



# OSDV Public License Agreement

Rationale Document – **Draft Version 1.0**

OSDV Legal Department & Greenberg-Traurig Attys

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## Mission and Objectives

The mission of the Open Source Digital Voting Foundation (OSDV) is to help create and promote a transparent and non-proprietary digital democracy infrastructure. Our long-term goal is a sustainable public benefits organization with an endowment to continue the efforts to accomplish this mission. The Foundation’s flagship effort to accomplish its mission, the [TrustTheVote Project](#), is addressing a serious problem in voting technology: the lack of open election technology that is demonstrably worthy of the public’s trust. Our focus is on creating production-ready, federally and State certified, voting systems, developed via a collaborative, open volunteer community to ensure complete transparency, public review, comment and participation. The results of this work are intended to include publicly vetted, peer-reviewed proposed draft standards for building, verifying, and using digital voting technology — and freely available reference implementations in the form of production-ready systems for managing elections and conducting voting. We have created this rationale document and the attached draft open source software license to launch review and discussion as to the licensing terms best suited to accomplish our mission.

## Weak Copyleft

Our primary goal is broad adoption of the software we make available, balanced by the objective of avoiding our software being wholesale forked and appropriated into proprietary systems. Accordingly, we have started with the assumption that a “weak copyleft” license will best accomplish our goals. A “strong copyleft” license would be more likely to place the goals of free software licensing above our goal of broad adoption. Our constituencies, for the license terms we offer, include both government and quasi-governmental organizations and the private entities to which they contract their election fulfillment responsibilities. Any license we use, therefore, must be acceptable to private actors while maintaining a basic copyleft structure. Our assumptions about what will likely be acceptable to our constituencies is based on significant feedback we have received from our constituencies<sup>1</sup>.

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<sup>1</sup> “Constituencies” as the term is used here refers to our Stakeholder Community, a group comprised primarily of elections administrators, directors, and officials from states and counties across the country. This community also includes other elections domain experts from academia, non-profit special interest groups (e.g., *Rock The Vote*, *NAACP*, *Overseas Vote Foundation*, *Verified Voting*, *SAVE*, etc.), and other research experts (e.g., *Caltech/MIT VIP*, *AEI*, *Brookings Institute*, *Brennan Law Center*, etc). As of this writing, the Stakeholder Community (our “constituencies”) includes over 200 individuals. Our constituencies advise us on a wide range of matters, primarily regarding requirements and specifications for elections and voting technology, but administrative, procedural, and regulatory issues as well. This includes matters of licensing for adoption and deployment of any publicly owned, open source elections and voting software technology to be implemented on approved commodity hardware or specialized application-specific hardware, and subject to Federal and/or State certification requirements for use in binding public elections.



## License Proliferation and a One-Document Solution

We have considered whether existing open source licenses approved by the OSI would be effective to promulgate our software; however, the existing licenses lack certain material terms we have detailed below that are necessary to contracting in this context. *(Please note that our review included the NASA Open Source Agreement, which is to our knowledge the only OSI-approved open source license specifically written for government contracting.)* Commentators from the open source community have suggested that we supplement an existing copyleft license with these additional material terms; however, we see two obstacles to doing so. Many OSI-approved copyleft licenses prohibit additional restrictions to the terms of the existing copyleft license, or prohibit modification of the license. Second, even if the additional terms we require would not be considered additional restrictions or modifications in violation of a license, our constituencies have clearly advised us that a single contract vehicle is necessary to achieve our goals. Accordingly, we have chosen to base our license on the **Mozilla® Public License version 1.1**. (“MPL”). The MPL is a weak copyleft license that our constituencies advise us will be acceptable to private actors and has also been modified by others in the past.

## Multi-Licensing

We are currently considering offering the software under alternative licenses, which may include commercial licenses and strong copyleft licenses.

## Goal-Specific Changes

We have modified the MPL to address six initial issues that we see with distributing and deploying our software to government agencies and their contractors:

1. **Governing Law.** Most government procurement regulations require the application of local state law or federal law to the material terms and conditions of any contract. Most open source licenses lack law or venue selection provisions. Also, the application of particular law affects the interpretation of a license document as a whole, and therefore, we conclude, is necessarily a modification to all of its terms. Thus, to agree in a separate contract that a particular body of law applies to a license would be an additional restriction on that license.
2. **Venue.** Many state and federal procurement regulations require that disputes be resolved in particular venues. Please see our comments above regarding governing law.
3. **Government Rights.** We want to clarify that the software is “commercial software” and not subject to rules of federal procurement that may require an assignment of rights to the software when the government funds development. Such provisions are essential to maintain community control, and they are also part of most commercial software licenses where the licensee is not named.

4. **March-in Rights.** Some of the technology we are developing may rise to the level of patentability, which we intend to pursue with a “public assignment” of resulting patent rights. Since some portion of our R&D work may be subject to funding from federal government grants, we will need to address the issue of “march-in rights” by the federal government.
5. **Sovereign Immunity.** Contracting with states may require a waiver of sovereign immunity to make the license agreements enforceable. It is customary in government contracting to allow a party to seek redress for violation of the agreement by the government.
6. **Deployment.** In order to make our voting system framework deployable for legal use in public elections, we will seek federal or state certifications where applicable. Thus, it may be necessary to incorporate additional terms into licenses for *actual deployment* of the software, as opposed to licenses for further development.

## Harmonization Changes

We are mindful that the Mozilla Foundation has recently announced (*as of this writing*) an intention to update the MPL. Rather than wait until that process has finished, we intend to harmonize our license with any revised MPL as that may be feasible and consistent with our goals. Some of the following changes may or may not be part of the revised MPL, and we express no opinion on that point. These changes are motivated by feedback from our constituencies regarding perceived issues with the MPL that might reduce the possibility of adoption of our software.

1. **Notice Requirements.** We feel the notice requirements for open source licenses have become more flexible and nuanced since the writing of MPL 1.1 (*including the revised notice requirements in GPL version 3 versus GPL version 2*). Also, we are mindful that effective and useful notice **is** crucial in a context where the public interest is at stake. We therefore tried to make the notice requirements more flexible, and followed the model of the notice requirements of the Apache 2.0 License.
2. **Intellectual Property Matters.** We felt the onus for making representations regarding third party intellectual property rights is not in keeping with our public mission or the latest best practices in open source licensing. We did not feel it appropriate that a license could be terminated for failure to meet such a requirement, where the public interest was at stake. Thus, we eased the burden by requiring only actual knowledge by each contributor that it has sufficient rights to grant the rights conveyed by the license.

## Specific Changes

Sections that have not changed (*except for numbering*) are not listed below.

- **Name and Introduction.** Changed the name to OSDV Public License Agreement and included an introduction that describes that this is not merely a license but a binding contractual agreement.
- **2.1(b).** We added “import” because that right was made part of U.S. Patent law under the TRIPS Agreement.
- **3.1 Application of License.** Moved requirement of including a copy of the license to Section 3.3 “Notice Requirements.”
- **3.3 Notice Requirements.** We modified notice requirements to make them similar to the notice requirements of the [Apache 2.0 License](#). For ease of reading, we combined the old Description of Modifications with the old Required Notices sections.
- **3.4 Intellectual Property Matters.** We *eased* the burden by requiring only actual knowledge by each contributor that it has sufficient rights to grant the rights conveyed by the license.
- **3.5 Application of Additional Terms.** As noted above, we moved the required notices to Section 3.3. We also allowed additional conditions specifically to address national security or public interest concerns as well as state and federal procurement regulations. This is an important aspect of the unique target audience for this license – federal, state, county, and/or municipal elections administration agencies.
- **4. Inability to Comply Due to Statute or Regulation.** Again, we want to allow government entities to be able to address national security and public interest concerns without being in violation of this license.
- **6.1 New Versions.** Changed the name from Netscape to OSDV.
- **6.2 Effect of New Versions.** Changed the name from Netscape to OSDV.
- **6.3 Derivative Works.** Changed the names from Netscape and Mozilla to OSDV.
- **8.2(b).** We wanted to remove the copyright license termination provision that has prevented some entities from adopting the original MPL.
- **10. U.S. government and State end users.** We wanted to clarify the applicability of FAR and DFAR regulations and also require government entities to waive sovereign immunity as discussed above.

- **11. Miscellaneous.** This section provides specific choice of law and choice of venue provisions for state and federal entities. It also allows state and federal entities to alter the choice of law and venue provisions as necessary to comply with regulations. This, too, is an important provision for our intended licensees.
- **13. Multiple-licensed code.** Changed the name from MPL to OSDV Public License.
- **Exhibit A.** Changed the name from Mozilla to OSDV. Added explanatory notes and license block text to enable search-retrieval in files.

### Process Going Forward

The license itself is a separate document available on our Project Wiki by simply copying and pasting this link: (*or clicking if this version of the document link is active*), which is intended to shorten the fully qualified URL Path for purposes of display and manual rekeying (if necessary). Before reviewing that document together with this document, let us explain our planned process for review and comment.

The license, together with this Rationale document is being released as a TrustTheVote Project Stakeholder Community RFC (“*Request for Comment*”). It is being made available to the Stakeholders in advance of the general public, and to that secondary audience within two (2) business days vis-à-vis the TrustTheVote Project (“TTV”) blog (announcement at: [www.trustthevote.org](http://www.trustthevote.org); search for “*OSDV Public License Draft Request for Comment*”). The comment period runs 30 days from the date of the blog post announcing the License draft RFC.

The TTV Project and OSDV Foundation Legal Department is accepting comments from anyone interested in contributing thoughtful remarks, advice, suggestions, or proposed changes to the License draft in any of the following manners:

1. By comment response to the blog post itself;
2. By comment on the Project Wiki License page Discussion at [wiki.trustthevote.org](http://wiki.trustthevote.org); or
3. By eMail to [legal@osdv.org](mailto:legal@osdv.org)

Our legal team will compile all of the comments, and then review them for consideration in revising the draft license for the final version 1.0. Any decision to incorporate any suggested changes will reside solely with the OSDV legal team at their discretion and professional judgment. However, it is our sincere desire for public review of and comment on this license agreement. We’re particularly interested in the sufficiency of terms and conditions for States, Counties, and Municipalities as legal entities desiring to license the OSDV Foundation TrustTheVote Project elections technology framework software.

We look forward to your feedback.

*The TrustTheVote Project Core Team & Legal Team*

