsible for all acts, products, and services required to support County's continued use of VIMS and deliver maintenance services to County, whether or not the acts, products, or services required to do so are specifically identified as a Task, subtask, or Deliverable in the Agreement or this SOW. Unless otherwise expressly stated, all work described in this SOW shall be performed by Contractor. The following list identifies four (4) specific Tasks and Deliverables.

**TASK 1 - SUPPORT AND MAINTENANCE SERVICES**

**TASK 2 - SYSTEM INTERFACE PROGRAMMING AND EXECUTION**

**TASK 3 - WIDE AREA NETWORK ACCESS PLAN**

**TASK 4 - CUSTOM PROGRAMMING MODIFICATIONS**

Contractor shall use the standard RR/CC software set forth below when preparing Deliverables. Contractor shall provide Deliverables in a file format importable to the standard RR/CC software. RR/CC standard software is as follows:

- Microsoft Word 2013 - Word Processing
- Microsoft Excel 2013 - Spreadsheet
- Microsoft PowerPoint 2013 - Project Presentations
- Microsoft Access 2013 - Database Manager
- Visio Version 2013 - Illustrations, Flowcharts, and Drawings
- Microsoft Project 2013 - Project Manager

**TASK 1 - SUPPORT AND MAINTENANCE SERVICES**

**Subtask 1.1 – Core Application Software Upgrades**

Contractor shall provide periodic updates or revisions to Core Application Software. Updates or revisions may result from new laws mandated by state, or federal statutes. County may also require changes to Core Application Software to meet internal needs.

*Subtask 1.1 Deliverable:*

*Core Application Software Updates.*

**Subtask 1.2 – Help Desk Support**

Contractor shall establish a Help Desk to manage and track any technical problems and failures encountered by County. Contractor shall provide County with a toll free telephone number to Help Desk staffed 24 hours per day, seven (7) days a week. Problems reported to the Help Desk shall be categorized into severity levels and Contractor shall respond according to the severity level of the problem. County shall make the determination of what severity level to assign to each problem reported to the Help Desk. The list below shows definition of each severity level and the level or response required from Contractor.

**Severity Levels**

Severity Level 1: Software failure results in suspension of critical task, job, or operation.

Severity Level 2: Software failure is limited to a specific module and alternate method is available to execute task, job, or operation.

Severity Level 3: Software failure is informational in nature and can be resolved by modifying procedures.

**Response Level**

Severity Level 1: Requires response within one hour, 24 hours per day, seven (7) days a week (including local, State, and federal holidays).

Severity Level 2: Requires response within four (4) hours, eight (8) hours per day, five (5) days a week (Monday - Friday, 9 a.m. until 5 p.m. Pacific Time). Problems reported after business hours and weekends shall be processed the next business day.

Severity Level 3: Requires response within the eight (8) hour working day, eight (8) hours per day, five (5) days a week (Monday - Friday, 9 a.m. until 5 p.m. Pacific Time). Problems reported after business hours and weekends shall be processed the next business day.

*Subtask 1.2 Deliverable:*

*Help Desk toll free telephone number staffed 24 hours a day, seven (7) days a week. In addition, respond according to severity levels above.*

**Subtask 1.3 - Help Desk Status Reports**

Each problem reported to Help Desk shall be documented and tracked by Contractor until it has been resolved. Contractor shall make available within four (4) hours reports containing the date problem was reported, the description, severity level, status, staff person assigned to resolve problem, and date problem resolved. County may request such reports at any time during normal business hours and for any period (by day, week, month, or year).

*Subtask 1.3 Deliverable:*

*Help Desk Status Reports.*

**TASK 2 – SYSTEM INTERFACE PROGRAMMING AND EXECUTION**

Contractor shall provide Analysis, Design, Development, Testing, Installation and Installation Testing, of Software that Will Provide the Interfaces Between VIMS and External Systems Identified by County. In accordance with Paragraph 12 (System Tests and Acceptance) of the body of the Agreement, Contractor shall give County notice of each of the installation test, and designated representatives of County may observe the installation tests and verify the results as County deems necessary or appropriate. Contractor shall deliver to County processing logic specifications and map of transaction files for all Interfaces identified in this task. Upon satisfactory completion of each of the installation test, Contractor shall deliver to County a written certification of completion of the applicable installation test.

Each of the Interfaces is listed below along with a brief description. The County shall review the draft specifications and identify any changes required. Contractor shall incorporate the changes into the reports described below before County Project Director and County Project Manager accept Deliverables under this Task, and County Project Director and County Project Manager will, if acceptable, approve each of such reports.

**Subtask 2.1 - Define and Develop Interface Software for Election Tally System (ETS)**

The Election Tally System (ETS) programmatically tallies election results for an election. The current ETS operates on a networked Intel client workstation platform using an internally developed tally system called "InkaVote." The County intends to replace it with a new comprehensive County developed voting system. A transaction process that shall send and receive data to and from ETS to VIMS in the same format and the same frequency as the existing interface process or a future process identified by County shall be defined and developed by Contractor. Contractor shall also build and document processing logic and map transaction files according to County approved specifications.

## **EXHIBIT A STATEMENT OF WORK**

Contractor shall perform an internal quality control check and certify that all components of this interface have been completed and are performing according to its specifications. The ETS software interface for the County's new voting system shall be delivered according to a written timetable defined by RR/CC.

### *Subtask 2.1 Deliverables:*

*2.1.1 Written certification of completion of the applicable installation test.*

*2.1.2 Report of processing logic specifications and map of transaction file for ETS System.*

*2.1.3 Report of Initial and Integrated System Component Tested software for the ETS System Interface.*

### **Subtask 2.2 - Define and Develop Interface Software for both the interim and permanent Statewide Voter Database**

The VOTECAL System is the state of California's proposed statewide voter registration database that will replace the interim statewide database known as CALVOTER. The VOTECAL System will run on computers located in Sacramento. A transaction process that shall send and receive data to and from the VOTECAL System shall be developed and implemented by the contractor. The hours required to accomplish any future development for a State system or major modifications to the program have not been included in Exhibit B (Price Matrix) and this future development may result in a surcharge to the County. Any surcharge to the County shall be charged at the same rate as "Other Professional Services" as set forth in Exhibit B (Price Matrix). Such process shall meet functional and business requirements mandated by California State Regulations, California Elections Code, and the Federal Help America Vote Act (HAVA). Contractor shall provide reports as specified in the deliverables.

### *Subtask 2.2 Deliverables:*

*2.2.1 Report of processing logic specifications and description of transaction files for VOTECAL System.*

*2.2.2 Report of Initial and Integrated System Component Tested software for the VOTECAL System.*

### **Subtask 2.3 - Implement Interfaces**

Once all of the foregoing reports in this Task 2 have been approved by County Project Director and County Project Manager, Contractor has tested the Interfaces to ensure that they function and integrate properly, and Contractor has so certified, in writing, to County,

## EXHIBIT A STATEMENT OF WORK

Contractor shall provide all Documentation pertaining to the Interfaces, assist County in implementing the Interfaces, and continue throughout such implementation to provide all appropriate end-user and technical training in connection therewith.

### *Subtask 2.3 Deliverables:*

*2.3.1 Contractor's certification of all of the Interfaces.*

*2.3.2 Implementation assistance resulting in successful implementation of all of the Interfaces.*

*2.3.3 Interface training.*

### **TASK 3 - WIDE AREA NETWORK ACCESS PLAN SPECIFICATIONS**

Contractor shall, upon County's request, submit a written report that contains specifications for a wide area network (hereinafter "WAN") including but not limited to: (1) hardware requirements; (2) software requirements; (3) telecommunications requirements; (4) routing protocols required; (5) recommended network design; and (6) network conceptual design. The written specifications shall make recommendations to meet the requirements listed below.

In addition to the requirements listed in this Task, Contractor shall provide all of the functional requirements set forth in any regulations, functional requirements, or specifications published by the Secretary of State's Office for the purpose of connecting to the Statewide Voter Database.

Contractor's written recommendations must include capability for a WAN such that: (1) Registrar-Recorder/County Clerk branch offices shall have full access to VIMS and (2) all of the City Clerks of Los Angeles County shall have limited access to VIMS. The WAN for the City Clerks shall allow for:

- A. Capability to access the voter file, but not to edit the voter file.
- B. Capability to access the full absentee voter system.
- C. Capability to check signatures and an internal tracker so that the cities in Los Angeles County may be billed for signature look up but not for simply viewing voter files.
- D. Capability to exchange polls and officers information.
- E. Capability to send voter updates to the County system tied to automatically generated letter to voter to confirm.
- F. Capability to add and access multilingual voter information.
- G. Capability to add city/municipal voting history to individual voter files.
- H. Capability to use electronic mail to flow documents or files to/from County system.
- I. Such other requirements as are specified by County Project Director.

### *Task 3 Deliverable:*

*Written WAN access plan and specifications.*

#### **TASK 4 – CUSTOM PROGRAMMING MODIFICATIONS**

Contractor shall provide Custom Programming Modifications, including, but not limited to, addition, deletion, or modification of Core Application Software functions, changes to current System outputs, new reports, modified reports, new screens and other software modifications.

Each Custom Programming Modification shall be provided in accordance with the following procedures:

##### **Subtask 4.1 - System Design Report**

1. For each Custom Programming Modification, County will submit a Custom Programming Modification Request ("CPMR") Form, Exhibit J of the Agreement, to Contractor. Each CPMR must be approved in writing by County Project Director and County Project Manager.
2. Within ten (10) working days of Contractor's receipt of County's CPMR, Contractor shall develop a functional description for the Custom Programming Modification. The functional description shall be sent to County Project Director, with a copy to County Project Manager, and shall include: (1) a description of the requested Custom Programming Modification, (2) a not-to-exceed cost estimate of the requested Custom Programming Modification and (3) the expected duration of the Custom Programming Modification implementation. Within sixty (60) Days of receipt of the functional description, County's Project Director will return the approved or disapproved functional description to Contractor.
3. The estimated cost for the Custom Programming Modification as included in the functional description shall be computed at the fixed hourly rate set forth in Exhibit B (Price Matrix) of the Agreement, multiplied by the estimated number of hours to implement the Custom Programming Modification (develop, test, document, certify, install and train). Within sixty (60) Days of receipt of the functional description, County Project Director will return the approved or disapproved functional description to Contractor.
4. If County does not return the approved or disapproved functional description to Contractor within sixty (60) Days, Contractor may give County written notice of cancellation of the functional description effective thirty (30) Days following the expiration of such sixty (60) Day period. County may request an extension within such thirty (30) Days.
5. When Contractor receives County's approval of Contractor's functional description, Contractor shall analyze County requirements in detail and shall prepare for each CPMR a System Design Report ("SDR").

**EXHIBIT A  
STATEMENT OF WORK**

6. Within ten (10) working days of receipt of the approved functional description from County, Contractor shall provide a delivery date for the SDR. Such delivery date shall occur no later than sixty (60) Days following Contractor's receipt of County's approved functional description, unless otherwise agreed to in writing by Contractor Project Director and County Project Director.
7. The SDR shall take into account all then-existing System Software and previously approved SDRs. Each SDR shall include the following and any other items mutually agreed by County and Contractor:
  - A. Design specifications, which must address and be consistent with County-approved requirements for the Custom Programming Modification.
  - B. Database impact.
  - C. User interface impact.
  - D. Dictionary impact.
  - E. Report impact.
  - F. Documentation impact.
  - G. Training impact.
  - H. Wide Area Network impact.
  - I. Special considerations, such as impact on current and future processing performance.
  - J. Quotation of a total firm fixed price, which shall be developed by multiplying the fixed hourly rate set forth in Exhibit B, Price Matrix, by Contractor's total number of hours for all work related to the Custom Programming Modification.
  - K. Estimated time for completion (subject to change depending on County's response date and Contractor's workload).
  - L. Estimated time to complete any interfaces.
  - M. Estimated time for any automated conversion programs to process to completion.
8. Within fifteen (15) working days of County Project Director's receipt of the SDR, County Project Director and County Project Manager shall fully approve, fully reject, or conditionally disapprove the SDR. Contractor shall, with County Project Director's consultation and consent, revise and resubmit any conditionally disapproved SDR.

## EXHIBIT A STATEMENT OF WORK

Within ten (10) working days of County's approval of the SDR, County Project Director shall notify Contractor whether to begin development and

Implementation of the Custom Programming Modification, unless such period is extended as agreed in writing by Contractor Project Director and County Project Director.

Any changes or revisions to the County-approved SDR shall be mutually agreed to in writing by Contractor Project Director and County Project Director. The approved SDR, including any agreed changes and revisions, shall be the basis for Contractor's development of the Custom Programming Modification.

As part of the Custom Programming Modification, Contractor shall develop and deliver: (1) all object code and related documentation for the Custom Programming Modification and any other impacted Application Software, (2) all documentation and procedures necessary to maintain the System, including, but not limited to, compilation instruction/assembly instructions and generated listings for all interfaces to any interfacing systems, and (3) all data files and their record layouts for all Interfaces to any interfacing systems.

### *Subtask 4.1 Deliverables:*

4.1.1 *Functional Description for each requested Custom Programming Modification.*

4.1.2 *System Design Report for each requested Custom Programming Modification.*

### **Subtask 4.2 Custom Programming Modification Development, Testing, Certification, Documentation and Installation**

1. Contractor shall develop, test, certify readiness of, document, demonstrate for County Acceptance, and install for Production Use each Custom Programming Modification in accordance with the applicable County-approved System Design Report.
2. At the sole option of County Project Director, each Custom Programming Modification shall be subject to Acceptance Test. RR/CC will use test scripts to test each basic functional requirement. Each script shall identify the expected results of each function being tested and RR/CC will determine if the function is executing correctly.
3. Contractor shall provide updates to the documentation applicable to the Custom Programming Modification and shall also provide written instructions and demonstration on the use of each Custom Programming Modification.

### *Subtask 4.2 Deliverables:*

4.2.1 *Certification of Completion of each requested Custom Programming Modification.*



*4.2.2 Updated documentation for each requested Custom Programming Modification.*

**Subtask 4.3. Custom Programming Modification Training Plan and Updated Training Materials**

For each Custom Programming Modification that Contractor determines and County agrees impacts training, Contractor shall provide a Training Plan for written approval by County Project Director and County Project Manager, updated inserts for the system training materials, and hands-on training classes for designated County staff.

*Subtask 4.3 Deliverable:*

*Additional training for each requested Custom Programming Modification.*

**6.0 GREEN INITIATIVES**

- 6.1 Contractor shall make reasonable efforts to initiate “green” practices for environmental and energy conservation benefits.
- 6.2 Contractor shall notify County Project Manager of Contractor’s new green initiatives prior to the Agreement commencement.

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**COUNTY EVALUATION OF CONTRACTOR RESPONSE:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Contractor Representative

\_\_\_\_\_  
Date

**COUNTY ACTIONS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR NOTIFIED OF ACTION:**

County Representative's Signature and Date \_\_\_\_\_

Contractor Representative's Signature and Date \_\_\_\_\_

**PRICE MATRIX**  
Initial Term (February 10, 1998 – May 9, 2015)

Description of Service	Units	Unit Cost	Total Amount
Core Application Software Maintenance Fee	5,452,187 voters *	\$0.07 per voter per year	\$ 3,400,000
Custom Programming/Other Professional Services	3,750 hrs	\$175/hr	\$ 656,250
Staff Training (Total includes Contractor staff, travel, per diem, materials, etc.)	30 training days	\$1,400/day	\$ 60,000
CA Online Voter Registration (COVR) (Amendment # 3)	N/A	N/A	\$ 270,873
Contract Sum – Initial Term			\$ 4,387,123

\* The Registrar-Recorder/County Clerk will update the voter registration file annually and update information with Contractor in November of each year.

**PRICE MATRIX**  
Extension Years (May 10, 2015 – May 9, 2018\*\*\*)

Description of Service	Units	Unit Cost	Total Amount
Core Application Software Maintenance Fee	6,350,000 voters **	\$0.07 per voter per year	\$ 1,555,750****
Custom Programming/Other Professional Services	3,000 hrs	\$175/hr	\$ 525,000
Staff Training (Total includes Contractor staff, travel, per diem, materials, etc.)	30 training days	\$1,400/day	\$ 42,000
Contract Sum – Extension Years			\$ 2,122,750

\*\* The Registrar-Recorder/County Clerk will update the voter registration file annually (“Units”) and update information with Contractor in November of each year. As such, Units may vary yearly; therefore, resulting in an increase or decrease in the “Total Amount” for Core Application Software Maintenance. Substantial increases in these charges may require amendments to the Extension Years and total Contract Sum.

\*\*\* Date reflects three year extension term only. Possible six month to month addition not factored.

\*\*\*\* Core Application Software Maintenance Fee Calculation:

*Units x Unit Cost x Contract Term including six month to month (3.5 years) = Extension Years Sum*

## COUNTY'S ADMINISTRATION

CONTRACT NO. 76010

### COUNTY PROJECT DIRECTOR:

Name: JERAMY GRAY

Title: ASSISTANT REGISTRAR-RECORDER/COUNTY CLERK, IT BUREAU

Address: 12400 IMPERIAL HWY.

NORWALK, CA 90650

Telephone: (562) 462-2714

Facsimile: \_\_\_\_\_

E-Mail Address: JGRAY@rrcc.lacounty.gov

### COUNTY PROJECT MANAGER:

Name: RAY CHING

Title: IT MANAGER II

Address: 12400 IMPERIAL HWY.

NORWALK, CA 90650

Telephone: (562) 462-2708

Facsimile: \_\_\_\_\_

E-Mail Address: rching@rrcc.lacounty.gov

### COUNTY CONTRACT PROJECT MONITOR:

Name: RAY CHING

Title: MANAGER II

Address: 12400 IMPERIAL HWY.

NORWALK, CA 90650

Telephone: (562) 462-2708

Facsimile: \_\_\_\_\_

E-Mail Address: rching@rrcc.lacounty.gov

**CONTRACTOR'S NAME:** DIMS, LLC

**Revised Date:** FEBRUARY 19, 2015

**CONTRACT NO:** 76010

**CONTRACTOR'S PROJECT DIRECTOR:**

Name: ROSS J UNDERWOOD  
Title: DIRECTOR, DIMS, LLC  
Address: 2999 DOUGLAS BLVD SUITE 310  
ROSEVILLE CA 95661  
Telephone: 916 746-6400  
Fax: 916 746-6499  
E-Mail: ross.underwood@essvote.com

**CONTRACTOR'S PROJECT MANAGER:**

Name: KEVIN WAGGONER  
Title: CUSTOMER SERVICE MANAGER  
Address: 2999 DOUGLAS BLVD SUITE 310  
ROSEVILLE CA 95661  
Telephone: 916 746-6400  
Fax: 916 746-6499  
E-Mail: kevin.waggoner@essvote.com

**CONTRACTOR'S AUTHORIZED OFFICIAL(S)**

Name: TOM O'BRIEN  
Title: CFO  
Address: 11208 JOHN GALT BLVD.  
OMAHA NE 68137  
Telephone: (402) 970-1173  
Fax: (402) 970-1291  
E-Mail: tfobrien@essvote.com

Name: DICK JABLONSKI  
Title: VP, FINANCE  
Address: 11208 JOHN GALT BLVD.  
OMAHA NE 68137  
Telephone: (402) 537-1103  
Fax: (402) 970-1291  
E-Mail: djjablonki@essvote.com

**Notices to Contractor shall be sent to the following:**

Name: ROSS J UNDERWOOD

Title: DIRECTOR, DIMS, LLC

Address: 2999 DOUGLAS BLVD SUITE 310  
ROSEVILLE CA 95661

Telephone: 916 746-6400

Fax: 916 746-6499

E-Mail: ross.underwood@essvote.com

# ESCROW AGREEMENT

Master Deposit Account Number \_\_\_\_\_

This agreement (the "Agreement") is entered into by and between Data Information Management Systems, LLC, located at 11208 John Galt Boulevard, Omaha, Nebraska 68137 ("Depositor") and by any additional party signing the Preferred Beneficiary Acceptance Form attached as Schedule C to this Agreement ("Preferred Beneficiary") and by Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain") on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"). Preferred Beneficiary, Depositor, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

- A. Depositor and Preferred Beneficiary have entered or will enter into a license and related services agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as the "License Agreement").
- B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.
- C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of elections and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.
- D. Depositor and Preferred Beneficiary desire to establish an escrow with Iron Mountain to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.
- E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States Bankruptcy Code, Section 365(n).
- F. The Parties understand and agree that this Agreement is subject to the provisions of Sections 2500-2501 of the California Elections Code.

## ARTICLE 1 -- DEPOSITS

- 1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the Parties, Depositor shall deliver to Iron Mountain the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement. Depositor and Preferred Beneficiary shall prepare and sign the form attached hereto as Schedule A. Iron Mountain shall have no obligation with respect to the preparation, signing or delivery of Schedule A.



## ESCROW AGREEMENT

- 1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to Iron Mountain, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. The identifying label shall include Depositor's name, the product name, and the product version number. Additionally, Depositor shall complete a Schedule B to this Agreement listing each such tangible media by the item label description, the type of media and the quantity. The Schedule B shall be signed by Depositor and delivered to Iron Mountain with the Deposit Materials. Unless and until Depositor makes the initial deposit with Iron Mountain, Iron Mountain shall have no obligation with respect to this Agreement, except the obligation to notify the Parties regarding the status of the account as required in Section 2.2 below.
- 1.3 Depositor's Certification of Initial Deposit. Within five business days of Depositor's initial deposit of the Deposit Materials, Depositor shall provide written certification in accordance with Sections 2500-2501 of the California Elections Code to Preferred Beneficiary (with a copy to the California Secretary of State) that Depositor has placed the Deposit Materials in escrow. Such certification shall include complete, fully executed copy of the Schedule B completed in connection with the initial deposit.
- 1.4 Iron Mountain's Notification of Initial Deposit. Within five business days of Depositor's initial deposit of the Deposit Materials, Iron Mountain shall provide written notice of such initial deposit to the California Secretary of State at the address provided by Depositor on the Authorized Person(s) / Notices Table and in accordance with Sections 2500-2501 of the California Elections Code. Such notice shall include Depositor's name and shall also include a complete, fully executed copy of this Agreement and a complete, fully executed copy of the Schedule B completed in connection with Depositor's initial deposit.
- 1.5 Deposit Inspection. When Iron Mountain receives the Deposit Materials and the corresponding Schedule B, Iron Mountain will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the corresponding Schedule B. In addition to the deposit inspection, Preferred Beneficiary may elect to cause a verification of the Deposit Materials in accordance with Section 1.9 below.
- 1.6 Acceptance of Deposit. At completion of the deposit inspection, if Iron Mountain determines that the labeling of the tangible media matches the item descriptions and quantity on Schedule B, Iron Mountain will date and sign Schedule B and mail a copy thereof to Depositor and Preferred Beneficiary (with a copy to the California Secretary of State). If Iron Mountain determines that the labeling does not match the item descriptions or quantity on Schedule B, Iron Mountain will (a) note the discrepancies in writing on Schedule B; (b) date and sign Schedule B with the exceptions noted; and (c) mail a copy of Schedule B to Depositor and Preferred Beneficiary. Iron Mountain's acceptance of the deposit occurs upon the signing of

## ESCROW AGREEMENT

Schedule B by Iron Mountain. Delivery of each signed Schedule B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by Iron Mountain.

- 1.7 Depositor's Representations. Depositor represents as follows:
- a. Depositor lawfully possesses all of the Deposit Materials deposited with Iron Mountain;
  - c. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to Iron Mountain and Preferred Beneficiary the rights as provided in this Agreement;
  - d. The Deposit Materials are not subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Depositor's creditors;
  - e. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement or Schedule A, as the case may be; and
  - f. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.
- 1.8 Verification. Preferred Beneficiary shall have the right, at Preferred Beneficiary's expense, to cause a verification of any Deposit Materials. Preferred Beneficiary shall notify Depositor and Iron Mountain of Preferred Beneficiary's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Deposit Materials. If a verification is elected after the Deposit Materials have been delivered to Iron Mountain, then only Iron Mountain, or at Iron Mountain's election an independent person or company selected and supervised by Iron Mountain, may perform the verification.
- 1.9 Deposit Updates. Depositor shall update the Deposit Materials within five business days of providing to Preferred Beneficiary any upgrades, updates, enhancements, revisions, improvements, bug fixes, patches, customizations, or modifications to the software licensed to Preferred Beneficiary pursuant to the License Agreement (collectively, "Supplemental Materials"). Depositor shall further update the Deposit Materials within five business days of issuing to Preferred Beneficiary any new version release of the software licensed to Preferred Beneficiary pursuant to the License Agreement, whether the new version release incorporates previously provided Supplemental Materials or adds new ones. Any new version release shall also be considered Supplemental Materials. Any Supplemental Materials shall be added to the existing deposit account that holds the Deposit Materials, but at all

## ESCROW AGREEMENT

times shall remain separately identified. Depositor shall deposit any Supplemental Materials in accordance with Sections 1.1 and 1.2 above. For every deposit of Supplemental Materials, Depositor shall clearly label each document, magnetic tape, disk, or other tangible media upon which the Supplemental Materials are written or stored. The label shall include Depositor's name, the product name, and the version number. Depositor shall then prepare and sign a new Schedule B listing all Supplemental Materials for a particular deposit. Within five business days of any deposit of Supplemental Materials, Depositor shall provide notice to Preferred Beneficiary (with a copy to the California Secretary of State) of such deposit. Such notice shall include a copy of Schedule B executed in connection with the update to the Deposit Materials. Iron Mountain shall process any deposit of Supplemental Materials and provide all applicable notices thereof in accordance with Sections 1.5 and 1.6 above and shall further create an independent record that will document the activity for each Schedule B. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any Supplemental Materials.

- 1.10 Removal of Deposit Materials. The Deposit Materials may be removed or exchanged only in accordance Sections 2500-2501 of the California Elections Code and upon Iron Mountain's receipt of written instructions signed by Depositor and Preferred Beneficiary (and Iron Mountain shall forward a copy to the California Secretary of State), or as otherwise provided in this Agreement.

### ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

- 2.1 Confidentiality. Iron Mountain shall maintain the Deposit Materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of Iron Mountain. Iron Mountain shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement, Iron Mountain shall not disclose, transfer, make available, or use the Deposit Materials. Iron Mountain shall not disclose the content of this Agreement to any third party except as required by the terms of this Agreement and Sections 2500-2501 of the California Elections Code. However, Depositor may provide the California Secretary of State with a copy of this Agreement and all Exhibits and Preferred Beneficiary Acceptance Forms. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, or upon a finding by the California Secretary of State that Iron Mountain is unwilling or unable to maintain the Deposit Materials in escrow in compliance with Sections 2500-2501 of the California Elections Code, Iron Mountain will immediately notify the Parties unless prohibited by law. It shall be the responsibility of Depositor or Preferred Beneficiary, at each's discretion, to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will not be required to disobey any order from a court or other judicial tribunal. (See Section 8.5 below for notices of requested orders.)

## ESCROW AGREEMENT

- 2.2 Status Reports. Iron Mountain shall provide to Depositor and Preferred Beneficiary access to the Iron Mountain real-time, on-line portal to view data and documentation relative to the escrow agreement, including a copy of this Agreement and complete deposit transaction history from the first deposit transaction to the current status. For avoidance of doubt, payment history is not currently available via the on-line portal. Upon request, Iron Mountain will provide ad hoc status reports to Depositor and Preferred Beneficiary. For avoidance of doubt, the availability of status reports does not affect any other Iron Mountain obligation to provide notices pursuant to the express provisions of this Agreement.
- 2.3 Retention of Deposit Materials.
- a. Pursuant to Sections 2500-2501) of the California Elections Code, Iron Mountain shall retain any and all records and other documentation it maintains with respect to this Agreement for the later of (i) the term of this Agreement, and (ii) twenty two (22) months following any election in which the Deposit Materials (*i.e.* the object code and software that is compiled by the Deposit Materials) were used.
  - b. Additionally, if the California Secretary of State informs Iron Mountain that a criminal prosecution involving fraudulent use of the election management computer program to which the Deposit Materials relates, has been timely commenced, then pursuant to Sections 2500-2501 and subject to continued payment of fees to Iron Mountain pursuant to Section 7.2 of this Agreement, Iron Mountain shall not release the original of the Deposit Materials until the later of (i) twenty two (22) months following such election, or (ii) the California Secretary of State has determined and notified Iron Mountain that the necessity for retention has ended.
- 2.4 Audit Rights. During the term of this Agreement, Depositor and Preferred Beneficiary shall each have the right to inspect the written records of Iron Mountain pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

### ARTICLE 3 -- GRANT OF RIGHTS TO IRON MOUNTAIN

- 3.1 Title to Media. Depositor hereby transfers to Iron Mountain the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.
- 3.2 Right to Make Copies. Iron Mountain shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. Iron

## ESCROW AGREEMENT

Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by Iron Mountain. With all Deposit Materials submitted to Iron Mountain, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including, but not limited to, the hardware and/or software needed. With the exception of copies requested by the California Secretary of State, which shall not pay for copies, any copying expenses incurred by Iron Mountain as a result of a request to copy will be borne by the Party requesting the copies. Alternatively, Iron Mountain may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for Iron Mountain to perform this Agreement.

- 3.3 Right to Transfer Upon Release. Depositor hereby grants to Iron Mountain the right to transfer a copy of the Deposit Materials to Preferred Beneficiary upon any release of the Deposit Materials for use by Preferred Beneficiary in accordance with Section 4.5. Except upon such a release or as otherwise provided in this Agreement or by applicable law, judicial order, or regulation, Iron Mountain shall not transfer the Deposit Materials.

### ARTICLE 4 -- RELEASE OF DEPOSIT

- 4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the occurrence of any of following:
- a. Depositor's failure to carry out its obligations imposed on it pursuant to the License Agreement; or
  - b. Depositor's failure to continue to do business in the ordinary course.
- 4.2 Filing For Release. In the event that Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary shall notify Iron Mountain of the occurrence. Such notice shall specify the particular Release Condition and shall identify, by Schedule B number, the Deposit Materials to be released. Upon receipt of such notice, Iron Mountain shall promptly notify Depositor and the California Secretary of State and shall provide a copy of Preferred Beneficiary's notice to each of Depositor and the California Secretary of State by overnight express mail (by commercial or U.S. Postal Service).
- 4.3 Contrary Instructions. From the date Iron Mountain mails the notice requesting release of the Deposit Materials, Depositor shall have ten business days to deliver to Iron Mountain contrary instructions ("Contrary Instructions"). For purposes of this Section, Contrary Instructions shall mean delivery by certified mail to Iron Mountain by Depositor, with a copy to Preferred Beneficiary and to the California Secretary of State, of an affidavit or declaration stating that a Release Condition has either not occurred or no longer exists. Upon receipt of Contrary Instructions, Iron

## ESCROW AGREEMENT

Mountain shall send a copy to Preferred Beneficiary by overnight express mail (by commercial or U.S. Postal Service). Additionally, Iron Mountain shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to Section 8.3 of this Agreement. Subject to Section 5.2 of this Agreement, Iron Mountain will continue to store the Deposit Materials without release pursuant to this Section 4 pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 8.3; or (c) order of a court.

- 4.4 Release of Deposit. If Iron Mountain does not receive Contrary Instructions from the Depositor, Iron Mountain is authorized to release a copy of the requested Deposit Materials to the Preferred Beneficiary. However, Iron Mountain is entitled to receive any fees due to Iron Mountain before making the release. Any copying expense in excess of \$300 will be chargeable to Preferred Beneficiary.
- 4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release the release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement.
- 4.6 Continuation of Agreement. Unless the Parties jointly notify Iron Mountain otherwise, no release pursuant to this Section 4 of a copy of the Deposit Materials, in whole or in part, shall be deemed to terminate, or shall cause the termination of, this Agreement as to any Party, including the Preferred Beneficiary receiving the Deposit Materials, and all obligations of Iron Mountain in respect of the Deposit Materials shall continue in full force and effect in accordance with the terms herein.
- 4.7 Order to Release Deposit Material at the Request of the Secretary of State of California. Should the Secretary of State of California order release of the Deposit Materials pursuant to Sections 2500-2501, Iron Mountain shall deliver them within the specified time period of 24 hours of receipt of the order.

## ARTICLE 5 -- TERM AND TERMINATION

- 5.1 Term of Agreement. The initial term of this Agreement is for a period of one year beginning as of the date of this Agreement. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor and Preferred Beneficiary jointly instruct Iron Mountain in writing that the Agreement is terminated, provided, that if the California Secretary of State has informed the Depositor or Preferred Beneficiary of an investigation or other proceeding related to this Agreement, then Depositor or Preferred Beneficiary is not permitted to terminate this Agreement for the twenty two (22) month period following any election conducted using the Deposit Materials; or (b) Iron Mountain instructs Depositor and Preferred Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with

## ESCROW AGREEMENT

Section 5.3. If the Deposit Materials are subject to another escrow agreement with Iron Mountain, Iron Mountain reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

- 5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to Iron Mountain by Depositor, Iron Mountain shall provide written notice of delinquency to all Parties. Either Depositor or Preferred Beneficiary shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) days of the date of such notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Depositor and Preferred Beneficiary (with a copy to the California Secretary of State). Iron Mountain shall have no obligation to take any action under this Agreement so long as any payment due to Iron Mountain remains unpaid. The payment by Preferred Beneficiary of any amounts to Iron Mountain pursuant to this Section 5.2 shall not constitute a waiver of, nor prejudice, any of Preferred Beneficiary's rights and remedies under the License Agreement, or at law or in equity, in respect of Depositor's nonpayment hereunder.
- 5.3 Termination by Resignation. Iron Mountain reserves the right to terminate this Agreement, for any reason, by providing Depositor and Preferred Beneficiary (with a copy to the California Secretary of State) with 60-days' written notice of its intent to terminate this Agreement. Within the 60-day period, the Depositor and Preferred Beneficiary may provide Iron Mountain with joint written instructions authorizing Iron Mountain to forward the Deposit Materials to another escrow company and/or agent or other designated recipient. If Iron Mountain does not receive said joint written instructions within 60 days of the date of Iron Mountain's written termination notice, then Iron Mountain shall destroy, return or otherwise deliver the Deposit Materials in accordance with Section 5.4.
- 5.4 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions and to the restrictions imposed by Section 2.3 of this Agreement, upon termination of this Agreement, Iron Mountain shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, Iron Mountain may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. Iron Mountain shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with Iron Mountain or if all Deposit Materials have been released to the Preferred Beneficiary in accordance with Section 4.4.
- 5.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:
- a. Depositor's Representations (Section 1.7);

## ESCROW AGREEMENT

- b. Retention of Deposit Materials (Section 2.3);
- c. The provisions regarding Financial Interest (Article 6);
- d. The obligations of confidentiality with respect to the Deposit Materials;
- e. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Deposit Materials has occurred prior to termination;
- f. The obligation to pay Iron Mountain any fees and expenses due;
- g. The provisions regarding Liability and Disputes (Article 8); and
- h. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

### ARTICLE 6 – FINANCIAL INTEREST

#### 6.1 Financial Interest Representations.

- a. Iron Mountain's Representations. Iron Mountain represents that Iron Mountain, its officers, and directors do not hold or exercise any direct or indirect financial interest in Depositor. Notwithstanding the foregoing, Iron Mountain's officers or directors may acquire or hold directly or indirectly, solely for investment purposes, securities in Depositor, provided that any such officer or director exercises no control of the purchase or sale decisions in respect of such security (e.g., such securities are held in a mutual fund or in a discretionary brokerage account over which investors have no ability to specify purchases or sales of individual securities).
- b. Depositor's Representations. Depositor represents that Depositor, its officers, and directors do not hold or exercise any direct or indirect financial interest in Iron Mountain.

#### 6.2 Financial Interest Affirmative Covenants.

- a. Iron Mountain's Affirmative Covenants. Iron Mountain covenants that if it develops a financial interest in Depositor, Iron Mountain shall:
  - i. Advise Depositor of the financial interest;
  - ii. Immediately notify Preferred Beneficiary of the financial interest; and



## ESCROW AGREEMENT

- iii. Transfer the Deposit Materials to another certified escrow company which has no financial interest in Depositor.
- a. Depositor's Affirmative Covenants. Depositor covenants that if it develops a financial interest in Iron Mountain, Depositor shall:
  - i. Advise Iron Mountain of the financial interest;
  - ii. Immediately notify Preferred Beneficiary of the financial interest; and
  - iii. As allowed by the terms of this Agreement, instruct Iron Mountain to transfer the Deposit Materials to another certified escrow company which has no financial interest in Depositor and has been approved by Preferred Beneficiary.

### ARTICLE 7 -- IRON MOUNTAIN'S FEES

- 7.1 Fee Schedule. Depositor agrees to pay Iron Mountain its standard fees and expenses applicable to the services provided. Iron Mountain shall notify Depositor at least ninety (90) days prior to any increase in fees. For any service not listed on Iron Mountain's standard fee schedule, Iron Mountain will provide a quote prior to rendering the service, if requested.
- 7.2 Payment Terms. Iron Mountain shall not be required to perform any service unless the payment for such service and any outstanding balances owed to Iron Mountain are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, Iron Mountain may terminate this Agreement in accordance with Section 5.2.

### ARTICLE 8 -- LIABILITY AND DISPUTES

- 8.1 Right to Rely on Instructions. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine. Iron Mountain may assume that any employee of a Party who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Iron Mountain shall not be responsible for failure to act as a result of causes beyond the reasonable control of Iron Mountain.
- 8.2 Indemnity, Limitation of Liability, and Consequential Damages Waiver.

## ESCROW AGREEMENT

- (a) Indemnity. Depositor and Iron Mountain shall defend, indemnify and hold harmless the other, its corporate affiliates and its respective officers, directors, employees, and agents and its respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.
- (b) Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT, (II) LIABILITY FOR DEATH OR BODILY INJURY, (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT MATERIALS), (IV) THEFT, OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (c) Consequential Damages Waiver. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.
- 8.3 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by arbitration under the Commercial Rules of the American Arbitration Association. Three arbitrators shall be selected. Depositor and Preferred Beneficiary shall each select one arbitrator and the two chosen arbitrators shall select the third arbitrator, or failing agreement on the selection of the third arbitrator, the American Arbitration Association shall select the third arbitrator. However, if Iron Mountain is a party to the arbitration, Iron Mountain shall select the third arbitrator. Depositor and Preferred Beneficiary agree that arbitration will take place in Los Angeles County, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail,

## ESCROW AGREEMENT

to the attorney for the party or, if unrepresented, to the party at the last known business address.

- 8.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.
- 8.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Iron Mountain to take, or refrain from taking any action, that party shall:
- a. Give Iron Mountain at least five business days' prior notice of the hearing, unless the nature of the request or requested order makes such notice impracticable;
  - b. Include in any such order that, as a precondition to Iron Mountain's obligation, Iron Mountain be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
  - c. Ensure that Iron Mountain not be required to deliver the original (as opposed to a copy) of the Deposit Materials if Iron Mountain may need to retain the original in its possession to fulfill any of its other duties.
- 8.6 No Liability for the State of California or its Secretary of State. Neither the State of California nor its Secretary of State shall be responsible for any of the fees claimed by Depositor, Preferred Beneficiary, or Iron Mountain to establish this Agreement. Further, neither the State of California nor its Secretary of State is a party to this Agreement and shall not incur any liability for the actions of the Parties.

### ARTICLE 9 -- GENERAL PROVISIONS

- 9.1 Entire Agreement. This Agreement, which includes Schedules A, B, C, and D described herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Iron Mountain is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. Iron Mountain's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties hereto, except that Schedule A need not be signed by Iron Mountain, Schedule B need not be signed by Preferred Beneficiary, Schedule C need only be signed by the Parties identified on the Form, and Schedule D need not be signed by the Preferred Beneficiary.

## ESCROW AGREEMENT

- 9.2 Notices. All notices regarding release of Deposit Materials or termination of this Agreement shall be in writing and sent by commercial express mail or certified mail. All other notices, including invoices, payments, and other documents and communications, shall be sent by commercial express mail or by regular mail to the individuals and Parties at the addresses provided by the Parties ("Authorized Persons/Notices Table") (see the signature page and Preferred Beneficiary Acceptance Form). Depositor and Preferred Beneficiary shall also have access to account data via the online portal maintained at the Iron Mountain Website. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of address. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services. The Parties recognize and agree that the California Code of Regulations imposes obligations relating to notice that may conflict with the provisions of this Section 9.2. In such case, the Parties shall comply with the more stringent requirement, but in all cases, comply with the provisions of the California Code of Regulations.
- 9.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.
- 9.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.
- 9.5 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.
- 9.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[signature page follows]

**ESCROW AGREEMENT**

**DIMS**

**IRON MOUNTAIN  
INTELLECTUAL PROPERTY  
MANAGEMENT, INC.**

<b>SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS</b>	

<b>SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	<a href="mailto:ipmcontracts@ironmountain.com">ipmcontracts@ironmountain.com</a>

**AUTHORIZED PERSON(S)/NOTICES TABLE**

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

<b>PRINT NAME:</b>		<b>PRINT NAME:</b>	
<b>TITLE:</b>		<b>TITLE:</b>	
<b>EMAIL ADDRESS</b>		<b>EMAIL ADDRESS</b>	
<b>STREET ADDRESS 1</b>		<b>STREET ADDRESS 1</b>	
<b>PROVINCE/CITY/STATE</b>		<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>		<b>POSTAL/ZIP CODE</b>	
<b>PHONE NUMBER</b>		<b>PHONE NUMBER</b>	
<b>FAX NUMBER</b>		<b>FAX NUMBER</b>	

California Secretary of State

**NOTICES TABLE**

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

<b>PRINT NAME:</b>		<b>PRINT NAME:</b>	
<b>TITLE:</b>		<b>TITLE:</b>	
<b>EMAIL ADDRESS</b>		<b>EMAIL ADDRESS</b>	
<b>STREET ADDRESS 1</b>		<b>STREET ADDRESS 1</b>	
<b>PROVINCE/CITY/STATE</b>		<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>		<b>POSTAL/ZIP CODE</b>	
<b>PHONE NUMBER</b>		<b>PHONE NUMBER</b>	
<b>FAX NUMBER</b>		<b>FAX NUMBER</b>	

# ESCROW AGREEMENT

## BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>EMAIL ADDRESS</b>	
<b>STREET ADDRESS 1</b>	
<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>	
<b>PHONE NUMBER</b>	
<b>FAX NUMBER</b>	

## IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to [ipmcontracts@ironmountain.com](mailto:ipmcontracts@ironmountain.com) OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

# ESCROW AGREEMENT

## SCHEDULE A

### MATERIALS TO BE DEPOSITED

Account Number \_\_\_\_\_

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to Iron Mountain shall consist of the following:

\_\_\_\_\_  
Depositor

\_\_\_\_\_  
Preferred Beneficiary

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ESCROW AGREEMENT****SCHEDULE B****DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: \_\_\_\_\_ ESCROW ACCOUNT NUMBER: \_\_\_\_\_

DEPOSIT NAME \_\_\_\_\_ AND DEPOSIT VERSION \_\_\_\_\_ (Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Internet File Transfer			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted?  Yes or  No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

**Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Schedule B via commercial express carrier to the following address:**

Iron Mountain Intellectual Property Management, Inc.  
 Attn: Vault Administration  
 2100 Norcross Parkway, Suite 150  
 Norcross, GA 30071  
 Telephone: (770) 239-9200  
 Facsimile: (770) 239-9201



# ESCROW AGREEMENT

## SCHEDULE C

- Preferred Beneficiary Acceptance Form

**Deposit Account Number:** \_\_\_\_\_

Depositor, Beneficiary and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"), hereby acknowledge that Election Systems & Software, Inc. is the **Depositor** referred to in the Escrow Agreement that supports Deposit Account Number: \_\_\_\_\_ with Iron Mountain as the escrow agent and the County of Los Angeles is the **Preferred Beneficiary** enrolling under this Agreement. **Iron Mountain, Preferred Beneficiary** and **Depositor** each hereby agrees to be bound by all provisions of such Agreement except as amended below.

1. As between Depositor, Iron Mountain, and the Preferred Beneficiary set forth on this Schedule C, Section 4.1 of the Master Escrow Agreement is hereby deleted and replaced with the following:

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the occurrence of any of the following:

- a. Preferred Beneficiary has terminated the License Agreement under any of the following provisions with respect to Depositor:
  - i. Paragraph 5 (Termination for Insolvency) of Exhibit A to the License Agreement (Additional Terms and Conditions);
  - ii. Paragraph 6 (Termination for Default) of Exhibit A (Additional Terms and Conditions) with respect to Contractor's breach of Maintenance & Support Services obligations;
- b. Depositor has discontinued Maintenance & Support Services provided under Exhibit E to the License Agreement (Maintenance & Support Services), provided the discontinuation of Maintenance & Support Services to Preferred Beneficiary is not based on Preferred Beneficiary's nonpayment of an any undisputed Maintenance & Support Fee accrued thereunder; or
- c. Depositor has impermissibly assigned an obligation under the License Agreement to a third party without the prior written approval of Preferred Beneficiary.

2. Additionally, as between Depositor, Iron Mountain, and the Preferred Beneficiary set forth on this Schedule C, new section 8.2(d) is added as follows:

8.2(d). No Change of Relationship. NOTWITHSTANDING THE FOREGOING SECTIONS 8.2(b) OR 8.2(c), OR ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, NEITHER THIS SECTION 8.2 NOR ANY OTHER PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE, REDUCE, OR LIMIT IN ANY WAY ANY DAMAGES ACCRUING BETWEEN DEPOSITOR AND PREFERRED BENEFICIARY, WHICH ARE ACKNOWLEDGED AND AGREED BETWEEN DEPOSITOR AND PREFERRED BENEFICIARY TO BE CONTROLLED EXCLUSIVELY BY THE LICENSE AGREEMENT BETWEEN THEM AND NOT BY THIS AGREEMENT.

# ESCROW AGREEMENT

**PREFERRED BENEFICIARY COMPANY NAME: COUNTY OF LOS ANGELES**

**AUTHORIZED PERSON(S)/NOTICES TABLE**

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below. Please complete all information as applicable. Incomplete information may result in a delay of processing.

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS		STREET ADDRESS	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

**PAYING PARTY COMPANY NAME: ELECTION SYSTEMS & SOFTWARE, INC.**

**BILLING CONTACT INFORMATION TABLE**

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

All notices should be sent to [ipmcontracts@ironmountain.com](mailto:ipmcontracts@ironmountain.com) OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

**NOTE: SIGNATURE BLOCKS FOLLOW ON THE NEXT PAGE**

# ESCROW AGREEMENT

## DEPOSITOR

<i>SIGNATURE:</i>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS</b>	

## PREFERRED BENEFICIARY

Signature:	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	

## IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

Signature:	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	<a href="mailto:ipmcontracts@ironmountain.com">ipmcontracts@ironmountain.com</a>

# ESCROW AGREEMENT

## SCHEDULE D

### AUXILIARY DEPOSIT ACCOUNT TO MASTER ESCROW AGREEMENT

(NOTE: TO BE COMPLETED ONLY IF DEPOSITOR ESTABLISHED A MASTER ESCROW AGREEMENT)

Master Deposit Account Number: \_\_\_\_\_

Auxiliary Account Number \_\_\_\_\_

Election Systems & Software, Inc. (“**Depositor**”) has entered into a Master Escrow Agreement with Iron Mountain Intellectual Property Management, Inc. (“**Iron Mountain**”). Pursuant to that Agreement, Depositor may deposit certain Deposit Material with Iron Mountain.

Depositor desires that new Deposit Material be held in a separate account and be maintained separately from the initial account. By execution of this Schedule D, Iron Mountain will establish a separate account for the new Deposit Material. The new account will be referenced by the following name:

\_\_\_\_\_.

Depositor hereby agrees that all terms and conditions of the existing Master Escrow Agreement previously entered into by Depositor and Iron Mountain will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

**DEPOSITOR**

**IRON MOUNTAIN  
INTELLECTUAL PROPERTY  
MANAGEMENT, INC.**

<i>SIGNATURE:</i>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS</b>	

Signature:	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	<a href="mailto:ipmcontracts@ironmountain.com">ipmcontracts@ironmountain.com</a>

**AUTHORIZED PERSON(S)/NOTICES TABLE**

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

<b>PRINT NAME:</b>		<b>PRINT NAME:</b>	
<b>TITLE:</b>		<b>TITLE:</b>	
<b>EMAIL ADDRESS</b>		<b>EMAIL ADDRESS</b>	
<b>STREET ADDRESS 1</b>		<b>STREET ADDRESS 1</b>	
<b>PROVINCE/CITY/STATE</b>		<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>		<b>POSTAL/ZIP CODE</b>	
<b>PHONE NUMBER</b>		<b>PHONE NUMBER</b>	
<b>FAX NUMBER</b>		<b>FAX NUMBER</b>	