

Software Agreement

This Software Agreement ("The Agreement") is made and entered into as of October 1, 2016 ("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 1370-B S Main Street, 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 through LiveBallot and electronic ballot delivery for UOCAVA voters. Democracy Live desires to license Software to Monterey County.
- 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

- 1.1 The purpose of this Agreement is for Democracy Live to supply online, ADA Compliant accessible sample ballot and voter guide access through LiveBallot and electronic ballot delivery 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 LiveBallot Sample Ballot ("Software"). Software 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.
- (b) 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 Initial Set-Up Fee: Customer will pay Democracy Live a one-time fee of twelve thousand and five hundred dollars (\$12,500) ("Initial Set-up Fee") for Initialization and customization in accordance with the Fee Schedule presented in Attachment A ("Fee Schedule").

3.2 License Fee: Customer will pay Democracy Live an annual subscription fee of two thousand and seven hundred dollars (\$2,700) and a one dollar (\$1.00) transaction fee in accordance with the Fee Schedule presented in Attachment A ("Fee Schedule") for the duration of the Agreement.

3.3 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 four and one-third year period beginning on October 1, 2016 ("Effective Date") and ending on December 31, 2020. 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.

- (a) 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.
- (b) 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 Software Trial: Democracy Live hereby agrees to provide Customer with a trial use of the LiveBallot software in connection with Customer's April 12, 2016 election at no cost as described in the Statement of Work ("Attachment B").
- 7.2 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 (Attachment B).

7.3 Supply: Democracy Live will provide to Customer the software package known as LiveBallot and as described in Attachment B.

7.4 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 LiveBallot system as expressed in Attachment B. Customer agrees to notify Democracy Live ninety-days (90) prior to the first election under this Agreement.

7.5 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 Attachment B. Notwithstanding anything to the contrary in this Agreement, Democracy Live will not provide Support and Maintenance for:

- (a) Any products other than the Software provided by Democracy Live under this Agreement.
- (b) Any modifications to Software not made by Democracy Live or a third party authorized in writing by Democracy Live to make modifications; or
- (c) Any use of Software that is not in accordance with this Agreement, the Documentation or other written instructions provided by Democracy Live.

7.6 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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) Information that is developed by the Receiving Party independently without breach of this Agreement.
- (e) 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:

- (a) Be kept strictly confidential and not disclosed to any third party by the Receiving Party without the Disclosing Party's prior written consent;

(b) 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;

(c) 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

(d) 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.

(e) 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.

(f) 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.

(g) 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:

Monterey County Elections Department:

DEMOCRACY LIVE, INC. CORPORATION

MONTEREY COUNTY ELECTIONS

By: Bryan Finney

By: _____

Name: Bryan Finney

Name: _____

Title: President

Title: _____

Date: 10-10-16

Date: _____

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) **Software Initial Set-up Fee:** Democracy Live shall provide ADA compliant, accessible sample ballot and voter guide software and electronic ballot delivery for UOCAVA voters. The one time Initial Set-up Fee for this Customer under this Agreement will be twelve thousand and five hundred dollars (\$12,500). This initial set-up fee includes a two thousand dollar (\$2,000) UOCAVA Consortium discount. The California UOCAVA Consortium expires on December 31, 2016. The Initial Set-up fee shall be paid by Customer to Democracy Live thirty days (30) days after receipt of invoice.
- (B) **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 two thousand and seven hundred dollars (\$2,700). The Annual Subscription Fee will be due every year on December 31st of each successive one year period.
- (C) **UOCAVA Transaction Fee:** Monterey County will be subject to a one-dollar (\$1.00) electronic ballot delivery Transaction Fee per eligible voter/ballot download. This fee is waived for the year 2016.

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
1370-B S. Main Street
Salinas, CA 93901

Pricing Summary

Service	Fee
Updates, upgrades, configuration, maintenance and software support	\$150/hr
Initial Set up Fee	\$12,500
Annual Subscription Fee	\$2,700
E-Ballot Delivery Transaction Fee	\$1 per UOCAVA download
Training and other services	\$150/hr

Attachment B- Statement of Work

This Attachment B is part of the Software License Agreement (“Agreement”) between Democracy Live and Monterey County as set forth in Section 7.1.

MONTEREY COUNTY, ELECTIONS

STATEMENT OF WORK

LiveBallot Audio Enabled, Accessible Sample Ballot/ Voter Guide and UOCAVA Electronic Ballot Delivery



A. CONTRACTED SYSTEMS OVERVIEW

The Monterey County Elections Department is engaging Democracy Live, to provide the County with ADA-compliant, accessible, audio-enabled sample ballot/voter guide, available to all County voters and official electronic ballot delivery to eligible UOCAVA voters.

Languages/Accessibility to be supported by LiveBallot:

☒ English (required)

☒ Spanish (required)

☒ Audio-enabled (required)

☒ ADA compliant (required)

All invoices shall be sent to:

**Monterey County Elections
1370-B S Main Street
Salinas, CA 93901**

System Features

The work shall be performed in accordance with all sections of Statement of Work (SOW).

- System shall be Web-hosted in secure Microsoft Government Cloud
- System shall be Web-available, ADA compliant and accessible to voters with disabilities
- System shall display and make available a voter-specific, accessible interactive sample ballot/voter guide
- System shall deliver official absentee ballot and materials to eligible UOCAVA voters
- Compatible with all accessibility tools (screen readers, sip and puffs, tactile paddles, etc.)

- The accessible sample ballot/voter guide application provides a complete, interactive sample ballot/voter guide in a responsive mobile format for voter convenience
-

B. CURRENT ENVIRONMENT

The Customer currently uses the following:

EMS/Voting system(s) system: Dominion supported Sequoia Voting Technology

VR System: California Voter Registration

C. SCOPE

- Democracy Live will deliver to the Customer the software package known as Live Ballot, v. 3.2, to include the modules identified in Part A. Democracy Live will host the system in the Microsoft Azure Government Cloud.
- The County, as a self-administered account, will be responsible for election configurations with support and training from Democracy Live 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 administered using the LiveBallot system.

D. DELIVERABLES, MILESTONES AND TIMELINES

Democracy Live Tasks/Deliverables

1. Agreement Terms (submitted with this Statement of Work)
2. LiveBallot Sample ballot/voter guide, customized website with accessible features
3. LiveBallot Administration access and controls
4. Administration and User Training (*written training materials included*).
5. Initial site configuration
 - a. Theme Development
 - b. Customization of editable text fields
 - c. Assist with initial account settings
 - d. Integration of customer-translated text
 - i. Contractor will supply list of all text items to be translated
 - ii. Pre-existing translations may be available for certain languages for customer review and acceptance
 - e. Account user set-up and initial password distribution
6. Election Configuration (First –time self-administered accounts)
7. E-mail Center Support (First –time self-administered accounts)
 - a. Note: *Any email communication that constitutes a legally-mandated communication with a voter must be initiated by the Customer.*
8. Contractor Election QA testing (First –time self-administered accounts)

9. Delivery of configured election and Customer QA components (First –time self-administered accounts). ~~Additional election configuration services, provided by Democracy Live, will be~~ provided at the standard hourly rate of \$150.00 per hour.

Beyond the initial implementation support and services, Democracy Live offers additional services at the standard hourly rate of \$150.00 per hour. These services include but are not limited to, the following examples:

- Training for new County personnel: 8 hours
 - Managed Election configuration: 16 hours (complete setup)
 - Managed email notification services for UOCAVA eBD: 5 hours/per election
 - Support for changes to set-up configurations (new theming or new return materials): 3 hours
10. Election Activation (First –time self-administered accounts)
11. Tiered Technical Support: 24/7 – 365 Days
12. Post-election reporting (First –time self-administered accounts)
13. Customer must deliver consumable data in a mutually agreed upon format no later than ten (10) business days before the desired “go-live” date.

Customer Tasks/Deliverables

1. Completed contract with all appropriate sign-offs
2. Theme elements
 - a. Banner
 - b. Contact data for site
 - c. Translations
 - d. Page edits
 - e. Account User information
3. System elements
 - a. Ballot PDFs
 - b. Precinct/split data
 - c. VR files (Initial and updates, as needed)
 - d. Ballot mapping files
 - e. Absentee ballot return materials, as needed

Timetable

Event Name	Event Date and Time
Due Date for Completed Edits/Translations/Theme Materials	30 days after agreement
Due Date for Initial Live Ballot Features (defined above)	45 days after agreement
Due Date for Supplementary Live Ballot Features (defined above)	50 days after agreement
Due Date for On-Site Administrative Training, if any	TBD – based on Customer availability
Due Date for Precinct/Mapping Data (managed accounts)	E-55

Due Date for Ballot PDFs (managed accounts)	E-55
Due Date for completion of Customer QA (managed accounts)	E-50
Due Date for Election Activation (UOCAVA Electronic Ballot Delivery)	E-45
Due Date for Election Activation (Sample ballot/voter guide)	E-30