



## Master Services Agreement

This Master Services Agreement (the “Agreement”), effective the \_\_\_ day of \_\_\_\_\_ 2022 (the “Effective Date”), is made by and between Clear Ballot Group, Inc., a Delaware corporation, with a principal place of business at 2 Oliver Street Floor 2, Boston, MA 02109 (“Clear Ballot”), and Miami-Dade County, FL, with a principal place of business at 2700 NW 87<sup>th</sup> Avenue, Doral, FL 33172 (“Customer”). In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

- 1.1 “Authorized Users” means Customer’s employees and such other types of users (if any) as may be expressly authorized in an Order and who are performing services solely for the benefit of Customer. Unless otherwise expressly provided in the relevant Product Schedule, Authorized Users are limited to employees only and do not include Customer’s vendors, contractors, or any other third parties, including technology service providers.
- 1.2 “Clear Ballot Products” means collectively, all Clear Ballot Licensed Software, Documentation, Hardware, Services and the Data Visualization Portal. For the avoidance of doubt, Customer’s right to use the Clear Ballot Products extends only to those specific Clear Ballot Products identified in the applicable Order.
- 1.3 “Data Visualization Portal” means Clear Ballot’s portal, accessible via a username (email address) and password, that allows You to access certain audit-related data.
- 1.4 “Designated Jurisdiction” means the jurisdiction in which the Clear Ballot Products will be used, and includes all jurisdictions for which the Designated Jurisdiction administers elections on behalf of. The Designated Jurisdiction shall be identified in the applicable Order.
- 1.5 “Documentation” means the documentation made generally available by Clear Ballot to its customers for use of the Licensed Software, as updated from time-to-time by Clear Ballot in its discretion.
- 1.6 “Licensed Software” means the Object Code version of Clear Ballot’s proprietary software that is identified on the applicable Order, including any bug fixes, updates and new releases thereof that may be made generally available by Clear Ballot from time to time as part of Support Services. The term “Licensed Software” also includes any and all Documentation applicable to such computer programs.
- 1.7 “Professional Services” means those design, testing, installation, setup, training, digital audit, consulting or other services provided by Clear Ballot pursuant to an Order or SOW.
- 1.8 “Object Code” means computer programs assembled or compiled, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse compiling, or reverse-engineering.
- 1.9 “Order” means a request to license the specific Clear Ballot Products identified on the Order. pursuant to the terms of this Agreement. A SOW may be attached to an Order as an Exhibit, however if a SOW is executed on a stand-alone basis, it is considered an Order for the purposes of this Agreement.
- 1.10 “Scope of Use” means the specific scope of use for which Customer is permitted to use the Clear Ballot Products. By way of example, this may include setting up the necessary infrastructure to create an election, defining



an election and tabulating and reporting election results in the Designated Jurisdiction, auditing election results, etc. Customer is only permitted to use the Clear Ballot Products for activities if such activities are clearly identified in the Scope of Use for the applicable Order.

1.11 “Services” means, collectively, any Support Services or Professional Services, both as defined below, purchased by Customer under an Order.

1.12 “Source Code” means computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

1.13 “SOW” means a Statement of Work signed by the duly authorized representatives of both parties that sets forth and describes Services to be provided hereunder, the fees to be paid, and any other terms agreed upon by the parties. A SOW may be attached to an Order as an Exhibit.

1.14 “Support Services” means the standard maintenance and support services offered to Customer as detailed in the support exhibit attached to the applicable Order.

1.15 “Work Product” means any work product, designs, deliverables, reports, analyses or documentation developed or delivered by Clear Ballot in the performance of the Professional Services and specifically identified in the SOW or Order (as applicable) as Work Product.

## 2. MASTER AGREEMENT

This is a master agreement under which Customer may order Clear Ballot Products. The Professional Services terms set forth in Exhibit A attached hereto are incorporated herein. Clear Ballot’s acceptance of any Order made by Customer under this Agreement shall be subject to all applicable provisions of this Agreement, as well as any additional provisions that may be set forth in the applicable Order, including any exhibits thereto. In the event of a conflict between the terms and conditions of an Order and this Agreement, the terms of this Agreement shall govern.

## 3. LICENSE AND RESTRICTIONS

3.1 *Grant of License for Licensed Software.* Subject to the terms and conditions of this Agreement and provided Customer has paid all undisputed fees and costs due under this Agreement, during the Licensed Software Term (as defined in the Order) Clear Ballot grants Customer a limited, nonexclusive, nontransferable, non-sublicensable license to use the Licensed Software identified in the applicable Order solely in the Designated Jurisdiction and for the Scope of Use set forth in the applicable Order. Customer may make a single copy of the object code of the Licensed Software for backup and archival purposes.

3.2 *Hardware.* If Hardware is included in the applicable Order and subject to the terms of this Agreement, Clear Ballot will provide the Hardware to Customer for use in connection with Clear Ballot Products. If Customer has purchased the Hardware, title and all risk of loss with respect to the Hardware will pass to Customer upon shipment by Clear Ballot. Customer shall keep the Hardware free of all security interests, liens and other encumbrances. Customer will use reasonable care in the use of the Hardware and protect the Hardware from theft, damage or misuse. Customer assumes the entire risk of loss, damage, or theft of the Hardware while in Customer’s possession. Customer will use the Hardware solely in connection with the Clear Ballot Products and in technical configuration



specified by Clear Ballot in the Documentation. In the event that the Hardware includes or incorporates any software code (include without limitation any firmware, operating system or other software), such software code shall be deemed “Licensed Software” licensed to Customer solely under the terms of this Agreement.

**3.3 Support Services.** Support Services are further described in the Order Form and any attachments thereto. Customer acknowledges and agrees that it is required to purchase Support Services for the Licensed Software and Hardware during the entirety of the Licensed Software Term.

**3.4 Access to Data Visualization Portal.** If access to the Data Visualization Portal is provided as part of the Clear Ballot Products ordered by Customer under the applicable Order, then subject to the terms and conditions of this Agreement and provided Customer has paid all undisputed fees and costs due under this Agreement, Clear Ballot grants Customer a limited, nonexclusive, nontransferable, non-sublicensable right to access the Data Visualization Portal during the term set forth in the applicable Order.

**3.5 Restrictions on Use.** Clear Ballot Products shall be used solely for the Scope of Use set forth in the applicable Order and not for any other purpose or use. Authorized Users may use the Clear Ballot Products solely on Licensee’s behalf in accordance with this Agreement and the applicable Order and not for any other purpose or use. Customer shall ensure Authorized Users comply with all relevant terms of this Agreement and any breach by an Authorized User will constitute a breach by Customer. Customer may not (i) use or permit the Clear Ballot Products to be used in any manner, whether directly or indirectly, that would enable Customer’s employees, agents, or any other person or entity to use the Clear Ballot Products in any jurisdiction other than the Designated Jurisdiction or for anyone’s benefit other than Customer, (ii) rent, sell, assign, lease, sublicense, or otherwise transfer the Clear Ballot Products, (iii) derive or attempt to derive the Source Code, source files, or structure of all or any portion of the Clear Ballot Products by reverse engineering, disassembly, decompilation, or any other means, except to the extent permitted by applicable law, (iv) copy, translate, port, modify, or make derivative works based on the Clear Ballot Products, (v) use the Clear Ballot Products except as set forth in the Documentation, (vi) use the Clear Ballot Products or Clear Ballot Confidential Information to contest the validity of any Clear Ballot intellectual property; (vii) use the Clear Ballot Products in a manner to compete with Clear Ballot, to create a product or service that competes with Clear Ballot, or to assist a third party in competing with Clear Ballot; (viii) use the Clear Ballot Products outside the Designated Jurisdiction; (ix) operate a service bureau or other similar service for the benefit of third parties using the Clear Ballot Products; (x) export, directly or indirectly, the Clear Ballot Products from the United States; or (xi) disclose the Clear Ballot products to any non-U.S. national in the United States in violation of any United States export or other similar law (e.g., unauthorized “deemed exports”). Customer shall take reasonable precautions to prevent unauthorized or improper use or disclosure of the Clear Ballot Products. Customer shall not remove, alter, or obscure any trademark, proprietary label or notice accompanying or incorporated in the Clear Ballot Products.

**3.6 Minimum System Configuration.** The minimum hardware and software requirements for proper operation of the Licensed Software are set forth in the Order or the relevant Documentation, which may be updated from time to time. Customer shall be solely responsible for purchasing, providing, and installing all other required equipment, peripherals, and hardware not included in the Statement of Work. The Licensed Software must be used with the Hardware as described in the Documentation, and all warranties, support and indemnification obligations hereunder are void if the Licensed Software is used with any other hardware or in any manner other than in the technical configuration specified by Clear Ballot. The requirements listed in this section refer to the requirements of Clear Ballot, and do not refer to any state-specific hardware requirements that may be in place. It is Customer’s responsibility to ensure that it understands and complies with any state-specific hardware requirements.



**3.7 Intellectual Property Ownership.** The Clear Ballot Products contain material that is protected by United States copyright, trade secret law and other intellectual property law, and by international treaty provisions. All rights in and to the Clear Ballot Products not expressly granted to Customer under this Agreement are reserved by Clear Ballot. As between Customer and Clear Ballot, all copyrights, patents, trade secrets, trademarks, service marks, tradenames, moral rights and other intellectual property and proprietary rights in the Clear Ballot Products will remain the sole and exclusive property of Clear Ballot or its licensors, as applicable. Customer agrees and acknowledges that Clear Ballot will be the exclusive owner of all right, title and interest in and to all software, programming, tools, documentation, materials, and other intellectual property of any kind used, developed, or delivered by Clear Ballot to Customer in connection with this Agreement; and this is not a work-made-for-hire agreement under Section 101 of Title 17 of the United States Code. Customer acknowledges and agrees that Clear Ballot will retain the unlimited right to use and to sublicense to others the ideas, designs, concepts, techniques, or other expertise which Clear Ballot may develop or employ in providing the Clear Ballot Products, in any products and for any lawful purposes.

**3.8 Feedback.** Customer may provide suggestions, comments, or other feedback (collectively, “Feedback”) to Clear Ballot with respect to its products and services, including the Clear Ballot Products. Feedback is voluntary and Clear Ballot is not required to hold it in confidence and may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Clear Ballot an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Clear Ballot’s business, including enhancement of the Clear Ballot Products.

**3.9 Aggregated Data.** Customer acknowledges and agrees that both during the term of this Agreement and thereafter, Clear Ballot may collect, analyze, copy, display and use Aggregated Data for the purpose of providing, operating, analyzing, and improving the Clear Ballot Products. Clear Ballot will not disclose any Aggregated Data unless it is in aggregated and anonymized form that would not permit a third party to identify the data as associated with Customer. “Aggregated Data” means anonymized or aggregated data, statistics, and analysis derived from Customer’s use of the Clear Ballot Products.

**3.10 Modification of Clear Ballot Products.** Except as otherwise expressly agreed in writing by the parties, Clear Ballot is not responsible for any: (a) modification to the Clear Ballot Products by Customer or any third party engaged by Customer, (b) failure by Customer to follow reasonable instructions provided by Clear Ballot for the care and maintenance of Clear Ballot Products, (c) failure by Customer to reasonably implement any improvements or updates to the Clear Ballot Products as supplied by Clear Ballot, (d) use of the Clear Ballot Products not strictly in the manner recommended in the Documentation; or (e) any material failure by Customer to use due care in the use and validation of the results produced by the Clear Ballot Products.

**3.11 Customer Representations.** Customer represents, warrants, and/or covenants to Clear Ballot that: (a) the Clear Ballot Products will be used only (i) by Customer and its Authorized Users, (ii) in the manner for which it was intended, (iii) in accordance with all applicable manuals and instructions, and (iv) in compliance with all applicable laws and regulations, (b) it has the authority to enter into this Agreement, (c) the person executing this Agreement on behalf of Customer has been duly authorized and has all required approvals, (d) by entering into this Agreement, Customer is not in violation of any laws or agreements applicable to Customer, and (e) Customer shall not modify, alter, or add to the Clear Ballot Products without the prior written consent of Clear Ballot.



#### 4. FEES, EXPENSES AND TAXES

Customer will pay the fees for the Clear Ballot Products in accordance with the applicable Order. All fees are in United States dollars. Unless otherwise expressly stated on an Order, Clear Ballot may increase fees at any time (but not more than once annually) upon at least thirty (30) days prior written notice to Customer. Except as expressly set forth in this Agreement, there are no refunds.

Unless otherwise set forth on the applicable Order, all fees will be invoiced annually, payable in advance. Customer will reimburse Clear Ballot for reasonable special or unusual expenses incurred at Customer's specific written request.

All undisputed amounts to be paid by Customer are due and payable thirty (30) days after Customer's receipt of the complete and accurate invoice. All payments not disputed in good faith by Customer and not made by Customer within sixty (60) days of when due will be subject to late charges of the lesser of (i) one percent (1.0%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. If Customer fails to pay Clear Ballot charges (other than charges disputed in good faith) within sixty (60) days after the applicable due date of the invoice, Clear Ballot may suspend Customer's right to access and use the Clear Ballot Products under this Agreement. For clarity, Clear Ballot will not initiate suspension while Customer is disputing charges reasonably and in good-faith and is cooperating diligently in resolving the dispute.

Customer will pay all sales, use, and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Clear Ballot's net income, unless Customer is exempt from the payment of such taxes and provides Clear Ballot with evidence of the exemption.

#### 5. DISCLAIMERS

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLEAR BALLOT PRODUCTS ARE PROVIDED TO CUSTOMER "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLEAR BALLOT EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CLEAR BALLOT DOES NOT WARRANT THAT THE CLEAR BALLOT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE CLEAR BALLOT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. CLEAR BALLOT DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE CLEAR BALLOT PRODUCTS IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLEAR BALLOT OR CLEAR BALLOT'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES PROVIDED IN THIS AGREEMENT (IF ANY).



Hardware carries the standard manufacturer's warranty only (if any). Clear Ballot will use commercially reasonable efforts to pass through to Customer any manufacturer's warranties on Hardware, to the extent such warranties may be passed through. All warranty claims for Hardware will be submitted to the respective manufacturer.

If applicable law affords Customer implied warranties, guarantees, or conditions despite these exclusions, those warranties will be limited to one (1) year and Customer's remedies will be limited by this Section 5 (Disclaimer of Other Warranties) and 8 (Limitations of Liability and Actions) to the maximum extent permitted by applicable law. For the avoidance of doubt, the disclaimer set forth in this Section 5 do not negate any of Clear Ballot's obligations under any certificates which Clear Ballot may be required to maintain by the applicable jurisdiction governing use of the Licensed Software hereunder.

## 6. INDEMNIFICATION

Clear Ballot will defend, indemnify, and hold harmless Customer from any and all third-party claims and resulting losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from a claim by a third party that Customer's use of the Licensed Software in accordance with this Agreement infringes that third party's United States patent, copyright, or trade secret rights. Notwithstanding the foregoing, Clear Ballot will have no obligation with respect to any claim of infringement that is based upon or arises out of (a) the use or combination of the Licensed Software with any hardware, software, products, data, or other materials not provided by Clear Ballot, where such claim would not have arisen but for such use or combination, (b) modification or alteration of the Licensed Software by anyone other than Clear Ballot where such claim would not have arisen but for such modification or alteration, (c) use of the Licensed Software in violation of this Agreement, (d) any specifications, requirements, data, or intellectual property provided by Customer (collectively, the "Excluded Claims").

If the Licensed Software is held to infringe (or, if Clear Ballot determines in its sole discretion that it may be held to infringe), Clear Ballot shall, at its own expense, in its sole discretion: (a) procure a license that will protect Customer against such claim without cost to Customer; (b) replace the impacted Licensed Software with non-infringing materials without material loss of functionality; or (c) if (a) and (b) are not commercially reasonable, terminate this Agreement or the applicable Order and refund to the Customer a prorated portion of the unused prepaid fees for the infringing Licensed Software. The rights and remedies granted Customer under this Section 6 state Clear Ballot's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) to the maximum extent permitted by applicable law, with advice of the Attorney General of the relevant jurisdiction if such advice is required by applicable law, allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the





indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

## **7. AUDIT**

**7.1 Audit of Customer by Clear Ballot.** Clear Ballot may audit Customer's use of the Clear Ballot Products ("Audit"). An Audit may include the inspection and review of facilities, technical environment, equipment, computers and/or servers on which the Clear Ballot Products has been installed, used or hosted, and records, procedures, or business practices that relate to Customer's performance under and compliance with the terms of this Agreement. Clear Ballot shall provide Customer reasonable advance notice of an Audit, which shall be performed by Clear Ballot or an independent third party authorized by Clear Ballot. Customer will reasonably cooperate with Clear Ballot in the conduct of the Audit. Audits will be conducted during Customer's normal business hours and commercially reasonable efforts shall be used not to disrupt Customer's business. The cost of the Audit shall be borne by Clear Ballot. In the event that Customer is found by Clear Ballot to be out of compliance with the terms of this Agreement, Clear Ballot shall notify Customer of the Clear Ballot's findings, in detail and Customer shall be responsible for the cost of the Audit. Customer shall have fifteen (15) days to review Clear Ballot's findings and respond to Clear Ballot and become compliant.

**7.2 Customer Access to Records.** Clear Ballot shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") during the Term of the Agreement. Not more than once annually (unless greater frequency is required by applicable law), Clear Ballot shall permit Customer's authorized representatives to access copies of the Records at reasonable times and places for purposes of examination and copying, at Customer's expense.

## **8. LIMITATIONS OF LIABILITY AND ACTIONS**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND COSTS, LOSS OF BUSINESS, LOSS OF SAVINGS, LOSS OF DATA, OR LOSS OF GOODWILL, IN CONNECTION WITH THE PERFORMANCE OF THE CLEAR BALLOT PRODUCTS, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF CLEAR BALLOT TO CUSTOMER FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO CLEAR BALLOT UNDER THE APPLICABLE ORDER WHICH FORMS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

THE LIMITATIONS OF LIABILITY SET FORTH HEREIN SHALL NOT APPLY TO ANY CLAIM OR DAMAGE FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. IF CUSTOMER'S JURISDICTION DOES NOT ALLOW THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION, THE LIABILITY OF CLEAR BALLOT SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. THIS SECTION 8 SHALL APPLY WITHOUT WAIVER OF CUSTOMER'S SOVEREIGN IMMUNITY, IF APPLICABLE.

## **9. CONFIDENTIALITY**



**9.1 Definition of Confidential Information.** During the term of this Agreement, each party will regard as confidential any information that is: (a) provided to it by the other party and designated in writing as proprietary or confidential, or (b) to be reasonably considered confidential given the nature of the information or the circumstances under which it was disclosed (“**Confidential Information**”). Clear Ballot’s Confidential Information includes any trade secrets related to the Clear Ballot Products.

**9.2 Exclusions.** Except as required by law or statute, Confidential Information will not include any information or material, or any element thereof, to the extent any such information or material, or any element thereof (i) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or non-disclosure agreement, (ii) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business of or by proof of actual use by the Receiving Party, (iii) has been or is hereafter rightfully received by the Receiving Party from a third person (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party, or (iv) has been independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party.

**9.3 Treatment of Confidential Information.** Each party recognizes the importance of the other’s Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section and elsewhere in this Agreement. Accordingly, each party agrees as follows: (i) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement; and (ii) without limiting the foregoing, the Receiving Party will use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance. The Receiving Party may disclose the Disclosing Party’s Confidential Information to its Affiliates and its and their directors, officers, employees, Independent Contractors, Vendor, and advisors (collectively “Representatives”) who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party’s Confidential Information than this Agreement. Each party accepts responsibility for the actions of its Representatives.

**9.4 Compelled Disclosures.** The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process, or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

**9.5 Public Records.** Notwithstanding any provision of this Agreement, including, without limitation this Section 9, Clear Ballot recognizes that Customer is a governmental entity subject to open records and sunshine laws. To the extent required by applicable law, Customer may be required to disclose a copy of this Agreement, as well as other Clear Ballot information and records related to this Agreement. The parties agree that Customer will not be in breach of this Agreement if the Customer is required to disclose such information pursuant to applicable law. However, to the extent permitted by applicable law, Customer agrees that prior to disclosure of any Clear Ballot information (whether Confidential Information or otherwise) under any public records request or obligation, Customer shall notify Clear Ballot of such required disclosure, so that Clear Ballot shall have an opportunity to note and/or redact any information that may be classified as an exemption to the applicable law. Similarly, Clear Ballot recognizes that the Customer is subject to state record retention regulations, and Customer will comply with all such requirements.





## 10. TERM AND TERMINATION

**10.1 Term.** This Agreement shall be effective as of the Effective Date and continue in effect until the expiration or termination of all Orders (the “Term”), unless earlier terminated in accordance with this Section 10. The term of the licenses granted by Clear Ballot to Customer hereunder will commence upon execution of the applicable Order and continue for the term specified in the Order, unless earlier terminated in accordance with the provisions of this Agreement.

**10.2 Breach.** If either party fails to observe or perform any material obligation under this Agreement, the non-defaulting party may give written notice to the defaulting party specifying the material failure. If the material failure is not corrected or a mutually agreed plan to correct the failure has not been established by the parties working together in good faith within thirty (30) Days after the date of such notice, the non-defaulting party may terminate this Agreement upon written notice to the defaulting party.

**10.3 Bankruptcy and Insolvency.** Either party may terminate this Agreement immediately on written notice to the other party, if the other party is the subject of a voluntary or involuntary bankruptcy, insolvency, or similar proceeding, that is not dismissed within sixty (60) days of filing.

**10.4 De-certification.** If Clear Ballot fails to maintain any required certifications which are necessary to provide the Licensed Software, Customer may give written notice to the Clear Ballot of Customer’s intent to terminate the Agreement or any Service Order. If Clear Ballot is unable to acquire the necessary certification within a reasonable, mutually agreed upon timeframe (of at least 30 days), at Customer’s sole discretion and as Customer’s sole and exclusive remedy, Customer may terminate the Agreement or any Service Order.

**10.5 Effect of Termination.** Upon the expiration or termination of this Agreement for any reason, the license and all other rights granted to Customer hereunder shall immediately cease, and Customer shall (i) return the Licensed Software to Clear Ballot together with all reproductions and modifications of the Licensed Software and all copies of any Documentation, notes and other materials respecting the Clear Ballot Products, (ii) attest that Customer shall no longer use or allow to be used the Clear Ballot Products, (iii) provide Clear Ballot a written certification that Customer has ceased all use of the Clear Ballot Products and has complied with all of its obligations under this Section. Except as expressly provided herein, to the maximum extent permitted by applicable law, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

## 11. INSURANCE

Clear Ballot shall, at its own cost, throughout the performance of this Agreement or any related SOW maintain in full force and effect with a reputable insurer(s), insurance as described below: (a) Commercial General liability insurance with a limit of not less than two Million Dollars (US\$2,000,000) in the aggregate; (b) Workers Compensation insurance with statutory limits, and Employer’s Liability insurance with limits of not less than One Million Dollars (US\$1,000,000) per occurrence; and (c) Errors and Omissions Liability insurance with a limit of not less than two Million US Dollars (US\$2,000,000) in the aggregate. Upon written request by Customer, Clear Ballot shall furnish Customer with certificates of insurance evidencing the insurance coverage required to be maintained



by Clear Ballot is in full force and effect.

## 12. GENERAL

**12.1 Waiver, Amendment, Or Modification.** The waiver, amendment, or modification of any provision of this Agreement, or any right, power, or remedy hereunder, shall not be effective unless made in writing and signed by the party against whom enforcement of such waiver is sought, or in the case of amendment, or modification unless signed by both parties. The terms of this Agreement shall not be amended or changed by the terms of any purchase order or acknowledgement issued by Customer even though Clear Ballot may have accepted or signed such documents. No failure or delay by either party in exercising any right, power, or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

**12.2 Notice.** All notices, demands, or consents given under this Agreement will be in writing and will be deemed given when delivered personally, or three (3) Days after deposit in the mail (certified or registered mail), or one (1) Day after being sent by overnight courier, to the receiving party at the address set forth in this Agreement or at such other address given by either party to the other in writing. A courtesy copy shall be sent to Clear Ballot via email at [contracts@clearballot.com](mailto:contracts@clearballot.com) and to Customer at the email address set forth below the signature block (if any).

**12.3 Entire Agreement.** This Agreement, together with the Orders, and any exhibits attached hereto, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations, or agreements between the parties in connection with the subject matter hereof except as specifically set forth or referred to herein. In the event of any conflict between the body of this Agreement and any Orders or exhibits, the body of this Agreement shall control.

**12.4 Assignment.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their permitted successors and assigns. To the maximum extent permitted by applicable law, Clear Ballot may assign this Agreement and all Orders as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets provided the resulting use, functionality, and support of the Licensed Software remains consistent with the terms of this Agreement and with the scope of use made by assigning party immediately before the assignment. If consent is required by applicable law to assign this Agreement, such consent shall not be unreasonably withheld. Except as expressly stated in this Agreement, to the maximum extent permitted by applicable law, neither party may assign this Agreement without the prior written consent of the other party, and any attempted assignment will be void. Clear Ballot may assign the performance of any portion of its obligations hereunder (including the provision of any portion of the Clear Ballot Products or functionality contained therein) to any subcontractor; provided that Clear Ballot shall be responsible for the performance of any such subcontractor.

**12.5 Publicity.** Customer grants Clear Ballot the right to add Customer's name and logo to Clear Ballot's customer list and to otherwise reference Customer as a Clear Ballot customer.

**12.6 Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, USA without regard to its conflict of law provisions. Any legal action or proceeding with respect to this Agreement shall be brought in the state or federal courts in Tallahassee, Florida. If you are prohibited by law from entering into a contract by governing law other than the laws of the state where your primary office is located, then this Agreement will be construed under the laws of the state in which your primary office is located. If



any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in full force and effect.

**12.7 Construction.** The section headings in this Agreement are for convenience of reference only, will not be deemed to a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Unless otherwise expressly stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to sections of this Agreement as a whole and not to any particular section, subsection, or other subpart of this Agreement. The words “include” and “including” shall not be construed as terms of limitation and shall, in all instances, be interpreted as meaning “including, but not limited to.”

**12.8 Relationship Of The Parties.** Clear Ballot is an independent contractor under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have authority to enter into agreements of any kind on behalf of the other party and shall have no power or authority to bind or obligate the other party in any manner to any other third party.

**12.9 No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person.

**12.10 Survival.** The following Sections shall survive expiration or termination of this Agreement: 3.5 (Restrictions on use), 3.7 (Intellectual Property Ownership), 3.78 (Feedback), 3.9 (Aggregated Data), 4 (Fees, Expenses and Taxes) (to the extent of fees accrued prior to the date of termination), 5 (Disclaimer of Warranties); 7 (Audit); 8 (Limitations of Liability and Actions); 10.4 (Effect of Termination); and 12 (General).

**12.11 Force Majeure.** Except for Customer’s payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

**12.12 Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute the same Agreement. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

**12.13 Agreement Drafted By All Parties.** This Agreement is the result of arm’s length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.



The parties have executed this Agreement to become effective as of the Effective Date.

**CUSTOMER:**

**CLEAR BALLOT GROUP, INC.**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

\_\_\_\_\_  
**(PRINTED NAME)**

\_\_\_\_\_  
**(PRINTED NAME)**

\_\_\_\_\_  
**(TITLE)**

\_\_\_\_\_  
**(TITLE)**

\_\_\_\_\_  
**(DATE)**

\_\_\_\_\_  
**(DATE)**

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## EXHIBIT A: PROFESSIONAL SERVICES TERMS

Clear Ballot shall provide Customer certain Professional Services as specified in a SOW.

Either party may request a change to a SOW, and for such purpose shall submit to the other party a written notice ("Change Request") setting forth the requested change and the reason for such request. The parties shall discuss the necessity, desirability and/or acceptability of the Change Request. When and if both parties have agreed in writing upon the changes, and any resulting change in the estimated fees for the Services, the parties shall complete and execute a change order ("Change Order") or a new or revised SOW.

Clear Ballot shall have sole discretion in staffing the Professional Services and may assign the performance of any portion of the Professional Services to any subcontractor; provided that Clear Ballot shall be responsible for the performance of any such subcontractor. Customer shall designate at least one employee with knowledge of Customer's business and Clear Ballot's technology and services as its primary contact to be available for communication with Clear Ballot in providing the Professional Services. Customer will (a) cooperate with Clear Ballot, (b) provide Clear Ballot with timely access to accurate and complete information, data and materials, (c) provide Clear Ballot with such assistance and access as Clear Ballot may reasonably request, and (d) fulfill its responsibilities as set forth in this Agreement and the SOW. If Clear Ballot personnel are required to be present on a Customer site, Customer will provide adequate workspace and may provide reasonable worksite safety and security rules to which such personnel are to conform. Unless otherwise set forth in the SOW, all resources and information that are required for Clear Ballot to perform the Services shall be provided at Customer's expense. Customer is responsible for the procurement of any necessary permits or licenses required for the design, production, testing or operation of any Work Product hereunder and costs incidental thereto unless otherwise agreed in the SOW.

Unless specified otherwise in the SOW, the cost estimate for Professional Services, as set forth in the SOW, is a budgetary estimate and is not a firm fixed price quotation and the Professional Services shall be provided on a time and material basis at the rates set forth in the SOW. If Clear Ballot, at any time, determines that the cost of the Professional Services is expected to exceed the budgetary estimate, Clear Ballot will notify the Customer and obtain the Customer's approval prior to exceeding the budget. Clear Ballot shall not be obligated to continue with any work which would cause Clear Ballot to exceed the budgetary estimates if Customer does not approve exceeding the budget. If actual costs are less than the budgetary estimate, only actual costs will be billed.

Unless otherwise set forth in the SOW, except for Clear Ballot Pre-Existing IP (as defined below) which shall continue to be owned by Clear Ballot, any Work Product delivered under a SOW shall be the property of Customer upon Customer's payment in full of all associated fees due hereunder.

"Clear Ballot Pre-Existing IP" shall mean any and all software, hardware, information, technology, configurations, training materials, tools, methodologies, data, designs, ideas, concepts, know-how, techniques, materials, data, algorithms, and other information owned or licensed by Clear Ballot prior to the commencement or independent of the Professional Services and all intellectual property rights therein, some of which may be used by Clear Ballot in performance of the Professional Services or the development of the Work Product hereunder, and shall also include any enhancements or modifications made by Clear Ballot to the Clear Ballot Pre-Existing IP while performing the Services hereunder. All Clear Ballot Pre-Existing IP is the sole property of Clear Ballot. Customer acknowledges and agrees that Clear Ballot is in the business of providing the Clear Ballot Products, and as such will retain the unlimited right to use and to sublicense to others the ideas, designs, concepts, techniques or other expertise which Clear Ballot



may develop or employ in providing the Professional Services, including those ideas, concepts, techniques acquired in developing the Work Product, in any products and for any purposes (including providing services and developing work product for other customers), provided that the same are (i) of general application and (ii) not based on and do not contain Customer Confidential Information. For the avoidance of doubt, Clear Ballot may create the same or similar work product for other customers without liability or obligation to Customer. To the extent that Clear Ballot incorporates any Pre-Existing IP into any Work Product, then Clear Ballot hereby grants Customer a royalty-free, non-exclusive, non-transferable license to use such Pre-Existing IP delivered to Customer solely as necessary for and in conjunction with and not separate from Customer's use of the Work Product.

“Customer Pre-Existing IP” shall mean any and all data, information, designs, materials, and other information owned or licensed by Customer prior to the commencement or independent of the Professional Services and all intellectual property rights therein, some of which may be used by Clear Ballot in performance of the Services or the development of the Work Product hereunder. All Customer Pre-Existing IP is the sole property of Customer.

Clear Ballot warrants that any Professional Services will be performed in a professional, workmanlike manner and shall substantially conform to the specifications set forth in the applicable Order for a period of thirty (30) days from the date of completion (the “Professional Services Warranty Period”), unless specified otherwise in the Order. If Customer notifies Clear Ballot in writing of any failure to comply with the Professional Services warranty described in this paragraph during the Professional Services Warranty Period, then Clear Ballot shall re-perform the relevant Professional Services at no additional cost to Customer within a reasonable period of time. The foregoing remedy is the sole and exclusive remedy of Customer and the sole and exclusive liability of Clear Ballot for breach of this Professional Services warranty.

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