



www.Runbeck.net ■ 877-230-8737
2800 S. 36th Street, Phoenix, AZ 85034

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT ("Agreement") is made as of the date of full execution, by and between **County of Nevada**, a governmental subdivision of the State of **California** ("Client"), and RUNBECK ELECTION SERVICES, INC., an Arizona corporation, whose address is 2800 S. 36th Street, Phoenix, AZ 85034 ("Runbeck") (collectively, the "Parties").

RECITALS

1. In connection with its elections responsibilities, Client desires to purchase from Runbeck software and to obtain a license to use software ("Software").
2. Runbeck desires to sell the Software and grant a license to use the software to Client on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

AGREEMENTS

1. Sale of Software

Runbeck hereby sells, and Client hereby purchases, the Software, as specifically set forth in the Agreement.

2. Grant of Software License; Annual License Fees; Restrictions

Subject to the Client's ongoing obligations under this Agreement, Client has been granted an irrevocable, non-exclusive right and license to install, display and use the Software for the term described in, and in accordance with the express terms of, the Software License attached hereto as Exhibit "A". Title to and ownership of the Software shall at all times remain with Runbeck and neither Client, nor its affiliates, agents or employees, will reverse engineer or reverse compile any part of the Software without Runbeck's prior written consent. Client shall pay Runbeck an annual License and Support Fee for the Software, as specifically set forth in Exhibit "B". All payments of this Fee shall be made on each successive yearly anniversary date of delivery of the Software to the Client.

3. Availability and Retention of Records

All records relating to the products and services provided under this Agreement and supporting documentation for invoices submitted to Client by Runbeck shall be retained and made available by Runbeck for audit by Client, its duly authorized representatives, the State of California (including, but not limited to, the Auditor of the State of California, Inspector General or duly appointed law enforcement officials) and agencies of the United States government. Such records shall be retained by Runbeck and made available for any time period required by state or federal law.

4. Assignment

The Parties expressly agree that neither shall assign this Agreement without the prior written consent of the other. Runbeck may subcontract services agreed to in this Agreement, but only with the written consent of the Client. All subcontracts are subject to the same terms, conditions, and covenants contained within this Agreement.

5. Governing Law

This Agreement shall be governed, construed, and enforced under the laws of California notwithstanding any conflicts of laws provisions. Any legal action brought pursuant to this Agreement shall be filed in the courts of California.

6. Integration and Modification

This Agreement, including exhibits (each of which is expressly incorporated herein), embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or contracts, either written or oral, between the Parties to this Agreement. This Agreement shall not be modified in any manner except by an instrument, in writing, executed by the Parties to this Agreement.

7. Severability

If any term or provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

8. Appropriations

Client represents and covenants that (i) it has, and will have, funds available to pay the purchase price for the Annual Software License and Support fees, and other financial obligations under this Agreement, including all exhibits hereto, through the end of Client's current fiscal period; and (ii) that it shall use its best efforts to obtain funds to pay any of the foregoing financial obligations for each subsequent fiscal year of the term of the Agreement. In the event Client's appropriations request to its legislative body or funding authority for necessary funds hereunder is denied, this Agreement, and all exhibits, may be terminated by Runbeck. Client shall make payment of all charges and obligations incurred through the end of the fiscal period for which funds were appropriated. In any such event, Client shall thereupon return to Runbeck all Software and other Runbeck property in its possession. Client shall retain possession of non-proprietary data, with exception to items specified in Exhibit C."DIMS.net Proprietary Database Objects.pdf."

9. Compliance

Runbeck agrees to comply with all applicable federal, state, and local laws in the conduct of work hereunder. Runbeck accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation, insurance premiums, income tax deductions, social security deductions, and all other taxes or payroll deductions required for all employees engaged by Runbeck in the performance of work under this Agreement.

10. Non-Discrimination

Runbeck certifies it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including, but not limited to, Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975 and the Age Discrimination in Employment Act, as amended.

During the performance of this Agreement, Runbeck will not discriminate against any employee, contract worker, or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. Runbeck will take affirmative action to ensure that during employment, all employees are treated without regard to race, color, religion, sex, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. These provisions apply also to contract workers, such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Runbeck agrees to post in conspicuous places, available to employees and applicants for employment, notices stating Runbeck complies with all applicable federal and state non-discrimination laws.

Runbeck, or any person claiming through Runbeck, agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Runbeck.

11. Independent Relationship

Nothing in this Agreement is intended to, nor shall be deemed to, create a partnership, association or joint venture between Client and Runbeck in the conduct of the provisions of this Agreement. Runbeck shall at all times have the status of an independent contractor.

12. Waiver

Any waiver by either party of any right, provision or condition under this Agreement shall not be construed or deemed to be a waiver of any other right, provision or condition of this Agreement, nor a waiver of a subsequent breach of the same right, provision or condition.

13. Confidential Information

All information owned, possessed or used by Client which is communicated to, learned, or otherwise acquired by Runbeck or its employees, agents or contractors in the performance of the terms of this Agreement shall be deemed and remain Confidential Information. Runbeck shall not, beginning on the date of first association or communication between the Client and Runbeck and continuing through the term of this Agreement and thereafter, disclose, communicate or divulge to another, or use for Runbeck's own benefit or the benefit of another, any such Confidential Information without the prior written consent of the Client.

14. Warranty

Runbeck warrants and represents that services provided pursuant to this Agreement, and attached exhibits, shall be timely performed in a professional manner in accordance with applicable industry standards; and that Runbeck has the requisite ownership, authority and license rights to furnish Software provided to Client in connection with this Agreement.

Runbeck warrants and represents that Software shall be free from any defects in material or workmanship for a period of one (1) year after installation (the "Warranty Period"). This warranty extends to: i) any defect reported during the Warranty Period but not corrected; ii) any defect reported and thought to be corrected but that reoccurs outside of the Warranty Period; iii) any defect misdiagnosed during the Warranty Period and discovered to reoccur outside of the Warranty Period; and iv) any defect discovered after the Warranty Period but which can be documented to have started during the Warranty Period. Runbeck agrees to a one-day grace period beyond the end of the Warranty Period for notification purposes for defects discovered during the Warranty Period. Runbeck shall, at its own election and expense, either repair or replace any component which Client discovers to be defective in material or workmanship, provided that Client has furnished timely written notice to Runbeck.

EXCEPT FOR THE WARRANTIES PROVIDED HEREIN, RUNBECK HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE CONCERNING THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Limitation of Runbeck Liability

Runbeck shall not be responsible for the Software's operation or failure to operate, to the extent such operation or failure results from, arises out of, or is related to Client's improper or negligent use or operation of the Software. IN NO EVENT SHALL RUNBECK BE LIABLE TO CLIENT OR TO ANY THIRD PARTY, FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, OR OTHER CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER.

16. Indemnification

Runbeck agrees to indemnify and hold harmless Client from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses, caused by the sole negligence or intentional misconduct of Runbeck with respect to its obligations under this Agreement.

Runbeck further agrees to defend, indemnify and hold harmless Client from and against any claim, suit, demand, or action alleging the Software, or any component thereof, infringes any copyright, trade secret, U.S. patent or any other proprietary right of any third party, and Runbeck shall indemnify Client against any judgment, award or amount paid in settlement to which Runbeck has agreed. Client shall provide Runbeck prompt written notice of such claim, suit, demand, or action and shall cooperate with Runbeck in the defense and settlement thereof. Runbeck shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof.

If a temporary or a final injunction is obtained against Client's use of Software by reason of an infringement of a copyright, trade secret, or other proprietary right, Runbeck will, at its option and expense, either:

1. Procure for Client the right to continue using the Software; or
2. Replace or modify Software, or such infringing portion thereof, so that it no longer infringes such copyright, trade secret, or other proprietary right

17. No Third-Party Beneficiary

Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement allows any claim or right of action in any third person or entity. Any person or entity other than Client or Runbeck receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

18. Notices

All written notices required under this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid as follows:

By Runbeck to: County of Nevada
950 Maidu Avenue, Ste. 210
Nevada City, CA 95959
Attention: Natalie Adona
Elections

To Runbeck: Runbeck Election Services, Inc.
2800 S. 36th Street
Phoenix, Arizona 85034
Attention: Rizwan Fidai
Vice President of Sales

With a copy to: Steven H. Williams, Esq.
2323 North Central Avenue, Unit 1905
Phoenix, Arizona 85004

Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by U.S. mail are effective upon the expiration of five (5) mail delivery days from deposit (postmarked) with the U.S. Postal Service.

19. Runbeck's Confidential Information

Runbeck represents that the Software and related documentation provided under this Agreement, including, but not limited to, the Source Code, the software design, structure and organization, the user interface, the database design, the database structure and schema, and the engineering know-how implemented in the software (collectively "Runbeck Confidential Information") constitute the valuable properties and trade secrets of Runbeck, embodying substantial creative efforts which are secret, confidential, and not generally known by the public. Client agrees to hold Runbeck's Confidential Information, including any copies thereof and any documentation related thereto, in strict confidence and to not permit any unauthorized person or entity to obtain access to it to the extent permitted under applicable law. Within this context, Client agrees not to disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available Runbeck Confidential Information or any part thereof to any other party in any form of media for any purpose other than performing its obligations under this Agreement. Client further agrees not to disclose or distribute to any other party, in whole or in part, Runbeck Confidential Information without written consent from Runbeck. Client is permitted to extract non-proprietary data for any purpose deemed necessary by Client. See Exhibit C."DIMS.net Proprietary Database Objects.pdf" for inclusive list of confidential information.

20. No Construction Against Drafting Party

The Parties and their respective counsel have had the opportunity to review this Agreement, and the Agreement will not be construed against any party merely because this Agreement was prepared by a particular party.

21. Successors and Assigns

The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

22. Time is of the Essence

The Parties agree that in the performance of the terms of this Agreement, time shall be of the essence, it being understood by the Parties that the Software and its components, and Runbeck's services related thereto, are essential to the Client's ability to conduct statewide and local elections.

23. Attorneys' Fees

In the event of a litigation action to enforce, or arising from, the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs incurred in the action.

24. Term and Renewal

The initial term of the Software License and the Equipment Maintenance and Support Services provisions shall commence on the date of execution by both parties.

25. Breach

Subject to the terms of Section 25, in the event Client commits a material breach of its obligations under this Agreement and any exhibits hereto, including a failure to timely pay any license or support fees, and Client fails to cure the breach within sixty (60) days after receiving notice thereof, Runbeck may terminate this Agreement effective upon delivery of written notice to Client. In any such event, Client shall thereupon return to Runbeck all Software and other Runbeck property in its possession.

26. Ownership of Data

Client is and shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all Client data collected, all Client documents of any type whatsoever, and any Client material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion, except for the Software which shall be owned or licensed as provided in this Agreement. Runbeck shall not release any Client materials under this section without prior written approval of Client.

No materials specifically produced by Runbeck for the Client in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as provided in this Agreement or except as determined at the sole discretion of the Client. Client shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or part, any reports, data, documents or other materials specifically prepared by Runbeck for the Client under this Agreement, except for computer software (including source code), which shall be subject to the restrictions set forth in this Agreement.

27. Responsibilities of Client

Client shall provide all information reasonably necessary to Runbeck in performing the Services provided herein. Runbeck shall not be responsible for any delays caused by Client's failure to provide information or failure to perform obligations.

The Client is responsible for their environment within their own firewall including the accessibility to the application. All environment, infrastructure, hardware changes and other changes outside of Runbeck's control are the sole responsibility of the Client. If Runbeck has to restore any application/product/service/connectivity that the Client or Third-Party has changed, this will result in additional charges by the Runbeck based on time and materials.

28. Technology Life Expectancy

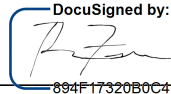
Client understands, acknowledges, and agrees that the technology upon which the Hardware, Software, and Third-Party Software is based changes rapidly. Client further acknowledges that Runbeck will continue to improve the functionality and features of the Software to improve legal compliance, accuracy, functionality, and usability. As a result, Runbeck does not represent or warrant that the Hardware, Software, and/or Third-Party Software provided to Client under this Agreement or that the Computer System recommended by Runbeck will function for an indefinite period of time. Rather, Runbeck and Client may, from time to time, analyze the functionality of the Hardware, Software, Third-Party Software, and Computer System in response to changes to determine whether upgrades are advised. Runbeck shall, for the duration of the maintenance period covered by this Agreement, and at no additional cost to Client, maintain the Software as configured as of the Effective Date of this Agreement, and as may be updated by Runbeck, to be compatible with Microsoft-supported operating systems and databases provided such Microsoft-supported operating systems and databases are not on the then current Microsoft End-of-Life list or that have a support date which has already passed. Client upgrades may include, without limitation, the installation of a new Release, additional disk storage and memory, and workstation and/or server upgrades. Client upgrades may also include the installation and/or removal of Third-Party Software. Client is solely responsible for all costs associated with such future resources and upgrades.

IN WITNESS WHEREOF, the Parties have signed this Agreement to be effective as of the date of full execution by the Parties.

Runbeck Election Services, Inc.

County of Nevada, CA

By:

DocuSigned by:

894F17320B0C4D2...

Title: Vice President of Sales

Date: 8/27/2021

EXHIBIT A

SOFTWARE LICENSE

1. Grant and Scope of License

- A. Grant of License. Subject to Client's discharge of its material duties under this Agreement, to include the timely payment of any fees due hereunder, Runbeck hereby grants to Client an irrevocable, non-exclusive right and license to install, display and use the Software pursuant to the terms of the Agreement. For the avoidance of doubt, the license granted under this clause shall become revocable in the event that Client materially breaches this Agreement and Client fails to cure within the proscribed cure period.
- B. Title. Runbeck shall at all times retain title to the Software provided by it hereunder and Runbeck does not convey any proprietary interest therein to Client.
- C. Updates. For payment of the required fees by the Client as set forth herein and in the Agreement, Runbeck shall provide to Client updates of any Software licensed hereunder at no additional charge and continue to maintain the Software in accordance with the requirements of the attached Agreement as long as Client continues to pay annual license and support services fees with respect to such Software.
- D. Breach. In the event Client commits a material breach of its obligations under this Agreement, to expressly include failure to timely pay any fees due hereunder, and Client fails to cure the breach within sixty (60) days after receiving notice thereof, Runbeck may terminate this Agreement, and the license hereunder, immediately upon delivery of written notice to Client.
- E. Add-Ons and New Software Products. From time to time, Runbeck may offer new software products that are not currently included within the Software. Client may elect, upon written amendment to this Agreement signed by both Parties, to license an Add-On or New Product upon the payment of a license fee to the Runbeck. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the Software upon payment of such license fee.
- F. Third Party Software. Client shall execute all documents reasonably requested by Runbeck and will abide by all reasonable requirements with respect to Third Party Software licensed or sublicensed by Runbeck to Client hereunder, or necessary to the performance of the Software hereunder in accordance with the Specifications, and Client agrees to maintain in effect all required licenses and approvals of all applicable third persons.

G. Rights of Client as Licensee.

- i. Client may install the Software on the Local Hardware and may, upon prior written notice to Runbeck, move the Software to different Local Hardware, or, in the event of a disaster, run the Software on back-up Local Hardware.
- ii. If the Software is licensed on a Seat basis, Client may use and execute the Software only on the licensed number of Seats designated on Exhibit B. Unless otherwise provided on Exhibit B, Client must purchase a license for each Seat that has access to the Software.
- iii. If the Software is licensed on a Site basis, Client may use and execute the Software only in connection with the operations of the Site(s). Unless otherwise provided in Exhibit B, Client must purchase a license for each site for which the Software is used.
- iv. Client may make copies of the Software for test, backup, and archival purposes only, provided that all copies are stored within the Client computer network and infrastructure and all copies that are made by Client shall be the property of Runbeck.
- v. Client may make copies of the Documentation for Client's internal use only, provided that Runbeck's copyright and other proprietary legends are reproduced on each copy.
- vi. Client may permit access to the Software to third parties for the purpose of loading data and/or generating reports, subject to execution by said parties of a non-disclosure agreement to be provided by Runbeck.

H. Restrictions. In addition to other restrictions set forth in this Agreement, Client may not:

- i. Use, copy, modify, loan, transfer, disseminate or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription, or merged portion thereof except as expressly authorized under this Agreement;
- ii. Use the Software for any purpose for the benefit of any third party (including any body of government other than the entity that executes this Agreement) in a commercial, retail, service bureau, or similar enterprise;
- iii. Translate, reverse engineer, decompile, disassemble, re-engineer, recompile, update, enhance, or create derivations of all or any part of the Software, or merge any Software with any other software or program, including, without limitation, the structure and sequence of any database and/or database files, including those created by Client under this Agreement;
- iv. Without prior written approval of Runbeck, modify or manipulate the data maintained in the standard database structure schema that is documented as part of the Software, except by those provided in the Software;
- v. Without prior written approval of Runbeck, modify, extend, or add tables, including, without limitation, the structure and sequence of any database or database files that are used by the Software, including those created by or for Client under this Agreement; or
- vi. Remove the labels or any proprietary legends from the Software or its Documentation.

I. Tools and Customizations. Client shall not have any right to independently make changes to the Software or the underlying code of the Software. Client may develop, and shall retain ownership of, hooks, interfaces, or similar tools for use with the Software, provided that the hook, interface or tool does not use any part of the Software or require any modification or alteration of the underlying code of the Software. Runbeck shall own all right, title, and interest (including all associated intellectual property rights) in and to any Customizations to the Software.

J. Documentation. Runbeck will provide documentation of the process and procedures for use of the Software, including all screens. Documentation will be embedded in the Software and accessible to End Users through a "Help" icon or menu.

- K. Right to Audit. Runbeck shall have the right, up to two (2) times per calendar year and within ten (10) days of Runbeck's written request, during normal business hours and at times mutually agreed upon by the parties, to audit Client's use of the Software to monitor compliance with this Agreement. If an audit reveals that Client has exceeded the restrictions on use, Client shall be responsible for the prompt payment to Runbeck of any underpayment of license fees.

2. Annual License and Support Fee

- A. Fees. Runbeck will invoice Client for the annual License and Support Fee ("Fee"), set forth in Exhibit "B" to the Agreement. All payments of this Fee shall be made annually on each successive anniversary term of the Agreement, for as long as the Agreement remains in effect and the Client continues to use referenced Software. The license for the Software entitles Client to the Warranties in Section 6 below but does not otherwise entitle Client to receive maintenance and support or updates to the Software. The annual License and Support Fee is subject to an annual adjustment not to exceed five percent (5%).
- B. Invoices. Runbeck's invoices will conform to the format requirements of the Client. Client will pay Runbeck's valid invoices within thirty (30) days after receipt.
- C. Additional Services. The parties agree that Client may request additional services not covered under this Agreement by delivering to Runbeck a Change Order request. Services to be provided pursuant to a Change Order may include, without limitation, services related to: (a) Training; (b) programming, configuration and data migration or repair; (c) research, development and business analysis related to the estimates for Customizations and Enhancements. Runbeck shall provide Client with a written response to the Change Order request which describes in general the work requested, an estimate of the time required to perform such services, and a schedule of the fees related thereto. For clarity, the scope and nature of a requested Change Order may require the development of specific requirements and an analysis of the impact on the Software and reports in order to provide detailed estimate for the requested work. The Client understands and acknowledges that Runbeck shall not undertake detailed specification development or estimate preparation until a signed Change Order authorizing such work is signed by Client. The Client shall be charged at the rates set forth in Exhibit B for the development of requirements by Runbeck. All work detailed in a Change Order will be performed on a time and materials basis at the rates set forth in Exhibit B, unless specified otherwise in the Change Order. Any impact on the Software License, Maintenance and Support Fee will also be reflected in the Change Order.

D. Support Services. Runbeck shall establish a Help Desk and an Issue Management tracking process to manage and track any technical problems, issues, failures, deficiencies, complaints, systems software bugs (collectively, "Problems") reported by Client. Runbeck shall also provide Client with a telephone number to Help Desk staffed twenty-four (24) hours per day, seven (7) days a week upon request throughout the entirety of the Contract during Critical Election Periods. Otherwise, normal support hours will be from 7:00am–5:00pm Pacific Local Time Monday through Friday. Problems reported to the Help Desk and the Issue Management tracking process shall be categorized into severity levels and Runbeck shall respond according to the severity level of the Problem. Problems reported to Runbeck shall be updated to the Issue Management tracking process based on the response times defined by the Severity and Response Level of the incident. Client shall make the determination of what severity level, based on severity level definitions, to assign to each problem reported to the Help Desk. Runbeck can follow the dispute resolution procedure if there is disagreement. The list below shows definition of each severity level and the level or response required from Runbeck.

a. Severity Levels:

- i. Severity Level 1 – Critical: Widespread System unavailability – Production System is down; System is completely or functionally inoperable. Operations are severely impacted.
- ii. Severity Level 2 - Major: Problem that substantially degrades performance of any Application Software component or materially restricts business; restricts use of one or more modules or features of Application Software to perform necessary business functions, but not entire Application Software. Users can use Application Software; but an important function of it is not available; operations are significantly impacted.
- iii. Severity Level 3 - Minor: A problem that causes only a minor impact on the use of the Application Software. The problem can be easily circumvented. The problem can cause some functional restrictions, but it does not have a critical or severe impact on operations.

b. Response Levels

i. Severity Level 1:

During Critical Election Periods, the vendor will respond within one (1) hour, and will work together with the county to determine a mutually agreed upon resolution date. In the meantime, between the Severity level 1 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within forty-eight (48) hours. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

In the meantime, between the Severity level 1 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within forty eight (48) hours. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

During other periods, the vendor will respond within four (4) hours, and will work together with the county to determine a mutually agreed upon resolution date.

In the meantime, between the Severity level 1 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within three (3) days. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

ii. Severity Level 2:

During Critical Election Periods, the Contractor will respond within four (4) hours, and will work together with the county to determine a mutually agreed upon resolution date.

In the meantime, between the Severity level 2 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within five (5) days. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

During other periods, the Contractor will respond within eight (8) hours, and will work together with the county to determine a mutually agreed upon resolution date.

In the meantime, between the Severity level 2 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within five (5) days. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

iii. Severity Level 3:

During all periods, the Contractor will respond within five (5) days, and will work together with the county to determine a mutually agreed upon resolution date.

In the meantime, between the Severity level 3 incident and the mutually agreed upon resolution, within the Contractor's control, the Contractor shall provide a workaround solution or agreed resolution in a future release. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround.

3. Installation and Acceptance

- A. Installation. Runbeck agrees to install the Software ready for use and in good working order and render said Software Functional as a part of the fully Functional System.
- B. Acceptance. Acceptance Testing and Acceptance of the Software as a part of the System shall be in accordance with the provisions of the attached Agreement.

4. Training

If Client's personnel require training in order to properly use the Software, Runbeck will provide such training for all users designated by Client, at a time agreed to by the Parties. All initial training by Runbeck in the proper use of the Software and System shall be at no additional charge, unless a fee for such training is otherwise agreed upon and funds appropriated and certified as available for such purposes by the Client in accordance with the Agreement.

5. Maintenance of Software; Term and Termination

- A. Maintenance Services. During the term of this Agreement and subject to payment of any required fees by the Client, Runbeck agrees to provide maintenance and support services for the Software ("Maintenance Services").

- B. Local Hardware. In order to be executed and to perform in a satisfactory manner, the Software must be installed on Local Hardware that provides sufficient network, communications, and computer resources to support the anticipated number of End Users. The Local Hardware must be properly configured, installed, managed, and maintained. Client is solely responsible for ensuring that the Local Hardware meets these standards and for ensuring that its Local hardware is installed according to the schedule mutually agreed by both Parties.

The Local Hardware and third party technologies required to properly execute the Software may change over time. Additional network, communications or computer resources may be required to enable Client to install and use enhancements, promotions or new Versions of the Software. Runbeck will make commercially reasonable efforts to give the Client a minimum of 180 days notice of additional third party software products that may be required, and provide information to allow Client to evaluate the impact of the enhancement, promotion or new Version on network performance and to plan for network upgrades.

- C. Software Updates. Runbeck shall provide updates to the Software as they become available. Installation of Software updates will include testing and validation of the updated Software. Runbeck will provide the Client with a toll-free support hotline number that may be used to obtain assistance with the Software during the term of this Agreement, subject to payment of any required fees.

D. Term and Termination.

- a. The Term of this Agreement shall commence upon execution by both parties (hereinafter the "Effective Date") and shall continue until all Tasks and Deliverables have been completed by Contractor and Accepted by County unless terminated earlier in accordance with this section. The Terms of the Software Maintenance Agreement and Software Escrow shall be as described in the respective Schedules C and F, as applicable.
- b. Termination by County
 - i. County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience or because of the failure of Contractor to fulfill the obligations hereunder. Upon receipt of such notice, Contractor shall immediately discontinue all services affected (unless the notice directs that the Disentanglement provision herein shall be invoked), and shall deliver to County all data, estimates, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing services under this Agreement, whether completed or in process.

- ii. For Convenience: County may, by written notice stating the extent and effective date, terminate this Agreement in whole or in part at any time. Upon receipt of such notice, Contractor shall promptly cease work and notify County as to the status of its performance. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for services performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such information as is necessary to determine the mutually agreeable reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.
- iii. For Cause: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, the County may elect to immediately suspend payments or terminate the contract, or both, upon thirty (30) days written notice.

c. Termination by Contractor

- i. For Nonpayment: Should County fail to pay Contractor all or any part of the payment set forth in Schedule E, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- ii. For Cause: Should County default in the performance of this Agreement or materially breach any of its provisions, Contractor, at Contractor's sole option, may terminate this Agreement upon thirty (30) days written notice.

d. Disentanglement

- i. If directed by County, Contractor shall cooperate with County and County's other vendors and contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County to accomplish a complete transition of the services as set forth in this Agreement being terminated to County or to any replacement provider designated by County, without any interruption or adverse impact on those services or any other services provided by third parties. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including but not limited to providing to County or any new service provider all requested information or documentation required to assist County in effecting a complete transition to the new service provider. Contractor shall provide all information or documentation regarding the services to be transitioned, including but not limited to data conversion tables, client files, interface specifications, and training materials. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: a) the Disentanglement is completed to the County's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current Term of the Agreement.

E. Return, Transfer and Removal of Data and other Assets

- a. Upon termination of this Agreement, Contractor shall return to County all County-furnished assets in Contractor's possession.
- b. Upon termination of this Agreement, Contractor shall ensure that any and all of County's data maintained by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date or the completion of the Disentanglement period, whichever is later, and that said data is securely transmitted or delivered to County or County's designee.

- F. Maintenance and Support. Runbeck shall provide maintenance and support services for the Software as set forth herein. Runbeck shall provide maintenance services only with respect to the Software. Runbeck shall not provide maintenance services for any third party software or for any hardware.

Runbeck's obligation to provide Support Services shall extend to the current Release installed at the Client. If Client desires support for earlier Versions of the Software and Runbeck agreed to provide such support, such support may be treated by Runbeck as additional consulting services for which Client will be billed at Runbeck's then-current time-and-materials rates. Client understands that its implementation of a new Version may require Client to upgrade its Computer System.

- G. Covered Maintenance. Runbeck will provide to Client:

- a. all services required to ensure that the Software operates in conformity with the specifications and capabilities set forth in this Agreement; and
- b. all Updates developed by Runbeck for the Software and related Documentation during the Term of this Agreement. Covered Maintenance Services do not include the costs of accessories and expendable supplies necessary to operate the Software, such as magnetic tape cards, optical disks, disk packs, paper, and similar items, and such items are not provided free of charge by Contractor hereunder.

- H. Client Obligations.

- a. Client may designate up to five (5) persons by whom requests by Client for Support Services may be made ("Support Team"). Runbeck shall not be required to accept calls or requests from anyone other than a designated contact person. Client may change its designated contact person, or request that additional people be made contact persons, at any time upon notice to Runbeck.
- b. Client shall implement and follow the reasonable written instructions of Runbeck regarding operation of the Software.
- c. Client shall maintain a Computer System that complies with the Hardware Specifications provided by Runbeck. The Computer System shall be housed with site conditions that conform to common industry standards for all computer systems and/or media devices. Client shall, at its own expense, install and periodically update a computer virus program to protect its Computer System and database from computer viruses that may, from time to time, be transmitted or downloaded. Runbeck expressly disclaims any liability for loss or damage caused by any computer virus on Client's computer platform or database, except those which may prove to be attributed to Runbeck's software or activities.

- d. Client will provide Runbeck with access to Client's network over a secure internet connection.
- e. Client shall create and maintain timely, accurate, and readable electronic back-ups of all data and program and system files.

6. Warranties

- A. In addition to any warranties which may be contained in the Agreement, Runbeck provides the following warranties:
 - a. Non-Infringement. Runbeck warrants that Runbeck owns the Software, including all associated rights, and has the right to grant Client the licenses provided pursuant to this Agreement, free from all liens, claims, encumbrances, security interests and other restrictions. Runbeck warrants that the Software does not and use of the Software will not; infringe any valid patents, copyrights, trademarks, trade secrets, or other proprietary rights of any third parties.
 - b. Correction of Defects. In the event of discovery of any material defect in the Software, Client agrees to provide Runbeck with sufficient detail to allow Runbeck to verify and reproduce the error, and Runbeck shall use reasonable diligence to correct such defect. Runbeck shall use its reasonable efforts to promptly respond and thereafter to diagnose and correct the material defect. Runbeck is not responsible for any error in the Software that has been modified by Client without Runbeck's prior written consent. Client's sole remedy in the event of a breach of this warranty is to require that Runbeck correct any material defects.
 - c. Performance of Services. Runbeck represents and warrants that all services provided by Runbeck to Client will be performed in a timely, competent and workmanlike manner. Runbeck further represents and warrants that it has a sufficient number of competent, qualified employees to provide the Services to support the Software.

Runbeck Disclaimer of All Other Warranties. Except as otherwise expressly stated in the Agreement, Runbeck makes no representations or warranties concerning the Software. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND RUNBECK HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT B
FEE SCHEDULE

License, Maintenance and Support Fees; Additional Service Fees

The license, maintenance and support fees for the Licensed Software are as follows:

Term	Coverage Period	Fee
Initial Term	July 1, 2021 – June 30, 2022	\$76,303
Optional Renewal #1	July 1, 2022 – June 30, 2023	\$79,005
Optional Renewal #2	July 1, 2023 – June 30, 2024	\$81,375

Additional Services:

Description of Service	Fee
Repair Services	\$150 per hour
Onsite Support (subject to availability)	\$1,750 for the first 8-hour day, \$1,500 for each additional 8-hour day

Taxes

If taxes apply they will be the sole responsibility of the Client.