

3389

MASTER CONSORTIUM AGREEMENT

This Agreement is entered into on the date last signed below, by and between El Dorado County (hereinafter "Customer") with offices at 2850 Fairlane County, Placerville, CA 95667 and Democracy Live, Inc., (hereinafter, "Contractor") a Delaware Corporation with offices at 35050 SE Douglas Street, Suite 200 Snoqualmie, WA 98065.

It is noted and agreed that El Dorado County is the lead county of a consortium of five (5) counties, each of which are listed in Exhibit D. The lead county represents that it is authorized to act on behalf of each and all counties in the consortium. For convenience and efficiency, each consortium county has authorized the lead county to act as its agent for purposes of this agreement. All references to Customer herein shall apply to each county subject to this Agreement. Democracy Live understands that El Dorado as the Consortium lead is not responsible for the actions or failure to act of each consortium member. Each Consortium County is responsible for working directly with Democracy Live on their election setup.

Whereas, it is necessary and desirable that Democracy Live be retained for the purpose of providing Customer with an ADA-compliant Remote Accessible Vote By Mail Solution ("Secure Select"), and fully UOCAVA MOVE Act solution through OmniBallot Online, available to Customer voters.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. **Exhibits and Attachments:** The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:
 - a. Exhibit A- Payments and Fees
 - b. Exhibit B- Statement of Work
 - c. Exhibit C- Support and Maintenance
 - d. Exhibit D- Consortium Counties
2. **Services to be performed by Contractor:** In consideration of the payments set forth in this Agreement and in Exhibit A, Contractor shall perform the services for Customer in accordance with the terms, conditions, and specifications set forth in this Agreement and Exhibit B. Nothing in this Agreement shall be construed to prevent Contractor from granting any other licenses or subscriptions to the use of Secure Select and OmniBallot Online in any matter whatsoever.
3. **Term:** This Agreement shall become effective on the date last signed below and shall remain in effect for 24 months after execution of the DRAM Agreement by and between El Dorado County and DRAM Settlement Fund ("Initial Term").

4. **Payment:** Customer will pay Contractor the Subscription Fee ("Subscription Fee") in accordance with the Fee Schedule presented in Exhibit A ("Fee Schedule").
5. **Funding:** The agreement between the parties is contingent on the award and funding support provided through the DRAM Settlement.
6. **Termination:** This Agreement may be terminated by Contractor or Customer at any time without a requirement of good cause upon thirty (30) days advance written notice to the other party.

6.1 **Breach:** If either party defaults in the performance of, or fails to perform, any material obligation of this Agreement and the default or failure is not remedied within thirty (30) days (or ten (10) days in the case of any payment obligations under Exhibit A) after receipt of written notice from the non-defaulting party, then the non-defaulting party will have the right (i) to terminate this Agreement by giving written notice to the defaulting party and (ii) to avail itself to any and all other rights and remedies which it may be entitled by law or equity.

7. **Ownership:** The parties hereby agree Secure Select and OmniBallot Online are the sole property of Contractor and Customer acquires no rights to Secure Select and OmniBallot Online except for the subscription granted under this Agreement.
8. **Representations and Warranties:** Contractor Represents and Warrants to Customer that: It has all necessary rights and authority to execute and deliver the services and perform its obligations hereunder and to grant the rights granted under this Agreement to Customer.

6.1 Except as expressly stated in this Agreement, there are no warranties express or implied, including but not limited to the implied warranty of fitness for a particular purpose, of merchantability or warranty of no infringement of third party property rights.

6.2 DEMOCRACY LIVE DOES NOT REPRESENT OR WARRANT THAT SECURE SELECT AND OMNIBALLOT ONLINE WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND THAT ALL PROGRAM ERRORS IN SECURE SELECT AND OMNIBALLOT ONLINE CAN BE FOUND IN ORDER TO BE CORRECTED. NOR DOES DEMOCRACY LIVE MAKE ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY, OR CURRENCY OF ANY INFORMATION CONTENT.

9. **Limitation of Liability:** EACH PARTY'S LIABILITY TO DAMAGES TO THE OTHER PARTY ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE MAXIMUM AMOUNT PAYABLE UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES,

DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.

10. **Indemnification.** Contractor will defend, indemnify, and hold harmless Customer against any and all third-party claims, actions, proceedings and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including without limitation reasonable attorneys' fees and other litigation expenses) incurred by Customer, arising out of or relating to any actual infringement of any U.S. issued patent or copyright by Contractor or misappropriation of any trade secret of any third party by Contractor and the Software ("Intellectual Property Infringement").

10. 1 **Conditions of Indemnification.** The indemnification obligations under this Section 9 are conditioned on Customer's compliance with the following: (a) Customer will provide to Contractor prompt written notice of any claim after Customer's receipt of notice of the claim or initial awareness thereof; (b) Customer will grant to Contractor, and Contractor will have, the sole and exclusive right to defend any claim and make settlements thereof at Contractor's own discretion; and (c) Customer will give, at Contractor's expense, the assistance and information that Contractor reasonably requires to settle or defend the claims. Customer may, however, participate in the defense or settlement of any claim at its own expense and with its own choice of counsel.

11. **Confidentiality.** Each party agrees that the terms and conditions of this Agreement and any information concerning either party's marketing plans, existing or future products, and any other confidential business or technical information, and all information declared confidential by either party, disclosed in furtherance of this Agreement shall be held in strict confidence and shall not be disseminated or disclosed without express written consent of the other party, except as otherwise provided in this Agreement. If a party is directed to disclose any material proprietary to the other party in conjunction with a judicial proceeding, arbitration or otherwise by law, then the party so directed shall notify the other party both in writing and orally immediately. This provision will survive cancellation or termination of this Agreement for a period of three (3) years. The parties agree that Customer may be required to release confidential information to the public pursuant to the requirements of the State of California.

12. **Assignment:** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement will be binding upon, inure to the benefits of and be enforceable by the parties hereto and their respective successors and assigns.

13. **Miscellaneous:**

13.1 **Independent Contractor:** Nothing in this Agreement will be construed as creating any relationship between Contractor and Customer, other than that of independent contractor and customer or licensee and licensor. This Agreement is not intended to be nor will be construed as a joint venture, association, partnership, franchise, or other form of business organization or agency relationship. Neither party will have the right, power or authority to assume, create or incur any expense, liability, or obligation, expressed or implied, on behalf of other except as expressly provided herein.

13.2 **Law and Venue:** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, USA.

13.3 **Notices:** Unless otherwise agreed by the parties, all notices required under this Agreement will be in writing and deemed effective when received by (a) personal delivery, (b) internationally recognized courier or (c) certified mail, return receipt requested at the address written above.

13.3 **Severability:** In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not.

13.5 **Force Majeure: Force Majeure.** Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if the delay or failure arises by any reason beyond its reasonable control, including any act of god, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or mechanical failures or delay in transportation or commercial communications; provided however, that lack of funds will not be deemed to be a reason beyond a Party's reasonable control. The Parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a delay in the performance of this Agreement.

13.6 **Administrator.** The County Officer or employee with responsibility for administering this agreement is Linda Webster, Assistant Registrar of Voters, Election Department, or successor.

13.7 **Records.** Democracy Live will keep records as well as copies of all reports to the Cy Pres Grants Administrators, invoices paid and supporting documentation for at least four (4) years after the completion of the use of grant funds and will make such books, records, reports and supporting documentation available to the Cy Pres Grants Administrators or their designee for inspection upon request.

13.8 **Counterparts.** This Agreement may be executed in one or more counterparts and by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

13.9 **Entire Agreement.** This Agreement, including the attachments to this Agreement, is the Parties' entire agreement relating to the Secure Select, OmniBallot Online, and Documentation. It supersedes all prior or contemporaneous oral or written communications, proposals, sales orders, or conditions between the parties relating to its subject matter. No modification or amendment to this Agreement will be binding unless in writing and signed by an authorized representative of each Party.

DEMOCRACY LIVE, INC.
Software License Agreement

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement and all Attachments hereto as of the Effective Date.

Democracy Live, Inc:

El Dorado County

DEMOCRACY LIVE, INC. CORPORATION

EL DORADO COUNTY

By: 

By: 

Name: Bryan Roney

Name: Sue Novak

Title: President

Title: Chair, Board of Supervisors

Date: 3/18/19

Date: 4/23/19

EXHIBIT A- Payment and Fees

I. Fees:

- A. **Secure Select Subscription Fee:** The Subscription Fee for Customer under this Agreement will be one-hundred and ninety-eight thousand dollars (\$198,000) payable in two installments as described below.
 - a. **1st Payment:** the initial payment of ninety-nine thousand dollars (\$99,000) will be invoiced upon signature of this Agreement.
 - b. **2nd Payment:** The final payment of ninety-nine thousand dollars (\$99,000) will be invoiced November 1, 2019.

II. Invoicing:

- A. Customer will make payment within thirty (30) days of the invoice being submitted from Democracy Live to Customer.
- B. All Invoices under this Agreement shall be sent to: Linda Webster, Assistant Registrar of Voters, 2850 Fairlane Court, Placerville, CA 95667.
- C. All Payment under this Agreement shall be sent to Democracy Live 2900 Ne Blakely Street Suite B, Seattle, WA 98105.

EXHIBIT B- Statement of Work

For as long as this Agreement is in effect Democracy Live agrees to provide Customer with OmniBallot Online Products and Services as described below:

I. Products and Services

◆ Secure Select

- Democracy Live will deliver to Customer a secure ballot marking system that enables the voter to access return materials and an onscreen representation of the appropriate ballot style.
- The voter marks, reviews, and prints their selections to be mailed to the County.

◆ Secure Select UOCAVA

- Democracy Live will deliver to Customer a secure ballot marking system that enables Military and Overseas voters to access return materials and an onscreen representation of the appropriate ballot style.
- The voter marks, reviews, and prints their selections to be mailed to the County.

◆ Optional Accessible Voter Guide

- The Contractor will deliver to Customer an online voter guide/pamphlet/sample ballot that enables the voter to access candidate statements, measure details, and additional information about the election.

◆ Languages

- English
- Spanish

◆ Accessibility:

- Satisfies all applicable WCAG 2.0 specifications
- Section 508 Compliant
- Compatible with (but not limited to) VoiceOver on macOS and JAWS, Narrator, and NVDA on Windows
- Accessible by keyboard and commonly-used input devices

◆ OmniBallot Online Feature Options

- Includes Voter access and authentication options
 - Utilize Voter Lookup application using VR files maintained in OmniBallot
 - Integration with existing Voter Portal
 - Directly embed OmniBallot applications into County website.
- Supports a variety of language options
- Customizable text and interface language
- Create custom voter workflows to meet specific requirements

◆ Secure Select Features

- Provides summary screen with option to change selections before printing
- Prohibits overvotes
- Provides undervote warnings

- Supports write-ins up to 32 characters
- Includes 2D barcode representation of selections

◆ **Technical Specifications**

- Does not require the installation of special software
- Compatible with (but not limited to) the most recent two versions of all major browsers (Chrome, Edge, Firefox, Internet Explorer, Safari) on the most recent two versions of Windows and macOS.
- Supports virtually unlimited number of ballot styles

II. **Democracy Live Services**

◆ **Training-** Democracy Live will deliver an online orientation and training that includes:

- Defining key points of contact for contract management and technical support for Customer and Democracy Live
- Identification and addition of Customer system administrators and roles
- Introduction to written, video and system-embedded training tools and materials
- Demonstration and training on self-management of Voter Registration (VR) file updates
- Demonstration and training on Quality Assurance (QA) testing, including ballot review and walk-through of voter experience
- Explanation of all available report modules and access to raw data logs
- Detailed description of all required data files from the Customer, including required format. Example files and data templates provided as learning tools.
- Overview of the election management workflow, including preparation of data files, time-lines, system configuration, quality assurance testing, election deployment and close-out
- Establishment of an elections calendar to cover all scheduled elections throughout the entire contract period and agreement on methodology for managing unscheduled events (special elections, etc.)
- Democracy Live will perform a refresher training orientation at the Customer's request once during every 24month period. Democracy Live will perform additional training at the request of Customer for an agreed upon service fee in a writing signed by both parties.

◆ **Configuration and Support Services (Gold Package Services)**

- **Election Data Preparation**
 - Democracy Live will provide support to Customer in the preparation and review of required data files for system configuration, including:
 - Structured data files, if used
 - Ballot PDFs
 - Ballot style mapping spreadsheet in .csv format
 - Comprehensive VR file in CSV or TXT format, as applicable
 - Ballot return materials in PDF format
 - Definition of desired overlays and placement on materials
- **System Configuration**
 - Democracy Live will configure all contracted services utilizing Customer data in accordance with established timelines.

- Democracy Live will provide QA testing links that will enable the Customer to review/approve all work before the system is activated and made available to voters.
 - QA Testing includes:
 - Quick Review- A list of each ballot style in an election, its ballot content and all associated precincts.
 - Voter QA Testing- A review of the end-to-end voter experience to review workflow and confirm delivery of correct ballot content. This testing will not affect voter usage statistic reports.
 - Democracy Live will activate contracted services upon completion of review and written approval of content by Customer.
- ◆ **Election Maintenance Through Election Day**
- Democracy Live will assign Customer a Technical Accounts Manager to serve as the primary point of contact for all service issues.
 - Democracy Live will provide ongoing issue response/customer support, as detailed in the Service Level Agreement (SLA), to respond to any identified issues, questions or requested content edits
 - Democracy Live will perform all VR updates after initial product activation, as applicable
- ◆ **Post-Election Tasks**
- Democracy Live will assist customer with post-election reports, as needed.
 - Democracy Live will archive election-related data for an agreed upon period.
 - Democracy Live will “purge” election-related data from any Democracy Live-maintained systems upon written request of Customer.

III. Customer Requirements

- ◆ **In order to guarantee an on-time Go Live Date the County agrees to:**
- Complete onboarding orientation with Democracy Live.
 - Provide complete and accurate election data in required format a minimum of ten business days prior to product launch dates. *Failure to provide data in identified format or in accordance with established timelines may result in product launch delays.*
 - Complete review and QA testing of all products before launch.
 - Send written approval of system (e-mail) to authorize activation of system features.
 - Perform all VR updates after initial product launch, as applicable
 - Notify Democracy Live of any changes to language requirements as soon as practicable.
 - Notify Democracy Live of any changes to election calendar as soon as practicable.
 - Notify Democracy Live of changes to system administrators (addition/deletion).
 - Notify Democracy Live of changes to key personnel assigned to system administration/support.

EXHIBIT C – Support and Maintenance

Service Level Agreement

Democracy Live business hours are **9:00 am to 5:00 p.m.** Pacific Time, Monday through Friday. During these hours, an assigned account manager will be available.

Democracy Live is committed to providing the highest level of support to Customer throughout the Term of this Agreement. Democracy Live will perform the following Service Levels, as applicable, in connection with this Agreement.

Democracy Live acknowledges that support requests may be submitted by either the town officials operating the system or Elections Division staff administering the system.

Election Calendar Period through Election Certification – Concurrent with the expected period configuring and testing the Solution between 60 and 45 days prior to election day, and through the final certification of the election, Democracy Live will respond to issues reported by email at support@democracylive.com or phone (855-655-VOTE), within one hour, 7 days a week, 24 hours a day. Upon notification to the company's Customer Support System the issue will be immediately routed to the appropriate operational personnel, and a case will be opened and managed through satisfactory resolution of the reported issue.

Off Peak Times – During the relatively quiet periods between the certification of the most recent election, and the configuration of the next, Democracy Live will respond to issues reported by email support@democracylive.com or phone (855-655-VOTE) within one hour, available during normal business hours eastern standard time. Upon notification to the company's Customer Support System the issue will be immediately routed to the appropriate operational personnel, and a case will be opened and managed through satisfactory resolution of the reported issue.

Support: For as long as Customer has paid all applicable fees and is in compliance with all the terms of this Agreement, including as set forth in the Attachments, and as long as this Agreement is in effect, Democracy Live will provide Support and Maintenance as described in Exhibit C. Notwithstanding anything to the contrary in this Agreement, Democracy Live will not provide Support and Maintenance for: (a) Any products other than the Software provided by Democracy Live under this Agreement; (b) Any modifications to Software not made by Democracy Live or a third party authorized in writing by Democracy Live to make modifications; or (c) Any use of Software that is not in accordance with this Agreement, the documentation or other written instructions provided by Democracy Live.

EXHIBIT D – Consortium Counties

El Dorado
Placer
Inyo
Marin
Fresno