

~ SOFTWARE LICENSE AND SERVICE AGREEMENT ~
BETWEEN TALLY AND THE CUSTOMER

THIS COMPUTER SOFTWARE AND DATABASE SERVICE AGREEMENT is dated this 20th day of June, 2019

Jurisdiction/Client:	Panola County TX Elections
Contact:	Cheyenne Lampley
Address:	110 South Sycamore, Room 217a
City / State / ZIP:	Carthage, TX 75633
Telephone/E-mail:	(903) 693-0370, cheyenne.lampley@co.panola.tx.us
Number of Poll Pad Leases:	(21) Poll Pad Software Licenses + Equipment
Professional Services - Onsite Support	N/A
Total Amount for Initial License & setup:	\$0.00
Annual Support & Maintenance Fee:	N/A
Start & End Date of Agreement:	June 21, 2019 - December 31, 2019
Payment Terms: Annual Support & Maintenance	N/A

THIS IS A COMPUTER SOFTWARE LICENSE AND SERVICE AGREEMENT.

This Agreement shall be on the terms and conditions set forth herein which shall constitute the entire agreement of the parties.

1) ENGAGEMENT

- a) TALLY, LLC ("TALLY", "the Service Provider"), who assumed Election Administrators' contracts as part of the purchase of the company in 2016, will provide KNOWiNK Poll Pads to Panola County TX ("the Customer") to use in place of the Customer's EA Tablets and/or EA Pollbooks, and this Agreement will act as an addendum to any & all current Agreements between the Customer and Tally, LLC (dba "Elections Administrators").
- b) The Customer agrees to pay the sum of Zero dollars (\$0.00) per Poll Pad delivered with the KNOWiNK Poll Pad Software as set forth above.
- c) The Customer hereby agrees to engage the Service Provider to provide the Customer with services consisting of annual support, maintenance and software updates as the Customer & Service Provider may agree upon (the "Services"), and the Service Provider hereby agrees to provide said Services to the Customer.
- d) The Customer agrees to comply with the terms and conditions of this Agreement and agrees not to use the Software in any way beyond the scope of this Agreement.

2) TERM OF AGREEMENT

- a) The term of this Agreement will begin on the date of this Agreement and will continue in full force for the term period as specified above under "THE CUSTOMER" section of this Agreement and is subject to earlier termination as otherwise provided in this Agreement, with the said term being capable of extension by mutual written agreement of the parties.
- b) The Customer agrees to only use the software during the term of this Agreement and any renewals thereof.
- c) The Customer agrees to return the original and all existing copies of the Software with all hardware within thirty (30) days after the termination of this Agreement.

3) PERFORMANCE

- a) The Service Provider agrees to provide annual support and maintenance to Customer's electronic Poll Pads and provide software updates and new releases, as necessary.
- b) Service Provider agrees to physically or remotely answer a service call request within eight (8) hours of being called for service.
- c) The compensation for computer servicing and maintenance is limited to labor charges only. If parts or upgrades are needed to complete the annual support and maintenance at any given time the Customer shall have the right to purchase the part[s] or upgrade[s] needed from another source as recommended by Service Provider. The Limit of Liability and warranty of said part[s] or upgrade[s] would be the responsibility of Customer if purchased from an outside source and in no way should be put upon the Service Provider.

4) COMPENSATION

- a) For the Services provided by the Service Provider under this Agreement, the Customer will pay to the Service Provider compensation as stated under "THE CUSTOMER" section of this Agreement for the contract duration as specified.
- b) Customer shall pay compensation of service contract as agreed upon herein to Service Provider and as set forth in "THE CUSTOMER" section.

5) ADDITIONAL COMPENSATION AND TAXES

- a) The Customer will provide additional compensation for all computer hardware parts replaced or software modifications that are requested by the Customer. Customer will be invoiced for payment at the conclusion of the service call when performed.

- b) The Customer agrees to pay, upon demand, any and all sales, use, or other similar tax which may be assessed on the Service Provider by any governmental agency on any aspect of the transaction contemplated herein.

6) ASSIGNMENT

- a) The Service Provider may assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement without the prior written consent of the Customer.

7) CAPACITY/INDEPENDENT CONTRACTOR

- a) It is expressly agreed that the Service Provider is acting as an independent contractor and not as an employee in providing the Services hereunder. The Service Provider and the Customer acknowledge that this Agreement does not create a partnership or joint venture.

8) MODIFICATION OF AGREEMENT

- a) Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

9) TIME OF ESSENCE/BREACH

- a) The making of payments at the times they respectively become due shall be considered as the essence of the Agreement, and in case of failure so to do, or in case the Customer shall fail to make any other payment due to the Service Provider, the Service Provider shall have the right to cancel the Agreement, and to declare due the entire amount unpaid.
b) If after any default in this Agreement the Service Provider shall place any matter arising out of or concerning this agreement with an attorney, either to collect damages or in response to legal action brought by the Customer, the Customer shall pay all of the Service Provider's reasonable legal fees, including court costs.

10) ENTIRE AGREEMENT

- a) This Agreement is the complete and exclusive statement of the mutual understandings of the parties. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement other than was is expressly stated herein.

11) SEVERABILITY

- a) In the event any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

12) TERMINATION OF THIS AGREEMENT

- a) The Service Provider may terminate this Agreement at any time, should the Customer violate any of the provisions set forth herein regarding the software's use.

13) GOVERNING LAW

- a) It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed with and governed, to the exclusion of the law of any other forum, by the laws of the State of Texas. This Agreement is not binding until accepted by the Service Provider in writing by an officer at its office in St. Louis, Missouri.

14) ADDENDUM TO EQUIPMENT LEASE CONTRACT FOR LEASES TO STATE OR MUNICIPAL ENTITIES

Non-Appropriation of Funds. You believe that funds can and will be obtained in amounts sufficient to make all Lease Payments during the Lease term. You and your fiscal officer hereby covenant that you (the Lessee entity) and he/she will do all things within your and his/her power to obtain, maintain and properly request and pursue funds from which the lease payments and payments for other related charges, if any, may be made, specifically including in your annual budget requests amounts sufficient to make such payments for the full Lease term. You intend to make all such payments for the full Lease term if funds are legally available for that purpose. If your official governing body does not allot you funds for the succeeding fiscal year to continue such payments under the Lease, and you have no other available funds to continue making such payments under the Lease or to purchase, lease or rent other equipment or services to perform functions similar to those performed by the Equipment under this Lease, you may terminate the Lease at the end of the then current fiscal year, by giving ninety (90) days prior written notice to us, and enclosing therewith a sworn, notarized statement that the foregoing conditions exist.

IN WITNESS WHEREOF, the parties have duly executed this Service Agreement this 9th day of July, 2019

Customer Authorized Signature: LeeAnn Jones

Date: 7-9-19, 2019

Printed Name of Authorized Signatory and Title: LeeAnn Jones, County Judge

ACCEPTED BY TALLY

Authorized Representative: Sherrin