

Tenex Software Solutions, Inc.

Election AIM

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

This software as a service subscription agreement (“Agreement”) governs your use of the system (as defined below) and any related service provided by and between **Tenex Software Solutions, Inc.** (“Tenex”), a Florida corporation, having its principal place of business at 5402 W Laurel Street, Suite 206, Tampa, Florida 33607. **El Dorado County Registrar of Voters**, having its principal place of business at 2850 Fairlane Court, Placerville, CA, 95667, is referred to as “Customer” in this Agreement. This “Agreement” is effective on the date that both parties have signed this Agreement (the “Effective Date”).

1.0 DEFINITIONS

The following definitions will apply:

- a. **System.** “System” means the individual modules or products that make up the system.
- b. **Customer Data.** “Customer Data” means any of the customer’s information, documents, or electronic files that are provided to Tenex including Election and/or Voter data.
- c. **Service.** “Service” means Vendor’s online service for providing asset and inventory management and allocation of election equipment
- d. **Support.** “Support” means the ongoing services by Tenex to support the System as defined below.

2.0 DELIVERABLES & DEADLINES

Tenex Software Solutions, Inc. shall perform the Services and provide the software (“Software”) to Customer, according to a Project Schedule to be outlined at the outset of the project. The Customer shall ensure that all required components are available before the work commences.

Tenex will implement Election AIM (“Software”) for the Customer. Election AIM is an asset and inventory management solution that provides functionality for managing all equipment and supplies needed to run an election. Election AIM provides a powerful solution for tracking and reporting on all equipment and supplies and how it is used, distributed, and returned from each location. The Software consists of: web-hosting and storage provided on Amazon Cloud Server, remote support during implementation, remote training for administrative staff (20 hours included), and a web solution for managing, tracking and allocating equipment and supplies for an election.

Any delays in Tenex’s performance caused by Customer third parties shall not constitute a breach of this Agreement by Tenex. Any delays in Customer’s performance caused by Tenex Software Solutions, Inc. or third parties shall not constitute a breach of this Agreement by Customer.

3.0 USE RIGHTS

3.1 Use Rights

During the term and subject to the terms of this Agreement, Tenex hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to permit Customer's Users to use the Software and its Components for Customer's business purposes.

3.2 License and Use Restrictions

Customer shall not, directly, indirectly, alone or with another party, (i) copy, disassemble, reverse engineer, or decompile the System or its Components; (ii) modify, create derivative works based upon, or translate the System or its Components; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System in any form to any other party, (iv) describe, show, tell, or explain any feature or portion of features or capabilities to any party including other vendors of county nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. You acknowledge and agree that Tenex shall own all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer.

3.3 Customer Data

Customer owns all right, title, and interest in the Customer Data. Customer hereby grants to Tenex, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for the purposes of the Customer's use of the System. Tenex shall not use the Customer Data except to improve the System and as necessary to perform its obligations set forth in this Agreement.

3.4 Security

Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the System, and for its Users compliance with the terms of this Agreement. Tenex will act as though any electronic communications it receives under Customer's user names have been sent by Customer. Customer will immediately notify Tenex if it becomes aware of any loss or theft or unauthorized use of any Customer's passwords or user names. Tenex has the right at any time to terminate or suspend access to any Customer if Tenex believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Tenex's network.

4.0 SUPPORT

4.1 Updates

Tenex shall deliver Updates to the System that apply to the Customer's current edition at no additional charge. Only those Updates that apply to the Customer's current edition will be delivered automatically to the Customer at no additional charge.

4.2 Error Correction

Tenex shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Tenex's normal business hours. Customer shall provide such access, information, and support as Tenex may reasonably require in the process of resolving any Error.

4.3 Support Exclusions

Tenex is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence, or willful misconduct of the Customer, including any unauthorized modifications of the System or its operating environment; (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Tenex's firewall).

5.0 FEES, EXPENSES & PAYMENT

5.1 Project Fees

Tenex will invoice Client for the annual Software License Fee, which is \$10,000 per year for the Tenex software in accordance with this Agreement. All payments of this Fee shall be made annually on each successive anniversary term of the Service Agreement, for as long as Client continues to use referenced Software. The license for the Software entitles Client to the warranties in Section 6.2 below. The annual Software License Fee is fixed for the first 4 years, after which is subject to an annual adjustment not to exceed five percent (5%).

5.2 Expenses

Unless an expense is approved in advance by Customer, Tenex Software Solutions, Inc. shall be responsible for all expenses incurred while performing services under this Agreement.

5.3 Payment Terms

Customer will pay Tenex Software Solutions, Inc. as follows:

- Tenex Software Solutions, Inc. will submit an invoice annually at the beginning of the contract year. Payment will be due from Customer on receipt of invoice.

6.0 INTELLECTUAL PROPERTY

6.1 Intellectual Property Ownership

Tenex Software Solutions, Inc. owns the entire copyright, title and interest in the following content ("Content"):

- Election AIM software, scripts used to create reports, data transformation utilities and monitoring modules used to keep track of the health of the system.
- All training materials and documentation provided to the customer.

Customer will secure all necessary rights to copyright, trademark or other intellectual property to any materials it submits to Tenex Software Solutions, Inc. for use in the Services.

Nothing in this section will affect ownership of intellectual property created and owned by any entities not a party to this Agreement and not pursuant to an agreement with Tenex. Prior agreements for other products will not be affected by this agreement.

6.2 Warranty

Tenex Software Solutions, Inc. warrants that it has the rights and authority to grant all assignments and licenses granted by Tenex Software Solutions, Inc. in this Agreement.

6.3 Permitted Uses

Tenex grants to the Customer a non-exclusive license to use the Election AIM software for managing election equipment and supplies. Customer agrees to protect the intellectual and confidential property of Tenex unless Tenex provides a written waiver for the terms of this requirement.

7.0 TERM & TERMINATION

7.1 Term

The term of this Agreement shall commence on the Effective Date and shall automatically terminate **four** year after the contract has commenced (Effective Date), Tenex has fulfilled their software as a service subscription agreement obligation, and payment of all Project Fees and Expenses as specified in this Agreement has been completed, unless otherwise extended by mutual written agreement or terminated in accordance with Section 7.2.

7.2 Termination

(a) Either party may terminate this Agreement effective immediately if the other party (i) commits any material breach or default of this Agreement; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or state insolvency proceeding and such proceeding is not terminated within sixty (60) days of its commencement; or (iii) ceases to be actively engaged in business and has not assigned this Agreement.

(b) If this Agreement is terminated other than by reason of a material breach by Tenex, Tenex Software Solutions, Inc. shall be entitled to a pro-rated payment for work in progress based on the percentage of the Services then completed, as reasonably determined by Tenex.

8.0 CONTRACTOR RELATIONSHIP

Tenex Software Solutions, Inc. is an independent contractor, and neither Tenex Software Solutions, Inc. nor Tenex's employees or contract personnel are, or shall be deemed, Customer's employees. This Agreement does not create a partnership relationship. Neither Tenex Software Solutions, Inc. nor Customer has authority to enter into contracts on the other's behalf.

9.0 NON-SOLICITATIONS & CONFIDENTIAL INFORMATION

9.1 Non-solicitation

During, and for a period of one year after termination of this Agreement, Customer agrees not to solicit or recruit Tenex 's employees, contractors, or freelancers of which Customer becomes aware as a result of Tenex 's services for Customer.

9.2 Confidential Information

Tenex Software Solutions, Inc. and Customer agree not to use or disclose to any third party, either during or after the term of this Agreement, any proprietary or confidential information of the other party without the other party's consent. Tenex Software Solutions, Inc. and Customer shall not be restricted in using any material, which is publicly available, already in their possession, or known to them, or which is rightfully obtained from sources other than the other party.

Proprietary or confidential information includes business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind owned by Tenex Software Solutions, Inc. or by Customer; and any information marked "Proprietary" or "Confidential."

10.0 WARRANTIES & REPRESENTATIONS

Tenex Software Solutions, Inc. warrants that it is able to complete the Services in a professional and timely manner; that any Project Deliverables shall be original or all necessary permissions and releases obtained and paid for; and that any Project Deliverables shall not contain any false, misleading, libelous or unlawful matter.

Customer warrants that any material given by Customer to Tenex Software Solutions, Inc. for use in the Services under this Agreement shall be original or all necessary permissions and releases obtained and paid for; and that any such material shall not contain any false, misleading, libelous or unlawful matter.

11.0 LIABILITY

11.1 Total Liability

In no event shall Tenex's aggregate liability for all cases or controversies arising out of the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the aggregate payments actually received by Tenex Software Solutions, Inc. under this Agreement. In no event will Tenex Software Solutions, Inc. be liable to Customer or any third party for any special, incidental or consequential damages or lost profits, whether based in breach of contract, tort (including negligence), product liability or otherwise, and whether or not Tenex Software Solutions, Inc. has been advised of the possibility of such damage.

11.2 Limitation of Remedies

Customer's exclusive remedy, and Tenex's sole liability for any case or controversy arising out of Tenex's failure to perform any of its obligations hereunder shall be to terminate this Agreement pursuant to Section 7.2 and receive a refund from Tenex Software Solutions, Inc. of the unearned portion of any fees paid with respect to the Services.

12.0 COUNTY CONTRACT LANGUAGE

12.1 Force Majeure

No party shall be in default if performance of any obligation hereunder is rendered impossible or impracticable solely by unforeseen and supervening conditions beyond such party's control, including acts of God, civil commotion, strikes, labor disputes, interruption of transportation, unavoidable accidents, or governmental demands or requirements. If Contractor's full performance is rendered impossible or impracticable, Contractor will accept as full compensation a proportionate payment for work completed.

12.2 Indemnity

Consultant shall defend, indemnify, and hold County and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Consultant, subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

12.3 Insurance

Consultant shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

12.4 No Third-Party Beneficiaries

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

12.5 Contract Administrator

The County Officer or employee with responsibility for administering this Agreement is Bill O'Neill, Registrar of Voters, Elections Department, or successor.

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| Customer: El Dorado County Registrar of Voters | Contractor: Tenex Software Solutions, Inc. |
| Signature: _____ Name: _____ Title: _____ Date: _____ | Signature: <u>Ashley Ellison</u> Name: <u>Ashley Ellison</u> Title: <u>Director of Marketing</u> Tax ID #: <u>59-3647858</u> Date: <u>08/21/2019</u> |