

OmniBallot Online Agreement

This Agreement is entered into on the date last signed below, by and between the Department of State, Division of Elections (hereinafter “Customer”), with offices at 20 West State Street, Trenton, NJ 08608 and Democracy Live, Inc., (hereinafter, “Democracy Live”) a Delaware Corporation with offices at 35050 SE Douglas Street, Suite 200 Snoqualmie, WA 98065.

Whereas, it is necessary and desirable that Democracy Live be retained for the purpose of providing Customer with a Secure Ballot Delivery System and Mobile Electronic Ballot Delivery Solution through OmniBallot (“OmniBallot Online”), for the May 12th, 2020 Election available to all Customer’s qualified voters consisting of 10 counties and 32 townships.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. **Exhibits and Attachments:** The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:
 - a. Exhibit A- Payments and Fees
 - b. Exhibit B- Statement of Work
 - c. Exhibit C- Support and Maintenance

2. **Services to be performed by Contractor:** In consideration of the payments set forth in this Agreement and in Exhibit A, Democracy Live shall perform the services for Customer in accordance with the terms, conditions, and specifications set forth in this Agreement and Exhibit B. Nothing in this Agreement shall be construed to prevent Democracy Live from granting any other licenses or subscriptions to the use of OmniBallot Online in any matter whatsoever.

3. **Term:** This Agreement shall become effective on the date last signed below and shall remain in effect through June 12, 2020 (“Initial Term”). After the Initial Term the Agreement may be renewed upon written Agreement signed by both parties.

4. **Payment:** Customer will pay Democracy Live the Subscription Fee (“Subscription Fee”) in accordance with the Fee Schedule presented in Exhibit A (“Fee Schedule”).

5. **Termination:** This Agreement may be terminated by Democracy Live or Customer at any time without a requirement of good cause upon sixty (60) days advance written notice to the other party. Notwithstanding any other provision of this Agreement, the Agreement cannot be terminated between sixty (60) days prior to an Election Day (commonly known as E-60) and Election Day.

In good faith, New Jersey discloses the following known circumstances which could result in contract termination:

- i. Changes in state law that would no longer permit the electronic return of ballots.
- ii. It is determined that the proposed solution, which provides for the electronic return of balloting materials to an administrative portal, is not allowed under current state law as electronic transmission.

5.1 Breach: If either party defaults in the performance of, or fails to perform, any material obligation of this Agreement and the default or failure is not remedied within sixty (60) days (or ten (10) days in the case of any payment obligations under Exhibit A) 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 (subject to the dates above in Paragraph 5) (ii) to avail itself to any and all other rights and remedies which it may be entitled by law or equity.

5.2 Effect of Termination: In the event that this Agreement should be terminated, Democracy Live shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit A hereto.

5.3 Survival: In addition to any payment obligations, sections 8, 9, and 10 shall survive the termination of this Agreement.

6. **Ownership:** The parties hereby agree OmniBallot Online is the sole property of Democracy Live and Customer acquires no rights to OmniBallot Online except for the subscription granted under this Agreement.
7. **Representations and Warranties:** Democracy Live Represents and Warrants to Customer that: It has all necessary rights and authority to execute and deliver the services and perform its obligations hereunder and to grant the rights granted under this Agreement to Customer; the goods and services provided by contract under this Agreement, including the Software and Intellectual Property provided hereunder, are original to Democracy Live, or its subcontractors, or parties; and the software, products and services as delivered as part of the system will not infringe or otherwise violate any applicable rule or regulation.
 - 7.1 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. **Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE SHALL NOT BE LIABLE TO ANY PARTY TO THIS AGREEMENT FOR ANY DIRECT DAMAGES. NEITHER PARTY

HERETO SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL DEMOCRACY LIVE'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT DUE FOR SERVICES RENDERED, EXCEPT TO THE EXTENT THAT SUCH LIABILITY IS THE DIRECT CONSEQUENCE OF DEMOCRACY LIVE'S WILLFUL OR INTENTIONALLY UNLAWFUL MISCONDUCT.

9. Indemnification: The indemnification provision of Section 4.1 contained in the State of New Jersey Standard Terms and Conditions, agreed to by Democracy Live on April 7, 2020, is incorporated herein by reference.

10. Confidentiality: This Agreement may be released to the public under the New Jersey Open Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., or the common law right to know. Democracy Live may designate any data or materials it asserts are exempt from public disclosure under OPRA or the common law, explaining the basis for such assertion. Democracy Live must provide a detailed statement clearly identifying items that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. Customer reserves the right to make the determination as to what is proprietary or confidential, and will advise Democracy Live accordingly. Any proprietary and/or confidential information will be redacted by Customer. Copyright law does not prohibit access to a record which is otherwise available under OPRA. In the event of any challenge to Democracy Live's assertion of confidentiality with which Customer does not concur, Democracy Live shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of Democracy Live. Customer assumes no such responsibility or liability.

11. Assignment: Democracy Live may not assign this Agreement without the prior written consent of Customer. Any assignment in violation of the foregoing sentence will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12. Miscellaneous:

14.1 Independent Contractor: Pursuant to Section 5.1 of the State of New Jersey Standard Terms and Conditions, agreed to by Democracy Live on April 7, 2020, Democracy Live's status shall be that of any independent contractor and not as an employee of the State of New Jersey.

14.2 Law and Venue: This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of New Jersey, USA. This Agreement will be governed by the laws of the State of New Jersey and subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. Both parties agree

that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, will be dealt with and adjudicated in the state courts of New Jersey, and for such purpose, Democracy Live expressly and irrevocably submits itself to the jurisdiction of such courts. Nothing in this Agreement will waive or toll the requirements of the New Jersey Tort Claims Act or New Jersey Contractual Liability Act.

14.3 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 address written above.

14.4 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.

14.5 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. The Parties acknowledge that this Agreement is being entered during the time of a declared emergency and a public health emergency, and each agrees that it is able to perform the responsibilities of this Agreement at the time of its execution..

14.6 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.

14.7 Entire Agreement: This Agreement, including the attachments to this Agreement, is the Parties' entire agreement relating to OmniBallot Online, and Documentation. It supersedes all prior or contemporaneous oral or written communications, proposals, sales orders, 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 License And Service Agreement

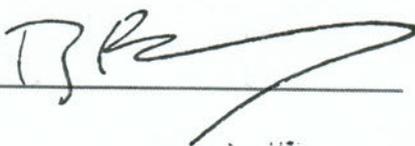
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement and all Attachments hereto as of the Effective Date.

Democracy Live, Inc:

State of New Jersey

DEMOCRACY LIVE, INC.

STATE OF NEW JERSEY
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

By: 

By: 

Name: Bryan Finney

Name: Robert F. Giles

Title: President

Title: Director, NJ Division of Elections

Date: April 27, 2020

Date: April 27, 2020

EXHIBIT A - Payment and Fees

I. Fees:

A. May 12th, 2020 Election setup and Configuration Fee: \$89,000 invoiced upon signature of this Agreement.

B. Payment Terms: Net 45

II. Payment:

(A) All Payment under this Agreement shall be sent to Democracy Live, Inc., 2900 NE Blakely Street Suite B, Seattle, WA 98105

(B) All invoices under this Agreement shall be sent to Donna Barber, 20 West State Street, P.O. Box 304, Trenton, NJ 08625-0304

EXHIBIT B - Statement of Work

For as long as this Agreement is in effect Democracy Live agrees to provide Customer with OmniBallot Online Products and Services as described below:

I. Products and Services

◆ Democracy Live Ballot Marking and Mobile Electronic Balloting Solution

- Under this Agreement Democracy Live will provide an electronic ballot delivery system that is fully section 508 and WCAG 2.0aa compliant that enables a voter to mark candidate/contest choices on their home computer or mobile device and return the ballot electronically through Democracy Live and AWS secure Balloting Portal.
- In addition to the Mobile solution, Democracy Live shall provide its standard Omniballot Online solution to include a link for ballot delivery and the ability for a voter to mark and print a ballot and return packages.

◆ Languages Included

- English
- The languages of Gujarati, Korean, and Spanish will be provided at \$750 per language.
- Additional languages may be added at \$750 per language.

◆ Technical Specifications

- Does not require the installation of special software
- Compatible with (but not limited to) the most recent two versions of all major browsers (Chrome, Edge, Firefox, Internet Explorer, Safari) on the most recent two versions of Windows and macOS.
- Supports virtually unlimited number of ballot styles

II. Democracy Live Services

◆ Training

- Democracy Live will deliver online orientation that includes:
- Defining key points of contact for contract management and technical support for Customer and Democracy Live
- Identification and addition of Customer system administrators and roles
- Introduction to written, video and system-embedded training tools and materials
- Demonstration and training on self-management of Voter Registration (VR) file updates
- Demonstration and training on Quality Assurance (QA) testing, including ballot review and walk-through of voter experience

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

◆ **Post-Election Tasks**

- Democracy Live will assist customer with post-election reports, as needed.
- Democracy Live will archive election-related data for an agreed upon period and shall keep the data confidential. Such data shall be produced upon request of Customer to support or oppose a legal challenge related to an election and shall not be used by Democracy live for any other purpose.
- Democracy Live will “purge” election-related data from any Democracy Live-maintained systems upon written request of Customer.

III. Customer Requirements

◆ **In order to guarantee an on-time Go Live Date the State agrees to:**

- Complete onboarding orientation with Democracy Live.
- Provide the necessary complete and accurate election data, as determined by the Customer, in the format required by Democracy Live, a minimum of fifteen business days prior to product launch dates (with the exception of the initial election). *Failure to provide data in identified format or in accordance with established timelines may result in product launch delays.*
- Complete review and QA testing of all products before launch.
- Send written approval of system (e-mail) to authorize activation of system features.
- Perform all VR updates after initial product launch, as applicable
- Notify Democracy Live of any changes to language requirements as soon as practicable.
- Notify Democracy Live of any changes to election calendar as soon as practicable.
- Notify Democracy Live of changes to system administrators (addition/deletion).
- Notify Democracy Live of changes to key personnel assigned to system administration/support.
- All data must be uploaded to <https://upload.liveballot.com> at an agreed upon specific location unique to the State of New Jersey. Any data delivered outside of this website may not be accepted by Democracy Live and will not be considered delivered in accordance with the ten business day requirement.

EXHIBIT C – Support and Maintenance

Service Level Agreement

Democracy Live business hours are **9:00 am to 5:00 p.m.** Eastern Time, Monday through Friday. During these hours, an assigned account manager will be available.

Democracy Live is committed to providing the highest level of support to Customer throughout the Term of this Agreement. Democracy Live will perform the following Service Levels, as applicable, in connection with this Agreement.

Democracy Live acknowledges that support requests will be submitted by Elections Division staff administering the system.

Election Calendar Period through Election Certification – Concurrent with the expected period configuring and testing the Solution between 60 and 45 days prior to election day, and through the final certification of the election, Democracy Live will respond to issues reported by email at support@democracylive.com or phone (855-655-VOTE), within one hour, 7 days a week, 24 hours a day. Upon notification to the company's Customer Support System the issue will be immediately routed to the appropriate operational personnel, and a case will be opened and managed through satisfactory resolution of the reported issue.

Off Peak Times – During the relatively quiet periods between the certification of the most recent election, and the configuration of the next, Democracy Live will respond to issues reported by email support@democracylive.com or phone (855-655-VOTE) within one hour, available during normal business hours eastern standard time. Upon notification to the company's Customer Support System the issue will be immediately routed to the appropriate operational personnel, and a case will be opened and managed through satisfactory resolution of the reported issue.

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 as described in Exhibit C. 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.