



AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on this **June 16th, 2016** (the “Effective Date”) by and between Votenet Solutions, Inc., a Delaware corporation (“Votenet”) and the undersigned client (“Client”).

CLIENT: Jacksonville Police and Fire Pension Fund

ADDRESS: 1 W Adams St # 100
Jacksonville, FL 32202

TEL: (904) 255-7373

NOW THEREFORE, in consideration of Votenet’s provision of the Services (as defined below) to Client and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to be bound by this Agreement.

AGREEMENT

1. **Terms and Conditions.** The Terms and Conditions attached hereto shall be binding upon the parties and are hereby incorporated herein for all purposes.

2. **Services.** Client hereby engages Votenet to provide the application and services (the “Services”) described in one or more sequentially numbered Statements of Work, each of which shall be attached hereto and incorporated herein for all purposes (each a “SOW”).

3. **Service Fees.** Client agrees to remit payment in accordance with the Terms and Conditions and in the amounts set forth on the applicable Statements of Work for Services rendered during the term of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement, which incorporates any applicable SOWs and the attached Terms and Conditions as of the date set forth above.

READ, ACKNOWLEDGED AND AGREED:

VOTENET SOLUTIONS, INC.

Jacksonville Police and Fire Pension Fund

By: *Caitlyn Perkins*

By:

Name: Caitlyn Perkins

Name:

Title: Account Manager

Title:

Date: June 16th, 2016

Date:



Terms and Conditions

The following terms and conditions (“Terms and Conditions”) are incorporated into the Services Agreement between Votenet and Client.

1. **SERVICES:** Client hereby engages Votenet to provide such Services as may be requested from time to time by Client in accordance with and upon these Terms and Conditions.

2. **STATEMENT OF WORK AND CHANGE ORDERS:**

2.1 Statements of Work. Each Statement of Work (each a “SOW”) shall include, to the extent appropriate: (i) a description of the Services to be provided by Votenet; (ii) any work product and specific deliverables to be developed or supplied by Votenet during the course of the Services (“Deliverables”); (iii) the applicable individuals designated by Client in connection with the SOW; (iv) the fees payable to Votenet for the Services to be performed; and (v) such additional provisions applicable to the SOW which are not otherwise set forth in this Agreement.

2.2 Change Orders. Client may request additions, deletions or revisions to the Services provided pursuant to an SOW, provided that all such changes are submitted in writing by Client and are subject to Votenet’s prior written approval (“Change Orders”). If Votenet determines that a Change Order is necessary, Votenet shall notify Client in writing of such Change Order and fee revision(s), if any, in advance of carrying out the modifications.

3. **PAYMENTS:** All fees and expenses are due and payable on the earlier of: (i) thirty (30) days following the date of Votenet’s invoice or (ii) the day prior to the date of an election (if applicable). If payment is not received when due, Client shall be charged a late payment fee equal to 5% of the outstanding balance. Additionally, interest on unpaid invoices or other amounts due hereunder shall accrue at the rate of 1.5% per month or the maximum amount permitted by law until paid. Moreover, Client shall reimburse Votenet for all expenses, including attorneys’ and expert witness fees, court costs, and all other expenses incurred in connection with the collection of any amounts owed

Votenet under this Agreement or any SOW. No payment by the Client of a lesser amount than the amount set forth on the invoice shall be deemed to be a payment in full of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Votenet may accept such check or payment without prejudice to Votenet’s right to recover the balance of such amount due or pursue any other remedy provided for herein. All fees payable to Votenet shall be non-refundable, notwithstanding any termination of this Agreement. Votenet may, without limitation or penalty, discontinue the provision of Services in the event of a dispute and/or delinquent fees due it, including but not limited to the removal of access to the eBallot system, if applicable, and other information from Client’s servers until Client has paid in full. Further, in the event that Client has engaged Votenet to provide multiple Services, and fails to make payment when and as due, for any such Service, Votenet reserves the right to suspend or discontinue all Services under any SOW until Client has paid in full. Notwithstanding anything contained herein to the contrary, prices set forth on a SOW are subject to change by Votenet upon thirty (30) days advance notice. Services requested by the Client that are not listed on a SOW will be billed at Votenet’s then prevailing rate.

4. **EXPENSES:** Client shall reimburse Votenet for reasonable out-of-pocket expenses incurred by Votenet in the performance or delivery of any Services hereunder. Expense reimbursement shall be due upon receipt of invoice.

5. **TERM AND TERMINATION:** This Agreement shall commence as of the Effective Date and shall continue until the later of: (a) twelve (12) months following the date hereof or (b) until all Services required under any SOW have been completed (the later of the foregoing

being referred to herein as the “Initial Term”), unless terminated earlier in accordance with this Section 5. Notwithstanding the foregoing, however, this Agreement and all SOWs hereunder shall be terminable by either party for any reason following thirty (30) days written notice to the other party. Upon expiration of the Initial Term, the Agreement will automatically renew for another period of twelve (12) months unless earlier terminated in accordance with this Section 5. Notwithstanding the foregoing, however, Votenet may terminate this Agreement immediately and without the necessity of advanced notice in the event of Client’s breach of this Agreement. Irrespective of the basis for termination and without regard to which party hereto initiated the termination, Client shall pay Votenet for all Services (including costs and expenses incurred) that have been performed through and including the effective date of such termination, plus any and all actual and reasonable wind down costs resulting from such termination.

6. LIMITATIONS ON LIABILITY; DAMAGES; INDEMNIFICATION AND WARRANTIES:

1. Limitation on Liability. Under no circumstances shall Votenet be liable for any consequential, incidental, indirect, exemplary, special or punitive damages, regardless of whether the claim giving rise to such damages is based upon breach of warranty, breach of contract, negligence, tort or other theory of liability, even if Votenet has been advised of the possibility thereof.

2. Cap on Damages. Votenet’s cumulative liability to the client or its representatives for any and all causes of action arising out of or relating to this Agreement or any SOW shall not exceed, in the aggregate, the lesser of the sum of the fees paid by Client to Votenet within the six (6) month period immediately preceding the event giving rise to the claim or Ten Thousand Dollars (\$10,000), regardless of whether the claim giving rise to such damages is based upon breach of warranty, breach of contract, negligence, tort or other theory of liability.

3. Indemnification.

6.3.1 Client Indemnification. Client agrees to indemnify, defend and hold harmless Votenet and Votenet’s shareholders, directors, officers, affiliates, employees and third-party agents, at its own cost and expense, from and against any and all liabilities, damages, losses, claims, demands, causes of action, debts, costs, and expenses, including attorneys’ fees and court costs, to the extent the same is based upon a claim: (i) that Client has breached any of its representations, warranties or obligations hereunder, (ii) that arises out of the negligence or misconduct of client; or (iii) that any data, materials or information provided by Client to Votenet infringes or violates any patent, copyright, trademark, trade name, trade secret, license or any other intellectual property right or other right of any third party.

6.3.2 Votenet Indemnification. Votenet shall indemnify, defend and hold Client harmless from and against any and all liabilities, losses, damages or expenses, including reasonable attorneys’ fees and costs, which Client incurs as a result of any claim, suit or proceeding brought or threatened against it which arises from: (a) the material breach of the terms of this Agreement by Votenet or (b) Votenet’s infringement of a third party’s copyright, patent or other intellectual property rights in connection with Votenet’s provision of the Services rendered hereunder (each, an “Infringing Item”) unless such Infringing Item was provided to Votenet directly or indirectly by Client. Votenet shall have no liability to Client or any other party for any claims arising from materials delivered by Votenet to a third party which are misconstrued, misinterpreted or misused.

4. Warranties. All deliverables and services provided hereunder are provided “as is” with all faults, and Votenet makes no express, implied or statutory warranties of any kind, including any warranty of merchantability or fitness for a particular purpose. Votenet hereby disclaims any and all other warranties that may be implied from usage of trade, course of dealing or course of performance

7. **INTELLECTUAL PROPERTY:** Client acknowledges and agrees that any and all business processes, patents, prototypes, production models, hardware, software, trade secrets, proprietary technology, processes, tests, analyses, notes, information about product development, design, technology, capabilities, ideas,

algorithms, formulas, compositions, data, techniques, discoveries, improvements, inventions (whether patentable or not), works of authorship, spreadsheets, data sets, and other intellectual property of Votenet used in connection with the performance and delivery of the Services (the "Votenet IP") shall belong solely to Votenet. However, the Deliverables, including intellectual property developed by Votenet which are incorporated in the Deliverables and which by their nature are intended for the sole benefit of Client shall belong to Client; provided, however that in no event shall Client retain any rights in any of Votenet's know-how. "Know-how" shall mean any and all of Votenet's IP, whenever created, and used by Votenet in the conduct of its business, including but not limited to, technical information, ideas, concepts, graphics, designs, templates and methodologies, together with improvements and modifications to such know-how. Notwithstanding the foregoing, however, each party shall retain all right, title and interest in and to all previously existing materials, methodologies, operating and applications software, programs, architecture data, processes, methods, creations, developments and technical information and intellectual property developed by such party.

8. **DATA; COPYRIGHTS AND TRADEMARKS:** Any and all data provided by Client to Votenet, if any, or entered into any software provided by Votenet, if applicable, in connection with the performance of the parties obligations under this Agreement (the "Data") shall remain the sole and exclusive property of the Client; provided, however that Votenet shall be under no obligation to verify facts or data supplied to it by Client. Client represents and warrants that it has the unrestricted right to provide the Data to Votenet. Client further represents to Votenet and unconditionally guarantees that any elements of Data, text, graphics, photos, designs, trademarks, or other artwork furnished to Votenet for inclusion in Web pages are owned by Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Votenet and its subcontractors from any claim or suit arising from the use of any elements furnished by Client.

9. **INDEPENDENT CONTRACTOR:** The parties hereto agree that Votenet is an independent contractor and, as such, neither Votenet nor its personnel shall be considered employee(s) of Client.

10. **CONFIDENTIALITY:** Both parties hereto shall maintain as confidential and shall not disclose, copy, nor use for purposes other than the performance of this Agreement, any information or proprietary materials (in every form and media) which relate to the other party's business affairs, trade secrets, existing or contemplated products, software, documentation, services, designs, technology, research and development activities, processes, technical data, techniques, methodologies and concepts and any information related thereto and any information relating to sales or marketing methods and customer lists or requirements, including but not limited to data which identify or concern past, current or eligible voters, customers of a party or its affiliates, certain computer data processing tapes, record formats, source and object codes, which identify or concern past, current or potential customers of a party or its affiliates and information and material identified by a party as "Confidential" ("Confidential Information"). Each agrees to protect the other's Confidential Information with the same degree of care it exercises to protect its own confidential information (but in no event less than a commercially reasonable standard of care) and to prevent the unauthorized, negligent or inadvertent use, disclosure or publication thereof. Each party may disclose the other's Confidential Information only to its own employees, consultants or advisors having a need to know for the purposes of this Agreement, provided that such parties agree in writing to maintain the confidentiality of the other party's Confidential Information in a manner consistent with the obligations set forth hereinabove. The obligations of either party under this Section 10 will not apply to information that the receiving party can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality, (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving party, (iii) has been received from a third party without restriction on disclosure and

without breach of agreement or other wrongful act by the receiving party, or (iv) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the receiving party shall furnish prompt written notice of such required disclosure and reasonably cooperate with the disclosing party, at the disclosing party's cost and expense, in any effort made by the disclosing party to seek a protective order or other appropriate protection of its Confidential Information. The confidentiality obligations contained herein shall survive the termination of this Agreement. Upon the termination or expiration of this Agreement, each party shall return all Confidential Information of the other party to such party and shall not retain any copies, extracts or other reproductions in whole or in part of such tangible material. Any such destruction shall be certified in writing to the disclosing party. In the event of a breach by either party of a duty of confidentiality, monetary damages alone shall be deemed inadequate. The non-breaching party shall be entitled to injunctive, equitable and other legal relief, including repossession of any proprietary information plus reasonable costs including attorneys' fees.

11. **SECURITY:** Votenet and Client shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of all Confidential Information and Data. All Data provided by Client for use with Votenet Service Packages will be managed and backed up periodically, using industry standard-grade security protocols and procedures. Upon notice to Votenet of any unauthorized breach of security, Votenet will take commercially reasonable steps to (i) notify Client of the breach; (ii) terminate access through the original password, issue a new password, and/or institute other security measures to eliminate the breach and restore security and all data contained therein; and (iii) take all other steps reasonably requested by Client to ensure the security of Client's Confidential Information.
12. **INSURANCE POLICIES:** Votenet shall, at its own cost and expense, obtain and maintain in full force and effect, liability insurance to cover Votenet's obligations under this Agreement and any applicable SOW,

including the following policies and limits of coverage:

- (a) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury, personal injury and property damage.
 - (b) Workers' Compensation Insurance in full compliance with all applicable state and federal laws and regulations and which covers all employees of Votenet.
13. **MARKETING:** Votenet reserves the right to display Client's logo on Votenet's website and reference Client's name in any publicity/marketing materials (including, without limitation, the Internet).
 14. **FORCE MAJEURE:** Votenet shall not be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from acts of God, terrorism, insurrection, civil disturbance, acts of the government in its sovereign capacity, fires, epidemics, interruptions in telecommunications, or internet services or network provider services, or any other occurrence beyond its reasonable control.
 15. **TAXES:** Unless Client is exempt and has provided evidence thereof in a form sufficient to Votenet, Client agrees to pay any applicable sales and use taxes and any other taxes on amounts due under the terms of this Agreement.
 16. **DISPUTE RESOLUTION:** The parties agree that any disputes arising hereunder or a SOW (other than a dispute arising from amounts due from Client to Votenet) shall be submitted to an independent mediator acceptable to both parties and then, in the event of a continuing disagreement hereunder, to binding arbitration which shall be governed by the Rules of the American Arbitration Association. Any mediation or arbitration shall occur in the District of Columbia. The parties further agree to equally share the expenses associated with such mediation and arbitration. The parties hereby waive any right to trial



by court and/or jury, provided, however, that nothing herein shall prevent or limit Votenet from seeking an injunction in a court of competent jurisdiction as provided for herein. Notwithstanding the foregoing, however, in the event of nonpayment of any amount due hereunder, Votenet may pursue any and all legal and equitable remedies available to it in a court of competent jurisdiction located within the District of Columbia.

17. **MISCELLANEOUS:** The Agreement, these Terms and Conditions, and any SOW shall serve as the complete agreement between the parties concerning the Services to be performed and may only be modified in a writing signed by an authorized representative of both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, such court may interpret any such provision to the fullest extent of the law with respect there to and the remaining provisions hereof shall remain in full force and effect, to be read and construed as if the void or unenforceable provisions were originally deleted or modified as provided by such court. Client shall reimburse Votenet for all expenses, including attorneys' and expert witness fees, court costs, and all other expenses incurred by Votenet in attempting to enforce any of its rights hereunder. Any notices, requests, demands, waivers, consents, approvals, confirmations or other communications (each, a "Notice") that is required hereunder shall be made in writing and be deemed given only if delivered personally, sent by facsimile (with transmission confirmed), by prepaid U.S. certified mail (return receipt requested), or by prepaid express courier, addressed to the parties at the addresses and/or fax numbers set forth in this Agreement. All Notices to Votenet, shall also be copied to The Gottlieb Law Firm, LLC, Attention: Michael S. Gottlieb, Esq., 9711 Washingtonian Blvd., Ste. 420, Gaithersburg, MD 20878, facsimile (301) 658-2114. Client may not sell, pledge, license, assign, or otherwise transfer, whether voluntarily, by operating of law or otherwise, any of its rights and obligations under this Agreement or any applicable SOW without the prior written consent of Votenet. This Agreement and any applicable SOW shall be binding upon the parties and their permitted successors and assigns. The waiver by either party of

the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent or other breach by that other party. This Agreement shall be governed by and construed in its entirety in accordance with the internal laws, and not the laws of conflict, of the District of Columbia. This Agreement shall not be construed more strictly against any party merely by virtue of the fact that the Agreement may have been drafted or prepared by such party or its counsel, it being recognized that all of the parties hereto have contributed substantially and materially to its preparation and that this Agreement has been the subject of negotiation between the parties and is a product of that negotiation.

18. **LICENSE:** (APPLICABLE ONLY FOR eBALLOT, SOFTWARE AND OTHER LICENSED SERVICES PROVIDED BY VOTENET). Votenet grants Client a non-exclusive, worldwide, non-transferable right and license(s) to utilize the software and services provided as part of the Services selected under this Agreement in accordance with the terms and conditions set forth herein. In no event shall Client transfer, sell, assign, duplicate, reverse engineer, decompile, or use for any other purpose besides that contemplated by the SOW any software, graphics, services and any information and data contained within any deliverable provided to Client under a SOW, regardless of form. Notwithstanding anything herein to the contrary, if Votenet customizes the contents of a Service Package to meet the Client's specifications, such modifications, additions or deletions shall not be deemed a work made for hire for purposes of the U.S. Copyright Act and nothing herein shall be construed to assign or transfer any rights in software code and documentation, in which Votenet retains all right, title, and interest subject to the license hereby granted.



JPPFF

Statement of Work

CONTRACT START DATE: June 16th, 2016

CONTRACT END DATE: June 15th, 2017

Type	Description	Price
Enterprise License	Three voting events with up to 1600 eligible voters	\$3163
Consulting	N/A	
Services	N/A	
TOTAL:		\$3163

CUSTOMER SUPPORT:

Support is available 9am-5pm Eastern Time at help@eballot.com.

****Note: Support is available for your organization and its staff. Assistance for individual voters should be directed to your organization first.**



Client Designees

The Client hereby designates the following individuals as authorized Client contacts for performance of the Services by Votenet:

PRIMARY CONTACT:

Primary Contact is authorized by the Client to approve purchase of eBallot custom work, modules and services. Approval must be given in writing. Only the Client's Primary Contact is authorized by Votenet to request ballot management and voter management adjustment services after ballot activation. Services rendered will be billed to the Client at the rates specified above in this Statement of Work.

Name:

Title / Organization:

Address:

City:

State:

Zip:

Telephone:

Email:

BILLING CONTACT:

All bills and billing inquires shall be submitted and/or made to the following individual.

Name:

Title / Organization:

Address:

City:

State:

Zip:

Telephone:

Email:



Payment Methods

Amount Due: \$3163

(Please select one)

Check

OR

Credit card (for amounts less than 5,000 USD)

Mastercard

Visa

AmEx

Card Number:

Exp Date:

Name on the Card:

Security Code:

Billing Address:

OR

Bank Wire (an additional charge of USD 50 shall be applied to the total price for the services indicated above)

PERMISSION TO USE CREDIT CARD:

Jacksonville Police and Fire Pension Fund

By:

Name:

Title:

DATE: