

DATED

SOFTWARE LICENCE AGREEMENT

between

DEMOCRACY COUNTS LIMITED

and

[CUSTOMER]

THIS AGREEMENT is dated _____.

PARTIES:

- (1) **Democracy Counts Limited**, a company incorporated and registered in England and Wales with company number 07095502, whose registered office is at Unit 2, Forrest Way, Gateworth Industrial Estate, Warrington, Cheshire WA5 1DF (**Supplier**); and
- (2) **[FULL NAME]**, a **[local authority]** established in **[England and Wales]** **[under the Local Government Act 1972]**, whose principal place of business is at **[ADDRESS]** (**Customer**).

RECITAL:

- A) The Supplier owns a software solution enabling the safe and efficient management of elections. The software is available as a service via the internet, accessible via either the Customer's own devices or devices loaned by the Supplier.
- B) The Customer wishes to use all or part of the Supplier's software solution in the management of elections, as further described below.
- C) The Supplier is willing to make available its software solution to the Customer on the terms and conditions of this agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in this agreement:

- 'Business Day':** a day from Monday to Friday (both days included), but excluding both (i) bank holidays and public holidays in **[England OR England and Wales]** and (ii) the period from 24 December to 31 December (both days included) in a calendar year.
- 'Customer Device':** any Device other than a Loaned Device.
- 'Data Protection Laws':** each law then in force relating to the collection, processing, storage, privacy and use of personal data, as applicable to either party, including the Data Protection Act 2018, the UK GDPR (being the UK's retained version of the General Data Protection Regulation (EU) 2016/679), and the Privacy and Electronic Communications Regulations 2003; and all legally binding codes of practice and codes of conduct relating to such laws.
- 'Device':** a [laptop or tablet] on which the Software is used by any User.

‘DPA’:	the Data Processing Agreement attached at Schedule 3.
‘Effective Date’:	[DATE].
‘Event of Force Majeure’:	any act, event, circumstances, omission, or accident, in all cases beyond a party’s reasonable control, causing that party to be delayed or prevented in the performance of all or a material proportion of its obligations under this agreement, including natural disaster, epidemic or pandemic, war, riot, civil commotion, malicious damage by a third party or compliance with any law. For the avoidance of doubt, and without limitation, each of the following is not an Event of Force Majeure: (i) economic downturn, or (ii) any labour strike affecting the party claiming an Event of Force Majeure.
‘Extraneous Event’	an event, failure, fault, or set of circumstances, to the extent that it is caused by (i) any act or omission of the Customer or a User that is not permitted by this agreement, (ii) malfunctioning or poor functioning of a Customer Device, or (iii) any failure of third-party services (for example, any network provider).
‘Fees’:	the fees payable by the Customer to the Supplier, as described in clause 6 and Schedule 2.
‘IPRs’:	intellectual property rights, namely: utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in software, database rights and rights in data, image rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, and in all cases (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights

or applications, (iv) whether vested, contingent or future, (v) unless stated otherwise, wherever existing, and (vi) including all other rights of a similar nature or having equivalent effect anywhere in the world.

‘Loaned Device’: any Device provided by the Supplier to the Customer and on which the Customer is entitled to make use of the Software.

‘Maintenance Release’: a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

‘Services’: the services to be provided by the Supplier to the Customer under this agreement, as set out in Schedule 1.

‘Software’: the online software application listed in Schedule 1 (and any Maintenance Release which is made available to the Customer during the Term) that is made available to the Customer as part of the Services, but not including any other software owned or licensed by the Supplier.

‘Standard Hours’: [9.00 a.m. to 5.30 p.m.] UK time on a Business Day.

‘Term’: a period of [TERM – e.g. 12 months], ending at 11.59 p.m. UK time on [DATE].

‘Territory’: [United Kingdom OR England and Wales].

‘User’: an employee, agent or independent contractor of the Customer who is authorised by the Customer to use the Software.

‘Virus’: any device or thing (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of, or access to, any software, hardware, network, service, equipment or data, or adversely affect user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Other terms are as defined elsewhere in the agreement.

1.3 Clause, Schedule and paragraph headings do not affect the interpretation of this agreement.

- 1.4 This agreement comprises the main body and the Schedules. Where there is a conflict between a provision in the main body and a provision of a Schedule, the provision in the main body takes precedence.
- 1.5 A reference to a 'party' is (save in the context of the phrase 'third party') to a party to this agreement and includes that party's personal representatives, successors and permitted assigns.
- 1.6 A 'person' includes a natural person, or corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 The words 'include', 'including', 'for example', or similar, will be deemed to be followed by the words 'without limitation'.
- 1.8 Unless the context requires otherwise, words in the singular include the plural and vice versa, and words denoting one grammatical gender include all grammatical genders.
- 1.9 A reference to a statute or statutory provision is a reference to such as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation in force made under it.
- 1.10 A reference to 'writing' or 'written', save where stated otherwise, includes e-mail.

2. COMMENCEMENT AND TERM

- 2.1 This agreement takes effect from the Effective Date. It will run for the Term, unless terminated sooner in accordance with this agreement.
- 2.2 Neither party will seek to incorporate any other terms into this agreement, and any terms that may be implied by trade, custom, practice or course of dealing are, to the furthest extent permitted by law, excluded from this agreement.
- 2.3 This agreement, and any other document referred to in it, constitutes the entire agreement between the parties in relation to its subject matter. It supersedes any previous arrangement, understanding or agreement between the parties relating to the subject matter of this agreement.
- 2.4 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance, undertaking or warranty, whether negligently or innocently made, other than as expressly set out in this agreement. Nothing in this clause 2.4, however, limits or excludes any liability of a party for fraud.

3. SERVICES

- 3.1 The Supplier will perform the Services with effect from the Effective Date.
- 3.2 The Supplier will use commercially reasonable efforts to make the Software available for the Services twenty-four hours a day, seven days a week, but excluding:
 - 3.2.1 planned maintenance;
 - 3.2.2 any unplanned maintenance outside Standard Hours for which the Supplier has given not less than six hours' notice.
- 3.3 The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer support services during Standard Hours in accordance with the Supplier's support policy in effect at the time that the Services are provided.
- 3.4 Where any part of the Services involves preparatory work by the Supplier to establish the feasibility of providing Services in full:
 - 3.4.1 any further provision of Services after that feasibility testing is subject to the Supplier, acting reasonably, determining whether the Services are capable of being provided as envisaged;
 - 3.4.2 in the event that the Supplier does not believe, following feasibility testing, that the Services can be provided as envisaged, it will confirm this to the Customer, and no Fees will be chargeable for any non-performed Services;
 - 3.4.3 for the avoidance of doubt:
 - (a) nothing obliges the Supplier to conduct feasibility testing where this is not an agreed part of the Services;
 - (b) an assessment of suitability does not serve as a guarantee of performance of any third-party service, including networks; and
 - (c) clause 5.4 applies at all times in relation to the availability of a network for the Software.
- 3.5 The Customer acknowledges that the Software has not been developed to meet its individual requirements, and therefore accepts responsibility for the selection of the Software as a means to achieve its intended outcome.

4. LICENCE

- 4.1 In consideration of the Customer's payment of the Fees, and subject to the Supplier's other rights under this agreement, the Supplier grants to the Customer a non-exclusive, non-transferrable right and licence, without the right to grant further sublicences, to permit Users to use the Services in the Territory during the Term for the purpose of enabling the Customer to enhance its delivery of elections.
- 4.2 The Customer may not use the Software other than as specified in this clause 4. Any further use will, without limiting the effect of any other clause, be deemed a

material breach of this agreement not capable of remedy pursuant to clause 12.3.2.

4.3 If the Fees are based on a maximum number of Users:

4.3.1 the Customer shall ensure that such number is not exceeded at any time; and

4.3.2 if the Customer requires an increase to the maximum number, it may contact the Supplier in writing with a request and the Supplier will use reasonable endeavours to allow such increase, subject to the payment of Fees (to be confirmed by the Supplier) to cover such increased usage.

4.4 The Customer is responsible for all Users' usage of the Software as if it were direct usage by the Customer.

4.5 The Customer shall not (and shall not permit any third party to):

4.5.1 copy, adapt, reverse engineer, decompile, disassemble, modify, adapt, or otherwise reduce to human-perceivable form the Software, in whole or in part;

4.5.2 sub-license, assign or novate the benefit or burden of this agreement in whole or in part;

4.5.3 make any public statement about the Software without the Supplier's prior written consent;

4.5.4 in relation to the Software, access, store, distribute or transmit:

(a) any Virus; or

(b) any material that is threatening, defamatory, obscene, unlawful or offensive;

4.5.5 attempt to build, or assist any third party to build, a product that is competitive with the Software; or

4.5.6 commercially exploit the Software.

4.6 The Customer permits the Supplier and its representatives, at any time during and for three years after the Term, and on not less than five Business Days' notice, to inspect and have access to any premises and equipment at or on which the Software is being kept or used, and any records kept in connection with this agreement, for the purposes of ensuring that the Customer is complying with, or has complied with, the terms of this agreement, and will procure that each User also provides such access.

5. DEVICES AND CONNECTIVITY

- 5.1 Schedule 1 sets out whether the Customer is using Loaned Devices or Customer Devices in order to access the Software.
- 5.2 If the Supplier is providing Loaned Devices:
- 5.2.1 the Supplier will ensure that each relevant Loaned Device type is compatible with the software;
 - 5.2.2 the Supplier will use reasonable endeavours to ensure that each Loaned Device is in good working order, and will promptly replace or (if reasonably practical) repair any Loaned Device that is not functioning correctly;
 - 5.2.3 the Customer shall take care of each Loaned Device, use it only for the purposes of this agreement, and return it in the condition in which it was supplied.
- 5.3 If the Customer is using Customer Devices, the Customer may use any device of its choosing but understands that not every device is equally compatible with the Software. Therefore the Supplier may recommend certain types of device as being more compatible than others.
- 5.4 It is the Customer's obligation to ensure availability of a suitably strong network throughout any period when the Software is being accessed. No loss of, or delay in, network connection will reduce the Fees, and so the Customer is recommended to check and satisfy itself as to network strength and availability.

6. FEES

- 6.1 The Fees will be charged at the levels set out in Schedule 2.
- 6.2 An annual indexation related increase of 2.5% will be added to the fees. This will be mutually agreed, at least 1 month prior to the anniversary of the original agreement.
- 6.3 The Supplier will issue invoices in the manner set out in Schedule or, in the absence of any manner being set out there, monthly in arrears.
- 6.4 All invoices must be paid by electronic transfer to the Supplier's bank account no later than [thirty] days after the date of invoice.
- 6.5 All amounts invoiced are subject to VAT where applicable.
- 6.6 If any payment due under this agreement remains unpaid after the due date, the Supplier will be entitled, without limiting any other rights it may have:

- 6.6.1 to charge the Customer interest on any overdue sum from the due date at the rate then in force under the Late Payment of Commercial Debts (Interest) Act 1998, accruing daily until the date on which the Supplier receives payment together with all accrued interest; and/or
- 6.6.2 to suspend all licences granted, and all support services rendered, under this agreement until payment is made in full.

7. CONFIDENTIALITY

7.1 In this agreement:

- 7.1.1 **‘Confidential Information’** means any information or material – in any form and whether or not designated as confidential – disclosed directly or indirectly, and by any means, by one party to the other, and relating to (i) the content of this agreement, (ii) voters, or (iii) the Discloser’s customers, partners, contacts, suppliers, services, products, software finances, operations, processes, formulae, plans, strategy, market opportunities, customer lists and commercial relationships. In all cases:
 - (a) it includes material or information containing, or that was created or derived by or on behalf of the Recipient from, the information referred to above; and
 - (b) it does not include information or material that:
 - (i) was lawfully known by the Recipient prior to disclosure by or on behalf of the Discloser;
 - (ii) was disclosed to the Recipient at any time by a third party who had not disclosed it in breach of an obligation of confidentiality owed to the Discloser or to another third party;
 - (iii) is publicly available other than through any breach of this agreement by the Recipient; or
 - (iv) has been agreed by the Discloser in writing as being excluded from the ambit of Confidential Information;
- 7.1.2 **‘Discloser’** means a party who provides Confidential Information directly or indirectly the Recipient;
- 7.1.3 **‘Permitted Purpose’** means the purpose of exercising or performing rights and obligations under, or being advised in relation to, this agreement;
- 7.1.4 **‘Recipient’** means a party who receives Confidential Information directly or indirectly from the Discloser; and

- 7.1.5 **‘Representatives’** means the Recipient’s employees, officers, consultants, permitted subcontractors, professional advisers and insurers who, in all cases, need to know Confidential Information for the Permitted Purpose.
- 7.2 Each party must:
- 7.2.1 keep all Confidential Information of the other party in strict confidence, using no less than the standard of care that it applies to its own Confidential Information (and, in all cases, no less than a reasonable standard of care); and
- 7.2.2 not disclose the other party’s Confidential Information, save as permitted by clause 7.3.
- 7.3 The Recipient may disclose Confidential Information:
- 7.3.1 to its Representatives;
- 7.3.2 for the Permitted Purpose; or
- 7.3.3 as may be required by law, court order or a regulator.
- 7.4 The Recipient must ensure that its Representatives are aware of the confidential nature of the Confidential Information. Any disclosure of Confidential Information by a Representative of the Recipient is deemed to be a disclosure by the Recipient.

8. WARRANTIES AND OBLIGATIONS

Mutual warranties

- 8.1 Each party warrants that:
- 8.1.1 it has full capacity to enter into and perform this agreement;
- 8.1.2 the person named as its signatory is authorised to bind that party;
- 8.1.3 upon signature by both parties, this agreement is binding in accordance with its terms;
- 8.1.4 it has in place, and will maintain, all licences, consents and permissions required to enable it to perform its obligations and receive Services under this agreement.

Supplier’s warranties

- 8.2 The Supplier warrants that:
- 8.2.1 it will use reasonable skill and care in the supply of Services, which will be performed substantially as set out in this agreement;
- 8.2.2 the Software will conform in all material respects to the description set out in Schedule 1, save that this warranty does not cover any failure or non-conformance to the extent that it is caused by an Extraneous Event;
- 8.2.3 it is the owner of, or otherwise entitled to provide, the Software to the Customer under this agreement for use in the Territory,

and all other warranties, express or implied, are, to the maximum extent permitted by law, excluded from this agreement.

- 8.3 For the avoidance of doubt, subject to clauses 3.2 and 8.2 the Supplier does not warrant that the Customer's use of the Software will be uninterrupted or free of errors or Extraneous Event.

Defect resolution

- 8.4 If the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to meet the standards of the warranty in clause 8.2, the Supplier shall, at the Supplier's option, do one of the following:

- 8.4.1 repair the Software at its own cost; or
- 8.4.2 where the Supplier does not believe that it can repair the Software effectively to meet the Customer's needs, terminate this agreement immediately by notice in writing to the Customer, in which case no further Fees would be due for the period after termination.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 In this agreement:

9.1.1 '**Losses**' means all costs, claims, damages, expenses, fines, losses and costs (including legal and other professional costs);

9.1.2 '**Post-Notification Period**' means the period beginning at the time at which the Supplier informs the Customer in writing to cease using the Software owing to the potential existence of a Relevant Claim or other claim;

9.1.3 '**Relevant Claim**' means a successful claim by a third party that the possession or use of the Software in accordance with the terms of this agreement infringes the IPRs in the Territory of that third party. For these purposes, 'Successful Claim' means either a claim that has succeeded in court and no right of appeal is exercised or a claim that the Supplier settles.

- 9.2 The Customer acknowledges that, as between the parties, full legal and beneficial title to all IPRs in the Software and any Maintenance Releases belong to the Supplier, and the Customer has no rights in or to the Software other than the right to use it in accordance with the terms of this agreement.

- 9.3 The Supplier will indemnify and hold harmless the Customer against any Losses arising from a Relevant Claim, subject to the following:

- 9.3.1 the indemnity shall not apply, and the Supplier shall have no liability:
- (a) to any claim in relation to infringement of IPRs outside the Territory;

- (b) to the extent that the Relevant Claim is attributable to:
 - (i) possession or use of the Software by the Customer or a User other than in accordance with the terms of this agreement;
 - (ii) use of the Software in combination with any hardware or software not supplied by the Supplier if the infringement would have been avoided by the use of the Software not so combined; or
 - (iii) use of the Software in the Post-Notification Period;
 - (iv) any failure by the Customer to comply with clause 9.4.
- 9.4 As soon as a Customer becomes aware of a Relevant Claim, it must:
 - 9.4.1 within 48 hours give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 9.4.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;
 - 9.4.3 to the extent that it receives a cessation notice, cease to use the Software in the Post-Notification Period; and
 - 9.4.4 subject to the Supplier providing security to the Customer against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.5 If any claim (including a Relevant Claim) is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
 - 9.5.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this agreement;
 - 9.5.2 modify the Software so that it ceases to be infringing;
 - 9.5.3 replace the Software with non-infringing software; or
 - 9.5.4 if none of clauses 9.5.1 to 9.5.3 are reasonably possibly, terminate this agreement, in which case no Fees will be due in respect of the period after termination.
- 9.6 This clause 9 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of any actual or alleged infringement of IPRs.

10. DATA PROTECTION

- 10.1 The parties will, at all times, comply with all obligations under Data Protection Laws in their performance of, and receipt of performance under, this agreement.

- 10.2 The DPA at Schedule 3 will govern any and all activity carried out by the Supplier as a processor (as defined in Data Protection Laws) on behalf of the Customer.
- 10.3 In the event of any loss or damage to Customer data caused other than by an Extraneous Event, the Supplier will use reasonable commercial endeavours to restore the lost or damaged Customer data from the latest back-up of such Customer data maintained by the Supplier.
- 10.4 The Supplier may destroy or otherwise dispose of any Customer data in its possession unless the Supplier receives, no later than ten days after the date of the termination of this agreement, a written request for the delivery to the Customer of the most recent back-up of Customer data. Such delivery will be made, subject to payment of all Fees by the Customer, within 30 days of the request.¹

11. LIMITS OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of the Supplier in respect of any performance or non-performance of the agreement, any breach of this agreement, any use made by the Customer of the Software, and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 11.2 Nothing in this agreement limits the Supplier's liability for:
- 11.2.1 fraud or fraudulent misrepresentation;
 - 11.2.2 death or personal injury due to negligence; or
 - 11.2.3 any other area in which limitation of liability is prohibited by law.²
- 11.3 Subject to clause 11.2, the Supplier will not be liable for any loss of the Customer to the extent that it is consequential or indirect.
- 11.4 Subject to clauses 11.2 and 11.3, the Supplier's total aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, is limited to 125% of the Fees charged or chargeable to the Customer during the first twelve months of this agreement (or during the whole period of the agreement, where the Term is less than twelve months).³

¹ This clause is a suggested option.

² Note that the indemnity is also likely to be considered uncapped.

³ I have pitched this quite low but without being too restrictive. My guess is that many clients will want to increase this, and some will also want no limitation at all in relation to certain areas such as confidentiality and data. That is obviously for negotiation; one thing I would avoid doing, however, is agreeing to limit the client's liability, since in the (unlikely) event that they pinch your product, you don't want to be limited to being paid a few thousand pounds.

12. TERMINATION

- 12.1 This clause 12 sets out the parties' termination rights. It is without prejudice to any other rights or remedies that the parties may have at common law.
- 12.2 Subject to earlier termination in accordance with this agreement, this agreement will run for the Term, whereupon it will automatically expire.
- 12.3 Either party may terminate this agreement at any time immediately on giving written notice to the other party if the other party:
- 12.3.1 has failed to pay any amount due under this agreement, and such amount remains unpaid forty-five days after the due date; or
 - 12.3.2 commits a material breach of this agreement that is incapable of remedy; or
 - 12.3.3 commits a material breach that is capable of remedy and fails to remedy it within thirty days of being notified in writing by the other party of the breach and the intention to terminate if it is not remedied; or
 - 12.3.4 suspends (or threatens to suspend) payment of its debts or the continuation of all or a substantial part of its business; or
 - 12.3.5 is unable or deemed unable to pay its debts as they fall due; or
 - 12.3.6 begins negotiations with any class of its creditors with a view to rescheduling any of its debts, or is the subject of a court order for winding-up, or has a receiver appointed over its assets (or entitles any person to appoint one), or enters into any formal compromise or formal arrangement with its creditors, or is the subject of a notice, resolution, or order for or in connection with its winding-up (other than for the sole purpose of a solvent amalgamation or solvent reconstruction); or
 - 12.3.7 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to those outlined in clause 12.3.6; or
 - 12.3.8 is subject to an Event of Force Majeure for more than fifteen days consecutively or for at least thirty days in any six-month period.
- 12.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 12.5 On termination for any reason:
- 12.5.1 all rights granted to the Customer under this agreement shall cease;
 - 12.5.2 the Customer shall cease all activities authorised by this agreement and will procure that all Users cease such activities;

- 12.5.3 the Customer shall remain liable to pay all Fees up to the date of termination, which the Supplier shall provide best endeavours to mitigate costs of termination; and
- 12.5.4 any provision of this agreement which, expressly or by implication, is intended to come into, or continue in, force on or after termination of this agreement will do so.

13. WAIVER

- 13.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. REMEDIES

- 14.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. FORCE MAJEURE

- 15.1 A party will not be in breach of this agreement, or (subject to clause 12.3.8) be liable for any failure or delay in performance of any obligation under this agreement (excluding an obligation to pay invoices), where such arises from or is attributable to an Event of Force Majeure, provided that the affected party gives the other party written notice of the existence and nature of the Event of Force Majeure within five days of becoming subject to it and uses reasonable endeavours to mitigate its effect.

16. NOTICES

- 16.1 A notice given by one party to the other under this agreement (excluding a notice given in the course of, or in commencement of, any proceedings) will be properly served if it is in English and is sent to the other party using the details in clause 16.3, provided that it is given by courier, by email or by registered first-class post.
- 16.2 A notice will be deemed to have been received at the following times:
- 16.2.1 by courier: at the time of actual delivery, as assessed by reference to the courier's records;
- 16.2.2 by email: at the time at which it is sent;
- 16.2.3 by registered first-class post: forty-eight hours after it is posted, save, in all cases, that if such time falls between and including 0000h and 0859h on a Business Day, it will be considered received at 0900h on that Business Day,

and if such time falls between and including 1730h and 2359h on a Business Day, it will be considered received at 0900 on the next Business Day.

16.3 The addresses for service of a notice are as follows:

16.3.1 Supplier:

Address: [ADDRESS]
For the attention of: [NAME OR TITLE]
Email: [EMAIL ADDRESS]

16.3.2 Customer:

Address: [ADDRESS]
For the attention of: [NAME OR TITLE]
Email: [E-MAIL ADDRESS].

17. NO PARTNERSHIP OR AGENCY

17.1 Nothing in this agreement establishes any partnership or joint venture between the parties, constitutes either party the agent of the other party, or authorises a party to make or enter into any commitments for or on behalf of the other party.

17.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

18. GENERAL

18.1 A variation of this agreement will be valid only if it is in writing, is in the English language, is stated to vary this agreement, and is signed by or on behalf of each of the parties.

18.2 A party's failure to exercise, or delay in exercising, any right or remedy provided under this agreement or by law does not constitute a waiver of such or preclude any further exercise of that or any other right or remedy.

18.3 If any provision or part-provision of this agreement is found to be invalid, illegal, or unenforceable, that provision or part-provision will, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions and part-provisions of the agreement are not affected.

18.4 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it.

18.5 This agreement may be signed in counterparts by the parties, save that this agreement will not come into effect until each party has executed at least one counterpart. Each counterpart together constitutes a single agreement.

19. DISPUTE RESOLUTION

19.1 Without prejudice to the parties' other rights (including any right to terminate this agreement), if any dispute arises under or in connection with this agreement, the

parties will first attempt to settle such through negotiation rather than through legal proceedings.

- 19.2 If a party has any complaint or dispute under, or in relation to, this agreement, it may serve the other party with a notice outlining the grounds of complaint or dispute in accordance with clause 16 (**'Dispute Notice'**).
- 19.3 No later than ten Business Days after the date of service of the Dispute Notice, authorised representatives of the parties must meet in person or by video call to discuss the Dispute Notice. Any resolution of the matters covered must be documented.
- 19.4 If the complaint or dispute is not resolved within twenty Business Days of service of the Dispute Notice, it may be settled by the courts of competent jurisdiction under this agreement.
- 19.5 Nothing in this agreement restricts or exclude the right of either party to seek injunctive relief against the other party.

20. COUNTERPARTS

- 20.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered constitute a duplicate original, but all the counterparts together constitute the one agreement.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This agreement, and any dispute or claim arising out of or in connection with it or its subject-matter or formation (including non-contractual disputes or claims), is governed by, and will be construed in accordance with, the law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 – Services and Software

Part One – Services

[DESCRIBE SERVICES – include whether the Customer is using Loaned Devices or Customer Devices (and, if the former, state the number and types of device being loaned)]

Part Two – Software

[DESCRIBE THE SOFTWARE]

Schedule 2 – Fees

[SET OUT THE FEES, INCLUDING INVOICING DATES]

Offboarding

Project Management
Data Sanitisation
Data Review
Data Test
Data Release

50% Upon Offboarding Kick Off & 50% Upon Final Sign Off

Schedule 3 – DPA⁴

This Data Processing Agreement (**DPA**) applies to all data processed by the Supplier as a Processor on behalf of the Customer. All parts of this DPA are to be read on the assumption that they apply only where the Supplier is acting as a Processor.

1. DEFINITIONS

1.1 In addition to the other definitions defined elsewhere in this agreement, the following definitions apply in this Schedule 3:

1.1.1 **‘Controller’, ‘Processor’, ‘Data Subject’, ‘Personal Data’, ‘Personal Data Breach’, ‘processing’ and ‘appropriate technical and organisational measures’** are as defined in Data Protection Legislation;

1.1.2 **‘Data Protection Legislation’** means each law then in force relating to the collection, processing, storage, privacy and use of personal data, as applicable to either party, including (i) the Data Protection Act 2018; (ii) the EU GDPR; (iii) the UK GDPR; (iv) the Privacy and Electronic Communications Regulations 2003; and (v) all legally binding codes of practice and codes of conduct relating to such Data Protection Legislation

1.1.3 **‘Domestic Law’** means the law of the United Kingdom or a part of the United Kingdom;

1.1.4 **‘EU GDPR’** means the General Data Protection Regulation ((EU) 2016/679);

1.1.5 **‘EU Law’** means the law of the European Union or any member state of the European Union;

1.1.6 **‘UK GDPR’** means the United Kingdom’s retained version of the EU GDPR.

⁴ This is here to cover any processing done on behalf of the client, i.e. where you are acting as a processor for the client rather than as a controller in your own right. If that needs clarification, I would be happy to discuss.

Also, I have assumed that no data will be transferred outside the UK under this agreement: is that correct?

2. DATA PROCESSING

- 2.1 Both parties will comply with all applicable requirements of Data Protection Legislation. This requirement is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller, and the Supplier is the Processor.
- 2.3 Without prejudice to the generality of paragraph 2.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 2.3.1 process that Personal Data only on the documented written instructions of the Customer, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall (to the extent that this provision does not constitute notice) promptly notify the Customer of this before performing the processing required by Domestic Law unless Domestic Law prohibits the Supplier from so notifying the Customer;
 - 2.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (and those measures may include, where appropriate, pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of its systems and services; using reasonable endeavours to ensure that availability of, and access to, Personal Data can be restored in a reasonably timely manner after an incident; and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 2.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 2.3.4 not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

- (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 2.3.5 assist the Customer, at the Customer's cost (based on the Supplier's applicable charge-out rates), in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.3.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 2.3.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- 2.3.8 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2.
- 2.4 The Customer consents generally to the Supplier appointing a sub-processor. The Supplier confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this paragraph 2 with any such sub-processor. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any sub-processor appointed by it pursuant to this paragraph 2.
- 2.5 Either party may, at any time on not less than 30 days' notice, revise this paragraph 2 by replacing it with any applicable controller-to-processor standard clauses or similar terms adopted under Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

Appendix – Processing, Personal Data, and Data Subjects

1. Processing by the Supplier

1.1 Scope

The Supplier will process Personal Data to perform Services as described in this agreement.

1.2 Nature

As set out in this agreement.

1.3 Purpose of processing

The provision of Services and performance of the agreement.

1.4 Duration of the processing

The Term.

2. Types of Personal Data

Names, addresses, contact details.

3. Categories of Data Subject

Voters.

SIGNED by **Democracy Counts Limited,**)
acting by **[NAME]**)
)
)

SIGNED by **[COMPANY NAME],** acting)
by **[NAME]**)
)
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