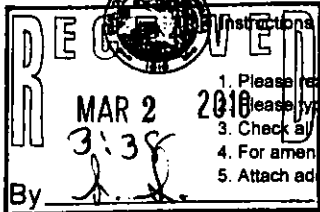


EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
 2. Please type all information.
 3. Check all boxes that apply.
 4. For amendments / renewals, attach original contract.
 5. Attach additional pages if necessary.



1. EDS Number:
D2-10-10

2. Date prepared:
2/23/2010

3. CONTRACTS & LEASES

- ☒ Professional/Personal Services ☐ Contract for procured Services
☐ Grant ☐ Maintenance
☐ Lease ☒ License Agreement
☐ Attorney ☐ Amendment#
☐ MOU ☐ Renewal #
☐ QPA ☐ Other

FISCAL INFORMATION

4. Account Number:
80300-19000.531010
5. Account Name:
IEC Elec Assist Comm Fund
6. Total amount this action:
\$48,338.00
7. New contract total:
48,335.60
8. Revenue generated this action:
\$0.00
9. Revenue generated total contract:
\$0.00
10. New total amount for each fiscal year:
- | | |
|-----------|-------------|
| Year 2010 | \$45,236.00 |
| Year 2011 | \$3,099.60 |
| Year | \$ |
| Year | \$ |

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year):
2/23/2010
12. To (month, day, year):
8/30/2011
13. Method of source selection: ☒ Bid/Quotation ☐ Emergency ☐ Negotiated
☐ RFP# ☐ Other (specify)

35. Will the attached document involve data processing or telecommunications systems(s)? ☒ Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
42 U.S.C. 15481 ET SEQ., IC 3-6-3-7.2, IC 3-6-4.2

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)

Purchase of license for "Clarity Training" software from vendor to assist the state in training poll workers to implement Indiana's state plan adopted pursuant to the federal Help America Vote Act of 2002, 42 U.S.C. 15481 et seq. Vendor will also upload state content into software and train state on its use of software. Vendor will also host and support of the software with state content.

38. Justification of vendor selection and determination of price reasonableness:
Three bids were solicited and this vendor was selected as the superior bid per specifications

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval

41. Date Approved

42. Budget agency approval

43. Date Approved

44. Attorney General's Office approval

45. Date Approved

46. Agency representative receiving from AG

47. Date Approved

AGENCY INFORMATION

14. Name of agency:
Election Board

15. Requisition Number:

16. Address: Indiana Election Commission
302 W WASHINGTON ST RM E204
INDIANAPOLIS, IN 46204

AGENCY CONTACT INFORMATION

17. Name:
Dale Simmons

18. Telephone #:
317/232-3928

19. E-mail address:
dsimmons@iec.in.gov

COURIER INFORMATION

20. Name:
Dale Simmons

21. Telephone #:
317-232-3928

22. E-mail address:
dsimmons@iec.in.gov

VENDOR INFORMATION

23. Vendor ID # 0000288559

24. Name:
SOE SOFTWARE CORP

25. Telephone #:
813-865-7548

26. Address: 5426 BAY CENTER DR STE 525
TAMPA, FL 33609

27. E-mail address: bmurphy@soesoftware.com

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) ☒ Yes ☐ No

29. Primary Vendor: M/WBE
Minority: ☐ Yes ☒ No
Women: ☐ Yes ☒ No

30. If yes, list the %:
Minority: %
Women: %

31. Sub Vendor: M/WBE
Minority: ☐ Yes ☒ No
Women: ☐ Yes ☒ No

32. If yes, list the %:
Minority: %
Women: %

33. Is there Renewal Language in the document? ☒ Yes ☐ No

34. Is there a "Termination for Convenience" clause in the document? ☒ Yes ☐ No

RECEIVED

MAR 12 2010

OAG-ADVISORY

ADDENDUM

This Addendum is entered into by and between the State of Indiana, by and through the Indiana Secretary of State and the Indiana Election Division ("the State") and the entity designated as "Contractor", below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the "Form Contract"). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document. Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

Contractor Name: SOE Software Corporation

Contractor Address:

5426 Bay Center Drive
Suite 525
Tampa, Florida 33609

Title of Form Contract: CLARITY ELECTION SUITE HOSTING AND SUPPORT AGREEMENT

1. Form Contract/Duties of Contractor

Attached Form Contract consists of 16 pages with terms on both sides.

2. Term

The contract term begins once the contract is fully executed by all parties hereto (the "Effective Date") and ends June 30, 2011.

3. Consideration

Total consideration for term of the Contract Form Contract is Forty Eight Thousand Three Hundred Thirty Six Dollars (\$48,336).

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees
- H. Any provision modifying the statute of limitations provided by Indiana statute.

- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20
- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC 5-14-3-3.5
- L. Any provision giving the Form Contract precedence over this Addendum

The following terms and conditions are incorporated into and made a part of the Form Contract:

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this agreement. They shall make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of the Form Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under the Form Contract and shall not be made to more than one party.

6. Audits

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

7. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Addendum on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Addendum and the Form Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that the Form Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Addendum and the Form Contract shall be reviewed by the State and the Contractor to determine whether the provisions of either require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate the Form Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC 4-2-6 and IC 4-2-7.
- C. The Contractor certifies by signing this Addendum, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or the Form Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Addendum and the Form Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on

the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination of the Agreement and denial of further work with the State.
- G. The Contractor hereby affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC 24-5-12 [Telephone Solicitations]; or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment

All services provided by the Contractor under the Form Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with the Form Contract or performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected information. The Contractor covenants promises and assures that data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above,

in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

12. Continuity of Services

- A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
 - 1. Furnish phase-in training, and
 - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
 - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
 - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

13. Debarment and Suspension

- A. The Contractor certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into the Form Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of the Form Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under the Form Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. The Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the sub-contractor for work to be performed under this Contract.

14. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of the Form Contract, then the Contractor may cancel and terminate the Form Contract and institute the appropriate measures to collect all monies due up to and including the date of termination.

15. Disputes

- A. Should any disputes arise with respect to the Form Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Form Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
 1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
 2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Form Contract will not be cause for Contractor to terminate the Form Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Form Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in the Form Contract is in excess of \$25,000.00, the Contractor hereby further agrees that the Form Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement; the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Force Majeure

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

18. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Form Contract, the Form Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

19. Governing Laws

This Addendum and the Form Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

20. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of the Contract. The State shall not provide such indemnification to the Contractor.

21. Independent Contractor

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees

22. Information Technology Enterprise Architecture Requirements

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate the Form Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

23. Insurance

The Contractor shall secure and keep in force during the term of this Contract, the insurance coverage described in paragraph 11 of the Form Contract. The Contractor shall provide proof of such insurance coverage by tendering to the State a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State agency prior to the commencement of this Contract.

24. Licensing Standards

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

25. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

26. Minority and Women's Business Enterprises Compliance

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan or subcontractor commitment that may have been submitted to the State. The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
----------------	--------------	---------------------	--	-------------------------	---------------

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

27. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

28. Notices

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

Notices to the State shall be sent to:

J. Bradley King and Pamela Potesta
Co-Directors of the Indiana Election Division
302 West Washington St., Suite E 204
Indianapolis, IN 46204

Scott R. Bowers
Deputy Secretary of State & Chief of Staff
Indiana Secretary of State Todd Rokita
Statehouse, Room 201
200 W. Washington Street

Indianapolis, Indiana 46204

A. Notices to the Contractor shall be sent to:

Marc Fratello
S.O.E. Software
5426 Bay Center Drive
Suite 525
Tampa, FL 33609

B. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

29. Order of Precedence

Any inconsistency or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence to this Addendum.

30. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

31. Payments

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Form Contract except as permitted by IC 4-13-2-20.
- B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

32. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

33. Renewal Option

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any provision for automatic renewal is void.

34. Security and Privacy of Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

35. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this contract.

36. Substantial Performance

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

37. Taxes

The State is exempt from state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

38. Termination for Convenience

The Form Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination.

The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

39. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor fails to:
 - 1. Correct or cure any breach of this contract;
 - 2. Deliver the supplies or perform the services within the time specified in this contract or any extension;
 - 3. Make progress so as to endanger performance of this contract; or
 - 4. Perform any of the other provisions of this contract.
- B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

40. Travel

No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-State travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

41. Waiver of Rights

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

42. Work Standards

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work

product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

43. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as contained in the 2009 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are identified by name below:

Paragraph 17 titled "Employment Option" was omitted.

Paragraph 24 titled "Insurance" was modified

Former paragraph 25 titled "Key Person(s)" was omitted

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

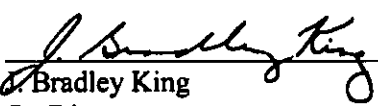
SOE Software Corporation

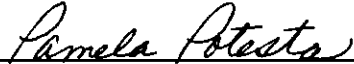
By: 
Printed Name: MARC J. FRATELLO
Title: CEO
Date: 2/22/10

Indiana Secretary of State:


Todd Rokita
Indiana Secretary of State
Date: _____

Indiana Election Division:


Bradley King
Co-Director
Date: 2/27/2010


Pamela Potesta
Co-Director
Date: 3-2-10

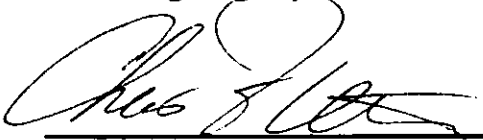
Indiana Office of Technology

By: 
Gerry Weaver, Chief Information Officer
Date: 3-Mar-2010

Department of Administration

 FOR
Mark W. Everson, Commissioner
Date: 3/8/2010

State Budget Agency


Christopher A. Ruhl, Director
Date: 3/9/10

APPROVED as to Form and Legality: Office of the Attorney General

 FOR
Greg Zoeller, Attorney General
Date: 3-12-10

CLARITY ELECTION SUITE HOSTING AND SUPPORT AGREEMENT

This Clarity Election Suite Hosting Agreement ("Agreement") is made and entered into by and between the State of Indiana, by and through the Indiana Secretary of State and the Indiana Election Division (hereinafter "State") and **SOE Software Corporation**, (hereinafter "Contractor").

WHEREAS, State desires to license Contractor's web-based Online Poll Worker Training platform, know as Clarity TRAINING and the associated documentation and other services as outlined herein.

NOW, THEREFORE, in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties, by their authorized signatures below, hereby agree as follows:

1. Definitions

- 1.1. The term "Agreement" shall mean this Agreement and all Exhibits, Attachments and the Addendum attached hereto as well as any future Amendment thereof.
- 1.2. The term "Customer Data" shall mean the content and characteristics within the service that are modified through the use of the Service features by the authorized Account users of the Service.
- 1.3. The term "Documentation" shall mean all documentation and/or other materials (including manuals, instructions, training materials, specifications, flow charts, logic diagrams, etc) relating to the use, operation and functionality of the Service.
- 1.4. The "Effective Date" is the date shown at the end of this Agreement and is the date when the parties intend the Service to commence.
- 1.5. The term "Services" shall have the meaning set forth in Section 2. When the term "Services" is used alone herein, it shall also be deemed to include the term "Hosting Services" as that term is further described in Section 2.
- 1.6. The term "Service Level Agreement" shall mean Exhibit C, which sets forth the service levels at which identified portions of the Service are to be provided by Contractor and sets forth certain remedies for State in the event that Contractor does not attain such service levels.
- 1.7. The term "Term" shall mean the period of time this Agreement is in effect (absent any earlier termination as provided herein) beginning on the Effective Date and ending June 30, 2011, subject to extension as provided herein.

2. Services

- 2.1. Services Scope - Contractor agrees to provide to State services for hosting the Software and for hosting other software required for the operation of the Software (the "Clarity Election Suite software,"). Contractor shall permit State to, on a 24 x 7 basis, remotely access and use the Software are referred to as the "Hosting Services". Contractor's performance of the Service shall be pursuant to the terms and conditions set forth herein and also must conform to State's standard technical support requirements set forth in Sec. 2.2 hereof. Contractor shall give a password to State allowing it to access Contractor's site. Contractor shall serve as the single point of contact for all Services and Hosting Services issues and shall be solely responsible for coordinating and ensuring the resolution of any problems involving the Services and Hosting Services in a prompt and timely fashion.
- 2.2. Technical Support - As part of the Hosting Services, Contractor shall provide the support set forth in Exhibit C, the Hosting Environment Agreement, attached hereto and incorporated in this Agreement by this reference, and understands and agrees that State shall be entitled to the remedies stated therein.

3. Grant of License

- 3.1 Contractor grants State and its operating divisions a non-exclusive license to use the Hosted Software in machine readable form from the Effective Date of this Agreement through December 31, 2010. Contractor also grants State a non-exclusive license to use the Documentation from the Effective Date through December 31, 2010.
- 3.2 Software upgrades are full version releases (e.g. version 4.x to version 5.0) and are included as part of the Annual Software Assurance and Support Agreement provided by Contractor to State.
- 3.3 Software updates (e.g. version 4.1 to version 4.2), including bug fix builds, are included as part of the Service provided by Contractor to State provided that State is current on all monies due to Contractor.

4. Obligations

- 4.1. Implementation - As a condition to Contractor's obligation to provide the Hosting Services, both parties shall be responsible for fulfillment of all of their obligations under the Agreement and completion of the project implementation plan. The project implementation plan will be jointly developed by Contractor and State.
- 4.2. Technical Environment - Contractor shall provide the Services and other products, as prescribed in Exhibit B, (or similar services and products that provide a similar level of service), and will also provide any and all equipment, to provide the Hosting Services (the "Hosting Environment") pursuant to Exhibit B. Contractor shall be responsible for the costs associated with obtaining and maintaining the Hosting Environment. Contractor also shall pay the costs of the services or other products necessary to permit State to transmit data to and receive data from the Hosting Environment; however State is responsible for the costs of its own communication lines. Contractor shall maintain and insure the server and shall indemnify State for any damage, loss or injury to its equipment (other than normal wear and tear).
- 4.3. Data Transmission - Should State require a special data transmission format to the Software, such as SSL, the format and any additional costs and implementation timeline effects will be agreed upon, in writing, between Contractor and State as an amendment to this Agreement.
- 4.4. Coordination - Each party shall designate a contact to coordinate day-to-day communication with the other party.

5. Term, Termination, and Transition Assistance

- 5.1. The initial term of this Agreement commencing on the Effective Date and end June 30, 2011 (the "Initial Term").
- 5.2. Renewal Term - State may exercise an option to renew this Agreement, at terms (pricing as well as length of time) acceptable to both Contractor and State beyond the Initial Term (the "Renewal Term"), at any time prior to the end of the Initial Term by giving notice thereof in writing to Contractor.
- 5.3. Termination for Material Breach - A party may terminate this Agreement if the other party commits a material breach or default (including nonpayment of fees) and fails to remedy such breach or default within thirty (30) days after written notice of the same from the other party. In the event of termination due to a breach or default by State, no refunds or credits will be due to State. In the event of termination due to a breach or default by Contractor, State will receive a refund of the fees for the remaining Annual Assurance Plan Payment.
- 5.4. Effect of Termination or Expiration - Upon the termination or expiration of this Agreement, all payment obligations of one party to the other under this Agreement incurred through the date of termination or expiration will immediately become due. Upon notification by State, and at State's sole discretion, Contractor shall either return all State's Data within thirty (30) days of the date of termination or expiration, or shall commence implementation of the Transition Plan as set forth below (Section 5.7).
- 5.5. Termination of Agreement Upon Bankruptcy - Either party may terminate this Agreement upon written notice to the other party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- 5.6. Termination of Agreement Upon Service Level Failures - State may terminate this Agreement upon thirty (30) days written notice to Contractor upon the failure of Contractor to provide technical and customer support constituting a material breach of this Agreement in accordance with the service levels outlined in the Service Level Agreement (Exhibit D). In the event of termination of this Agreement due to a material breach of this Agreement pursuant to this Section 5.6, State shall receive a refund of the fees for the remaining Annual Assurance Plan Payment.
- 5.7. Transition Services - The parties acknowledge that, prior to the termination or expiration of this Agreement, State may engage a successor vendor to perform such services or bring such services in-house. From the time that State notifies Contractor to whom State plans to migrate the services, Contractor agrees to cooperate with State (and, if applicable, the successor vendor) to effect an orderly and efficient transition. Within sixty (60) calendar days after termination or expiration of this Agreement by either party, State shall pay Contractor all undisputed amounts due and owing as of the termination of the Agreement and shall immediately cease any and all use of the Service and materials or services provided by Contractor pursuant to this Agreement. At such time as State reasonably determines necessary to effect the transition, Contractor shall provide in electronic format a copy of all State Data, without limitation, residing on Contractor's systems that is necessary for an effective transition. Cooperation by Contractor may include, without limitation, continuing to host State images, making qualified service personnel available for questions and consultations, transferring contact numbers or URL addresses, and providing any required technical assistance and cooperation to State as State may from time to time reasonably request. Such transition period will not extend past six (6) months from the termination or expiration of this Agreement, unless otherwise negotiated. Within thirty (30) days after the transition period ends, upon written request, each party shall deliver to the other party all copies of the Confidential Information of the other party in every form that such party continues to hold. On a party's written request, the other party shall certify, in writing, to the requesting party that the other party has performed the foregoing delivery or destruction.

6. Fees Price - Payment

- 6.1. Fees - State shall pay to Contractor the fees as prescribed in Exhibit A, attached to and incorporated in this Agreement by reference. If State and Contractor jointly agree in writing to provide for additional services for the remainder of the Initial Term or jointly agree in writing to further extend the Initial Term, such writing shall set forth the fees for the additional services or for services during the extended term(s). Maximum compensation payable by State to Contractor shall not exceed the fees prescribed in Attachment A during the Initial Term.
- 6.2. Payment Terms - Contractor shall submit invoices to State on an as incurred basis. Payment on undisputed amounts shall be due within thirty (30) days after State's receipt of Contractor's invoice. State shall pay interest at a rate of 1.5% per month on any overdue invoices.
- 6.3. Taxes - State shall provide evidence of its status as a tax exempt entity.

7. Contractor Representations and Warranties.

In addition to the representations and warranties in the Agreement:

- 7.1. General Contractor Warranties - Contractor warrants that (a) the Service provided hereunder and the underlying technology used by Contractor in performing the Service is owned free and clear of any encumbrances or is in the public domain; (b) Contractor has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (c) there are no outstanding assignments, grants, licenses, encumbrances, obligations or agreements (whether written, oral or implied) that are inconsistent with this Agreement; (d) Contractor's compliance with the terms and conditions of this Agreement shall not violate any federal, state or local laws, regulations or ordinances nor shall it violate any third party agreements; (e) there is no claim, litigation or proceeding pending or threatened against Contractor with respect to the Service or its underlying technology or any component thereof alleging infringement or misappropriation of any patent, trademark, copyright or any trade secret or other proprietary right of any person; and (f) the Service does not infringe or misappropriate in any respect upon any patent, trademark, copyright or any trade secret or other proprietary right of any person or entity
- 7.2. Authority and Performance - Contractor represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations hereunder, and the performance of its obligations hereunder will not cause a breach of any agreements between Contractor and any third parties, including all vendors critical to its performance obligations hereunder.
- 7.3. Service Level Commitment - Contractor warrants that it will perform its services in accordance with Contractor's service level commitment as set forth in Exhibit D.

8. State Representations and Warranties.

In addition to the representations and warranties in the Agreement:

- 8.1. Authority and Performance. State represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations hereunder, and the performance of its obligations hereunder will not cause a breach of any agreements between State and any third parties.

9. Intellectual Property

- 9.1. State Data - State will own all State Data. Contractor will not sell, license or in any way distribute the State Data to any person or entity, and shall not permit the State Data to be used in any way (including any aggregation or summarized results of State Data) by any person or entity other than State without State's express written permission.
- 9.2. Aggregated Data - Notwithstanding the preceding section 9.1, Contractor may include in its benchmark/comparison studies performance data about the Services provided hereunder such as total number of users, overall customer count, average amount of disk usage, etc., so long as such

performance data is aggregated with the performance data of Contractor's other customers so that State's information cannot be separately identified.

- 9.3. **Contractor Technology** - The Service and any technology, computer programs or computer codes developed, created or produced by or on behalf of Contractor existing as of the Effective Date of this Agreement, and any Contractor documentation relating thereto, are, as between Contractor and State, the sole property of Contractor. To the extent that, during the term of this Agreement, State pays in whole or in part for, or provides development personnel to work on, technical or functional developments related to the Service, Contractor agrees to incorporate such developments into the Service provided for State. Contractor shall have full right, title and interest in the developments and may incorporate the developments into the services made available to Contractor's other customers.
- 9.4. **No Rights in Other Party's Intellectual Property** - Neither party will have any rights in or with respect to the other party's property described in the preceding Section 9.1 and 9.2, other as expressly set forth in this Agreement and the exhibits hereto.

10. Indemnification

- 10.1. Contractor shall indemnify, defend, and hold harmless State, its respective employees, directors, shareholders and agents, from and against any expense, cost, damage, loss, fine, penalty, liability or judgment (including attorneys' fees and costs) suffered or incurred by State as a result of a third party claim, demand, action, arbitration, suit or similar proceeding (hereafter "Claim") related to Contractor's actual or alleged infringement of a patent, copyright, trade secret or other proprietary right of any such third party. Contractor's indemnification obligation is subject to: (i) State providing Contractor with prompt written notice of any Claim, (ii) Contractor having sole control of the defense and all negotiations for settlement or compromise thereof and (iii) State reasonably cooperating, at Contractor's expense, in the defense of such Claim. Failure to provide prompt written notice shall not abrogate or diminish Contractor's obligations under this Section if Contractor has or receives knowledge of the existence of such Claim by any other means or if such failure does not materially prejudice Contractor's ability to defend the same. Contractor agrees to pay all settlements entered into by Contractor, judgments finally awarded against State, and all attorneys' fees and expenses for counsel hired by Contractor. State may elect to participate in any such action with counsel of its own choice and at its own expense. In the event State is precluded by a court of competent jurisdiction from using the Service as a result of Contractor's infringement of any such patent, copyright, trade secret or other proprietary right of such third party, Contractor shall do one of the following (the election of which option to pursue being in Contractor's reasonable discretion):

- a. obtain the right for State to use the Service; or
- b. replace or modify the Service so that it no longer infringes but maintains substantially the same functionality and performance; or
- c. if neither of the foregoing is, in Contractor's reasonable opinion, commercially reasonable: terminate this Agreement with respect to the Service and promptly reimburse to State all unused prepaid fees paid by State.

- 10.2 **Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations for work to be done pursuant to this Agreement.**

11. Limitation of Liability

- 11.1. **CONTRACTOR'S AND ITS THIRD PARTY VENDORS' AGGREGATE LIABILITY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEE PAID BY STATE TO CONTRACTOR FOR USE OF THE SERVICES.**

12. Insurance

12.1. During the Term, Contractor shall keep in full force and effect, policies of insurance meeting or exceeding the following specifications:

- a) Commercial General Liability insurance, with coverage including premises/operations, contractual (including without limitation coverage for all indemnities herein), personal and advertising injury, and products/completed operations, with aggregate coverage limits of not less than one million dollars (\$1,000,000).
- b) Workers' Compensation insurance, as required by law, and Employer's Liability insurance with limits of liability of not less than one hundred thousand dollars (\$100,000) per accident or disease and five hundred thousand dollars (\$500,000) aggregate by disease.

Such insurance shall be purchased from companies having a rating of A-VII or better in the current Best's Insurance Reports published by A. M. Best Company. Policies of insurance shall provide that they will not be canceled or materially changed without at least thirty (30) days prior written notice to State. Contractor shall, at State's request, provide a Certificate of Insurance.

14. Other Provisions

- 14.1 **Notice** - All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class, certified mail return receipt requested, or the first business day after being sent by a reputable overnight delivery service. The addresses for notices for Contractor and State are set forth on the attached Addendum, paragraph number 29. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section 14.1.
- 14.2 **Benefit of Successors and Assignees** - This Agreement and all of the terms and conditions hereof shall be binding upon and inure to the benefit of Contractor and State and their respective successors, transferees, or assignees. Any terms of this Agreement containing a reference to State, Contractor, or a party hereto shall apply with equal effect to any such successor, assignee, transferee of the party in question.
- 14.3 **Assignment** - State may not assign this Agreement or convey any rights or obligations under this Agreement to a third party. Contractor may not assign this Agreement or convey any rights or obligations under this Agreement to a third party; provided however, Contractor may assign this Agreement to a purchaser of all or substantially all of its assets, a subsidiary or business unit, or a successor by merger or operation of law so long as such purchaser, subsidiary, business unit or successor agrees to be bound by the terms of this Agreement.
- 14.4 **Relationship** - The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or agents. Nothing in this Agreement makes Contractor a sole supplier to State, grants any exclusive rights to Contractor, or prohibits State from obtaining similar or related services from other parties.
- 14.5 **Severability** - A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.
- 14.6 **Headings Gender, Number and Language of Inclusion** - Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including, but not limited to".
- 14.7 **Publicity** - Contractor may not use State's trade names, trademarks, logos, service marks, or other proprietary marks in any manner, including but not limited to advertising, publicity, user lists, or guest

lists or websites, unless Contractor has received prior consent from an authorized representative of State to do so, which consent may not be unreasonably withheld by State.

- 14.8 **Data Privacy** - Contractor may use State's contact information, including names, phone numbers, and e-mail addresses only in connection with the performance of its obligations hereunder.
- 14.9 **Remedies** - The rights and remedies of State set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or equity. Notwithstanding anything to the contrary in this Agreement, in the event of an alleged breach of this Agreement by State, Contractor shall not use any type of electronic means to prevent or interfere with State's use of the Software without first obtaining a valid court order authorizing the use of such electronic means.
- 14.10 **Entire Understanding** - This Agreement, its Exhibits, Addenda, Attachments and Amendments constitute the entire agreement between the parties for the Software licensed hereunder, and will become binding when signed by both parties. There are no understandings, agreements or representations not specified herein with respect to Software licensed hereunder. This Agreement may not be modified, except by a written amendment signed by duly authorized representatives of both parties.
- 14.11 **Force Majeure** - Any delay or failure of performance of either party to this Agreement shall not constitute a breach of the Agreement or give rise to any claims for damages, if and to the extent that such delay or failure is caused by an occurrence beyond the reasonable control of the party affected, including acts of governmental authorities, acts of God, material shortages, wars, riots, rebellions, sabotage, fire, explosions, accidents, floods, or strikes or lockouts of third parties. In the event one of the parties intends to invoke this provision, that party shall (i) promptly notify the other party of the cause beyond its reasonable control, the expected duration thereof, and the anticipated effect of such cause on its ability to perform its obligations under this Agreement, and (ii) shall make reasonable efforts to mitigate any such effects.
- 14.12 **No Waiver** - Except as expressly set forth in this Agreement, the failure of either party at any time to require performance of any provision of this Agreement or to exercise any right provided for herein shall not be deemed a waiver of such provision or right unless made in writing and executed by the party waiving such performance or right. No waiver by either party of any breach of any provision of this Agreement or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision or right or a waiver of the provision or right itself.
- 14.13 **Survival** - All representations, warranties, indemnities and obligations of confidentiality expressly set forth herein shall survive the termination of this Agreement.

15. Effective Date

The Effective Date, when the parties intend for the Service to commence, is the date signed by Contractor and State on the attached Addendum.

16. Exhibits

The following Exhibits are attached hereto and deemed part of this Agreement:

- Exhibit A Fees
- Exhibit B Hosted Environment – Annual Software Assurance and Support
- Exhibit C Technical Support Attachment
- Exhibit D Service Level Agreement
- Exhibit E Statement of Work

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by authorized personnel who, on the date of such signing, have the necessary and appropriate corporate authority to bind his or her respective organization hereunder.

WITNESS:

Contractor: SOE SOFTWARE CORPORATION

Print Name: _____

Print Name: _____

Signed By: _____

Signed By: _____

Date: _____

Title: _____

Date: _____

WITNESS:

State: Indiana Secretary of State, Election Division

Print Name: _____

Print Name: _____

Signed By: _____

Signed By: _____

Date: _____

Date: _____

EXHIBIT A

FEES

PRICING Overview

The following sets forth a payment schedule SOE Software's web-based Training platform, Clarity TRAINING.

PRICING for Indiana Office of the Secretary of State, Election Division

Contractor shall provide the activities, services and deliverables described in this Agreement for a fee not to exceed the sum of Forty Eight Thousand Three Hundred Thirty Six Dollars (\$48,336) based upon the following payment schedule.

Payment Schedule	
Project Implementation Plan	\$4,000
Set-up, upload and training for Clarity Training Platform- Estimated Delivery March 1, 2010	\$14,670
Software License Fee*	\$20,000
Monthly Hosting and Technical Support Fee March, 2010	\$966.60
Monthly Hosting and Technical Support Fee April, 2010	\$966.60
Monthly Hosting and Technical Support Fee May, 2010	\$966.60
Monthly Hosting and Technical Support Fee June, 2010	\$966.60
Monthly Hosting and Technical Support Fee July, 2010	\$966.60
Monthly Hosting and Technical Support Fee August, 2010	\$966.60
Monthly Hosting and Technical Support Fee September, 2010	\$966.60
Monthly Hosting and Technical Support Fee October, 2010	\$966.60
Monthly Hosting and Technical Support Fee November, 2010	\$966.60
Monthly Hosting and Technical Support Fee December, 2010	\$966.60
Grand Total	\$48,336

*License Fee Payable upon delivery of Set-up, upload and training for Clarity Training Platform

Payment Terms

As specified herein and the attached Addendum.

EXHIBIT B
HOSTED ENVIRONMENT
ANNUAL SOFTWARE ASSURANCE AND SUPPORT

1. Software Assurance Services - Operations

The software assurance services (the "Assurance") provided by Contractor to the State hereunder are in consideration of the charges described in Exhibit A, unless otherwise specified herein. These services shall commence on the Effective Date through December 31, 2010 unless this Agreement is amended by the parties to provide otherwise. The Assurance shall consist of:

- 1.1 All day to day operations of hosted products will be managed by Contractor staff or its agents, including required operating system and system utility administrative tasks and system back up and recovery. This includes management of system logs, coordination and installation of operating system patches and upgrades and system tuning.
- 1.2 Contractor will act as the database administrator for the application. Contractor will perform data back-up and recovery activities, manage and control database access, monitor and tune database performance and implement any required database patches and/or upgrades. Daily incremental backups will be performed Monday through Friday, after standard business hours. Full database back-ups will be performed weekly, after standard business hours. Database patches and/or upgrades are implemented as required, after standard business hours.
- 1.3 All maintenance will be performed done by Contractor staff or their agents.
- 1.4 Use of Contractor's reasonable commercial efforts to correct errors in the licensed Software. Errors are defined as the failure of the Software to operate in substantial conformity to the applicable documentation provided by Contractor to State for such Software.
- 1.5 Contractor will manage and maintain other items necessary to Hosting Services, including Software, internal network, firewall, routers, servers and data transmission equipment (including Contractors virtual private network (VPN)).

2. Support

- 2.1 Operations and Technical Support will be available Monday – Friday, 7:30 AM – 7 PM, Central Time ("Business Hours")
- 2.2 Access to after-hour support (10:00 PM to 10:30 AM Central Time Monday – Friday, plus Saturday – Sunday), will be available through our after-hours support team
- 2.3 Response by Operations / Technical Support personnel will be within 4 hours, during Business Hours
- 2.4 Operation / Technical Support will cover data transfer and database / application availability issues
- 2.5 Operation and Technical Support will not cover end-use or analytical issues or questions

3. Bandwidth

- 3.1 Contractor will provide equipment and related software to send and receive data at approximately a 100 Mbps rate. However, Contractor cannot guarantee Internet latency and over-all Internet performance.

4. Redundancy

- 4.1 Primary Production Facility – Contractor will provide and maintain a fault-tolerant Premiere Hosting facility, including redundant power and communications.
- 4.2 Contractor will also provide an out-of-state failover hosting facility, in case of massive failure of all redundant systems, with similar capabilities as the main data center.

5. Security

- 5.1 Contractor will perform user ID and password management and dissemination. Access to Hosting Systems, Software and Ancillary Software will be coordinated with the State.
- 5.2 Contractor and State may agree to set-up and use a mutually agreed upon data encryption mechanism to transfer data between the Contractor's and State's sites within thirty (30) days from the execution of this Agreement.

6. Additional Services

State may request Contractor to perform services of a different nature than, or beyond the scope of, those described above, and Contractor may provide such services ("Additional Services") upon the execution of a written amendment to the Agreement, and shall be compensated therefore by State at rates for such services as are customarily charged by Contractor. Examples of such Additional Services are:

- 6.1 Designing, programming, or testing of "customer specific" customization or requested enhancements.
- 6.2 Changes required to State's unique modifications to interface with updates to the standard version of the Software.
- 6.3 Additional training and instruction (other than what is provided with normal implementation).

EXHIBIT C
TECHNICAL SUPPORT ATTACHMENT

Technical Support Response and Resolution Levels shall commence on the Effective Date through December 31, 2010 unless this Agreement is amended by the parties to provide otherwise.

TECHNICAL SUPPORT RESPONSE AND RESOLUTION LEVELS SHALL BE AS FOLLOWS:

Severity Classification	Description	Response Time*	Resolution Time Standard**
1 - Critical	- Business critical function is down - Major impact to State's business - No workarounds exists	As soon as possible, using reasonable commercial efforts, but no more than 20 minutes	4 hours^
2 - Major	- Business critical function is impaired or degraded - There are time-sensitive issues that impact ongoing production - Workaround exists, but it is only temporary	1 hour	12 hours^
3 - Minor	- Non-critical function down or impaired - Does not have significant current production impact - Performance is degraded	12 hours	2 business days^
4 - Low	- Non-critical, function down or impaired - No business impact - Generic Service Enhancements	1 business day	Mutually agreed timeframe based on prioritization.

* Response Time is the elapsed time between State's first report of a problem and when the Vendor assigns a ticket number for the problem

** Resolution Time is the elapsed time between State's first report of the problem and the problem in the Software has been resolved.

^ Level 1 – 3 issues may require resolution times that exceed these Response Time Standards. If fixes to level 1 – 3 issues are not resolvable within the timeframes listed above, Contractor will immediately notify State of the anticipated time to resolve the issue.

In the event that the issue is classified as a level 1 or level 2, Contractor will immediately assign a senior Product Developer to work exclusively on the issue. Additionally, the COO will be notified and the issue resolution will be given top priority. If the fix will require more than one business week to implement, Contractor and State will mutually agree on a resolution timetable and Contractor will provide updates at agreed upon intervals via email and/or telephone calls. Interim workarounds, if any, will also be communicated during the initial meeting and any subsequent communications should a workaround become available after the initial meeting.

Failure to meet the mutually agreed upon maintenance response timetable in the preceding paragraphs using reasonable commercial efforts will result, at the State's option, in triggering the Dispute Resolution provisions outlined in section 13.

EXHIBIT D

SERVICE LEVEL AGREEMENT

The following service levels and service level remedies shall commence on the Effective Date through December 31, 2010 unless this Agreement is amended by the parties to provide otherwise.

1. Contractor may schedule no more than 5 hours per week for routine maintenance, back-ups and data loads. Contractor may or may not choose to use this time for maintenance, back-ups and data loads, but downtime in this period will not count against Contractor's service availability commitment. For major new releases Contractor may from time to time require longer planned maintenance window. In the case of longer planned maintenance due to major releases, State shall be notified twenty-four (24) hours in advance of any scheduled down-time. Release builds and routine maintenance will typically be performed on weekends between 6:00 a.m. Central Time Saturday morning and Sunday 11:00 p.m. Central Time. Occasionally, bug fix builds will need to be performed during the business week. If a bug fix build is required to be performed during the business week, it will take place after 8:00 p.m. Central Time.
2. The Hosting Services shall be deemed "unavailable" if State is unable for all practical business purposes to transmit data to or receive data from the Hosting Environment, provided that the inability to transmit and receive data is not due to problems with non-Hosting Environment equipment, services, communication lines, or other products.
3. Failure to meet Availability service levels will result in penalties and will not be considered a breach of this Agreement. Penalties will be calculated according to the following matrix if Contractor falls below minimum service levels detailed below. All percentages exclude planned maintenance.

Availability	
Guaranteed System Availability Percentage	99% of Total Hours Per Month (excluding planned maintenance referenced in 1.1 above)
Credit to State's Account	3% of monthly fee for each 1% of the time period that the Services are down beyond committed levels
Penalty Cap	Maximum = Monthly Hosting and Technical Support Fee

EXHIBIT E
STATEMENT OF WORK

Statement of Work for Goods/Services ("SOW")

This is an SOW between **S.O.E. Software Corporation** ("SOE") and State. This SOW defines the Deliverables (as defined below) to be provided to State by SOE as well as defines the work to be provided by State.

1. Background/Scope

The State seeks to license S.O.E. Software's Clarity TRAINING platform to conduct training for poll workers from the Effective Date of this Agreement through December 31, 2010.

2. Deliverables

SOE shall create and deliver the following goods and services ("Deliverables"):

- SOE will provide all servers, hosting requirements and bandwidth required to support the State's election workers
- SOE will upload training videos shot, edited and produced by the State
 - State will provide a post-production version
 - State will provide a written transcript of the audio
- SOE will place video in the controller and add the closed captioning per the provided transcript
- SOE will upload election worker information to create unique user ID's and passwords
- SOE will provide the ability for Indiana poll workers to self register to gain access to the training curriculum
- SOE will assist in the initial creation and training for the ability to provide Chapter Assessments to learners
- SOE will provide training for administrators on the use of the Clarity Training Platform

State shall be responsible for the creation and delivery the following goods and services ("Deliverables"):

- State will be responsible for providing the original video file formats for any existing training videos it hopes to upload into the Clarity TRAINING platform.
- State will be responsible for coordinating and providing access to all poll worker records within each jurisdiction for uploading into the Clarity TRAINING platform.

3. Timeframe/Delivery Dates/Milestones

State will utilize the online training platform referenced in this SOW as a complement to their in-person training efforts, Indiana Secretary of State desires to begin training in March of 2010.

4. SOE Software Support

SOE will provide full support to State during the use of the platform. This support will include the assignment of an account manager to act as liaison between the State account manager and the SOE technical team.

5. Reports/Meetings/Reviews

SOE and State will agree to a weekly conference call to discuss the progress of the project. These calls will begin with a kick-off introductory call and progress through the entire project. These meetings will review progress made as well as direct the future efforts around the development of the program.