# Scytl

### SUBSCRIPTION AGREEMENT
### Between
### COMAL COUNTY TEXAS
### &
### SOE SOFTWARE CORPORATION (d/b/a SCYTL)

#### PREAMBLE

This SUBSCRIPTION AGREEMENT (the "Agreement") is entered into as of this 1st day in the month of October, in the year of 2019 by and between Comal County, Texas with address at 150 N Seguin Ave, Suite 1010, New Braunfels, Texas 78130 (the "Customer") and SOE Software Corporation (d/b/a SCYTL) a corporation existing under the laws of Florida, with principal offices at 1111 N. Westshore Blvd., Suite 300 Tampa, FL 33607 ("SCYTL"). Collectively, SCYTL and the Customer shall be referred to as the "PARTIES" and each separately as the "PARTY".

#### RECITALS

A.  SCYTL is a technology company specializing in providing election management and online voting solutions. SCYTL has developed and is the rightful owner/SCYTL is the rightful Licensor of a (Election Night Reporting), among other solutions (hereinafter referred to as the SOFTWARE).

B.  The Customer has decided to retain the services of SCYTL to provide the SOFTWARE on a SaaS model.

C.  The PARTIES desire to enter into this SaaS Agreement so as SCYTL will license the Software to the Customer and provide it with associated services under the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, the PARTIES agree as follows:

## ARTICLE 1.- DEFINITIONS

*   Documentation: means standard documentation including setup and back-office user guides in English
*   Customer: means Comal County Texas
*   SaaS: Software as a Service
*   SCYTL: SOE SOFTWARE CORPORATION
*   Software: Election Night Reporting, also known as ENR
*   Subscription: the services and license provided by SCYTL to the Customer under the terms and conditions of this Agreement as defined in Articles 2 and 3.

## ARTICLE 2.- SOFTWARE SUBSCRIPTION

2.1. Provision of the SOFTWARE .Under the terms and conditions hereunder agreed SCYTL provides the Customer with (i) the SOFTWARE as SaaS; (ii) Maintenance and support services as defined in Article 4; and (iii) hosting for the SOFTWARE (all of them referred hereinafter as the Subscription).

2.2. Grant of License. Subject to the terms and conditions of this Agreement and payment of the Subscription fees, Scytl hereby grants the Customer a non-exclusive, non-perpetual, non-transferable license to use the SOFTWARE and the Documentation for internal purposes.

2.3. Reservation of Rights. The SOFTWARE and Documentation are licensed, not sold. SCYTL and affiliates own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights), in and to the SOFTWARE and Documentation and any copies, corrections, bug fixes, enhancements, modifications, Updates, Upgrades, or new versions thereof, all of which shall be deemed part of the SOFTWARE, as the case may be, and subject to all of the provisions of this Agreement. The Customer shall keep the SOFTWARE and Documentation free and clear of all liens, encumbrances and/or security interests. No rights are granted to the Customer pursuant to this Agreement other than as expressly set forth in this Agreement.

2.4. Restrictions. The Customer shall not (and shall not allow its customers or any third party) to: (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the SOFTWARE and/or Documentation, except to the extent that such restriction is permitted by applicable law; (b) circumvent any user limits or other license timing or use restrictions that are built into the SOFTWARE; (c) sell, resell, rent, lend, transfer, distribute, license, sublicense or grant any rights in the SOFTWARE and/or Documentation in any form to any person without the written consent of Scytl except for the right to authorize the use of the SOFTWARE by its customers under the terms and conditions hereunder agreed; (d) remove any proprietary notices, labels, or marks from the SOFTWARE and/or Documentation except those trademarks which are configurable, (e) unbundle any component of the SOFTWARE and/or Documentation; (f) build a product or service that is competitive with the SOFTWARE; (g) copy any ideas, features, functions or graphics of the SOFTWARE and/or Documentation; (h) copy, frame or mirror any part of the SOFTWARE; (i) permit any third party to access the SOFTWARE or (i) use the SOFTWARE and/or the Documentation in violation of applicable laws.

## ARTICLE 3.- HOSTING AND INSTALLATION

3.1. SCYTL shall provide the Customer with the following services included in the Subscription Fee as defined in Article 2.
   a. Hosting of the SOFTWARE in SCYTL's servers in a Cloud Hosted Data Center rented by SCYTL located in the US and providing the Customer access to the hosted SOFTWARE seven (7) days per week, twenty-four (24) hours per day except for scheduled maintenance.
   b. Installation, test and initial system set up in the servers in the Data Center.
   c. Standard documentation including setup and back-office user guides in English.

3.2. SCYTL shall provide the Customer with the following hosting support and service level:
   a. Availability of 99.9% uptime (excluding scheduled maintenance windows).
   b. Reporting tools will be available upon request to show historic data.
   c. Full infrastructure and network redundancy using distributed cloud locations.

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# ARTICLE 4.- MAINTENANCE AND SUPPORT SERVICES

4.1. During the Term of this Agreement, SCYTL shall provide the Customer with maintenance services and third level support in accordance with the Service Level Agreement attached hereto as Appendix 1, being an integral part of this Agreement, which shall consist of (i) the updating and upgrading of the SOFTWARE and (ii) the modification and/or adaptation of the SOFTWARE in order to correct and solve any defects, errors, or malfunctions in the SOFTWARE.

4.2 The support services provided by Scytl include:
- Account Management support, such as application setup review and questions; content updates; and technical support.
- Support services are limited to 8 hours. When you have reached 80% of the allotted support service hours, you will be notified, and you may choose to add additional hours via a work order. If the issue is determined to be a product error, hours will not be deducted. Reference section 9.1 for the support service price table.
- If additional support service hours are not purchased and they are required due to a non-product error, the customer will be charged at a rate of $150/hr.
- Refunds or carry over are not considered if the allotted support service hours are not consumed at the end of the Agreement (and on a yearly basis).
- As a courtesy, Scytl provides election event monitoring of the platform by Account Management and IT Engineers.

4.3 Services delivered are in-line with the original proposal.

4.4 The PARTIES have appointed the following persons as their respective Single Point of Contact (SPOC)

> CUSTOMER: Cynthia Jaqua
> Email: jaquac@co.comal.tx.us
>
> SCYTL: Wendy Williams, Client Services Director
> Email: wendy.williams@scytl.com

# ARTICLE 5.- CUSTOMER AND CUSTOMER DATA

5.1. As between SCYTL and the Customer, Customer exclusively owns all rights, title and interest in and to all its Data.

5.2. SCYTL shall not access Customer's Data, except to prevent or respond to service or technical problems or otherwise at Customer request. SCYTL shall not disclose any Customer Data except as compelled by law or as expressly permitted in writing by Customer.

5.3 All assets created by SCYTL remain the ownership of SCYTL. This includes work files, images, graphics and video footage.

# ARTICLE 6.- DATA PROTECTION

6.1. In order to provide Maintenance and Support Services, under this Agreement SCYTL may need to have access or process personal data under the control of the Customer. In that case, SCTYL, as data processor, undertakes to comply with the requirements set forth in the applicable data protection laws and regulations and, in particular:

    a. to process the personal data only in accordance with the instructions provided by the Customer as data controller;

    b. to not apply or use the personal data for a purpose other than set out in this Agreement, and

    c. to not communicate the personal data to other persons even for their preservation.

6.2. SCTYL warrants having in place the required security measures to avoid loss or unauthorized access or use of the personal data to be processed by SCTYL on behalf of the Customer under this Agreement.

6.3. Upon termination of this Agreement pursuant to Article 8, SCYTL shall destroy or return to the Customer the personal data processed by SCYTL on behalf of the Customer under this Agreement together with any support or document containing personal data.

# ARTICLE 7.- CUSTOMER RESPONSIBILITIES

7.1. The CUSTOMER is responsible for all activities that occur in its accounts and for its compliance with the Subscription Agreement.

7.2. The CUSTOMER shall: (i) use best practices and have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the SOFTWARE, and notify Scytl promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, provincial, federal, and foreign laws in using the SOFTWARE.

7.3. The CUSTOMER acknowledges that SCYTL's ability to deliver the SOFTWARE and the related Services is dependent upon CUSTOMER's full and timely cooperation with SCYTL.

7.4. SCYTL requires seven business days to review, and/or deliver on any requests from the CUSTOMER related to Maintenance and Support Services (Article 4).

7.5. SCYTL will not be liable for any delays in the delivery caused by CUSTOMER or resulting from CUSTOMER's failure to fulfil any of its obligations.

# ARTICLE 8.- SUBSCRIPTION TERM AND TERMINATION

8.1. This Agreement shall be valid and remain in full force and effect for a term of three (3) years as of the Effective Date (the Initial Term).

8.2. By mutual agreement, the PARTIES may, but shall not be obliged to, renew this Agreement in writing (each new term the "Renewal Term"). The Fee for any successive Renewal Term shall be equal to the Fee at the end of the Extended Term or any Renewal Term, as applicable, increased by five (5)%.

8.3. This Agreement may be terminated, within the Initial Term or any Renewal Term, for cause upon thirty (30) calendar days prior written notice in the event a Party hereto:

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a. Is in material breach of this Agreement and fails to remedy such breach within thirty (30) calendar days after receipt of prior written notice by the non-defaulting Party pursuant to Article 17.1 of this Agreement.
b. Does not pay the yearly Subscription Fee, after being requested in writing to do so by SCYTL and without prejudice of the interests set forth in Article 9.6.
c. Becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
d. The failure of Customer to appropriate funds for this Agreement in any given fiscal year shall terminate this agreement, without further recourse to either party.

8.4. Upon termination or expiration of this Agreement the Customer shall unless otherwise set forth in this Article 8 immediately cease the use of the SOFTWARE and if applicable delete and/or destroy all copies of the SOFTWARE. All assets created by Scytl remain the ownership of Scytl. This includes work files, images, graphics and video footage.

8.5. Termination shall not relieve the CUSTOMER of the obligation to pay any fees accrued or payable to SCYTL prior to the effective date of termination.

# ARTICLE 9.- FEES FOR SUBSCRIPTION AND OTHER SERVICES

9.1. The Customer shall pay to SCYTL as the price of the Subscription (Subscription fee) for the Initial Term the following fees per year which will be paid upfront at the beginning of each year term:

| Service | Fee | Invoicing Date |
|---|---|---|
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2019-2020 | $3350.00 | 30 days in advance of contract expiration |
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2020-2021 | $3350.00 | 30 days in advance of contract expiration |
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2021-2022 | $3350.00 | 30 days in advance of contract expiration |

¹Additional Support hours may be added on:

9.2. At least ninety (90) days from the end of the (Initial Subscription) Term, the PARTIES agree to review this Subscription Agreement and, should both PARTIES agree to renew or extend the Subscription (The Renewal Term), SCYTL may increase the License fee for any Renewal Term by at least 5% with thirty (30) days' prior notice to CUSTOMER.

9.3. Unless otherwise provided to the contrary in this Agreement, all fees are non-cancellable, non-refundable cannot be decreased during the relevant Subscription Term and will be maintained up to 105,000 registered voters.

9.4. All Fees, whether for the Initial Term or any of the Renewal Term, are exclusive of taxes

9.5. If the Customer does not pay an invoice by the due date for payment, SCYTL may charge and the Customer shall pay in conjunction with the unpaid amount, interest at the rate lesser of 2% per month

or the maximum rate permitted by law, calculated on the daily balance of the unpaid amount from the due date for payment until that unpaid amount (including accrued interest) is paid in full.

## ARTICLE 10.- SCOPE AND LIMITATION OF AFFILIATE'S AUTHORITY

Nothing in this Agreement shall be deemed to create an agency relationship or the relationship of employer and employee, master and servant, franchiser and franchisee, partnership or joint venture between the PARTIES. It is understood that the relationship between SCYTL and the Customer shall be that of independent contractors.

## ARTICLE 11.- CONFIDENTIAL INFORMATION

11.1. Each PARTY agrees and shall undertake to ensure that any and all information received by it in connection with this Agreement which is derived from the Agreement or another PARTY (however acquired and in whatever form) and which is designated by means of appropriate text to be or otherwise should be seen to be of a proprietary or confidential nature shall be treated by it as confidential, and neither PARTY shall disclose all or any part of it to any third-party or otherwise seek to exploit all or any part of it without the prior written consent of the other PARTY. This Article 11 shall not apply to information which at any time comes into the public domain through no fault of any PARTY.

11.2. Each PARTY agrees to make all reasonable efforts to prevent any of its employees or personnel or any other person(s) from obtaining or making any unauthorized use of, or affecting any disclosure of, any confidential information.

11.3. Any confidential information furnished by a PARTY shall remain the property of the PARTY from which it is derived and, upon termination of this Agreement for any cause whatsoever, the other PARTY shall cease to use the same and shall destroy or return the same to the PARTY from which it is derived together with all related documents and copies.

11.4. Notwithstanding Article 8 with respect to the term of this contract, the obligations in this Article 11 shall bind the PARTIES during the term of this Agreement and for three (3) years after this Agreement is terminated for whatever cause.

11.5. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by the Recipient without a breach of this Agreement; or (f) is disclosed by the Recipient, without a confidentiality requirement imposed on the third party receiving the disclosure, with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order.

# ARTICLE 12.- WARRANTIES AND DISCLAIMERS

12.1. SCYTL represents and warrants that (i) the SOFTWARE will perform materially in accordance with the specifications and requirements of Annex I for the Subscription Term; (ii) the SOFTWARE will not contain any Malicious Code at the time of delivery to the Customer; (iii) SCYTL owns the rights in the SOFTWARE and Documentation to grant to the Customer the rights to use the SOFTWARE and Documentation granted herein; and (iv) to its knowledge, the SOFTWARE and Documentation do not infringe any intellectual property rights of any third party. SCYTL does not warrant, however, that the Customer's use of the SOFTWARE will be uninterrupted, and that the operation of the SOFTWARE will be error-free.

12.2. In the event of a breach during the applicable warranty period of one or more of the warranties set forth in Section 12.1 hereof, SCYTL shall use reasonable commercial efforts to correct such breach of the warranty. If Scytl is unable to remedy the breach of warranty within a reasonable time, SCYTL shall refund the purchase price of the SOFTWARE.

12.3. The foregoing warranty is only applicable if SCYTL receives written notice of a breach of warranty within thirty (30) days after the end of the applicable warranty period. Such notice must contain sufficient information regarding the circumstances under which the warranty breach can be observed. The warranty shall not apply to the extent that the breach is caused by misuse, negligence, accident, unauthorized modification, alteration, customization or repair, improper operation or maintenance.

12.4. The warranties set out in section 12 hereof are the only warranties provided by SCYTL and the remedies set out in section 12.2 hereof are the sole and exclusive remedies of et for a breach of warranty.

# ARTICLE 13.- INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

13.1. Subject to this Agreement, SCYTL shall defend, indemnify and hold the Customer harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings made or brought against the Customer by a third party alleging that the use of the SOFTWARE and Documentation as contemplated hereunder infringes the intellectual property rights of a third party (each an "Infringement Claim"); provided, that the Customer (a) promptly gives written notice of the Infringement Claim to SCYTL; (b) gives SCYTL sole control of the defense and settlement of the Infringement Claim (provided that SCYTL may not settle or defend any Infringement Claim unless it unconditionally releases the Customer of all liability); and (c) provides to SCYTL all reasonable assistance and information.

13.2. If (a) SCYTL becomes aware of an actual or potential Infringement Claim, or (b) the Customer provides SCYTL with notice of an actual or potential Infringement Claim, SCYTL may (or in the case of an injunction against the Customer, shall), at SCYTL' sole option and determination: (i) procure for the Customer the right to continue to use the SOFTWARE; or (ii) replace or modify the SOFTWARE with equivalent or better SOFTWARE so that the Customer's use is no longer infringing; or (iii) if (i) and (ii) are not commercially reasonable, as determined by Scytl in its sole discretion, terminate the license(s) for such SOFTWARE and refund to the Customer that portion of any prepaid subscription fees that is applicable to the period following the termination of the Subscription pursuant to this Section 13, less any outstanding moneys owed on such affected portion of the SOFTWARE.

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13.3. The indemnity in this Article does not extend to (1) any Infringement Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the SOFTWARE furnished by SCYTL with other products, SOFTWARE or services not provided or approved by SCYTL, other than SOFTWARE designed by SCYTL with certain commercial hardware or other commercially available SOFTWARE, if such infringement would have been avoided but for such combination; (2) any Infringement Claim related to or in connection with any modification of the SOFTWARE by anyone other than SCYTL if such infringement would have been avoided but for such combination; (3) any Infringement Claim in respect to any version of the SOFTWARE other than the most current version; or (4) any use, distribution, sublicensing or exercise of any other right outside the scope of the licenses granted in this Agreement.

13.4. This article 13 contains SCYTL's entire liability, and the customer's sole and exclusive remedies, for infringement claims.

# ARTICLE 14.- CUSTOMER INDEMNIFICATION

To the extent permitted by law, without the creation of sinking fund, the Customer shall defend, indemnify and hold SCYTL harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against SCYTL by a third party alleging that the Customer's Data or the Customer use of the SOFTWARE and Documentation in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that SCYTL (a) promptly gives written notice of the third party claim to the Customer; (b) gives the Customer sole control of the defense and settlement of the third party claim (provided that the Customer may not settle or defend any third party claim unless it unconditionally releases SCYTL of all liability); and (c) provides to the Customer, at the Customer's cost, all reasonable assistance and information.

# ARTICLE 15.- LIMITATION OF LIABILITY

15.1. Subject to section 15.3. Hereof, in no event shall either party have any liability to the other party for any indirect, special, incidental, punitive, or consequential damages (including, without limitation, damages for loss of business, loss of profits, business interruption, loss of data, lost savings or other similar pecuniary loss).

15.2. Limitation of Liability. Subject to section 15.3 hereof, in no event shall either party's aggregate liability arising out of or related to this agreement or relating to the subject matter hereof for all claims, costs, losses and damages exceed the amounts actually paid by and due from the customer hereunder in the twelve months preceding the incident giving rise to liability.

15.3. Notwithstanding the foregoing, no limitation of either party's liability set forth in this agreement shall apply to (i) damages arising from a party's breach of its confidentiality obligations, (ii) indemnification claims, (iii) damages arising from infringement of a party's intellectual property rights; (iv) any claims for non-payment, (v) fraud or wilful misconduct, or (vi) bodily injury or death.

# ARTICLE 16.-NOTICES

16.1. All notices given pursuant to this Agreement shall be given personally or be sent by facsimile, e-mail or hand delivery; or by express delivery/courier service to a PARTY's address set forth in Articles

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16.2 and 16.3, with all postage or other charges of conveyance prepaid and shall be effective upon the actual receipt thereof.

16.2. Unless and until otherwise notified to SCYTL, Customer's address for the purposes of this agreement shall be:

> **COMAL COUNTY TEXAS**
> 396 N. Seguin Ave., Suite 101
> New Braunfels, TX 78130
> Attention: Cynthia Jaqua,
> E-mail: jaquac@co.comal.tx.us

16.3. Unless and until otherwise notified to the Customer, SCYTL's address for the purposes of this agreement shall be:

> **SOE SOFTWARE CORPORATION**
> 1111 N. Westshore Blvd., Suite 300,
> Tampa, FL 33607
> Attention: Jonathan Brill
> Email: Jonathan.brill@scytl.com
>
> c.c.:
> Scytl Secure Electronic Voting S. A.
> C/ Enric Granados 84,
> 08008 Barcelona, Spain
> Spain
> Attention: Ms. Belen Gabutti
> Email: belen.gabutti@scytl.com

## ARTICLE 17 - OTHER PROVISIONS

17.1.   Cure Any failure by a PARTY to meet any of its obligations under this Agreement, must be brought to the other PARTY's attention, in writing.  The defaulting PARTY shall have thirty (30) days after receiving such notification to cure such failure and meet its obligations.

17.2.   No Waivers The failure of either PARTY to this Agreement to exercise any of its rights hereunder upon breach by the other PARTY or any condition, covenant or provision contained in this Agreement shall not be construed as a waiver thereof, nor as a waiver of the same or any other default subsequently occurring.

17.3.   Headings The headings of the articles and sections in this Agreement are employed, and are for, the convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the PARTIES.

17.4.   Severability If any provision of this Agreement is determined to be unenforceable, the remaining provisions of the Agreement shall remain in effect to the extent possible in the absence of the unenforceable provision.

17.5.   Authority Each PARTY represents and warrants that the undersigned has full authority to execute this Agreement and to bind the PARTY to the terms and provisions herein.

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**Scytl**

17.6. Jurisdiction This Agreement shall be construed in accordance with and governed by the laws of Texas and each party agrees to submit to the jurisdiction of the courts of Comal County, Texas.

17.7. Entire Agreement This Agreement contains the entire agreement between the PARTIES, and all prior or contemporaneous agreements and understandings, oral or written (including, without limitation, any correspondence, proposed drafts or term sheets) are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless done so in writing and signed by both PARTIES.

17.8. Transfer of Right Neither PARTY shall transfer or assign any and all of its rights or obligations under this Agreement without the prior written consent of the other PARTY. Consent shall not be unreasonably withheld.

17.9. Force Majeure Neither PARTY will be responsible for any failure to perform hereunder due to unforeseen circumstances or cause beyond the non-performing PARTY's reasonable control including, without limiting the foregoing, a strike or other labor disturbance, lock-out, riot, delay in transportation, the inability to secure labor, materials, supplies or equipment, an act of God or the elements, fire, flood, or accidents, an act of war or conditions arising out of or attributable to war, laws, rules, and regulations of any governmental authority, procedures relating to environmental matters, delay in the issuance of required permits or approvals with respect to any operations or activities, or any other matters or conditions which are beyond the reasonable control of such PARTY, whether or not similar to the matters and conditions herein specifically enumerated. This Article 17.9 does not apply to excuse a failure to make payments when due.

17.10 Counterparts This Agreement may be executed in two or more counterparts, and each counterpart shall become binding when the other(s) has or have been signed as if it had been signed by each PARTY. Facsimile signatures shall be considered original signatures for the purposes of execution and enforcement of the rights and obligations described herein.

IN WITNESS WHEREOF, the PARTIES have duly executed this Agreement on this date first written above intending to be bound thereby,

**COMAL COUNTY, TEXAS**

By: *Ramone Womack*
Title: *Purchasing Director*

**SOE SOFTWARE CORPORATION
(d/b/a SCYTL)**

By: Jonathan Brill
President & General Manager North America

# APPENDIX 1

## 1 Software Maintenance and Support – Technical Service description

### 1.1 Definitions

The definitions used in the Agreement are incorporated herein by reference. In addition, the following terms shall have the following meaning:

- "Software maintenance" is defined as the process of modifying a software system or component after delivery to correct faults, errors and bugs; to improve performance or other attributes; or to adapt to a changed environment.

- "Perfective maintenance" includes modifications and upgrades done in order to keep the software usable over a long period of time. It includes new features and new user requirements for refining the software and improving its reliability and performance.

- "Adaptive maintenance" includes modifications and upgrades applied to keep the software product up-to-date and tuned to the changing environment

- "Preventive maintenance" includes modifications and upgrades to prevent future issues of the software. It aims to attend problems, which are not significant at this moment, but may cause serious issues in the future.

- "Corrective maintenance" includes modifications and upgrades done in order to correct or fix faults, errors and bugs, which are either discovered by the Customer or concluded by user error reports.

- "Response time" means the time elapsing between the reporting of an Issue by a Customer and the response from a Scytl's Technical Support Services engineer acknowledging receipt of the reported Issue.

- "Diagnosis time" means the time elapsing between the Response time and the diagnosis of the Issue made by Scytl's Technical Support Services engineer.

- "Issue" means either:
  a) A failure of the Software to conform to the specifications set out in the documentation relating to that version of the Software, resulting in the inability to use, or restriction in, the use of the Software; or
  b) A problem in current features requiring new procedures, clarifications, additional information and/or requests for product enhancements.

- "Resolution or Patch or Bug Fix" means either a Software modification or addition that, when made or added to the Software, corrects an Issue, or a procedure or routine that, when observed in the regular installation or operation of the Software, eliminates the practical adverse effect of the issue on you.

- **"Upgrade"** means a revision or change of version of the Software released by Scytl to its end user customers generally during the Support Services Term, to add new and different functions or to increase the capacity of the Software.

- **"Maintenance Release"** is a release of or for the Software, that includes the most recent Patches and Upgrades.

- **"Current Software Version"** means the most recently released, commercially available version of the Software at the time a Customer Support Contact relates a particular support incident to Scytl hereunder.

- **"Supported Versions"** means SCYTL's obligations with respect to the Maintenance Services, which shall apply only to those versions of the Software that are within one (1) year time frame of the Current Software Version.

- **"Hosted System"** means Software hosted by Scytl externally in its data center to which the Customer may access it over the Internet from anywhere at any time.

- **"Annual Pool of Hours"** means the number of support hours as captured in the contract. Support hours may include application "how to" questions, content modifications and technical support. Application issues as a result of Scytl product updates and hosting are not deducted from the pool of hours.

## 1.2   General Terms and Conditions

The Customer shall be entitled to the following Support and Maintenance services during the Term and upon payment of the Fee:

### 1.2.1   Scytl Technical Services.

Scytl Support and Maintenance Services include perfective, adaptive, preventive and corrective maintenance in relation to Supported Versions. The Support Services do not include any post-installation configuration or development support, such as integrations of the Software with the user or third-party developed software or data, configuration advice that is not related to the initial installation and setup, or non-bug related technical problem resolution.

### 1.2.2   Resolutions and Severity levels.

Scytl will make commercially reasonable efforts to provide a resolution or patch designed for resolving a reported issue in accordance with the Service Schedule hereto. If such issue has been resolved or corrected already in an existing Maintenance Release, the Customer must install and implement that Maintenance Release/Upgrade; otherwise, the resolution for critical and high severity issues may be provided in the form of a temporary patch (fix, procedure, or routine) to be used until a Maintenance Release containing the resolution is available. The priority level shall be agreed between the parties following the priority levels described below:

| Severity | Description | Details |
|----------|-------------|---------|
| CRITICAL | An immediate and sustained effort using all available resources until issue is resolved. | • Business critical function is down<br>• Major impact to Customer's business<br>• No workarounds exist |
| HIGH | Technicians respond immediately, assess the situation, and may interrupt other staff working low or medium priority jobs for assistance | • Business critical function is impaired or degraded<br>• There are time-sensitive issues that impact on-going production<br>• Workaround exists, but it is only temporary |
| MEDIUM | Respond using standard procedures and operating within normal Management structures | • Non-critical function down or impaired<br>• Does not have significant current production impact<br>• Performance is degraded |
| LOW | Respond using standard operating procedures and as time allows. | • Non-critical, function down or impaired<br>• No business impacts<br>• General Service Enhancements |

### 1.2.3 Technical Support Contacts.

Scytl Maintenance and Support Services will be accessible by one (1) designated contact (Technical Support Contact) and one (1) back up contact. You may modify your designated Technical Support Contact at any time during the terms of the service by confirmed email to Scytl's Technical Support Contact, who will be the main interface to the Scytl Maintenance and Support Services.

### 1.2.4 Exclusions from Scytl's Technical Services.

Scytl is not obligated to provide Technical Services in the following situations:

a) When Scytl determines that the issue is caused by unauthorized changes or modifications to the Software provided by Scytl, resulting in malfunctioning of the Software. This is not applicable if the changes or modifications are made under the direct supervision of Scytl;

b) The Software has been damaged through negligent use by the Customer.

c) The issue is caused by the negligence, hardware, malfunction or other causes beyond the reasonable control of Scytl;

d) The issue is caused by third party software not licensed by or through Scytl;

e) The Customer has not installed and implemented a prior Upgrade or Maintenance Release;

f) The Customer has not installed up-to-date browser and system software;

g) The Customer has not paid the Technical Service fees when due;

h) The version of the Software that the Customer is using is not a Supported Version,

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i)   If the Customer has not complied with Scytl's license Agreement; or

j)   Failures related to an accident, disaster, or other Force Majeure event

### 1.2.5   Agreement in Force.

Except as agreed herein, all other terms and conditions of the Agreement shall apply with full force and effect to this Service Level Agreement.

## 1.3   Escalation Process

For each issue:

1.   The Customer's Technical Support Contact will notify Scytl of the issue through the agreed channels;
2.   A Scytl Technical Support contact will acknowledge the reception of the issue;
3.   A Scytl Technical Support contact will do an initial diagnosis and complete the incident details in the Incident Management Tool

     * Services affected,

     * Level of disruption;

     * Cause of the incident, if known;

     * Estimated time to resolve the issue or time of next update;

     * Feasible workaround.

4.   The Scytl Technical Support contact will call or email the Customer's Technical Support Contact providing the diagnosis and incident identifier and will agree on a *Criticality Level* based on a predefined set of criteria;
5.   The Scytl Technical Support contact will provide regular updates on the incident status.

## 1.4   Service Level Agreements (SLAs)

To guarantee a smooth and efficient relationship between Scytl and their partners, Scytl assigns a Service Manager (Account Manager) who will be the main point of contact to coordinate regular maintenance and support activities.

The Service Manager will periodically report on the different activities performed, as well as the status of the contracted pools of support hours (if any).

| What is included | • | Single Point of Contact (SPOC) |
|---|---|---|
| What is not included | • | Project Management activities for Electoral Events |

### 1.4.1 Issue Response.

In the event the Hosted System fails to perform as required by this Agreement (an "Issue"), the following Issue Response Procedure shall apply: Customer will notify Scytl of any identified Issue as soon as possible. Customer will also provide the reasonable availability of a single point of contact to assist Scytl in resolving any Issue with the Software. Upon notification of an Issue, Customer and Scytl by mutual agreement in good faith shall classify the severity of the Issue based on the levels detailed in Section 1.2.2. Scytl shall follow up with Customer with a telephone call or email response within 30 minutes upon notification of an Issue, subject to the Issue levels below. During the follow-up telephone or email, Scytl shall provide Customer with an initial assessment of the Issue in conjunction with any identified steps for the parties to mitigate the Issue.

| Severity | Response Time |
| --- | --- |
| Critical Priority | 0-30 minutes (during business hours) |
| High Priority | Within 2 hours |
| Medium Priority | Within 24 hours |
| Low Priority | Within 5 working days |

### 1.4.2 Service Details.

Scytl's Software Support and Maintenance Service is divided into different sub-services:

- Service availability,
- Planned Maintenance Service and Technical Support,
- Hosting.

Further details are provided below.

### 1.4.2.1 Service Availability.

| Service hours | Monday to Friday from 8 AM to 5 PM EST (Eastern Time) |
|---|---|
| After hours support | On-call staff can be reached via the support telephone and/or support email. Calls received outside of Service Support Hours will be forwarded to the on-call service manager's mobile telephone.<br><br>Email support is available using the support email product support @ scytl com.<br><br>Calls and emails received outside of the service time frame will receive a response in accordance with the priority of the reported issue. |
| Response time | Dependent on issue priority (see section Error! Reference source not found.) |
| Diagnosis time | Dependent on issue priority (see section Error! Reference source not found.) |
| Service volume | Annual pool of hours (see contract). |
| Rules of use | • In the event of consuming the whole bundle of hours, an additional pool of hours could be purchased.<br><br>• Refunds or carry over are not considered if the pool of hours is not consumed at the end of the Agreement (and on a yearly basis). |

### 1.4.2.2 Planned Maintenance Service and Technical Support.

#### 1.4.2.2.1 Service Description – Planned Maintenance

Scytl is responsible for guarantying the quality of the Software provided under the Agreement, as well as facilitating the inclusion of new features as a result of a product evolution. Upon a Maintenance Release, Scytl guarantees the data integration for the Supported Versions.

| What is included | • Perfective maintenance.<br>• Adaptive maintenance.<br>• Preventive maintenance (including updates such as digital certificates).<br>• Corrective maintenance |
|---|---|
| What is not included | • Extension of any existing functionality, which should be handled via the Change Management process;<br><br>• The development of any new functionality, which should be handled via the Change Management process |

### 1.4.2.2.2 Service details – Planned Maintenance

| Service hours | Monday to Friday from 9 AM to 5 PM EST |
| --- | --- |
| | Maintenance activities may be planned as after-hours service or during the weekends as agreed by the Customer |
| Response time | Within 2 working days |
| Diagnosis time | • Critical and High severity issues - Within 8 service hours |
| | • Medium severity issues - Within 16 service hours |

### 1.4.2.2.3 Service Description – Specialized Technical Support Service

Scytl provides specialized technical support for those software components embedded in the provided solution. The specialized technical support includes responses to technical questions and providing technical support during maintenance or testing activities[1]. The support service will be handled through the defined Technical Support Contacts.

| What is included | • Response to technical questions related to the products making up the solution. |
| --- | --- |
| | • Deployment or support to the deployment on the Licensee's infrastructures after a Maintenance Release; |
| | • Ad-hoc digital signature of applications after a Maintenance Release |
| | • Ad-hoc Trusted Build activities after a Maintenance Release. |
| What is not included | • Support on solution configuration for specific electoral processes. |

### 1.4.2.2.4 Service details – Specialized Technical Support Service

| Service hours | Monday to Friday from 9 AM to 5 PM EST |
| --- | --- |
| Response time | Within 2 working days |
| Diagnosis time | Within 3 working days |
| Service volume | Annual pool of hours (see proposal/contract) |

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[1] Technical support during specific electoral processes is an optional service that is not included under this service

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### 1.4.2.3 Hosting.

Scytl is responsible for new releases, security, maintenance, and uptime and will provide the Customer with the following services:

a. Hosting of the software on Scytl' servers in an Amazon Data Center rented by Scytl located in the US and providing the Customer access to the hosted SOFTWARE seven (7) days per week, twenty-four (24) hours per day, except for scheduled maintenance.

b. Installation, test, and initial system set up in the servers in the Data Center.

Scytl will provide the Customer with the following support and service level.

a. Availability of 99.9% uptime (excluding scheduled maintenance windows).

b. Full infrastructure and network redundancy using distributed cloud locations.

c. Reporting tools will be available upon request to show historic data.

# Scytl

**SUBSCRIPTION AGREEMENT**
**Between**
**COMAL COUNTY TEXAS**
**&**
**SOE SOFTWARE CORPORATION (d/b/a SCYTL)**

### PREAMBLE

This SUBSCRIPTION AGREEMENT (the "Agreement") is entered into as of this 1st day in the month of October, in the year of 2019 by and between Comal County, Texas with address at 150 N Seguin Ave, Suite 1010, New Braunfels, Texas 78130 (the "Customer") and SOE Software Corporation (d/b/a SCYTL) a corporation existing under the laws of Florida, with principal offices at 1111 N. Westshore Blvd., Suite 300 Tampa, FL 33607 ("SCYTL"). Collectively, SCYTL and the Customer shall be referred to as the "PARTIES" and each separately as the "PARTY".

### RECITALS

A.  SCYTL is a technology company specializing in providing election management and online voting solutions. SCYTL has developed and is the rightful owner/SCYTL is the rightful Licensor of a (Election Night Reporting), among other solutions (hereinafter referred to as the SOFTWARE).

B.  The Customer has decided to retain the services of SCYTL to provide the SOFTWARE on a SaaS model.

C.  The PARTIES desire to enter into this SaaS Agreement so as SCYTL will license the Software to the Customer and provide it with associated services under the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, the PARTIES agree as follows:

## ARTICLE 1.- DEFINITIONS

- Documentation: means standard documentation including setup and back-office user guides in English
- Customer: means Comal County Texas
- SaaS: Software as a Service
- SCYTL: SOE SOFTWARE CORPORATION
- Software: Election Night Reporting, also known as ENR
- Subscription: the services and license provided by SCYTL to the Customer under the terms and conditions of this Agreement as defined in Articles 2 and 3.

## ARTICLE 2.- SOFTWARE SUBSCRIPTION

2.1. Provision of the SOFTWARE._Under the terms and conditions hereunder agreed SCYTL provides the Customer with (i) the SOFTWARE as SaaS; (ii) Maintenance and support services as defined in Article 4; and (iii) hosting for the SOFTWARE (all of them referred hereinafter as the Subscription).

2.2. Grant of License. Subject to the terms and conditions of this Agreement and payment of the Subscription fees, Scytl hereby grants the Customer a non-exclusive, non-perpetual, non-transferable license to use the SOFTWARE and the Documentation for internal purposes.

2.3. Reservation of Rights.   The SOFTWARE and Documentation are licensed, not sold. SCYTL and affiliates own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights), in and to the SOFTWARE and Documentation and any copies, corrections, bug fixes, enhancements, modifications, Updates, Upgrades, or new versions thereof, all of which shall be deemed part of the SOFTWARE, as the case may be, and subject to all of the provisions of this Agreement.  The Customer shall keep the SOFTWARE and Documentation free and clear of all liens, encumbrances and/or security interests.  No rights are granted to the Customer pursuant to this Agreement other than as expressly set forth in this Agreement.

2.4. Restrictions.  The Customer shall not (and shall not allow its customers or any third party) to: (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the SOFTWARE and/or Documentation, except to the extent that such restriction is permitted by applicable law; (b) circumvent any user limits or other license timing or use restrictions that are built into the SOFTWARE; (c) sell, resell, rent, lend, transfer, distribute, license, sublicense or grant any rights in the SOFTWARE and/or Documentation in any form to any person without the written consent of Scytl except for the right to authorize the use of the SOFTWARE by its customers under the terms and conditions hereunder agreed; (d) remove any proprietary notices, labels, or marks from the SOFTWARE and/or Documentation except those trademarks which are configurable; (e) unbundle any component of the SOFTWARE and/or Documentation; (f) build a product or service that is competitive with the SOFTWARE; (g) copy any ideas, features, functions or graphics of the SOFTWARE and/or Documentation; (h) copy, frame or mirror any part of the SOFTWARE; (i) permit any third party to access the SOFTWARE or (i) use the SOFTWARE and/or the Documentation in violation of applicable laws.

## ARTICLE 3.- HOSTING AND INSTALLATION

3.1. SCYTL shall provide the Customer with the following services included in the Subscription Fee as defined in Article 2.
   a. Hosting of the SOFTWARE in SCYTL's servers in a Cloud Hosted Data Center rented by SCYTL located in the US and providing the Customer access to the hosted SOFTWARE seven (7) days per week, twenty-four (24) hours per day except for scheduled maintenance.
   b. Installation, test and initial system set up in the servers in the Data Center.
   c. Standard documentation including setup and back-office user guides in English.

3.2. SCYTL shall provide the Customer with the following hosting support and service level:
   a. Availability of 99.9% uptime (excluding scheduled maintenance windows).
   b. Reporting tools will be available upon request to show historic data.
   c. Full infrastructure and network redundancy using distributed cloud locations.

## ARTICLE 4.- MAINTENANCE AND SUPPORT SERVICES

4.1. During the Term of this Agreement, SCYTL shall provide the Customer with maintenance services and third level support in accordance with the Service Level Agreement attached hereto as Appendix 1, being an integral part of this Agreement, which shall consist of (i) the updating and upgrading of the SOFTWARE and (ii) the modification and/or adaptation of the SOFTWARE in order to correct and solve any defects, errors, or malfunctions in the SOFTWARE.

4.2 The support services provided by Scytl include:
- Account Management support, such as application setup review and questions; content updates; and technical support.
- Support services are limited to 8 hours. When you have reached 80% of the allotted support service hours, you will be notified, and you may choose to add additional hours via a work order. If the issue is determined to be a product error, hours will not be deducted. Reference section 9.1 for the support service price table.
- If additional support service hours are not purchased and they are required due to a non-product error, the customer will be charged at a rate of $150/hr.
- Refunds or carry over are not considered if the allotted support service hours are not consumed at the end of the Agreement (and on a yearly basis).
- As a courtesy, Scytl provides election event monitoring of the platform by Account Management and IT Engineers.

4.3 Services delivered are in-line with the original proposal.

4.4 The PARTIES have appointed the following persons as their respective Single Point of Contact (SPOC)

> CUSTOMER: Cynthia Jaqua
> Email: jaquac@co.comal.tx.us
>
> SCYTL: Wendy Williams, Client Services Director
> Email: wendy.williams@scytl.com

## ARTICLE 5.- CUSTOMER AND CUSTOMER DATA

5.1. As between SCYTL and the Customer, Customer exclusively owns all rights, title and interest in and to all its Data.

5.2. SCYTL shall not access Customer's Data, except to prevent or respond to service or technical problems or otherwise at Customer request. SCYTL shall not disclose any Customer Data except as compelled by law or as expressly permitted in writing by Customer.

5.3 All assets created by SCYTL remain the ownership of SCYTL. This includes work files, images, graphics and video footage.

## ARTICLE 6.- DATA PROTECTION

6.1. In order to provide Maintenance and Support Services, under this Agreement SCYTL may need to have access or process personal data under the control of the Customer. In that case, SCTYL, as data processor, undertakes to comply with the requirements set forth in the applicable data protection laws and regulations and, in particular:

    a.  to process the personal data only in accordance with the instructions provided by the Customer as data controller;

    b.  to not apply or use the personal data for a purpose other than set out in this Agreement, and

    c.  to not communicate the personal data to other persons even for their preservation.

6.2. SCTYL warrants having in place the required security measures to avoid loss or unauthorized access or use of the personal data to be processed by SCTYL on behalf of the Customer under this Agreement.

6.3. Upon termination of this Agreement pursuant to Article 8, SCYTL shall destroy or return to the Customer the personal data processed by SCYTL on behalf of the Customer under this Agreement together with any support or document containing personal data.

## ARTICLE 7.- CUSTOMER RESPONSIBILITIES

7.1. The CUSTOMER is responsible for all activities that occur in its accounts and for its compliance with the Subscription Agreement.

7.2. The CUSTOMER shall: (i) use best practices and have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the SOFTWARE, and notify Scytl promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, provincial, federal, and foreign laws in using the SOFTWARE.

7.3. The CUSTOMER acknowledges that SCYTL's ability to deliver the SOFTWARE and the related Services is dependent upon CUSTOMER's full and timely cooperation with SCYTL.

7.4. SCYTL requires seven business days to review, and/or deliver on any requests from the CUSTOMER related to Maintenance and Support Services (Article 4).

7.5. SCYTL will not be liable for any delays in the delivery caused by CUSTOMER or resulting from CUSTOMER's failure to fulfil any of its obligations.

## ARTICLE 8.- SUBSCRIPTION TERM AND TERMINATION

8.1. This Agreement shall be valid and remain in full force and effect for a term of three (3) years as of the Effective Date (the Initial Term).

8.2. By mutual agreement, the PARTIES may, but shall not be obliged to, renew this Agreement in writing (each new term the "Renewal Term"). The Fee for any successive Renewal Term shall be equal to the Fee at the end of the Extended Term or any Renewal Term, as applicable, increased by five (5)%.

8.3. This Agreement may be terminated, within the Initial Term or any Renewal Term, for cause upon thirty (30) calendar days prior written notice in the event a Party hereto:

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a.  Is in material breach of this Agreement and fails to remedy such breach within thirty (30) calendar days after receipt of prior written notice by the non-defaulting Party pursuant to Article 17.1 of this Agreement.
b.  Does not pay the yearly Subscription Fee, after being requested in writing to do so by SCYTL and without prejudice of the interests set forth in Article 9.6.
c.  Becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
d.  The failure of Customer to appropriate funds for this Agreement in any given fiscal year shall terminate this agreement, without further recourse to either party.

8.4. Upon termination or expiration of this Agreement the Customer shall unless otherwise set forth in this Article 8 immediately cease the use of the SOFTWARE and if applicable delete and/or destroy all copies of the SOFTWARE. All assets created by Scytl remain the ownership of Scytl. This includes work files, images, graphics and video footage.

8.5. Termination shall not relieve the CUSTOMER of the obligation to pay any fees accrued or payable to SCYTL prior to the effective date of termination.

# ARTICLE 9.- FEES FOR SUBSCRIPTION AND OTHER SERVICES

9.1. The Customer shall pay to SCYTL as the price of the Subscription (Subscription fee) for the Initial Term the following fees per year which will be paid upfront at the beginning of each year term:

| Service | Fee | Invoicing Date |
|---|---|---|
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2019-2020 | $3350.00 | 30 days in advance of contract expiration |
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2020-2021 | $3350.00 | 30 days in advance of contract expiration |
| Scytl ENR (Election Night Reporting) annual maintenance and hosting 2021-2022 | $3350.00 | 30 days in advance of contract expiration |

[1]Additional Support hours may be added on;

9.2. At least ninety (90) days from the end of the (Initial Subscription) Term, the PARTIES agree to review this Subscription Agreement and, should both PARTIES agree to renew or extend the Subscription (The Renewal Term), SCYTL may increase the License fee for any Renewal Term by at least 5% with thirty (30) days' prior notice to CUSTOMER.

9.3. Unless otherwise provided to the contrary in this Agreement, all fees are non-cancellable, non-refundable cannot be decreased during the relevant Subscription Term and will be maintained up to 105,000 registered voters.

9.4. All Fees, whether for the Initial Term or any of the Renewal Term, are exclusive of taxes.

9.5. If the Customer does not pay an invoice by the due date for payment, SCYTL may charge and the Customer shall pay in conjunction with the unpaid amount, interest at the rate lesser of 2% per month

or the maximum rate permitted by law, calculated on the daily balance of the unpaid amount from the due date for payment until that unpaid amount (including accrued interest) is paid in full.

## ARTICLE 10.- SCOPE AND LIMITATION OF AFFILIATE'S AUTHORITY

Nothing in this Agreement shall be deemed to create an agency relationship or the relationship of employer and employee, master and servant, franchiser and franchisee, partnership or joint venture between the PARTIES. It is understood that the relationship between SCYTL and the Customer shall be that of independent contractors.

## ARTICLE 11.- CONFIDENTIAL INFORMATION

11.1. Each PARTY agrees and shall undertake to ensure that any and all information received by it in connection with this Agreement which is derived from the Agreement or another PARTY (however acquired and in whatever form) and which is designated by means of appropriate text to be or otherwise should be seen to be of a proprietary or confidential nature shall be treated by it as confidential, and neither PARTY shall disclose all or any part of it to any third-party or otherwise seek to exploit all or any part of it without the prior written consent of the other PARTY. This Article 11 shall not apply to information which at any time comes into the public domain through no fault of any PARTY.

11.2. Each PARTY agrees to make all reasonable efforts to prevent any of its employees or personnel or any other person(s) from obtaining or making any unauthorized use of, or affecting any disclosure of, any confidential information.

11.3. Any confidential information furnished by a PARTY shall remain the property of the PARTY from which it is derived and, upon termination of this Agreement for any cause whatsoever, the other PARTY shall cease to use the same and shall destroy or return the same to the PARTY from which it is derived together with all related documents and copies.

11.4. Notwithstanding Article 8 with respect to the term of this contract, the obligations in this Article 11 shall bind the PARTIES during the term of this Agreement and for three (3) years after this Agreement is terminated for whatever cause.

11.5. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by the Recipient without a breach of this Agreement; or (f) is disclosed by the Recipient, without a confidentiality requirement imposed on the third party receiving the disclosure, with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order.

## ARTICLE 12.- WARRANTIES AND DISCLAIMERS

12.1. SCYTL represents and warrants that (i) the SOFTWARE will perform materially in accordance with the specifications and requirements of Annex I for the Subscription Term; (ii) the SOFTWARE will not contain any Malicious Code at the time of delivery to the Customer; (iii) SCYTL owns the rights in the SOFTWARE and Documentation to grant to the Customer the rights to use the SOFTWARE and Documentation granted herein; and (iv) to its knowledge, the SOFTWARE and Documentation do not infringe any intellectual property rights of any third party. SCYTL does not warrant, however, that the Customer's use of the SOFTWARE will be uninterrupted, and that the operation of the SOFTWARE will be error-free.

12.2. In the event of a breach during the applicable warranty period of one or more of the warranties set forth in Section 12.1 hereof, SCYTL shall use reasonable commercial efforts to correct such breach of the warranty. If Scytl is unable to remedy the breach of warranty within a reasonable time, SCYTL shall refund the purchase price of the SOFTWARE.

12.3. The foregoing warranty is only applicable if SCYTL receives written notice of a breach of warranty within thirty (30) days after the end of the applicable warranty period. Such notice must contain sufficient information regarding the circumstances under which the warranty breach can be observed. The warranty shall not apply to the extent that the breach is caused by misuse, negligence, accident, unauthorized modification, alteration, customization or repair, improper operation or maintenance.

12.4. The warranties set out in section 12 hereof are the only warranties provided by SCYTL and the remedies set out in section 12.2 hereof are the sole and exclusive remedies of et for a breach of warranty.

## ARTICLE 13.- INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

13.1. Subject to this Agreement, SCYTL shall defend, indemnify and hold the Customer harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings made or brought against the Customer by a third party alleging that the use of the SOFTWARE and Documentation as contemplated hereunder infringes the intellectual property rights of a third party (each an "Infringement Claim"); provided, that the Customer (a) promptly gives written notice of the Infringement Claim to SCYTL; (b) gives SCYTL sole control of the defense and settlement of the Infringement Claim (provided that SCYTL may not settle or defend any Infringement Claim unless it unconditionally releases the Customer of all liability); and (c) provides to SCYTL all reasonable assistance and information.

13.2. If (a) SCYTL becomes aware of an actual or potential Infringement Claim, or (b) the Customer provides SCYTL with notice of an actual or potential Infringement Claim, SCYTL may (or in the case of an injunction against the Customer, shall), at SCYTL' sole option and determination: (i) procure for the Customer the right to continue to use the SOFTWARE; or (ii) replace or modify the SOFTWARE with equivalent or better SOFTWARE so that the Customer's use is no longer infringing; or (iii) if (i) and (ii) are not commercially reasonable, as determined by Scytl in its sole discretion, terminate the license(s) for such SOFTWARE and refund to the Customer that portion of any prepaid subscription fees that is applicable to the period following the termination of the Subscription pursuant to this Section 13, less any outstanding moneys owed on such affected portion of the SOFTWARE.

13.3. The indemnity in this Article does not extend to (1) any Infringement Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the SOFTWARE furnished by SCYTL with other products, SOFTWARE or services not provided or approved by SCYTL, other than SOFTWARE designed by SCYTL with certain commercial hardware or other commercially available SOFTWARE, if such infringement would have been avoided but for such combination; (2) any Infringement Claim related to or in connection with any modification of the SOFTWARE by anyone other than SCYTL if such infringement would have been avoided but for such combination; (3) any Infringement Claim in respect to any version of the SOFTWARE other than the most current version; or (4) any use, distribution, sublicensing or exercise of any other right outside the scope of the licenses granted in this Agreement.

13.4. This article 13 contains SCYTL's entire liability, and the customer's sole and exclusive remedies, for infringement claims.

## ARTICLE 14.- CUSTOMER INDEMNIFICATION

To the extent permitted by law, without the creation of sinking fund, the Customer shall defend, indemnify and hold SCYTL harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against SCYTL by a third party alleging that the Customer's Data or the Customer use of the SOFTWARE and Documentation in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that SCYTL (a) promptly gives written notice of the third party claim to the Customer; (b) gives the Customer sole control of the defense and settlement of the third party claim (provided that the Customer may not settle or defend any third party claim unless it unconditionally releases SCYTL of all liability); and (c) provides to the Customer, at the Customer's cost, all reasonable assistance and information.

## ARTICLE 15.- LIMITATION OF LIABILITY

15.1. Subject to section 15.3. Hereof, in no event shall either party have any liability to the other party for any indirect, special, incidental, punitive, or consequential damages (including, without limitation, damages for loss of business, loss of profits, business interruption, loss of data, lost savings or other similar pecuniary loss).

15.2. Limitation of Liability. Subject to section 15.3 hereof, in no event shall either party's aggregate liability arising out of or related to this agreement or relating to the subject matter hereof for all claims, costs, losses and damages exceed the amounts actually paid by and due from the customer hereunder in the twelve months preceding the incident giving rise to liability.

15.3. Notwithstanding the foregoing, no limitation of either party's liability set forth in this agreement shall apply to (i) damages arising from a party's breach of its confidentiality obligations, (ii) indemnification claims, (iii) damages arising from infringement of a party's intellectual property rights; (iv) any claims for non-payment, (v) fraud or wilful misconduct, or (vi) bodily injury or death.

## ARTICLE 16.-NOTICES

16.1. All notices given pursuant to this Agreement shall be given personally or be sent by facsimile, e-mail or hand delivery; or by express delivery/courier service to a PARTY's address set forth in Articles

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**Scytl**

16.2 and 16.3, with all postage or other charges of conveyance prepaid and shall be effective upon the actual receipt thereof.

16.2. Unless and until otherwise notified to SCYTL, Customer's address for the purposes of this agreement shall be:

> **COMAL COUNTY TEXAS**
> 396 N. Seguin Ave., Suite 101
> New Braunfels, TX 78130
> Attention: Cynthia Jaqua,
> E-mail: jaquac@co.comal.tx.us

16.3. Unless and until otherwise notified to the Customer, SCYTL's address for the purposes of this agreement shall be:

> **SOE SOFTWARE CORPORATION**
> 1111 N. Westshore Blvd., Suite 300,
> Tampa, FL 33607
> Attention: Jonathan Brill
> Email: jonathan.brill@scytl.com
>
> c.c.:
> Scytl Secure Electronic Voting S. A.
> C/ Enric Granados 84,
> 08008 Barcelona, Spain
> Spain
> Attention: Ms. Belen Gabutti
> Email: belen.gabutti@scytl.com

## ARTICLE 17 - OTHER PROVISIONS

17.1.    Cure Any failure by a PARTY to meet any of its obligations under this Agreement, must be brought to the other PARTY's attention, in writing.  The defaulting PARTY shall have thirty (30) days after receiving such notification to cure such failure and meet its obligations.

17.2.    No Waivers The failure of either PARTY to this Agreement to exercise any of its rights hereunder upon breach by the other PARTY or any condition, covenant or provision contained in this Agreement shall not be construed as a waiver thereof, nor as a waiver of the same or any other default subsequently occurring.

17.3.    Headings The headings of the articles and sections in this Agreement are employed, and are for, the convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the PARTIES.

17.4.    Severability If any provision of this Agreement is determined to be unenforceable, the remaining provisions of the Agreement shall remain in effect to the extent possible in the absence of the unenforceable provision.

17.5.    Authority Each PARTY represents and warrants that the undersigned has full authority to execute this Agreement and to bind the PARTY to the terms and provisions herein.

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17.6. <u>Jurisdiction</u> This Agreement shall be construed in accordance with and governed by the laws of Texas and each party agrees to submit to the jurisdiction of the courts of Comal County, Texas.

17.7. <u>Entire Agreement</u> This Agreement contains the entire agreement between the PARTIES, and all prior or contemporaneous agreements and understandings, oral or written (including, without limitation, any correspondence, proposed drafts or term sheets) are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless done so in writing and signed by both PARTIES.

17.8. <u>Transfer of Right</u> Neither PARTY shall transfer or assign any and all of its rights or obligations under this Agreement without the prior written consent of the other PARTY. Consent shall not be unreasonably withheld.

17.9. <u>Force Majeure</u> Neither PARTY will be responsible for any failure to perform hereunder due to unforeseen circumstances or cause beyond the non-performing PARTY's reasonable control including, without limiting the foregoing, a strike or other labor disturbance, lock-out, riot, delay in transportation, the inability to secure labor, materials, supplies or equipment, an act of God or the elements, fire, flood, or accidents, an act of war or conditions arising out of or attributable to war, laws, rules, and regulations of any governmental authority, procedures relating to environmental matters, delay in the issuance of required permits or approvals with respect to any operations or activities, or any other matters or conditions which are beyond the reasonable control of such PARTY, whether or not similar to the matters and conditions herein specifically enumerated. This Article 17.9 does not apply to excuse a failure to make payments when due.

17.10 <u>Counterparts</u> This Agreement may be executed in two or more counterparts, and each counterpart shall become binding when the other(s) has or have been signed as if it had been signed by each PARTY. Facsimile signatures shall be considered original signatures for the purposes of execution and enforcement of the rights and obligations described herein.

IN WITNESS WHEREOF, the PARTIES have duly executed this Agreement on this date first written above intending to be bound thereby,

**COMAL COUNTY, TEXAS**

By: *Ramona Womack*
Title: *Purchasing Director*

**SOE SOFTWARE CORPORATION**
**(d/b/a SCYTL)**

_____
By: Jonathan Brill
President & General Manager North America

# APPENDIX 1

## *1* Software Maintenance and Support – Technical Service description

### 1.1 Definitions

The definitions used in the Agreement are incorporated herein by reference. In addition, the following terms shall have the following meaning:

- **"Software maintenance"** is defined as the process of modifying a software system or component after delivery to correct faults, errors and bugs; to improve performance or other attributes; or to adapt to a changed environment.

- **"Perfective maintenance"** includes modifications and upgrades done in order to keep the software usable over a long period of time. It includes new features and new user requirements for refining the software and improving its reliability and performance.

- **"Adaptive maintenance"** includes modifications and upgrades applied to keep the software product up-to-date and tuned to the changing environment.

- **"Preventive maintenance"** includes modifications and upgrades to prevent future issues of the software. It aims to attend problems, which are not significant at this moment, but may cause serious issues in the future.

- **"Corrective maintenance"** includes modifications and upgrades done in order to correct or fix faults, errors and bugs, which are either discovered by the Customer or concluded by user error reports.

- **"Response time"** means the time elapsing between the reporting of an Issue by a Customer and the response from a Scytl's Technical Support Services engineer acknowledging receipt of the reported Issue.

- **"Diagnosis time"** means the time elapsing between the Response time and the diagnosis of the Issue made by Scytl's Technical Support Services engineer.

- **"Issue"** means either:
  a) A failure of the Software to conform to the specifications set out in the documentation relating to that version of the Software, resulting in the inability to use, or restriction in, the use of the Software; or
  b) A problem in current features requiring new procedures, clarifications, additional information and/or requests for product enhancements.

- **"Resolution or Patch or Bug Fix"** means either a Software modification or addition that, when made or added to the Software, corrects an Issue, or a procedure or routine that, when observed in the regular installation or operation of the Software, eliminates the practical adverse effect of the issue on you.

- **"Upgrade"** means a revision or change of version of the Software released by Scytl to its end user customers generally during the Support Services Term, to add new and different functions or to increase the capacity of the Software.

- **"Maintenance Release"** is a release of or for the Software, that includes the most recent Patches and Upgrades.

- **"Current Software Version"** means the most recently released, commercially available version of the Software at the time a Customer Support Contact relates a particular support incident to Scytl hereunder.

- **"Supported Versions"** means SCYTL's obligations with respect to the Maintenance Services, which shall apply only to those versions of the Software that are within one (1) year time frame of the Current Software Version.

- **"Hosted System"** means Software hosted by Scytl externally in its data center to which the Customer may access it over the Internet from anywhere at any time.

- **"Annual Pool of Hours"** means the number of support hours as captured in the contract. Support hours may include application "how to" questions, content modifications and technical support. Application issues as a result of Scytl product updates and hosting are not deducted from the pool of hours.

## 1.2    General Terms and Conditions

The Customer shall be entitled to the following Support and Maintenance services during the Term and upon payment of the Fee:

### 1.2.1    Scytl Technical Services.

Scytl Support and Maintenance Services include perfective, adaptive, preventive and corrective maintenance in relation to Supported Versions. The Support Services do not include any post-installation configuration or development support, such as integrations of the Software with the user or third-party developed software or data, configuration advice that is not related to the initial installation and setup, or non-bug related technical problem resolution.

### 1.2.2    Resolutions and Severity levels.

Scytl will make commercially reasonable efforts to provide a resolution or patch designed for resolving a reported issue in accordance with the Service Schedule hereto. If such issue has been resolved or corrected already in an existing Maintenance Release, the Customer must install and implement that Maintenance Release/Upgrade; otherwise, the resolution for critical and high severity issues may be provided in the form of a temporary patch (fix, procedure, or routine) to be used until a Maintenance Release containing the resolution is available. The priority level shall be agreed between the parties following the priority levels described below:

| Severity | Description | Details |
|---|---|---|
| CRITICAL | An immediate and sustained effort using all available resources until issue is resolved. | • Business critical function is down<br>• Major impact to Customer's business<br>• No workarounds exist |
| HIGH | Technicians respond immediately, assess the situation, and may interrupt other staff working low or medium priority jobs for assistance. | • Business critical function is impaired or degraded<br>• There are time-sensitive issues that impact on-going production<br>• Workaround exists, but it is only temporary |
| MEDIUM | Respond using standard procedures and operating within normal Management structures. | • Non-critical function down or impaired<br>• Does not have significant current production impact<br>• Performance is degraded |
| LOW | Respond using standard operating procedures and as time allows. | • Non-critical, function down or impaired<br>• No business impacts<br>• General Service Enhancements |

### 1.2.3 Technical Support Contacts.

Scytl Maintenance and Support Services will be accessible by one (1) designated contact (Technical Support Contact) and one (1) back up contact. You may modify your designated Technical Support Contact at any time during the terms of the service by confirmed email to Scytl's Technical Support Contact, who will be the main interface to the Scytl Maintenance and Support Services.

### 1.2.4 Exclusions from Scytl's Technical Services.

Scytl is not obligated to provide Technical Services in the following situations:

a) When Scytl determines that the Issue is caused by unauthorized changes or modifications to the Software provided by Scytl, resulting in malfunctioning of the Software. This is not applicable if the changes or modifications are made under the direct supervision of Scytl;

b) The Software has been damaged through negligent use by the Customer.

c) The issue is caused by the negligence, hardware, malfunction or other causes beyond the reasonable control of Scytl;

d) The issue is caused by third party software not licensed by or through Scytl;

e) The Customer has not installed and implemented a prior Upgrade or Maintenance Release;

f) The Customer has not installed up-to-date browser and system software;

g) The Customer has not paid the Technical Service fees when due;

h) The version of the Software that the Customer is using is not a Supported Version;

i)   If the Customer has not complied with Scytl's license Agreement; or

j)   Failures related to an accident, disaster, or other Force Majeure event.

### 1.2.5   Agreement in Force.

Except as agreed herein, all other terms and conditions of the Agreement shall apply with full force and effect to this Service Level Agreement.

## 1.3   Escalation Process

For each issue:

1.   The Customer's Technical Support Contact will notify Scytl of the issue through the agreed channels;

2.   A Scytl Technical Support contact will acknowledge the reception of the issue;

3.   A Scytl Technical Support contact will do an initial diagnosis and complete the incident details in the Incident Management Tool:

   - Services affected;

   - Level of disruption;

   - Cause of the incident, if known;

   - Estimated time to resolve the issue or time of next update;

   - Feasible workaround.

4.   The Scytl Technical Support contact will call or email the Customer's Technical Support Contact providing the diagnosis and incident identifier and will agree on a *Criticality Level* based on a predefined set of criteria;

5.   The Scytl Technical Support contact will provide regular updates on the incident status.

## 1.4   Service Level Agreements (SLAs)

To guarantee a smooth and efficient relationship between Scytl and their partners, Scytl assigns a Service Manager (Account Manager) who will be the main point of contact to coordinate regular maintenance and support activities.

The Service Manager will periodically report on the different activities performed, as well as the status of the contracted pools of support hours (if any).

| | |
|---|---|
| *What is included* | • Single Point of Contact (SPOC) |
| *What is not included* | • Project Management activities for Electoral Events |

### 1.4.1   Issue Response.

In the event the Hosted System fails to perform as required by this Agreement (an "Issue"), the following Issue Response Procedure shall apply: Customer will notify Scytl of any identified Issue as soon as possible.  Customer will also provide the reasonable availability of a single point of contact to assist Scytl in resolving any Issue with the Software. Upon notification of an Issue, Customer and Scytl by mutual agreement in good faith shall classify the severity of the Issue based on the levels detailed in Section 1.2.2.  Scytl shall follow up with Customer with a telephone call or email response within 30 minutes upon notification of an Issue, subject to the Issue levels below.  During the follow-up telephone or email, Scytl shall provide Customer with an initial assessment of the Issue in conjunction with any identified steps for the parties to mitigate the Issue.

| Severity | Response Time |
|---|---|
| Critical Priority | 0-30 minutes (during business hours) |
| High Priority | Within 2 hours |
| Medium Priority | Within 24 hours |
| Low Priority | Within 5 working days |

### 1.4.2   Service Details.

Scytl's Software Support and Maintenance Service is divided into different sub-services:

- Service availability;
- Planned Maintenance Service and Technical Support;
- Hosting.

Further details are provided below.

### 1.4.2.1 Service Availability.

| | |
|---|---|
| Service hours | Monday to Friday from 8 AM to 5 PM EST (Eastern Time) |
| After hours support | On-call staff can be reached via the support telephone and/or support email. Calls received outside of Service Support Hours will be forwarded to the on-call service manager's mobile telephone. Email support is available using the support email product.support@scytl.com. Calls and emails received outside of the service time frame will receive a response in accordance with the priority of the reported issue. |
| Response time | Dependent on issue priority (see section **Error! Reference source not found.**) |
| Diagnosis time | Dependent on issue priority (see section **Error! Reference source not found.**) |
| Service volume | Annual pool of hours (see contract). |
| Rules of use | • In the event of consuming the whole bundle of hours, an additional pool of hours could be purchased;<br>• Refunds or carry over are not considered if the pool of hours is not consumed at the end of the Agreement (and on a yearly basis). |

### 1.4.2.2 Planned Maintenance Service and Technical Support.

1.4.2.2.1 Service Description – Planned Maintenance

Scytl is responsible for guarantying the quality of the Software provided under the Agreement, as well as facilitating the inclusion of new features as a result of a product evolution. Upon a **Maintenance Release**, Scytl guarantees the data integration for the **Supported Versions**.

| | |
|---|---|
| What is included | • Perfective maintenance;<br>• Adaptive maintenance;<br>• Preventive maintenance (including updates such as digital certificates);<br>• Corrective maintenance. |
| What is not included | • Extension of any existing functionality, which should be handled via the Change Management process;<br>• The development of any new functionality, which should be handled via the Change Management process. |

### 1.4.2.2.2 Service details – Planned Maintenance

| | |
|---|---|
| *Service hours* | Monday to Friday from 9 AM to 5 PM EST<br><br>Maintenance activities may be planned as after-hours service or during the weekends as agreed by the Customer. |
| *Response time* | Within 2 working days |
| *Diagnosis time* | • Critical and High severity issues - Within 8 service hours<br><br>• Medium severity issues - Within 16 service hours |

### 1.4.2.2.3 Service Description – Specialized Technical Support Service

Scytl provides specialized technical support for those software components embedded in the provided solution. The specialized technical support includes responses to technical questions and providing technical support during maintenance or testing activities[1]. The support service will be handled through the defined Technical Support Contacts.

| | |
|---|---|
| *What is included* | • Response to technical questions related to the products making up the solution;<br><br>• Deployment or support to the deployment on the Licensee's infrastructures after a Maintenance Release;<br><br>• Ad-hoc digital signature of applications after a Maintenance Release;<br><br>• Ad-hoc Trusted Build activities after a Maintenance Release. |
| *What is not included* | • Support on solution configuration for specific electoral processes. |

### 1.4.2.2.4 Service details – Specialized Technical Support Service

| | |
|---|---|
| *Service hours* | Monday to Friday from 9 AM to 5 PM EST |
| *Response time* | Within 2 working days |
| *Diagnosis time* | Within 3 working days |
| *Service volume* | Annual pool of hours (see proposal/contract). |

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[1] Technical support during specific electoral processes is an optional service that is not included under this service

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### 1.4.2.3 Hosting.

Scytl is responsible for new releases, security, maintenance, and uptime and will provide the Customer with the following services:

a. Hosting of the software on Scytl' servers in an Amazon Data Center rented by Scytl located in the US and providing the Customer access to the hosted SOFTWARE seven (7) days per week, twenty-four (24) hours per day, except for scheduled maintenance.

b. Installation, test, and initial system set up in the servers in the Data Center.

Scytl will provide the Customer with the following support and service level:

a. Availability of 99.9% uptime (excluding scheduled maintenance windows).

b. Full infrastructure and network redundancy using distributed cloud locations.

c. Reporting tools will be available upon request to show historic data.