

Clarity Election Suite Standard Term SaaS Agreement

Service Agreement

This Service Agreement ("Agreement") is made between SOE Software with its headquarters located at 5426 Bay Center Drive, Ste. 525, Tampa, Florida 33609 ("Vendor") and Wise County Election Administrator with its office located at 1555 W Business 380 Suite 1 Decatur, TX 76234 ("Customer") (as defined below). This Agreement, including the attached Exhibit(s), is effective on the date that both parties have signed this Agreement (the "Effective Date").

1. Definitions. The following definitions (and additional definitions provided below) will apply:

1. "Activation Date" is defined in Section 20.
2. "Customer" means the legal entity or individual that enters into this Agreement as described on the Signature Page.
3. "Customer Data" means data, information or material provided or submitted by Customer or any User to Vendor in the course of utilizing the Service.
4. "Customer Representative" means the Users designated by Customer as authorized to create User accounts, administer Customer's use of the Service and otherwise represent Customer for the purpose of this Agreement.
5. "Pricing Schedule" means Exhibit A to this Agreement.
6. "Service" means Vendor's online service as described in Exhibit B and applicable information on Vendor's web site.
7. "Term" means the term of this Agreement as specified in Section 20.
8. "User" means one of Customer's employees, representatives, consultants, contractors or agents and other persons expressly permitted by Customer in connection with Customer's business affairs who are authorized to use the Service and have been supplied User identifications and passwords by Customer (or by Vendor at Customer's request).
9. "Vendor Content" means Vendor-supplied text, audio, video, graphics and other information and data available by means of the Service or on Vendor's web site.

2. Customer Use of the Service

1. Vendor grants Customer a license to access and use the Service during the Term via the Internet under and subject to the terms of this Agreement. Vendor will host the Service. Vendor reserves the right to make changes and updates to the functionality and/or documentation of the Service from time to time.
2. Customer is licensed during the Term to store, print, and display the Vendor Content and to permit Users to access it only in connection with use of the Service. No other use of Vendor Content is permitted. [Customer will maintain and will require its Users to maintain Vendor Content as Confidential Information (as defined below) of Vendor.]

3. Number of Authorized Users

There is no limit to the number of authorized users.

4. Fees Generally

Customer agrees to pay fees as set forth in the Pricing Schedule or as Vendor and Customer otherwise agree in writing.

5. Web Hosting Fees; Payment

1. Subject to the fee structure and calculations stated in the Pricing Schedule, hosting fees are due for the Service at the start of the billing year.
2. Vendor will invoice annually for use of the Service at the effective date. All invoices for any charges under this Agreement are due and payable within 30 days of invoice date. Customer's account will be considered delinquent (in arrears) if payment in full is not received by the due date specified on the invoice. Amounts due are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such amounts. All amounts are payable in U.S. dollars. If Customer believes that any specific charge under this Agreement is incorrect, in order to obtain a credit, Customer must contact Vendor in writing within 30 days of invoice date setting forth the nature and amount of the requested correction; otherwise invoices are final.

6. Non-Payment

1. In addition to other applicable remedies, Vendor reserves the right to suspend and/or terminate Customer's access to the Service and/or terminate this Agreement, upon five days' email notice, if Customer's account becomes delinquent (falls into arrears).
2. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection, including reasonable attorneys' fees and court costs. Customer will be charged all applicable fees, including fees for all Users then authorized, during any period of suspension.

7. Account Information Submitted to Vendor

Customer agrees to provide Vendor in writing with billing and contact information as Vendor may reasonably require, including Customer's legal company name, street address, email address, and name and telephone number of an authorized billing contact, as well as the name, User name of the Customer Representative. Customer agrees to update this information promptly by means of email to snichols@soesoftware.com, and in any case within 15 days, if there is any change.

8. Appropriate Use of the Service

1. While Users may be any persons that Customer authorizes to use the Service for its business, including, but not limited to, Customer's employees and contractors, Customer may not sublicense, resell or supply the Service for use in or for the benefit of any other organization, entity, business, or enterprise without Vendor's prior written consent.
2. Vendor reserves the right to suspend or terminate immediately any Customer or User account or activity that is disrupting or causing harm to Vendor's computers, systems or infrastructure or to other parties, or is in violation of state or federal laws regarding "spam," including, without limitation, the CAN-SPAM Act of 2003. Any such spamming activity by Customer will be a material breach of this Agreement.

9. Passwords and Access

Customer is responsible for all activities that occur under Customer's User accounts. Customer is responsible for maintaining the security and confidentiality of all User usernames and passwords. Customer agrees to notify Vendor immediately of any unauthorized use of any Service username or password or account or any other known or suspected breach of security.

10. Customer Data

1. All Customer Data submitted by Customer to Vendor, whether posted by Customer or by Users, will remain the sole property of Customer or such Users to the full extent provided by law.
2. Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. Vendor will not use the Customer Data for any purpose other than to provide the Service to Customer and for statistical reporting purposes. Vendor may aggregate anonymous statistical data regarding use and functioning of its system by its various Users. Such aggregated statistical data will be the sole property of Vendor.
3. Vendor will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use.

11. Limited License to Customer Data

Subject to the terms and conditions of this Agreement, Customer grants to Vendor a non-exclusive license to use, copy, store, transmit and display Customer Data to the extent reasonably necessary to provide and maintain the Service.

12. Vendor's Ownership

Vendor and its suppliers retain all rights in the Service and Vendor Content. This Agreement grants no ownership rights to Customer. No license is granted to Customer except as to use of the Service as expressly stated herein. The Vendor name, the Vendor logo, and the product names associated with the Service are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

13. Restrictions on Use of the Service

Customer may not alter, resell or sublicense the Service or provide it as a service bureau. Customer agrees not to reverse engineer the Service or its software or other technology. Customer will not use or access the Service to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics of the Service, (iii) make derivative works based upon the Service or the Vendor Content or (iv) copy any features, functions or graphics of the Service or the Vendor Content. Customer will not "frame" or "mirror" the Service. Use, resale or exploitation of the Service and/or the Vendor Content except as expressly permitted in this Agreement is prohibited.

14. Privacy

Vendor agrees to implement its privacy policies in effect from time to time. Vendor reserves the right to modify its privacy and security policies from time to time in its business judgment and as it deems required for compliance with applicable law.

15. Additional Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Customer represents and warrants that it has not falsely identified itself or provided any false information to gain access to the Service and that Customer's billing information is correct.

16. Professional Services

1. Customer may retain Vendor to perform professional services ("Professional Services") as the parties may agree upon in writing in the form of a work order or other writing ("Work Order"). Vendor will use reasonable efforts to carry out the Professional Services stated in the Work Order and to provide any resulting functionality in the Service made available online to Customer and Customer's Users. Except as the parties otherwise agree in a Work Order, Professional Services and the results thereof are made available "AS IS."

2. Unless otherwise agreed in writing in the Work Order, Professional Services are provided by Vendor on a time and materials basis at Vendor's then applicable rates and subject to such deposit or advance payment as Vendor may require. Maintenance and support of code or functionality created by means of Professional Services will likewise be on a Work Order basis under this Section unless otherwise agreed in writing. The code and functionality made or provided under this Section and all interests therein, including copyrights, will be Vendor's property. Access to the results of Professional Services will be available as part of the Service during the Term unless otherwise agreed in writing.

17. Indemnification

1. Vendor will defend, indemnify, and hold Customer (and its officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from any third party claim, suit, action, or proceeding arising from the actual or alleged infringement of any United States copyright, patent, trademark, or misappropriation of a trade secret by the Service or Vendor Content (other than that due to Customer Data). In case of such a claim, Vendor may, in its discretion, procure a license that will protect Customer against such claim without cost to Customer, replace the Service with a non-infringing Service, or if it deems such remedies not practicable, Vendor may terminate the Service and this Agreement without fault, provided that in case of such a termination, Customer will receive a pro-rata refund of the license fees prepaid for use of the Service not yet furnished as of the termination date. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

2. In case of any claim that is subject to indemnification under this Agreement, the party that is indemnified ("Indemnitee") will provide the indemnifying party ("Indemnitor") reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement of any action or proceeding covered by this Section to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

18. Disclaimers and Limitations

1. THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 15 ABOVE, THE SERVICE AND VENDOR CONTENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES. VENDOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. VENDOR IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY CUSTOMER OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

2. Except with regard to Customer's payment obligations and with regard to either party's indemnification obligations, in no event will either party's aggregate liability exceed the license fees due for the 12 month period measured by the quarterly payment obligation at the time of the event or circumstance giving rise to such claim. Except in regard to Customer breach of Sections 8 or 9, in no event will either party be liable for any indirect, special, incidental, consequential damages of any type or kind (including, without limitation, loss of data, revenue, profits, use or other economic advantage).

19. Confidentiality

1. "Confidential Information" means non-public information, technical data or know-how of a party and/or its affiliates, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential.

2. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the providing party of any such requirement and cooperate with any attempt to procure a protective order or similar treatment.

3. Neither party will use the other party's Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party's Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. [The confidentiality obligations set forth in this Section will survive for one (1) years after the termination or expiration of this Agreement.

4. Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party's possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees or agents.

5. In case a party receives legal process that demands or requires disclosure of the disclosing party's Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

20. Term and Termination

1. The Term commences on the "Effective Date." Vendor will use commercially reasonable efforts to make the Service available to Customer on the "Target Activation Date". The "Activation Date" will be the date that Vendor first makes the Service available to Customer and provides email or written notice of such availability to Customer. In most cases, the Target Activation Date and the Activation Date will be the same; Vendor will inform Customer of any likely delay. Billing of annual hosting fees will start as of the Effective Date and thereafter on or after the first of each year.

2. The initial term of this Agreement ("Initial Term") will begin on the Effective Date and will end one year from the Effective Date. This Agreement will automatically renew for successive one-year periods (each a "Renewal Term") beginning at the end of the Initial Term, unless Customer provides notice of termination not less than 60 days before the end of the Initial Term or current Renewal Term, as applicable. Applicable pricing, will continue unchanged from the previous term unless Vendor notifies Customer of changes in pricing at least 30 days prior to the expiration of the Initial Term or current Renewal Term, as applicable. Vendor reserves the right to terminate this Agreement for convenience not less than 60 days notice.

3. Vendor, in its sole discretion, may suspend or terminate Customer's username and password, account, or use of the Service and/or terminate this Agreement if Customer materially breaches this Agreement and such breach has not been cured within 10 business days of notice of such breach.

1. In the event that this Agreement is terminated (for any reason), Vendor will, within 5 days of a Customer's request, make available one backup of the Customer Data in Vendor's standard format. Customer agrees and acknowledges that Vendor has no obligation to retain and may delete Customer Data that remains in Vendor's possession or control more than 60 days after termination. Should service lapse as described here in this contract the startup fee may, at our discretion, need to be repaid in order to reinstate service. If at any time Wise County Texas decides to discontinue services and then reinstate services they will be subject to payment of a reinstatement fee of \$5,760 at the reinstatement point.

2. The following provisions will survive termination: all definitions, Customer's accrued financial obligations, the license to Customer Data to the extent reasonable for Vendor's discharge of its post-termination obligations, and the following Sections and paragraphs: 1 (Definitions), 6.2 (Overdue Payments), 10.1 (Customer Data), 12 (Vendor's Ownership), 13 (Restrictions on Use of the

Service), 17 (Indemnification), 18 (Disclaimers and Limitations), 19 (Confidentiality), 20.4 (Return of Customer Data), 20.5 (Survival of Provisions), 21 (Notice), [23 (Arbitration),] [24 (Non-Solicitation),] and 25 (Miscellaneous).

21. Notice

Vendor may give notice by means of electronic mail to Customer's email address on record in Customer's account or by written communication sent by first class mail or by courier service to Customer's address on record in Customer's account. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier or 12 hours after sending (if sent by email), or, if earlier, when received. A party may, by giving notice, change its applicable address, email, or other contact information.

22. Assignment

This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned by Vendor to (i) a parent or subsidiary, (ii) an acquirer of all or substantially all of Vendor's assets involved in the operations relevant to this Agreement, or (iii) a successor by merger or other combination. Any purported assignment in violation of this Section will be void. This agreement may be enforced by and is binding on permitted successors and assigns.

23. Arbitration

Any dispute arising under this Agreement or the termination of this Agreement will be subject to arbitration in the city of Decatur, TX under the commercial rules of the American Arbitration Association before a single arbitrator. The parties will share the arbitration fees equally. Any award will be enforceable in any court of competent jurisdiction and will not be inconsistent with the terms of this agreement. Nothing herein will prevent a party's application to a court of law for injunctive relief to prevent irreparable harm.]

24. Non-Solicitation

During the Term of this Agreement and for a period of one year thereafter, Customer will not, and will ensure that its affiliates will not, directly or indirectly: (i) solicit for employment or for performance of any services any person employed by Vendor or (ii) hire or engage for any services any person employed by Vendor.]

25. Miscellaneous

1. *Choice of Law; Jurisdiction.* This Agreement will be interpreted fairly in accordance with its terms, without any strict construction in favor of or against either party and in accordance with the laws of the State of Texas and applicable US federal law.
2. *Severability.* If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
3. *No Agency.* No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this Agreement or use of the Service.
4. *No Waiver.* The failure of Vendor to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing.
5. *Force Majeure.* Except for the payment by Customer, if the performance of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental

action, labor disputes, act of God or any other causes beyond the control of such party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

6. *Entire Agreement.* This Agreement, together with any applicable Exhibit(s), comprises the entire agreement between Customer and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

7. *Schedules.* The following Exhibits are attached hereto and deemed part of this Agreement:

- Exhibit A Fees
- Exhibit B Hosted Environment
- Exhibit C Technical Environment
- Exhibit D Service Level Agreement

Signed as a binding Agreement by the parties as of the Effective Date:

Vendor: SOE Software

By (Authorized Signatory):



Date: 6/18/12

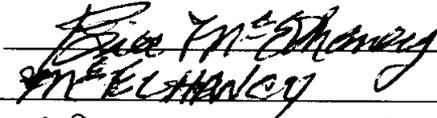
Print Name: Marc Fratello

Title: CEO

Customer

Company Name: Wise County Elections

By (Authorized Signatory):



Date: 6/18/12

Print Name:

Bill McElhenny

Title:

County Judge

Street Address: 1555 W Business 380 Ste 142

City, State: Decatur, TX

Postal Code, Country: 76234 USA

Email Address for Contact: lannie.noble@co.wise.tx.us

EXHIBIT A

FEES

Service Start-up Fee – This service start-up fee provides for the set-up and configuration of the Clarity ENR solution. All configuration, testing and quality assurance is included in this one-time fee.

Implementation Fee – The annual access & implementation fee provides Wise County Elections with unlimited utilization of the Clarity ENR solution. All functionality of Clarity ENR to include but not limited to jurisdiction map displays, bar chart displays, downloadable reports, RSS feeds, and back-end administrative user interface are covered with this fee.

Fee Structure	Clarity ENR
Clarity ENR Service Start-Up Fee	\$ 5,760
Clarity ENR Implementation Fee	\$ 3,840
Total First Year Cost:	\$ 9,600
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Ongoing Annual Assurance	\$ 2,900

Payment Terms

Billing is made ahead of service. The total year one services and fees are due within thirty (30) days upon the execution of this agreement.

Other

Any travel to client will be billed to client as incurred.

EXHIBIT B
HOSTED ENVIRONMENT

1. Annual Access & Service Fee

The annual access & service fee provided by Licensor to the Customer hereunder are in consideration of the annual charge described in Exhibit A, unless otherwise specified herein. The fee shall consist of:

- 1.1 All day to day operations of hosted products will be managed by Licensor 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 Licensor will act as the database administrator for the application. Licensor 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 Licensor staff or their agents.
- 1.4 Use of Licensor'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 Licensor to Customer for such Software.
- 1.5 Licensor will manage and maintain other items necessary to Hosting Services, including Software, internal network, firewall, routers, servers and data transmission equipment (including Licensors virtual private network (VPN)).

2. Support

- 2.1 Operations and Technical Support will be available Monday – Friday, 8:30 AM – 8 PM, Eastern Time (“Business Hours”).
- 2.2 Access to after-hour support (8:00 PM to 8:30 AM PT 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 Licensor will provide equipment and related software to send and receive data at approximately a 100 Mbps (Megabits) per second rate. However, Licensor cannot guarantee Internet latency and over-all Internet performance.

4. Redundancy

4.1 Primary Production Facility – Licensor will provide and maintain a fault-tolerant state-of-the-art hosting facility, including redundant power and communications.

4.2 Licensor 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 Licensor will perform user ID and password management and dissemination. Access to Hosting Systems, Software and Ancillary Software will be coordinated with the Customer.

5.2 Licensor and Customer may agree to set-up and use a mutually agreed upon data encryption mechanism to transfer data between the Licensor's and Customer's sites within thirty (30) days from the execution of this Schedule.

6. Additional Services

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

6.1 Retrieval of data lost by hardware malfunction or operator error.

6.2 Operational support beyond the allocated four hours per incident.

6.3 Designing, programming, or testing of "customer specific" customization or requested enhancements.

6.4 Changes required to Customer's unique modifications to interface with updates to the standard version of the Software.

6.5 Additional training and instruction (other than what is provided with normal implementation).

EXHIBIT C
TECHNICAL SUPPORT ATTACHMENT

TECHNICAL SUPPORT RESPONSE AND RESOLUTION LEVELS SHALL BE AS FOLLOWS:

Service Classification	Description	Response	Resolution
1 - Critical	<ul style="list-style-type: none"> Business critical function is down Major impact to Customer's business No workarounds exist 	As soon as possible, using reasonable commercial efforts, but no more than 20 minutes.	24 hours [^]
2 - Major	<ul style="list-style-type: none"> Business critical function is impaired or degraded There are time-sensitive issues that impact ongoing production Workaround exists, but it is only temporary 	4 hours	2 days [^]
3 - Minor	<ul style="list-style-type: none"> Non-critical function down or impaired Does not have significant current production impact Performance is degraded 	1 business day	4 weeks [^]
4 - Low	<ul style="list-style-type: none"> 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 Customer's first report of a problem and when the Vendor assigns a ticket number for the problem.

** Resolution Time is the elapsed time between Customer'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. Licensor will immediately notify Customer of the anticipated time to resolve the issue.

In the event that the issue is classified as a level 1 or level 2, Licensor 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, Licensor and Customer will mutually agree on a resolution timetable and Licensor 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 Customer's option, in triggering the Dispute Resolution provisions outlined in section 13.

EXHIBIT D
SERVICE LEVEL AGREEMENT

1. Licensor may schedule no more than 5 hours per week for routine maintenance, back-ups and data loads. Licensor 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 Licensor's service availability commitment. For major new releases Licensor may from time to time require longer planned maintenance window. In the case of longer planned maintenance due to major releases, Customer 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 7:00 a.m. Eastern Time Saturday morning and Sunday 12:00 p.m. Eastern 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 9:00 p.m. Eastern Time.

2. The Hosting Services shall be deemed "unavailable" if Customer 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 Licensor falls below minimum service levels detailed below. All percentages exclude planned maintenance.

Availability	
Guaranteed System Availability Percentage	97% of Total Hours Per Month (excluding planned maintenance referenced in 1.1 above)
Credit to Customer'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 fee