

Program Participation Agreement For Virginia Members

This Program Participation Agreement (this “**Agreement**”), dated as of August 1, 2023 (the “**Effective Date**”) by and between U.S. Digital Response (“**USDR**”) and the County Board of Arlington County, VA (“**Member**”) sets forth the terms and conditions for USDR to provide, and Member to receive, certain technical support services related to Member’s poll worker management system, all as described in more detail in this Agreement.

BACKGROUND

- A. USDR has developed the Poll Worker Management System (the “**PWMS**”) as a tool that election offices can use to manage poll worker recruitment, scheduling, pay, and related back-office election tasks. Unlike other poll worker management software, the PWMS is not built on proprietary software code; instead, the PWMS is built by customizing the configuration of a low-code development platform from Airtable. USDR intends to make publicly available (for the world at large and for free) the scripts and other customization instructions that would allow anyone to build the PWMS in Airtable.
- B. In order to support the further development and improvement of the publicly available and free PWMS, USDR is launching (initially on a pilot basis) a membership-based Election Technical Support Collaborative (the “**Program**”). In exchange for an annual membership fee, members of the Program will receive the following: assistance from USDR with setting up their instance of the PWMS; training for their own staff on the PWMS; and access to participation in discussions among members of the Program regarding poll worker management and use of the PWMS (the “**Communities of Practice**”).
- C. Member wishes to participate in the pilot version of the Program, in exchange for the designated membership fee, under the terms and conditions set out in this Agreement.

Therefore, in consideration of the agreement set forth below and contained herein, and intending to be bound hereby, USDR and Member (“**the Parties**”) agree as follows:

1. **Description of the Program and USDR Services; Member’s Obligations.**
 - a. As a member of the Program, Member will receive from USDR technical support related to the PWMS, including the following benefits (collectively, the “**Services**”):
 - i. Configuration of Member’s Airtable instance to conform to the free and publicly available PWMS specifications published online by USDR, as well as configuration of any reasonable and mutually agreed upon modifications to Member’s specifications;
 - ii. Training Member’s staff on the use and maintenance of the PWMS;
 - iii. USDR’s reasonable efforts to provide ongoing technical support to Member’s PWMS instance during USDR’s regular business hours;

- iv. Configuration of PWMS feature enhancements as they are made available (either generally to all PWMS users, which shall be in USDR's sole discretion, or to Member specifically for beta-testing purposes, as mutually agreed by the Parties); and
 - v. Participation in one or more Communities of Practice as established by USDR.
 - b. As a member of the Program, Member agrees that it will:
 - i. Pay the fees set forth in section 3 of this Agreement;
 - ii. Provide timely feedback to USDR on the PWMS;
 - iii. Complete an annual survey regarding the PWMS and the Services; and
 - iv. Attend at least one Communities of Practice session hosted by USDR. Member may attend a Communities of Practice session by having at least one of Member's employees or officials participate either virtually or in-person.
 - c. The Services do not include access to "**Third-Party Tools**" necessary or useful for the Services such as (i) Airtable, which is the software platform that USDR configures to create the PWMS, (ii) Twilio, which is used for sending text messages, (iii) SendGrid, which is used for sending emails, and (iv) other software and tools that are used in conjunction with the PWMS, as determined by USDR in its sole discretion. Member will access Third-Party Tools through USDR in exchange for an additional fee (the "**Third-Party Tool Fee**") and subject to the terms set forth in the Third-Party Tool Agreement that is attached to this agreement as Exhibit B.
- 2. **Term.** This Agreement, and Member's participation in the Program, shall commence on the Effective Date and will continue through December 31, 2024, subject to its earlier termination as provided in this Agreement.
- 3. **Fees; Discounts; Expenses; Taxes.**
 - a. In consideration for access to USDR's Services and access to participation in the Program as set forth above, Member shall pay USDR a membership fee of \$5,667.00 (the "**Membership Fee**"). If Member declines to utilize any or all of the Services, Member is not entitled to a refund.
 - b. USDR may reduce Member's Membership Fee by a set percentage in exchange for Member's participation in one or more activities benefiting the further development of the PWMS and its effective use by other jurisdictions (together, the "Promotional Activities"). The total potential reduction in Member's Membership Fee shall not exceed 20% per year. A list of current Promotional Activities and their corresponding percentage discounts are attached as Exhibit A. Member will indicate the Promotional Activities, if any, in which Member agrees to participate by checking the applicable boxes in Exhibit A. Member agrees that USDR may change the list of Promotional Activities that qualify for reductions in the Membership Fee and the amount of any activity's discount at any

time, in USDR's sole discretion. Member further agrees that (i) the sufficiency of Member's participation in a Promotional Activity for purposes of receiving a discount is within USDR's sole discretion and (ii) for any Promotional Activity in which Member's participation is determined by USDR to be insufficient, Member will pay USDR an additional fee equal to the amount of the discount initially applied to the Membership Fee in association with that Promotional Activity (the "Nonparticipation Fee"). USDR will invoice Member for any Nonparticipation Fees before the expiration of this Agreement and Member agrees to pay all such Nonparticipation Fees within thirty (30) days of the invoice date. Member may satisfy its obligation to pay a Nonparticipation Fee by instead participating in a substitute Promotional Activity that (i) confers an equivalent benefit to the development of the PWMS as the Promotional Activities enumerated herein and (ii) is mutually agreed to in writing by Member and USDR.

- c. In consideration for Member's access to the Third-Party Tools, Member shall pay USDR a **Third-Party Tool Fee** of \$4,029.00. Member understands that the Third-Party Tool Fee is determined by Member's anticipated use of the Third-Party Tools identified in the Third-Party Tool Agreement attached as Exhibit B. If Member's actual use of the Third-Party Tools exceeds the anticipated use that was assumed in calculating the Third-Party Tool Fee, Member shall pay USDR an additional Third-Party Tool Fee. If Member's actual use of the Third-Party Tools is less than the anticipated use that was assumed in calculating the Third-Party Tool Fee, USDR may, in its sole discretion, provide Member a partial refund of the Third-Party Tool Fee.
- d. USDR shall invoice Member for the Membership Fee, less any discounts applied based on Member's agreement to participate in any Promotional Activities, and the Third-Party Tool Fee on the Effective Date. Member agrees to pay the invoice in full within forty-five (45) days of the invoice date.
- e. Member shall reimburse USDR for reasonable out-of-pocket expenses incurred by USDR in connection with the Services, subject in each case to Member's pre-approval. USDR shall invoice Member for all reimbursable expenses and all additional Third-Party Tool Fees as they are incurred and shall submit with each such request receipts and documentation reasonably necessary to substantiate such invoice. Member agrees to pay the invoice in full within forty-five (45) days of the invoice date.
- f. In the event that Member does not pay the full amount of any invoice within forty-five (45) days of the invoice date, USDR may charge interest on any unpaid balance at the rate of two percent (2%) per month or the highest rate permissible under applicable law, whichever is lower, calculated daily and compounded monthly.
- g. Subject to the remaining provisions of this Agreement, which define the agreed upon and reasonable commercial value of Member's participation in the Program and Member's access to the Third-Party Tools, USDR will not provide Member with money, goods, gifts, donations, or services of any kind for free, in kind, or at a discount.

- h. If Member is generally exempt from paying sales tax under the laws of its state, Member will indicate as such by initialing in the box below the signature line.
4. **Member Data; Prohibited Use of the PWMS.** As between the Parties, Member shall retain all right, title and interest in all information, data, and other content that is uploaded by Member into the PWMS or otherwise received directly or indirectly by USDR from Member ("**Member Data**"). Member hereby grants to USDR a non-exclusive, worldwide, fully paid-up, royalty-free license to use, copy, store, transmit, modify, and display Member Data exclusively for the following purposes: (i) in order to provide, maintain, or improve the PWMS or the Services; and (ii) in order to perform any other actions that are authorized or instructed by Member in writing (including by email). Member shall not use the PWMS (i) to access, store or transmit Social Security Numbers or marked ballots; or (ii) for any activities related to tabulating votes.
5. **USDR Volunteers.** USDR is a 501(c)(3) public charity. The volunteers working with USDR do not receive compensation from any person for their time performing the Services. Member shall not provide any compensation, of any kind whatever, to such volunteers. Member may not sell or otherwise commercially exploit the Services for profit. Should Member wish to retain any Program volunteer as a paid consultant or employee, or in any other paid or compensated arrangement, Member will ensure that such volunteer terminates his/her volunteer relationship with Member via USDR prior to entering into any such paid or compensated relationship, unless otherwise discussed and agreed upon.
6. **Independence; No Joint Venture.** USDR and Member are and will remain independent, arms-length contracting parties. The arrangements contemplated under the Program do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither USDR nor Member has the power or authority to bind or obligate the other to a third party or commitment in any manner. The use of the term "partner" or comparable term in any communications is solely for convenience.
7. **No Warranties.** USDR makes no representation or warranty of any kind, express or implied, relating to the Services, including, without limitation, implied warranties of merchantability or fitness for a particular purpose. USDR also makes no representation or warranty of any kind, express or implied, that any software created or modified through the Services will operate without interruption, meet any performance or reliability standards, or be error-free.
8. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL USDR, ITS DIRECTORS, OFFICERS, EMPLOYEES OR VOLUNTEERS BE LIABLE TO MEMBER FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, COSTS OF DELAY, FAILURE OF

DELIVERY, LOSS OF DATA OR BUSINESS INTERRUPTION, RELATED TO THIS AGREEMENT, THE PROGRAM OR THE SERVICES; OR (B) ANY LOSS OR DAMAGE, HOWEVER ARISING, RELATED TO THE THIRD-PARTY TOOLS, EVEN IF, IN EITHER CASE, USDR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE NATURE OF THE CLAIM GIVING RISE TO THE LOSS OR DAMAGE (INCLUDING CLAIMS IN CONTRACT, TORT, OR STRICT LIABILITY), EXCEPT FOR CLAIMS OF INTELLECTUAL PROPERTY INDEMNIFICATION, PERSONAL INJURY OR DEATH USDR recognizes that Program volunteers may enter into specific agreements with Member from time to time and nothing in this Agreement shall alter any such agreement with a Program volunteer; provided, however, except as otherwise specifically agreed in such an agreement, the foregoing limitation of liability shall apply to each such agreement that Member may enter into with a Program volunteer. Member recognizes that USDR is not a party to such agreements and shall not seek to hold USDR liable for any breach of the same by any Program volunteer.

9. **No Religious or Political Activities.** Member agrees that it will not request nor assign Program volunteers or USDR personnel to conduct or engage in religious, sectarian, or political activities.
10. **No Harassment or Discrimination; Accommodation of Disabilities.** Member agrees that it will not engage in harassment of, or discrimination against, Program volunteers on the basis of race; color; national origin, including limited English proficiency; sex; sexual orientation; age; political affiliation; religion; disability (if the volunteer is a qualified individual with a disability); or any other category protected by law. Member will cooperate with USDR regarding any issues or concerns that are raised by or about any aspect of the Program in this regard. To the extent reasonably practicable, Member will make the activities to which Program volunteers are assigned accessible to persons with disabilities (including mobility, hearing, vision, mental, and cognitive impairments or addictions and diseases) and/or limited English language proficiency and provide reasonable accommodation to allow persons with disabilities to participate in such activities.
11. **Policies.** Member's participation in the Program shall be subject to [the U.S. Digital Response Policies and Guidelines](#), as the same may be applicable and published or updated from time to time; should Member determine that it cannot comply with such policies, it must terminate its participation in the Program. By default and unless agreed otherwise, all software and design assets produced by USDR team members or volunteers may be published using Open Source Initiative-approved or Creative Commons Zero licenses. Nothing in this Agreement prohibits or restricts Member from requiring Program volunteers to comply with Member's applicable policies and procedures, provided the same are consistent with applicable law and do not conflict with this Agreement.

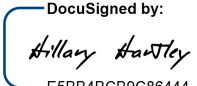
12. **Compliance with Laws.** Member shall, at its own expense, comply with all federal, state, and local laws, ordinances, rules, regulations, orders, licenses, permits and other governmental requirements applicable to the Services and its participation in the Program. Without limiting the generality of the foregoing, Member represents and warrants that its participation in the Program and its utilization of the Services are in full compliance with all laws applicable to it and its operations, including Va. Code § 24.2-124.1.
13. **Intellectual Property Indemnification:** USDR warrants that in providing services under this Agreement neither USDR nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties. USDR covenants for itself, its employees and its subcontractors to defend, hold harmless, and indemnify Arlington County and its elected and appointed officials, current and former employees, agents, boards and commissions from and against all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges or liability for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Agreement. This duty to save, defend, hold harmless and indemnify will survive the termination of this Agreement.
14. **Termination.** Either USDR or Member may terminate this Agreement and Member's participation in the Program at any time, by providing written notice to the other; provided, however, this Agreement shall continue to govern any issues arising in connection with Member's participation in the Program even after such termination.
15. **Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder by either party shall be in writing and shall be validly given or made to the other party if sent via personal delivery, prepaid overnight delivery, or by email with confirmation of receipt. Notice shall be deemed effective upon receipt. Notice to a party shall be sent to the address set out underneath its signature below. Any Party may change its address for purposes of this paragraph by written notice given in the manner provided above.
16. **Miscellaneous.** This Agreement and Member's participation in the Program shall be governed by the laws of the state of Virginia, without regard to its conflicts of laws rules. This Agreement may only be altered or waived by a writing signed by both Member and USDR, recognizing that no volunteer has any authority to bind USDR or otherwise alter this Agreement. Member may not assign any rights, responsibilities or duties arising from its participation in the Program without USDR's express written consent. Unless expressly stated to the contrary, the terms "include" and "including" (and the like) as used in this Agreement are deemed to be followed by the words "without limitation". Sections 4, through 8 and sections 11 through 18 of this Agreement shall survive indefinitely.

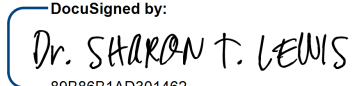
18. **Authority and Execution.** Each of USDR and Member represents and warrants that it has the full legal right, power and authority to enter into this Agreement and perform the obligations set forth herein and when executed and delivered by that party, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement. This Agreement may be executed in print or digital counterparts, each of which shall be deemed a duplicate original, and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, USDR and Member each has caused this Agreement to be signed by its duly authorized representative.

U.S. Digital Response

County Board of Arlington County, VA

By: 
Name: Hillary Hartley
Title: CEO
Date: 8/31/2023

By: 
Name: DR. SHARON T. LEWIS
Title: Purchasing Division Chief
Date: 9/1/2023

Address for notices:
490 43rd Street Unit #230
Oakland, California 94609

Address for notices:
2100 Clarendon Blvd
Arlington, VA 22201

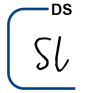
 **By *initialing here, Member represents that it is exempt from sales tax under the laws of its state.***

Exhibit A

Promotional Activities and Corresponding Discounts

Member will check the box next to each Promotional Activity in which it is willing to participate. USDR may reduce the Membership Fee by no more than 20% for all Promotional Activities combined.

Early Adopter – A 10% discount is available to Members that enroll in the Election Technical Support Collaborative before December 31, 2023, and either (1) helped USDR co-develop the PWMS before February 1, 2023, or (2) are among the first three Members to enroll in their state.

New Feature Development – A 10% discount is available to Members that support USDR in ideation, building and testing of a new PWMS feature. The feature must be a brand-new feature. Feature development subject to availability and approval of USDR.

Case Study – A 10% discount is available to Members that partner with USDR to write a case study benefiting the Election Technical Support Collaborative. Must be a new case study featuring a new module.

Co-presenter – A 10% discount is available to Members that co-present with USDR at a local-elections-related conference on the PWMS and the Election Technical Support Collaborative for the purpose of marketing to new members.

Refer a Friend – A 10% discount is available to Members that refer a new member to the Election Technical Support Collaborative. The discount will be applied to the year after the referral joins the Collaborative.

Exhibit B

Third-Party Tool Agreement

1. Subject to the terms and conditions of the Program Participation Agreement and this Third-Party Tool Agreement, USDR will provide Member with access to and use of the following Third-Party Tools: (i) Airtable, (ii) Twilio, and (iii) SendGrid.
2. This Third-Party Tool Agreement may be amended by mutual written agreement of the Parties if additional Third-Party Tools are required or are no longer required in order for Member to use the PWMS or for USDR to perform the Services. If such amendment includes an additional Third-Party Tool Fee, USDR will invoice Member for the fee and Member shall pay the invoice in full within forty-five (45) days of the invoice date.
3. **General Terms.**
 - a. Member will access the Third-Party Tools as a permitted end user of USDR. Member understands that it does not have any right to access the Third-Party Tools except as provided for in the Program Participation Agreement and this Third-Party Tool Agreement.
 - b. Member's access to one or more Third-Party Tools may be revoked by USDR at any time if, in USDR's sole discretion, Member violates any of the terms of this Third-Party Tool Agreement. If Member's access to a Third-Party Tool is revoked pursuant to this subsection 3(b), Member shall not be entitled to a refund of any Third-Party Tool Fees.
 - c. Member's access to one or more Third-Party Tools may also be revoked by USDR at any time if USDR's agreement to license those Third-Party Tools is terminated. If Member's access to a Third-Party Tool is revoked pursuant to this subsection 3(c), Member shall be entitled to a refund of the relevant part of any unused portions of its Third-Party Tool Fees or, in the alternative, shall be entitled to a credit to be applied to any additional fees for substitute Third-Party Tools.
 - d. Member understands that, as USDR's end user, all Member Data and other information that Member stores in, transmits or processes using the Third-Party Tools will be made available to the companies from which USDR has licensed the Third-Party Tools. Each company has agreed to limit its use of USDR's end users' information, including Member's information, in accordance with the policies cited in section 4 below.

- e. USDR makes no representation or warranty of any kind, express or implied, relating to the Third-Party Tools, including, without limitation, implied warranties of merchantability or fitness for a particular purpose. USDR also makes no representation or warranty of any kind, express or implied, that any Third-Party Tool will operate without interruption, meet any performance or reliability standards, or be error-free.
- f. Member shall not permit any person other than Member's agents to use the Third-Party Tools. Member shall use commercially reasonable efforts to prevent unauthorized access to or use of the Third-Party Tools and notify USDR promptly of any such unauthorized access or use. If Member is given passwords to access Third-Party Tools, Member shall require that all persons who are permitted to access the Third-Party Tools on Member's behalf must keep user ID and password information strictly confidential and not share such information with any unauthorized person.
- g. Member shall not, and, to the extent possible, shall not allow any other person to:
 - i. use the Third-Party Tools for any purpose other than enabling Member's participation in the Program and its use of the PWMS;
 - ii. use the Third-Party Tools to access, store or transmit Social Security Numbers or marked ballots or for any activities related to tabulating votes;
 - iii. sell, transfer, or license any Third-Party Tool to another person or entity;
 - iv. reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of any Third-Party Tool;
 - v. copy, modify, or create derivative works from any Third-Party Tool or any documentation that exists to support the use of the Third-Party Tool ("**Documentation**");
 - vi. remove or obscure any copyright or proprietary or other notice contained in any Third-Party Tool or Documentation;
 - vii. propagate any virus, Trojan horse, or other malware or programming routine intended to damage any system or data;
 - viii. use any Third-Party Tool in a manner that violates any applicable law, regulation, or legal requirement or obligation;
 - ix. use any Third-Party Tool in violation of any third-party rights of privacy or intellectual property rights;
 - x. use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark any Third-Party Tools;
 - xi. post, upload, transmit or provide any Member Data that is unlawful, harmful, abusive, libelous, defamatory, or otherwise objectionable;

- xii. use the name, logo or marks of any Third-Party Tool or any company from which USDR has licensed a Third-Party Tool without first obtaining USDR's express written consent to such use; or
- xiii. use the Third-Party Tools except as expressly permitted by the Program Participation Agreement, this Third-Party Tool Agreement, and the policies set forth in section 4 below.

4. Policies Applicable to Members' Use of Specific Third-Party Tools.

- a. The Privacy Policy available here applies to Member's use of Airtable: <https://www.airtable.com/privacy>.
- b. The Privacy Notice available here applies to Member's use of Twilio: <https://www.twilio.com/legal/privacy>. The Acceptable Use Policy available here applies to Member's use of Twilio: <https://www.twilio.com/legal/aup>.
- c. The Privacy Policies available here applies to Member's use of SendGrid: <https://sendgrid.com/policies/privacy/?ust=1570226656505000>. The Acceptable Use Policy available here also applies to Member's use of SendGrid: <https://www.twilio.com/legal/aup>.