

## **Software Agreement**

This Software Agreement ("The Agreement") is made and entered into as of January 1, 2022 ("The Effective Date"), by and between Democracy Live, Inc., a Delaware Corporation with offices at 35050 SE Douglas Street, Suite 200 Snoqualmie, WA 98065 ("Democracy Live") and Monterey County ("Customer"), with an address at 1441 Schilling Place, Salinas, CA 93901.

### **Recitals**

- A. WHEREAS, Monterey County wishes to license software for the purpose of ADA compliant, accessible, audio-enabled sample ballot / voter guide and a remote accessible vote by mail solution and electronic ballot delivery for UOCAVA voters.
- B. Democracy Live has agreed to provide such services and support, subject to the terms of this Agreement.

**NOW, THEREFORE** in consideration of the foregoing recitals and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

#### **1. Purpose of Contract**

The purpose of this Agreement is for Democracy Live to supply online, ADA Compliant accessible sample ballot and voter guide access, a remote accessible sample ballot by mail solution and electronic ballot deliver for UOCAVA voters. The software must function in accordance with applicable state and federal laws at the time of delivery for the purpose of conducting elections.

#### **2. Grant of License**

2.1 License: Democracy Live, hereby grants to Customer a non-exclusive, non-transferable statewide license to "OmniBallot OnlineSoftware" shall include executable object code of software programs and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software program necessary for the proper function and operation of the system as delivered by Democracy Live and accepted by Customer.

## 2.2 Upgrades.

- (a) During the Software Agreement Term and any renewal thereof, Democracy Live may provide new releases, upgrades or maintenance patches to the software along with appropriate documentation ("Upgrades"), on a schedule defined by Democracy Live. Customer is responsible for obtaining any upgrades on purchases of third party hardware or software required to operate the updates designed to patch software problems. Customer is not required to obtain or install new releases or upgrades designed to enhance software performance or version upgrades. All new releases, upgrades or software patches shall be clearly identified by Democracy Live. All software patch updates shall be deemed to be the "Software", and shall be subject to all forms and conditions Democracy Live license of the Software upon delivery. Customer may install updates in accordance with Democracy Live recommended instructions or may request Democracy Live install the updates. Democracy Live may charge customer then-current rates to (a) install software performance enhancement updates or (b) provide maintenance and support to the software which is required as a result of Customer's failure to install the path update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, lost amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Software Patch Update or the second most recent Software Patch Update, provided by Democracy Live. If Customer proposes changes in the Software to Democracy Live, such proposal will become property of Democracy Live. Democracy Live represents to Customer that the updates will comply with all applicable state law requirements at the time of delivery. Democracy Live shall pay for any Software Performance Enhancement Update which is required due to change in state law.
- (a) Modifications: Democracy Live reserves the right to modify Software at any time, including but not limited to adding or removing features and content .

## 3. Fees

3.1 License Fee: Customer will pay Democracy Live an annual subscription fee of nine thousand and nine hundred ninety-nine dollars (\$9,999). Customer may request Democracy Live to configure an election (Optional Gold Package) for a fee of \$1,950 per election. In the event Democracy Live configures an election, Customer will be invoiced separately upon completion of the election.

3.2 Payment Terms: Unless otherwise provided in Attachment A, payment shall be due by Customer within 30 days after the date of invoice by Democracy Live.

#### **4 Ownership**

4.1 The original and any copies of the Licensed Programs, made by Customer, including translations, compilations, partial copies, and modifications and updates are the property of Democracy Live.

#### **5 Term**

5.1 This Agreement shall be in effect for a three-year period beginning on January 1, 2022 ("Effective Date") and ending on December 31, 2024. Both parties shall have the option to renew for one (1) one year period with written agreement from both Parties or unless terminated as provided in section 6.

#### **6 Termination**

6.1 During the term of this Agreement, either party may terminate the Agreement for any reason by given written notice of termination at least thirty (30) days prior to the effective date of termination.

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

### 6.3 Effect of Termination.

6.3.1 In the event of Termination, Customer will immediately discontinue use of the Licensed Programs. Within one (1) month after termination of this Agreement, Customer will furnish to Democracy Live, Inc., a certificate which certifies with respect to each Licensed Programs that, through its best effort and to the best of its knowledge, the original and all copies in whole or in part and in any form, of each of the Licensed Programs have been destroyed.

6.3.2 Upon termination of this Agreement for any reason other than Customer's default, in addition to any remedies available to Customer at law or in equity, Democracy Live will refund to Customer a pro-rated portion of any one-time license fees paid by Customer for the Software and a pro-rated portion of the then current Annual Subscription Fee (if any) pre-paid on the remainder of the then current term for which those fees were paid.

6.4 Survival. In addition to any payment obligations under this Agreement the following sections 3, 8, 9, 10 will survive in accordance with their terms upon termination of this Agreement.

## 7 Services, Support and Maintenance

7.1 Statement of Work: The Services, Support and Maintenance as agreed by Customer and Democracy Live in the Statement of Work shall be incorporated under this Agreement (Exhibit A).

7.2 Supply: Democracy Live will provide to Customer the software package known as Omni Ballot and as described in Exhibit A.

7.3 Services: Monterey County will be a self-administrated account. Customer as a self-administrated account will be responsible for election configurations during the contract period. Democracy Live will provide assistance with the initial Account set-up and will provide comprehensive administrative and configuration support during the first election to be administrated using the OmniBallot system as expressed in Exhibit A. Customer agrees to notify Democracy Live ninety-days (90) prior to the first election under this Agreement.

7.4 Support: For as long as Customer has paid all applicable fees and is in compliance with all the terms of this Agreement, including as set forth in the Attachments, and as long as this Agreement is in effect, Democracy Live will provide Support and Maintenance according to Exhibit A. Notwithstanding anything to the contrary in this Agreement, Democracy Live will not provide Support and Maintenance for:

7.4.1 Any products other than the Software provided by Democracy Live under this Agreement.

7.4.2 Any modifications to Software not made by Democracy Live or a third party authorized in writing by Democracy Live to make modifications; or

7.4.3 Any use of Software that is not in accordance with this Agreement, the Documentation or other written instructions provided by Democracy Live.

7.5 Maintenance Releases. Democracy Live may provide Maintenance Releases to Customer from time to time at its sole discretion. Customer understands and acknowledges that the Maintenance Releases may be required for the proper functioning of Software. Maintenance Releases do not include Upgrades. Upgrades may be provided to Customer as stated in Section 2.2 at additional charge upon the Parties' mutual written agreement. All Maintenance Releases and Upgrades will be part of the Software and subject to all terms of this Agreement.

## **8 Representations and Warranties**

**8.1** Democracy Live Represents and Warrants to Customer that: it has all necessary rights and authority to execute and deliver the Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Customer; the goods and services provided by contract under this Software License, including the Software and Intellectual Property provided hereunder, are original to Democracy Live, or its subcontractors, or parties; and the software as delivered as part of the system will not infringe or otherwise violate any applicable rule or regulation.

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

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

## **9 Indemnification**

**9.1** Democracy Live will defend, indemnify, and hold harmless Customer against any and all third-party claims, actions, proceedings and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including without limitation reasonable attorneys' fees and other litigation expenses) incurred by Customer, arising out of or relating to any actual

infringement of any U.S. issued patent or copyright by Democracy Live or misappropriation of any trade secret of any third party by Democracy Live and the Software ("Intellectual Property Infringement").

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

9.3 Customer hereby indemnifies and shall hold harmless Democracy Live, its and their subsidiaries, affiliates, officers, directors and employees and agents and subcontractors from and against all liability, damages, loss, cost or expenses (including reasonable attorney's fees) arising out of or in connection with any third-party claims that Customer's use of the software in contravention of the grants of rights infringes or otherwise violates any rights of third parties.

9.4 Waiver of Automobile Liability. Democracy Live's work does not require Democracy Live representatives to travel in the performance of this Agreement. Democracy Live will provide support and troubleshooting services for the Monterey County Elections website which includes training, coding adjustments and hosting support. All support and troubleshooting will be conducted via online or conference calls with Election IT services staff as needed.

## **10 Confidentiality**

**10.1** **Definition.** Each Party may make available to the other Confidential Information under this Agreement. "Confidential Information" means all confidential or proprietary information provided to the other Party in connection with this Agreement, including all information designated as confidential by the Disclosing Party and all information which by its nature or the circumstances surrounding its disclosure should reasonably be considered confidential. For the purposes of this Section 10, the Party disclosing Confidential Information will be called the "Disclosing Party" and the other the "Receiving Party." For the avoidance of doubt, The Software, Documentation, and any technical information of Democracy Live will be deemed Confidential Information of Democracy Live and the Customer technical information will be deemed Confidential Information of Customer. The following information is not Confidential Information:

**10.1.1** Information that is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party

**10.1.2** Information that is in the Receiving Party's possession at the time of disclosure other than as a result of the Receiving Party's breach of any legal obligation.

**10.1.3** Information that becomes known to the Receiving Party, through disclosure by a third party that has a legal right to disclose that Confidential Information; or

**10.1.4** Information that is developed by the Receiving Party independently without breach of this Agreement.

**10.1.5** Information which is by law or by statute public.

**10.2** **Restrictions.** Each Receiving Party agrees that all Confidential Information made available by a Disclosing Party to a Receiving Party under this Agreement will:

**10.2.1** Be kept strictly confidential and not disclosed to any third party by the Receiving Party without the Disclosing Party's prior written consent.



10.2.2 Be treated by the Receiving Party in the same way and with the same degree of care (but with no less than reasonable care) as it treats proprietary or confidential information generated by itself.

10.2.3 Only be shared with the Receiving Party's employees, agents, and representatives (including accountants and attorneys) on a need-to-know basis and under a written agreement or legal obligations requiring them to keep Confidential Information secret consistent with the terms of this Agreement; and

10.2.4 Remain the property of the Disclosing Party. Neither Party will furnish to the other Party any Confidential Information which it does not have the right to furnish.

10.2.5 However, the parties agree that the Customer may be required to release confidential information to the public pursuant to the requirements of the State of California.

10.2.6 Disclosure Required by Law. Notwithstanding the restrictions in Section 10, the Receiving Party may disclose information that the Receiving Party is required to disclose to comply with applicable laws or governmental regulations, provided that the Receiving Party, to the extent it is allowed under applicable law, provides prior written notice of the disclosure to Disclosing Party and takes all reasonable actions to avoid and minimize the extent of the disclosure.

10.2.7 Confidential information, between the parties, does not include the County's voter information, which must be disclosed by the County in a timely manner, as required by law. Disclosure of this information does not require written notification.

## **11 Assignment**

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

## **12 Miscellaneous**

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

**12.2** **Export Controls.** U.S. export control laws may apply to Software, and the documentation. Democracy Live and Customer will comply with all U.S. export control laws.

**12.3** **Law and Venues.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of California, USA. Venue for any action to enforce or construe this agreement shall be in Superior Court of Monterey County, California.

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

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

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

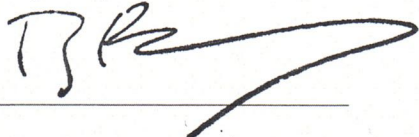
12.7 Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

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

**DEMOCRACY LIVE, INC.**  
Software Agreement

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

Democracy Live, Inc:

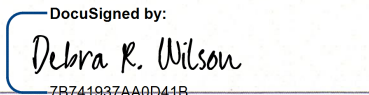
By: 

Name: Bryan Finney

Title: CEO

Date: 11/15/2021

Monterey County:

By: 

Name: Debra R. wilson

Title: Acting Contracts Purchasing Officer

Date: 11/23/2021 | 10:51 AM PST

## Attachment A- Fee Schedule

This Attachment A is part of the Software License Agreement ("Agreement") between Democracy Live and Monterey County as set forth in Section 3 Fees.

### I. Fees

(A) **Subscription Fee, including Support and Maintenance:** For each year in which this Agreement is in effect, Monterey County will pay an Annual Subscription Fee of nine thousand and nine hundred ninety-nine dollars (\$9,999). The Annual Subscription Fee will be due every year on December 31<sup>st</sup> of each successive one-year period.

(B) **Optional Gold Package Configuration Fee Services:** For each year in which this Agreement is in effect, if Monterey County requests Democracy Live to configure an election, County will pay an election configuration fee of one thousand and nine hundred and fifty dollars (\$1,950) per election. The election configuration fee will be invoiced upon completion of each election.

### II. Payment

(A) All Payment under this Agreement shall be sent to the address listed below:

Democracy Live  
2900 NE Blakely Street Suite B  
Seattle, WA 98105

(B) All Invoices under this Agreement shall be sent to the address listed below:

Monterey County Elections  
PO Box 4400  
Salinas, CA 93912