

OmniBallot Online UOCAVA Solution AGREEMENT

This Agreement is entered into on the date last signed below, by and between the Williamson County Elections Department (hereinafter "Customer") with offices at 301 SE Inner Loop Ste 104 Georgetown, TX 78626 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 fully compliant UOCAVA MOVE Act solutions through OmniBallot Online ("UOCAVA Solution"), available to all Customer's qualified voters.

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 the UOCAVA Solution in any matter whatsoever.
3. **Term:** This Agreement shall become effective on the date last signed below and shall remain in effect through December 31, 2022 ("Initial Term"). After the Initial Term the Agreement may be renewed by a written amendment signed by both parties. After the Initial Term Democracy Live reserves the right to raise the subscription fee to reflect current market rates, subject to approval of the Williamson County Commissioners Court.
4. **Payment:** Customer will pay Democracy Live the Subscription Fee ("Subscription Fee") in accordance with the Fee Schedule presented in Exhibit A ("Fee Schedule").
 - i. **Texas Prompt Payment Act Compliance:** Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date Customer receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one

percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

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.

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 and the UOCAVA Solution are the sole property of Democracy Live and Customer acquires no rights to the UOCAVA Solution and 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.

7.2 DEMOCRACY LIVE DOES NOT REPRESENT OR WARRANT THAT OMNIBALLOT ONLINE WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND THAT ALL PROGRAM ERRORS IN OMNIBALLOT ONLINE 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.

8. **Limitation of Liability:** TO THE EXTENT AUTHORIZED UNDER TEXAS LAW EACH PARTY'S LIABILITY TO DAMAGES TO THE OTHER PARTY ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE MAXIMUM AMOUNT PAYABLE UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOSS PROFITS, INCOME, GOODWILL OR REVENUE IN CONNECTION WITH ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.
9. **Indemnification:** 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").

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.

10. Confidentiality: To the extent authorized under Texas Law, each party agrees that the terms and conditions of this Agreement and any information concerning either party's marketing plans, existing or future products, and any other confidential business or technical information, and all information declared confidential by either party, disclosed in furtherance of this Agreement shall be held in strict confidence and shall not be disseminated or disclosed without express written consent of the other party, except as otherwise provided in this Agreement. If a party is directed to disclose any material proprietary to the other party in conjunction with a judicial proceeding, arbitration or otherwise by law, then the party so directed shall notify the other party both in writing and orally immediately. This provision will survive cancellation or termination of this Agreement for a period of three (3) years. The parties agree that Customer may be required to release confidential information to the public pursuant to the requirements of the State of Texas.

11. Assignment: 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 benefits 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 be construed as a joint venture, association, partnership, franchise, or other form of business organization or agency relationship. Neither party will have the right, power or authority to assume, create or incur any expense, liability, or obligation, expressed or implied, on behalf of other except as expressly provided herein.

12.2 Law and Venue: This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Texas, USA.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 Entire Agreement: This Agreement, including the attachments to this Agreement, is the Parties' entire agreement relating to the UOCAVA Solution, 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.

12.8 Right to Audit: Democracy Live agrees that the Customer or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Democracy Live which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Democracy Live agrees that the Customer shall have access during normal working hours to all necessary Democracy Live facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The Customer shall give Democracy Live reasonable advance notice of intended audits.

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:

County of Williamson

DEMOCRACY LIVE, INC.

COUNTY OF WILLIAMSON

By: 

By: 

Name: Bryan Finney

Name: Bill Gravell Jr.

Title: CEO

Title: County Judge

Date: 12/17/19

Date: January 7, 2020

EXHIBIT A - Payment and Fees

I. Fees:

- A. Annual Subscription Fee (beginning January 2020): For each year this Agreement is in effect County will pay an Annual Subscription Fee of nine thousand dollars (\$9,000). The Annual Fee will be invoiced on January 1st of each year this Agreement is in effect. The first Annual Fee will be invoiced on January 1st, 2020.

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 Williamson County Elections Department Attn: Jenifer M. Favreau, 301 SE Inner Loop Ste 104, Georgetown, TX 78626.

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

♦ UOCAVA – PDF Delivery

- Democracy Live will deliver to Customer a PDF ballot delivery system that enables the voter to access return materials and a PDF of the appropriate ballot style.
- The voter prints the PDF locally, marks the paper ballot, and subsequently returns the completed ballot to the County.

♦ Languages Included

- English
- Spanish

♦ 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 and training 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, 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
- Explanation of all available report modules and access to raw data logs
- Detailed description of all required data files from the Customer, including required format. Example files and data templates provided as learning tools.
- Overview of the election management workflow, including preparation of data files, time-lines, system configuration, quality assurance testing, election deployment and close-out

- Explanation of County self-managed email center system for optional use by County. County understands Democracy Live does not send emails on behalf of County to voters.
- Establishment of an elections calendar to cover all scheduled elections throughout the entire contract period and agreement on methodology for managing unscheduled events (special elections, etc.)
- Democracy Live will perform a refresher training orientation at the Customer's request once during every 12 month period. Democracy Live will perform additional training at the request of Customer for an agreed upon service fee in a writing signed by both parties.

◆ **Configuration and Support Services**

- **Election Data Preparation**
 - Democracy Live will provide support to Customer in the preparation and review of required data files for system configuration, including:
 - Structured data files, if used
 - Ballot PDFs
 - Ballot style mapping spreadsheet in .csv format
 - Comprehensive VR file in CSV or TXT format, as applicable
 - Ballot return materials in PDF format
 - Definition of desired overlays and placement on materials
- **System Configuration**
 - Democracy Live will configure all contracted services utilizing Customer data in accordance with established timelines.
 - Democracy Live will provide QA testing links that will enable the Customer to review/approve all work before the system is activated and made available to voters.
 - QA Testing includes:
 - Quick Review- A list of each ballot style in an election, its ballot content and all associated precincts.
 - Voter QA Testing- A review of the end-to-end voter experience to review workflow and confirm delivery of correct ballot content. This testing will not affect voter usage statistic reports.
 - Democracy Live will activate contracted services upon completion of review and written approval of content by Customer.

◆ **Election Maintenance Through Election Day**

- Democracy Live will assign Customer a Technical Accounts Manager to serve as the primary point of contact for all service issues.
- Democracy Live will provide ongoing issue response/customer support, as detailed in the Service Level Agreement (SLA), to respond to any identified issues, questions or requested content edits

- Democracy Live will perform all VR updates after initial product activation, as applicable

◆ **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.
- 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 County agrees too:**

- Complete onboarding orientation with Democracy Live.
- Provide complete and accurate election data in required format a minimum of ten business days prior to product launch dates. *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>. 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

Democracy Live business hours are **9:00 am to 5:00 p.m.** Central 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 may be submitted by either the town officials operating the system or 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.