

## **INTERGOVERNMENTAL AGREEMENT**

**Agency Agreement No. EL-0413-26**

**Local Government Agreement N/A**

This Intergovernmental Agreement (the “Agreement”) is entered into by the State of Oregon, acting by and through the Secretary of State (the “Agency”), and the County of Columbia (the “County”) (collectively, the “Parties”).

### **SECTION 1. AUTHORITY**

This Agreement is authorized by ORS 190.110, which provides that state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to that agreement has the authority to perform.

### **SECTION 2. PURPOSE**

The Agency is implementing a statewide digital ballot duplication solution to improve the accuracy, speed, and transparency of processing Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) ballots. This project is funded under the Federal Voting Assistance Program EASE 4.0 grant (Grant No. H98210-24-1-0012) with the Department of Defense (“DOD”). The selected solution is a ballot remake station kit created by Enhanced Voting (the “Vendor”) that is known as Enhanced Remake (the “Enhanced Remake Kit”) and described in more detail in Section 5.

On December 15, 2025, the Agency and the Vendor entered into Amendment No. 34 to EL-0033-07 the Contract for Services between Oregon Secretary of State and Enhanced Voting LLC Alternative Ballot Format (the “Primary Contract”). Under the Primary Contract, the Agency purchased thirty-three (33) Enhanced Remake Kits for use by Oregon counties.

The purpose of this Agreement is to set out the terms and conditions on which the Agency shall provide one or more Enhanced Remake Kits to the County for the period described in Section 3.

### **SECTION 3. EFFECTIVE DATE AND DURATION**

This Agreement is effective on the date of the last signature and expires on July 14, 2029, unless terminated earlier in accordance with Section 16.

## **SECTION 4. AUTHORIZED REPRESENTATIVES**

The Agency's Authorized Representative is:

Dena Dawson  
Elections Director  
Oregon Secretary of State  
Public Service Building Suite 126  
255 Capitol St. NE  
Salem OR 97310  
Email: dena.dawson@sos.oregon.gov

The County's Authorized Representative is:

Debbie Klug, CCC  
County Clerk  
Columbia County  
230 Strand St.  
Saint Helens, OR 97051  
Email: debbie.klug@columbiacountyor.gov

A Party may designate a new Authorized Representative by written notice to the other Party.

## **SECTION 5. EQUIPMENT AND SERVICES**

5.1 Each Enhanced Remake Kit shall include the following Equipment:

- Lenovo TIO PC/ Monitor with touchscreen
- iDPRT Label Printer
- Lexmark MS500 Series W/w election printer with 22" extension (unless printer is upgraded through the upgrade credit process described in Section 6)
- Scan Avenger barcode scanner
- Starter supplies, including ultra-high yield 25K toner, drum unit, and label roll

5.2 Each Enhanced Remake Kit shall include the following Software:

5.2.1 Enhanced Ballot Annual License, to include:

- Online platform for electronic ballot delivery
- Unlimited users, voters, and elections on Enhanced Ballot platform
- Secure hosting and security monitoring
- Phone and email support provided by Enhanced Voting
- Ballot data imports from Oregon Certified Tabulation vendors
- Maintenance updates and bug fixes
- Product enhancements from product roadmap
- Includes ability to set up and configure Enhanced Remake stations

5.2.2 Enhanced Remake License and Support Services, to include:

- Licenses, one for each remake station
- Phone and email support
- Software maintenance updates and bug fixes
- Product enhancements from product roadmap
- Hardware break/fix support through end-of-life schedule
- Shipping and installation of replacement hardware included

5.2.3 Evergreen Remake License Upgrade, to include:

- Extends hardware end-of-life through 2032
- While the hardware is within its end-of-life term, Vendor shall cover the replacement costs of any hardware issues

5.3 Each Enhanced Remake Kit shall include the following Services:

- Delivery, to be arranged by County directly with the Vendor.
- Onsite installation and implementation (including initial testing and troubleshooting) to be performed by up to two (2) Vendor staff, with full functionality on or before March 6, 2026.

- Training to be completed as part of the installation and implementation process.
- Technical support with agreed-upon minimum response and resolution times for the duration of the use of the Enhanced Remake Kits, including on-site support if remote support is unable to resolve the issue. The technical support requirements are outlined in Exhibit A (Service Agreement and Software License) and Exhibit B (Remote Ballot Marking Station Purchase and Service Agreement).

## **SECTION 6. UPGRADE CREDIT**

6.1 Prior to installation, the County may select up to \$2,500 worth of upgrades, accessories, and supplies per each Enhanced Remake Kit installed. The County shall order these upgrades, accessories, and supplies directly from the Vendor, using any order form required by the Vendor.

6.2 The Vendor shall bill the associated charges to the Agency, and the Agency will pay the charges up to \$2,500 per each Enhanced Remake Kit installed in the County.

6.3 The County shall be responsible for any selected upgrades that exceed the \$2,500 credit authorized by the Agency, and the Vendor will bill the County directly for those charges.

## **SECTION 7. AUTHORIZED USES**

The only Authorized Uses of the Enhanced Remake Kit(s) are the duplication and/or printing of UOCAVA and non-UOCAVA ballots.

## **SECTION 8. PROPERTY STANDARDS**

Because the Enhanced Remake Kit(s) were acquired using federal funds (Grant No. H98210-24-1-0012), they are subject to the uniform standards governing management and disposition of property set out in 2 C.F.R. sections 200.313 through 200.314. Consistent with those regulations:

8.1 The Parties shall use the Enhanced Remake Kit(s) only for Authorized Uses during the term of this Agreement or until they are no longer needed, regardless of the status of Grant No. H98210-24-1-0012.

8.2 During the period of Authorized Use, the Parties shall not dispose, or encumber the title, of the Enhanced Remake Kit(s) without the approval of the awarding DOD agency.

8.3 The Parties shall use, manage, and dispose of the Enhanced Remake Kit(s) in accordance with state law.

8.4 The Parties shall use, manage, and dispose of the Enhanced Remake Kit(s) in accordance with the following subsections 8.4.1 through 8.4.3.

8.4.1 During the period of Authorized Use and notwithstanding subsection 8.1, the Parties must make the Enhanced Remake Kit(s) available for other activities if doing so does not interfere with the Authorized Uses and in the order of priority specified in 2 C.F.R. § 200.313(c)(2). After the period of Authorized Use, the Parties may make the Enhanced Remake Kit(s) available for other activities in the order of priority specified in 2 C.F.R. § 200.313(c)(1).

8.4.2 The Parties must maintain property records, conduct inventories and reconciliations, implement safeguards against loss, report any losses, and perform regular maintenance in accordance with 2 C.F.R. § 200.313(d).

8.4.3 When the Enhanced Remake Kit(s) are no longer needed, the Parties shall request, and comply with, disposition instructions from the awarding DOD agency.

## **SECTION 9. TITLE TO EQUIPMENT**

9.1 Consistent with Grant No. H98210-24-1-0012, title to the Equipment is presently vested in the Agency.

9.2 Upon the natural termination of this Agreement on July 14, 2029, the Agency shall transfer title of the Equipment described in Section 5.1 to the County with any required authorization from the awarding DOD agency. At that time, the County may elect to contract directly with the Vendor for the Software and Services outlined in Sections 5.2 and 5.3.

9.3 In the event of earlier termination, the Agency shall retain title to the Equipment described in Section 5.1 if the termination results from a breach of this Agreement by the County under Section 16. Otherwise, the Agency shall transfer title of the Equipment to the County with any required authorization from the awarding DOD agency. At that time, the County may elect to contract directly with the Vendor for the Software and Services outlined in Sections 5.2 and 5.3.

9.4 If the County does not wish to acquire title to the Equipment, the County shall notify the Agency at least 30 days prior to the expiration of the Agreement.

9.5 Regardless of whether title is vested in the Agency or the County, the use, management, and disposition of the Equipment shall continue to be subject to 2 C.F.R. sections 200.313 through 200.314.

## **SECTION 10. RIGHTS AND RESPONSIBILITIES OF AGENCY**

10.1 The Agency shall purchase 1 Enhanced Remake Kit, to include all Equipment, Software, and Services described in Section 5, on behalf of the County.

10.2 The Agency shall cover the cost of up to \$2,500 in upgrades per Enhanced Remake Kit installed in the County, in accordance with Section 6.

10.3 On receipt of the applicable serial numbers from the County, the Agency shall provide the County with a document attesting to the County's custody of the Equipment and with stickers to apply to that Equipment reflecting that it was paid for using federal funds.

10.4 The Agency shall otherwise comply with Section 8 of this Agreement and 2 C.F.R. sections 200.313 through 200.314 in all respects.

## **SECTION 11. RIGHTS AND RESPONSIBILITIES OF COUNTY**

11.1 The County shall schedule the delivery, installation, implementation, and training dates for the Enhanced Remake Kit(s) directly with the Vendor to occur on or before the deadlines specified in Section 5. The County shall not schedule to receive the delivery, installation, implementation, and training dates for the Enhanced Remake Kit(s) prior to the Effective Date of this agreement.

11.2 The County shall pay the Vendor directly for any selected upgrades that exceed the \$2,500 credit authorized by the Agency.

11.3 The County shall indicate that the installation is complete, and that County staff have been trained and understand how to use the Enhanced Remake Kit(s), by signing the Agency Installation and Training Completion Report, attached as Exhibit C.

11.4 Not later than July 1, 2026, the County shall validate the operation of the Enhanced Remake Kit(s)s by providing a list of errors that arose during the 2026 Primary Election to the Agency, for the purposes of the Agency developing a remediation plan for the Vendor to resolve those ongoing and recurring errors.

11.5 Upon receipt of the Equipment, the County shall provide the Agency with all applicable serial numbers.

11.6 The Agency shall provide, and the County shall sign, a document attesting to the County's custody of the Equipment.

11.7 The Agency shall provide, and the County shall apply, stickers to the Equipment reflecting that it was purchased using federal funds.

11.8 The County shall use the Enhanced Remake Kit(s) only for Authorized Uses during the term of this Agreement.

11.9 The County shall promptly comply with all Agency requests for information necessary to satisfy the terms of Grant No. H98210-24-1-0012.

11.10 The County shall comply with any and all usage directions, maintenance recommendations, and training protocols provided by the Vendor or the Agency.

11.11 In the event of any technical issues with the Equipment, the County shall contact the Vendor directly for troubleshooting and support. The County shall also notify the Agency of any technical issue(s) and confirm when and how those issue(s) are resolved.

11.12 Upon delivery and acceptance of the Equipment, the County is responsible for its disposition and disposal unless otherwise directed by Agency. The County shall advise the Agency when a change or disposition is planned at least 30 days prior to the change or disposition.

11.13 The County shall otherwise comply with Section 8 of this Agreement and 2 C.F.R. sections 200.313 through 200.314 in all respects.

## **SECTION 12. COMPENSATION AND PAYMENT TERMS**

There is no fee associated with this Agreement.

## **SECTION 13. REPRESENTATIONS AND WARRANTIES**

13.1 The Agency represents and warrants to the County that:

13.1.1 The Agency has the power and authority to enter into and perform this Agreement.

13.1.2 The making and performance by the Agency of this Agreement (a) have been duly authorized by all necessary action of the Agency; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency; and (c) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which the Agency is party or by which the Agency may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by the Agency of this Agreement, other than those that have already been obtained.

13.1.3 THE AGENCY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE COUNTY AS TO THE SYSTEM PROVIDED BY THE VENDOR, INCLUDING BUT NOT LIMITED TO THE EQUIPMENT, SOFTWARE, AND SERVICES.

13.1.4 This Agreement has been duly executed and delivered by the Agency and constitutes a legal, valid, and binding obligation of the Agency enforceable in accordance with its terms.

13.2 The County represents and warrants to the Agency that:

13.2.1 The County is duly organized and validly existing, and it has the

power and authority to enter into and perform this Agreement.

13.2.2 The making and performance by the County of this Agreement (a) have been duly authorized by all necessary action of the County; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of the County's charter or other organizational document; and (c) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which the County is party or by which the County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by the County of this Agreement, other than those that have already been obtained.

13.2.3 This Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County enforceable in accordance with its terms.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided.

## **SECTION 14. CONDITIONS SUBSEQUENT**

### **14.1 Continued Appropriations**

The Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of the Agency.

### **14.2 Continued Grant Funding**

The Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving continued funding under Grant No. H98210-24-1-0012.

### 14.3 Continued Operability of the Enhanced Remake Kit(s)

The Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon the Parties' continued satisfaction with the operation of the Enhanced Remake Kit(s).

## **SECTION 15. DEFAULT**

15.1 A Party will be in breach or default under this Agreement upon the occurrence of any of the following events:

15.1.1 The Party fails to perform, observe or discharge any of its covenants, agreements or material obligations under this Agreement; and/or

15.1.2 Any representation, warranty or statement made by the Party in this Agreement or in any documents or reports relied upon by the other Party to measure the delivery of services, the expenditure of funds or the performance by the County is untrue in any material respect when made.

## **SECTION 16. TERMINATION**

This Agreement may be terminated prior to July 14, 2029, only in the following manners: (a) at any time by mutual written agreement of the Parties; (b) at any time after a Party has failed to cure a breach of the Agreement after receiving 15 days written notice from the non-breaching Party; (c) by either Party after providing 30 days written notice to the other Party; (d) at any time on written notice by the Agency upon the occurrence of a condition subsequent listed in Section 14; (e) at any time on written notice by the Agency if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's performance of its obligations under this Agreement is prohibited; and (f) at any time on written notice by the Agency if its Primary Contract with the Vendor is terminated, including by expiration.

## **SECTION 17. SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections

8, 13, 14, 15, 19, and 20, and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 18. REMEDIES**

In the event a Party has materially failed to perform under the Agreement, the Party that is then not in default shall be entitled to seek all rights and remedies available to it under the Agreement or by law. Provided, however, all remedies, whether by under the Agreement or at law or equity, shall be subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution. No remedy provided for is exclusive of any other available remedy. All remedies are cumulative and in addition to every other remedy available under the Agreement, at law, in equity, or by statute.

## **SECTION 19. DISPUTE RESOLUTION**

The Parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition to other processes to resolve disputes arising under the Agreement, either Party may notify the other that it wishes to engage in a more guided dispute resolution process. Upon such notification, the Parties shall engage in non-binding arbitration to resolve the dispute. If the Parties do not reach agreement as a result of the non-binding discussion, the Parties may agree to consider further appropriate dispute resolution processes, including binding arbitration. The rights and remedies set forth in this Agreement are not intended to be exhaustive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.

## **SECTION 20. GOVERNING LAW AND CONSENT TO JURISDICTION.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this Section, neither Party waives any form of defense or immunity,

whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The Parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either Party does not have the right to seek judicial enforcement of this Agreement.

## **SECTION 21. CONTRIBUTION**

21.1 If any third party makes any claim or brings any action, suit, or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third-Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third-Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section with respect to the Third-Party Claim.

21.2 With respect to a Third-Party Claim for which the Agency is jointly liable with the County (or would be if joined in the Third-Party Claim ), the Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the Agency on the one hand and of the County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Agency on the one hand and of the County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Agency’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

21.3 With respect to a Third-Party Claim for which the County is jointly liable with the Agency (or would be if joined in the Third-Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Agency in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

## **SECTION 22. LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 21, NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 23. INDEMNIFICATION BY CONTRACTORS**

The County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

## **SECTION 24. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties on the subject matter hereof.

## **SECTION 25. COUNTERPARTS; ELECTRONIC SIGNATURES**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. Signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and any amendments, submitted or exchanged via email are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. The Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

## **SECTION 26. AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, except by written agreement signed by both of the Parties. To avoid ambiguity, the Parties may change their Authorized Representative(s) without amending the Agreement by providing the other Party with written notice of such change.

## **SECTION 27. SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 28. HEADINGS**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

## **SECTION 29. NOTICE**

Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 30. COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

## **SECTION 31. INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that the County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

## **SECTION 32. INTENDED BENEFICIARIES**

The Agency and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 33. TIME IS OF THE ESSENCE**

Time is of the essence in each Party's performance of its obligations under this Agreement.

**SECTION 34. FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Each Party may terminate this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

**SECTION 35. ASSIGNMENT AND SUCCESSORS IN INTEREST**

The County may not assign or transfer the Equipment or its interest in this Agreement without the prior written consent of the Agency, and any attempt by the County to assign or transfer the Equipment or its interest in this Agreement without such consent will be void and of no force or effect. The Agency's consent to the County's assignment or transfer of the Equipment or its interest in this Agreement will not relieve the County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

**EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its Secretary of State.**

**Authorized Signature:**

\_\_\_\_\_  
Division Director or designee Date

**Authorized Signature:**

\_\_\_\_\_  
Chief Procurement Officer Date

**Reviewed by:** \_\_\_\_\_  
Contract Administrator Date

**Columbia County**  
**Authorized Signature:**

\_\_\_\_\_  
Name, Title Date

**Exhibit A**  
**SERVICE AGREEMENT AND SOFTWARE LICENSE**

**WITNESSETH:**

WHEREAS, Customer desires to provide a remote ballot delivery and marking system for use by certain voters during the Customer's vote-by-mail period; and

WHEREAS, Contractor is willing and able to provide such remote ballot delivery and marking system to Customer on the terms and conditions more fully set forth herein.

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Recitals; Terms and Conditions. The parties hereto agree that the foregoing recitals are true and correct and are incorporated herein by this reference. Except as set forth in this Exhibit, the Services and obligations of the parties described in this Exhibit will be governed by the terms of the Contract. For purposes of this Exhibit, the term "Agency" has the same meaning as the term "Division" as defined in the Contract.

2. Provision of Services.

a. Services. Contractor shall furnish and host a remote ballot marking system (the "System") that will allow certain voters registered to vote in the State of Oregon (each a "Voter") to generate and print mail-in election ballots for one or more elections during the Term (each an "Election") as more particularly described on **Exhibit "A"** attached hereto (the "Services").

b. Training and Implementation. The Contractor shall provide comprehensive training and Documentation to state and County staff as authorized by Customer, including, but not limited to integration, migration, set-up, testing and troubleshooting of the System. Training may be performed in person or remotely and include training materials for additional reference.

c. Performance of Services. Contractor shall provide all Services hereunder in a timely, professional, and workmanlike manner and in accordance with the terms and conditions set forth in this Exhibit.

d. Information Security. Contractor shall, at all times, provide the System in accordance with Exhibit L to the Contract.

3. Voters and Ballots.

a. Voter Access; Generation of Ballots. Each Voter shall access the System by entering certain identifying information into the System (the "Voter Information"). Once the Voter enters their Voter Information into the System, the System will automatically generate a ballot for the Voter for the then-upcoming Election from ballot information (the "Ballot Data") that Customer provides to Contractor (as set forth below). The Voter shall then be able to mark their ballot within the system before printing it and returning it to the Customer.

b. No Storage of Ballots. The Services shall specifically exclude any remote hosting or storage of completed ballots in the System or any other method of returning ballots to Customer through the System. Voters shall be required to return all ballots to the Customer via the means specified by the Customer. **Under no circumstances shall Contractor be responsible for any ballots that Voters attempt to deliver or return to the Customer through the System.**

c. Categories of Voter Information. Customer shall inform Contractor in writing of the specific criteria of Voter Information that Customer desires to use to allow a Voter to access the System and generate that Voter's ballot at least thirty (30) days prior to the opening of the vote-by-mail period for an Election (which may include, but shall not be limited to, a Voter's first and last name, date of birth, registered address, and driver's license number).

d. Delivery of Voter Information. Once the specific criteria of Voter Information has been established, Customer shall provide all Voter Information to Contractor in a format readable by the Services in a timely manner. Customer may, at its option, either: (i) input the Voter Information into the System itself; or (ii) request that Contractor enter the Voter Information. Contractor is not responsible for any failures in the Services caused by Customer's failure to timely provide accurate Voter Information (whether such failure is caused by Customer's errors in inputting Voter Information itself or errors in the Voter Information it provides to Contractor for Contractor to input) or Voter Information in a format that is not readable by the Services.

e. Ballot Data. Customer or an Affiliate of Customer shall provide all Ballot Data to Contractor in a format readable by the Services prior to the opening of the vote-by-mail period for an Election which shall include, but shall not be limited to, the items up for election (which may include elected offices, judgeships, board seats, referenda, and constitutional amendments), the candidates for such elections or the text of the other items up for election, and the method of voting (such as first past the post or ranked choice). Customer or an Affiliate of Customer may, at its option, either: (i) input the Ballot Data into the System itself; or (ii) request that Contractor enter the Ballot Data. Contractor is not responsible for any failures in the Services caused by Customer's or an Affiliate's failure to

timely provide accurate Ballot Data (whether such failure is caused by Customer's or Affiliate's errors in inputting Ballot Data itself or errors in the Ballot Data it provides to Contractor for Contractor to input) or Ballot Data in a format that is not readable by the Services.

f. Proofing. Customer or its Affiliates and their staff will conduct proofing and testing of the System, including generating sample ballots, to ensure that the Voter Information and Ballot Data is accurate. Customer acknowledges that ballots will not be available to Voters until Customer or Affiliates complete the proofing and testing step. Either Customer or its Affiliates will immediately notify Contractor of any errors identified during this process, and Contractor shall timely fix such errors.

#### 4. Software License.

a. Grant of License. Subject to the terms and conditions of this Agreement, and in consideration of and conditioned on Customer's timely payment of amounts payable hereunder, Contractor hereby grants to Customer a non-exclusive, non-transferable, revocable license to use the Software as part of the Services. Customer may permit its Affiliates to exercise the rights granted to Customer under the license granted under this Section 4(a).

b. Restrictions of License. Customer, Affiliates, and Voters may access and use the Services solely for the purpose of interacting with and using the Services. The license does not give Customer any rights to and, except as permitted under this Exhibit, Customer may not: (i) reverse engineer, decompile, disassemble, hack, exploit, or attempt to derive a source code version of any aspect of the Software; (ii) sublicense, resell, rent, lease, export, import, distribute, assign, or otherwise make the Software available to any Person other than Affiliates or Voters as contemplated in connection with the Services; or (iii) remove or alter any proprietary notices pertaining to the Software.

c. Proprietary Rights. The Software is licensed, not sold, and Contractor expressly reserves all rights that Contractor does not expressly grant to Customer hereunder. Customer acknowledges and agrees that Contractor owns and retains all rights, title, and interest in and to all the Software and all copyright, trademark, patent, trade secret, intellectual property, improvements, enhancement, modifications, derivative works, and other proprietary rights associated therewith. The license granted hereunder does not include a license of any such proprietary rights to Customer.

d. Feedback. If Customer gives Contractor any ideas, proposals, suggestions, enhancement requests, or other feedback, including ideas for new services and improvements to the Software or the Services, Customer grants Contractor the unlimited right to use such feedback and incorporate it into its products and services without fees, royalties, or any other obligations to Customer.

e. Trade Names. Customer is authorized under this agreement to provide the Services to its Voters under Customer's own name or any trade name it sees fit; provided, however, that it shall not provide the Services under Contractor's name. Contractor shall retain all right, title and ownership interest in Contractor's own trademarks and trade names and said trademarks and trade names shall remain proprietary to Contractor. Customer shall retain all right, title and ownership interest in Customer's own trademarks and trade names and said trademarks and trade names shall remain proprietary to Customer.

f. Maintenance Modifications. As part of the Services, Contractor shall provide Maintenance Modifications to the Software from time to time. Contractor will make commercially reasonable efforts to notify Customer in advance when any downtime is expected from the implementation of a Maintenance Modification (or as otherwise necessary to continue providing the Services) (the "Scheduled Downtime"). Contractor will make commercially reasonable efforts to implement Scheduled Downtime during non-business hours (but cannot guarantee such, particularly as to critical Maintenance Modifications correcting Errors that materially affect the Services). Except with respect to Scheduled Downtime necessary to prevent the System being unavailable or to avoid a material disruption to the Service, Contractor shall give Customer no less than 48 hours prior notice of any Scheduled Downtime. At Agency's request, and if practical, Contractor shall coordinate Scheduled Downtime with Agency and its Affiliates in order to minimize disruption to Agency and Affiliates' election management activities.

g. Enhancements. Customer agrees all requested System behavior outside of the scope of the Services defined herein are deemed to be Enhancements and not considered Maintenance Modifications. Contractor may, but is not required to, develop Enhancements to the System and Customer acknowledges and agrees that such Enhancements may incur additional Fees depending on the scope and delivery date requested. The implementation of any Enhancements shall be set forth in a separate writing between Customer and Contractor (or in an amendment to this Agreement).

h. Modification. Contractor shall have the right to make Maintenance Modifications or Enhancements to the Software without the prior written consent or request of Customer in order to improve the delivery of the Services but shall not make any modifications that materially change the nature of the Services or the user experience except as agreed in writing by both parties. No Enhancements that Contractor makes of its own accord and without Customer's consent shall incur additional Fees hereunder.

## 5. Customer Support and Uptime.

a. Customer Support. Contractor will provide remote technical support for the to Customer and its Affiliates from 9:00 a.m. to 5:00 p.m. in the Pacific time zone on Business Days (the "Business Hours"). Support requests will be received via e-mail and

support for any such requests will be provided via e-mail and/or telephone (the “Helpdesk”). As part of such support, Contractor will respond to any support request and fix or repair any material and reproducible Errors in the Software that are reported to Contractor: (i) within twelve (12) hours for Critical Errors (as defined below); and (ii) within four (4) Business Days for all other Errors. Response times will be measured from the time a Support request is received by Contractor through the Helpdesk. With the exception of Critical Errors, for which Contractor will receive and accept support requests twenty-four (24) hours a day and seven (7) days a week, if a support request is sent to Contractor outside of normal Business Hours, it will not be deemed to have been received by Contractor until the beginning of the next Business Day. As used herein, “Critical Error” means an Error where the System is entirely down during the Election Period and no workaround is immediately available. For purposes of the foregoing, the Election Period is the period that begins 60 days prior to and ends 30 days after the date of a federal or state election in the State of Oregon during the term of the Contract.

b. Uptime. Contractor will make the System Available (as defined below) at least 99.9% of the time as measured over the course of each calendar month during the Term, excluding unavailability caused by any of the Exceptions (as defined below). As used herein, (i) “Available” means the Platform is available for access and use by Voters over the Internet and is operating in material accordance with the Documentation, and (ii) “Exceptions” means any: (a) any connectivity issues with Customer’s or a Voter’s Internet service; (b) Force Majeure Event; (c) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other item not supplied by Contractor; or (d) Scheduled Downtime.

c. Helpdesk. Customer and its Affiliates shall promptly utilize Contractor’s designated Helpdesk to report and log errors, outages, equipment failures, and other problems with the Services. **Contractor shall not be responsible for any losses or damages that result from Customer’s failure to use the Helpdesk, and the response times contained in Section 5(a) shall not take effect or apply until and unless Customer uses Contractor’s Helpdesk to notify Contractor of a failure in the Services.** Contractor may, from time to time, change its Helpdesk and the requirements thereof upon thirty (30) days’ prior written notice to Customer.

## 6. Fees and Payment.

a. Fees. The fees for the Services shall be as set forth on Exhibit M (Statement of Work) to the Contract. The Contractor shall invoice the Customer for all Fees on the first (1<sup>st</sup>) day of the month following a payment milestone as set forth on Exhibit M. Payment is due within thirty (45) days following the date of such invoice. Agency’s obligation to pay late charges is subject to ORS 293.462.

b. Termination Fees. Customer and Contractor hereby agree that upon termination or cancellation of the Term of this Agreement other than for Contractor's default, (i) Customer will pay any Fees then unpaid attributable to Services provided before the effective date of such termination, and (ii) Contractor may retain any pre-paid fees previously paid to Contractor other than for Services that Contractor did not perform in accordance with the terms of the Contract. This Section 6(b) shall survive termination of the Contract.

7. [Intentionally Deleted]

8. Intellectual Property Indemnification. To the extent that any component of the System infringes (or allegedly infringes) upon any patent, copyright, trade secret or other proprietary right of a third party, Contractor, as Customer's sole remedy, shall: (i) at Contractor's sole option and expense either; (a) exercise commercially reasonable efforts to cure the infringement; or (b) modify, replace or procure for Customer the right to use the infringing component of the Kit; (ii) defend Customer through final judgment or settlement of any claim asserted against Agency by any third party alleging such infringement; and (iii) will indemnify Agency in the amount of any final judgment or settlement of such claim. Contractor, however, will have no obligation to cure the infringement, to modify, replace or procure the right to use the infringing component of the Kit, or to defend or indemnify Agency if such third party claim arises solely out of any use of the System that is inconsistent with the terms of this Exhibit. As a condition to the foregoing defense and indemnification obligations, Customer agrees to give Contractor prompt written notice of any written threat, warning, or notice of any claim and to provide copies of applicable documentation served upon or received by it. If Contractor has an obligation to defend Agency under this Section 8 no attorney selected by Contractor to provide that defense may represent or purport to represent Agency or the State of Oregon without the permission of the Oregon Attorney General.

9. Limitation on Liability; Representations and Warranties.

a. Warranties. Subject to the limitations set forth in this Agreement, Contractor warrants only to Customer that the System furnished hereunder when properly used and unmodified by Customer or Voter, will substantially conform to the Documentation. Contractor's sole responsibility under this Section 8 shall be to use reasonable commercial efforts to promptly correct material Errors or, if after such reasonable efforts Contractor is unable to cause the System to function in accordance with this warranty, Customer may terminate this Exhibit and Contractor shall return to Customer any fees attributable to periods following the date that Customer first reported that the System did not comply with the foregoing warranty. All warranty claims not made in writing or not received by Customer shall be deemed waived. Contractor's warranty obligations are solely for the benefit of Customer, who has no authority to extend or transfer this warranty to any other Person.

b. No Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SERVICES ARE PROVIDED “AS IS” AND PROVIDER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY WORK PERFORMED OR TO BE PERFORMED UNDER THIS AGREEMENT, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT (IF ANY) CONSTITUTE THE ONLY WARRANTIES MADE BY PROVIDER WITH RESPECT TO THIS AGREEMENT AND THE SERVICES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED.

c. Limitation on Damages. In the event Customer suffers damages, Customer’s sole and exclusive remedy shall be to recover an equitable amount not to exceed all Fees paid to Contractor during the term of the Contract. Under no circumstances shall Contractor be liable for any claims for special, incidental, or consequential damages including, but not limited to, loss of profits or revenue, lost data, or the costs of substitute equipment or services, whether based upon tort, contract or other theory of recovery.

10. Reserved

11. Definitions. Capitalized terms shall have the following meanings as used in this Agreement:

a. “Affiliate” means, (a) with respect to Contractor, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, and (b) with respect to Agency, any county of the State of Oregon, or any other public body in the State of Oregon that performs elections management functions. For purposes of this definition, the term “controls”, “is controlled by”, or “is under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

b. “Business Day” means Monday through Friday, 6:00 am to 6:00 pm Pacific time.

c. “Documentation” means all technical and functional specifications, user and maintenance manuals, marketing materials, and other written materials, regardless of form, that describe the technical and functional characteristics and capabilities of the System.

d. “Enhancement” means a change or addition to any Software and related Documentation (including all new releases of the Code) that improves functions,

adds new functions, or significantly improves performance by changes in system design or coding. Enhancements shall not include any change or addition that is a Maintenance Modification.

e. “Error” means any error, problem, or defect resulting from an incorrect functioning of Software, or an incorrect or incomplete statement or diagram in Documentation, if such error, problem, or defect renders the Software inoperable, causes the Software to fail to meet the specifications thereof, or causes the Documentation to be inaccurate or incomplete in any material respect.

f. “Maintenance Modification” means any modification or revision (other than Enhancements) to Software or Documentation that correct Errors, support new releases of the operating systems with which the Code is designed to operate, support new input/output devices, or provide other incidental updates and corrections.

g. “Person” means any natural person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, governmental agency or subdivision thereof, joint venture, trust or any other entity.

12. Assignability. Neither party hereto shall have the right to assign this Agreement or its rights or duties hereunder to any other Person. Notwithstanding the foregoing, Contractor shall have the right, without Customer’s consent, to assign this Agreement and any or all of the rights and duties hereunder, to any Affiliate or successor of the Contractor or pursuant to a sale of assets to an unrelated third party. Contractor shall, unless prohibited by law or contract, provide Customer with reasonable advance notice of any assignment of this Agreement.

13. Severability. If any provision of this Agreement is deemed to be invalid, unenforceable, or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision; and such provision shall be inoperative in such state or jurisdiction, and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

**Exhibit B**  
**Remote Ballot Marking Station Purchase and Service Agreement**

1. Purchase of Equipment and Software.

a. Scope of Purchase. Contractor shall furnish and deliver the equipment, if any (the "Equipment"), and software (the "Software") specified on Exhibit M, (Statement of Work) attached hereto (the "Purchase Schedule") to Agency. The Equipment and Software shall together be referred to as the "Kit." Except as set forth in this Exhibit, the terms of the Contract shall govern the performance of the parties required under this Exhibit. For purposes of this Exhibit, the term Agency has the same meaning as the term "Division" as defined in the Contract.

b. Shipment. Contractor shall ship Kits in the numbers and to the locations, and specified on Exhibit P to the Contract, and according to the schedule set forth in Exhibit M. All shipments of Equipment are F.O.B. destination. Except as otherwise stated herein, the prices on the Purchase Schedule include standard shipping charges. Unless otherwise specified by Agency prior to the date of shipment, Contractor shall select the method of shipment it deems appropriate. If a county identified in Exhibit P to the Contract prefers a specific method or forwarding agent to handle the shipments, complete instructions must be given to Contractor in writing prior to shipping. The county, and not Agency, shall be responsible for any increased fees and charges incurred due to such request, payable in full within thirty (30) days of the date of shipping. All Claims for loss, breakage and damage (obvious or concealed) resulting from such alternate shipping will be the responsibility of the county specifying the alternative shipping method.

c. Delivery and Acceptance. Each county to which Contractor ships the Equipment will receive the Equipment. Agency shall be deemed to have accepted the Equipment upon Contractor's submission of the completion report described in Exhibit M.

2. Limited Software License.

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor hereby grants to Agency a non-exclusive, non-transferable, irrevocable license to use the Software (the "License"). If the Software is ordered in connection with Equipment, Agency may only use such Software on the Equipment. Agency may permit its Affiliates to exercise the rights granted to Agency under the License. The License shall have a duration as set forth in Exhibit M.

b. Restrictions of License. Except as specifically set forth in this Exhibit S, the License does not give Agency any rights to and Agency may not: (i) reverse engineer, decompile, disassemble, hack, exploit, or attempt to derive a source code version of any aspect of the Software; (ii) sublicense, resell, rent, lease, export, import, distribute, assign, or otherwise make the Software available to any Person except as contemplated pursuant to this Agreement; or (iii) remove or alter any proprietary notices pertaining to the Software.

c. Proprietary Rights. The Software is licensed, not sold, and Contractor expressly reserves all rights that Contractor does not expressly grant to Agency hereunder. Agency acknowledges and agrees that Contractor owns and retains all rights, title, and interest in and to all the Software and all copyright, trademark, patent, trade secret, intellectual property, improvements, enhancement, modifications, derivative works, and other proprietary rights associated therewith. The license granted hereunder does not include a license of any such proprietary rights to Agency.

d. Feedback. If Agency gives Contractor any ideas, proposals, suggestions, enhancement requests, or other feedback, including ideas for new services and improvements to the Software, Agency grants Contractor the unlimited right to use such feedback and incorporate it into its products and services without fees, royalties, or any other obligations to Agency.

### 3. Provision of Services.

a. The term “Hardware Services” shall mean: (i) maintaining, servicing, and keeping any Equipment in good working order and condition; (ii) providing parts (which may be refurbished) and labor necessary to repair or, if necessary, replace any Equipment that has failed prior to its End of Life Date (as specified on the Purchase Schedule) with equipment of substantially similar specifications; and (iii) providing remote and on-site technical support for the Equipment. The Hardware Services shall not include the costs of consumables for the Kit, such as toner and paper.

b. The term “Software Services” shall mean: (i) providing Maintenance Modifications for the Software; and (ii) providing remote technical support for the Software. The Software Services shall not include Enhancements for any Software.

c. The Contractor shall provide the Hardware Services and Software Services (together, the “Services”) during the Initial Term. During any Renewal Term, Agency may elect to continue the full Services or to continue only the Hardware Services or Software Services by specifying such in its notice of exercise of a Renewal Term (as described in Section 4(a)). If Agency does not specify that it shall continue with only the Hardware Services or the Software Services, it shall be deemed to continue with the full Services during such Renewal Term.

d. The Services shall exclude those services listed as additional services on the Purchase Schedule (the “Additional Services”) and any service necessary due to: (i) the failure of Agency or its personnel to comply with Contractor’s written instructions or recommendations; (ii) the combination of the Kit with any products or software other than those recommended by Contractor; (iii) any alterations of the Kit by Agency not authorized by Contractor; (iv) any improper storage, handling, neglect, or misuse of the Kit or damage caused by an external source; or (v) the maintenance of the Kit by anyone other than Contractor.

e. If the Kit fails due to an update to the operating system of the platform on which the Software operates, Contractor shall make all commercially reasonable efforts to promptly restore the Kit to working order; however, it shall not be subject to the response times specified in Section 3(g).

f. Notwithstanding the length of the Term (including any Renewal Terms), the Services shall not include any service for any component of the Kit on or after its End of Life Date, as specified on the Purchase Schedule. If no End of Life Date is specified for a component, the Services shall continue for the full duration of the Term.

g. Agency Support. Contractor shall provide remote technical support for the Kit to Agency from 9:00 a.m. to 5:00 p.m. in the Pacific time zone on Business Days (the “Business Hours”). Support requests will be received via e-mail and initial support for any such requests will be provided via e-mail and telephone (the “Helpdesk”). As part of such support, (i) Contractor shall service, repair, or replace any failed Equipment: (A) within forty-eight (48) hours during an Election Period (a “Critical Failure”); and (B) within five (5) Business Days outside of an Election Period; and (ii) Contractor shall respond to any support request and fix or repair any material and reproducible Errors in the Software that are reported to Contractor: (A) within twelve (12) hours for any Errors where the Kit is entirely down during the Election Period and no workaround is immediately available (each a “Critical Error”); and (B) within two (2) Business Days for all other Errors. Response times will be measured from the time a Support request is received by Contractor through the Helpdesk. With the exception of Critical Failures and Critical Errors, for which Contractor shall receive and respond to support requests twenty-four (24) hours a day and seven (7) days a week, if a support request is sent to Contractor outside of normal Business Hours, it will not be deemed to have been received by Contractor until the beginning of the next Business Day.

h. Helpdesk. Agency shall promptly utilize Contractor’s designated Helpdesk to report and log Errors, outages, Equipment failures, and other problems with the Kit. **Contractor shall not be responsible for any losses or damages that result from Agency’s failure to use the Helpdesk, and the response times contained in Section 3(g) shall not take effect or apply until and unless Agency uses Contractor’s Helpdesk to notify Contractor of a failure in the Services.** Contractor may, from time to time, change

its Helpdesk and the requirements thereof upon thirty (30) days' prior written notice to Agency.

i. Additional Services; Consumables. Agency may purchase Additional Services (as set forth on the Purchase Schedule) during the Term for the Fees set forth on the Purchase Schedule upon not less than thirty (30) days' prior written notice to Contractor. Contractor and Agency shall schedule the additional and optional services at such times as are mutually agreeable to both parties. Agency may purchase certain consumables for the Fees set forth on the Purchase Schedule by contacting the Helpdesk. Consumables will be dispatched to Agency within a reasonable timeframe.

j. Affiliates. Agency's Affiliates are entitled to receive Hardware and Software Services as described in this Section 3, in the same manner and subject to the same terms as Agency.

4. Term and Termination.

a. This Agreement shall be for the term specified on the Purchase Schedule (the "Initial Term") and may be extended via written Amendment to the Contract.

5. Payment. For the purchase of the Kits, Agency shall pay Contractor the amounts specified in Exhibit M to the Contract for the term of the Contract. Agency's obligation to pay late charges is subject to ORS 293.462. Agency shall be responsible for any sales, use, excise, value-added, services, consumption and other tax due on the Fees, with the exception of any import tariffs, for which Contractor shall bear responsibility. In addition, in the event of non-payment of any Fees, Contractor may, at its sole discretion, take any or all of the following actions: (i) suspend performance of the Services until Agency has paid all sums due and owing (which suspension shall not be deemed a breach of this Agreement); (ii) commence collection activities for all Fees; (iii) terminate this Agreement as set forth in the Contract; and (iv) pursue any other remedies permitted by law.

6. [Intentionally Omitted]

7. Limitation on Liability; Representations and Warranties.

d. Warranties.

a. Contractor shall perform the Services in a good and workmanlike manner consistent with industry practice. Contractor's full obligations with respect to the Services shall be limited those described herein. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AGENCY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE KIT OR THE SERVICES OR ANY WORK PERFORMED OR TO BE PERFORMED UNDER

THIS AGREEMENT, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT (IF ANY) CONSTITUTE THE ONLY WARRANTIES MADE BY PROVIDER WITH RESPECT TO THIS AGREEMENT AND THE SERVICES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED.

b. Contractor represents and warrants that each Kit will function in accordance with the Documentation for a period beginning on the date the Contractor delivers a Training Completion Report for the Kit pursuant to Exhibit M to the Contract, and ending on July 1, 2026.

e. Limitation on Damages. In the event Agency suffers damages, Agency's sole and exclusive remedy shall be to recover an equitable amount not to exceed all Fees paid to Contractor during the Term. Except as specifically set forth herein, under no circumstances shall either party be liable for any claims for special, incidental, or consequential damages including, but not limited to, loss of profits or revenue, lost data, or the costs of substitute equipment or services, whether based upon tort, contract or other theory of recovery.

8. Intellectual Property Indemnification. To the extent that any component of the Kit infringes (or allegedly infringes) upon any patent, copyright, trade secret or other proprietary right of a third party, Contractor, as Agency's sole remedy, shall: (i) at its sole option and expense either; (a) exercise commercially reasonable efforts to cure the infringement; or (b) modify, replace or procure for Agency the right to use the infringing component of the Kit; (ii) defend Agency through final judgment or settlement of any Claim asserted against Agency by any third party alleging such infringement; and (iii) will indemnify Agency in the amount of any final judgment or settlement of such Claim. Contractor, however, will have no obligation to cure the infringement, to modify, replace or procure the right to use the infringing component of the Kit, or to defend or indemnify Agency if such third party Claim arises solely out of: (i) a modification of the Kit by anyone other than Contractor or a third party authorized by Contractor; or (ii) any use of the Software that is inconsistent with the License. To the extent that a third party Claim arising out of one or more conditions stated in clauses (i) through (iii) foregoing is asserted against the Contractor, and Agency's acts or omissions are the basis for such Claim then Agency, at its sole cost and expense, and subject to the limits of Article XI, Section 7, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through ORS 30.400) shall indemnify the Contractor in the amount of any final judgment or settlement thereof (together with all costs, including reasonable attorneys' fees, incurred by the Contractor as a result of such Claim). As a condition to the foregoing defense and indemnification obligations, each Party agrees to give the other prompt written notice of any written threat, warning, or notice of any such Claim and to provide copies of applicable documentation served upon or received by it. Contractor has an obligation to defend Agency under this Section 8 no attorney selected by Contractor to

provide that defense may represent or purport to represent Agency or the State of Oregon without the permission of the Oregon Attorney General.

9. RESERVED

10. Definitions. Capitalized terms shall have the following meanings as used in this Agreement:

h. "Affiliate" means, (a) with respect to Contractor, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, and (b) with respect to Agency, any county of the State of Oregon, or any other public body in the State of Oregon that performs elections management functions. For purposes of this definition, the term "controls", "is controlled by", or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

i. "Business Day" means Monday through Friday, 6:00 a.m. to 6:00 p.m., Pacific Time.

j. "Claim" means any suit, claim, demand, cause of action, administrative, regulatory or judicial action, proceeding, hearing, written notice, arbitration, investigation, request for information, litigation, charge or complaint.

k. "Cyberattack" means any action, physical or electronic, taken to intentionally damage or disrupt an electronic Kit, including but not limited to Equipment, backup services, cloud services, electrical Kits and power grids, networks.

l. "Documentation" means all technical and functional specifications, user and maintenance manuals, marketing materials, and other written materials, regardless of form, that describe the technical and functional characteristics and capabilities of the Kits.

m. "Enhancement" means a change or addition to any Software and related Documentation (including all new releases of the Code) that improves functions, adds new functions, or significantly improves performance by changes in Kit design or coding. Enhancements shall not include any change or addition that is a Maintenance Modification.

n. "Election Period" means the period that begins 60 days before and ends 30 days after a state or federal election in the State of Oregon during the term of the Contract.

o. “Error” means any error, problem, or defect resulting from an incorrect functioning of Software if such error, problem, or defect renders the Software inoperable, causes the Software to fail to meet the specifications thereof set forth in the Documentation, or causes any Documentation accompanying the Software to be inaccurate or incomplete in any material respect.

p. “Maintenance Modification” means any modification or revision (other than Enhancements) to Software that correct Errors, support new releases of the operating Kits with which the Software is designed to operate, enhance the security of the Software, support new input/output devices, or provide other incidental updates and corrections.

q. “Person” means any natural person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, governmental agency or subdivision thereof, joint venture, trust or any other entity.

11. Assignability. Neither party hereto shall have the right to assign this Agreement or its rights or duties hereunder to any other Person. Notwithstanding the foregoing, Contractor shall have the right, without Agency’s consent, to assign this Agreement and any or all of the rights and duties hereunder, to any Affiliate or successor of the Contractor or pursuant to a sale of assets to an unrelated third party. Contractor shall, unless prohibited by law or contract, provide Customer with reasonable advance notice of any assignment of this Agreement.

12. Severability. If any provision of this Agreement is deemed to be invalid, unenforceable, or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision; and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from either of the parties to the other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

13. RESERVED

14. RESERVED.

15. RESERVED

16. RESERVED

**Exhibit C**  
**Agency Installation and Training Completion Report**

## Certification of Installation and Training

Signatures on this page certify that the installation of equipment is complete and training has been provided.

Date of Install \_\_\_\_\_  
Technician Name \_\_\_\_\_  
County Name \_\_\_\_\_  
County Representative \_\_\_\_\_  
Representative Title \_\_\_\_\_  
  
County Signature \_\_\_\_\_

Item Installed	Description of Item	Quantity	Item Number

Date of Training \_\_\_\_\_  
Trainer Name \_\_\_\_\_  
County Name \_\_\_\_\_  
County Representative \_\_\_\_\_  
Representative Title \_\_\_\_\_  
  
County Signature \_\_\_\_\_