MEMORANDUM

To: Todd Rokita, Secretary of State; Brad King, Indiana Election Division Co- Director; Pam Potesta, Indiana Election Division Co-Director

From: John Runte, Virchow Krause & Company; SVRS Independent Project Manager

CC: Andrew Schuman, Virchow Krause & Company; Joe McLain, HAVA Coordinator

Date: April 23rd, 2009

Re: SVRS Application Speed and Performance Issues

Virchow Krause and Company (herein after VK), as the State's Independent Statewide Voter Registration System (SVRS) Project Manager, has drafted this memo at the State's request to provide background information on Quest Information Systems' (herein after Quest) SVRS application performance issues that occurred during the 2008 Primary Election. VK understands that there were some discussions during the Vote Indiana Team meeting on April 3rd, 2009 regarding the SVRS speed and performance issues as well as potential contractual service level agreement (SLA) credits available to the State as a result of the issues. This memo references the Primary Election of 2008 and the General Election of 2008.

Executive Summary

This memo provides a summary on the speed and performance issues discussed during the April 3rd, 2009 Vote Indiana Team meeting. VK offers the following summary of these project events which have generally been documented in previous project documents:

- The IN SVRS has performed successfully in four statewide elections and many municipal and special elections. Leading up to the 2008 Primary Election, the IN SVRS experienced unprecedented transactional, reporting, and user activity based on very high voter registration volumes resulting in widespread speed and performance issues within the system. The impact of these issues was primarily a slower system which did not meet contractual service level agreements (SLAs). A contractual service level agreement is defined in the contract for acceptable speed and performance associated with how long it takes for a transaction to be completed within the system (generally three seconds or less for transactions and higher time limits for different categories of reports).

- The State core team consisting of the Secretary of State and the Bipartisan Co-Directors of the Indiana Election Division together with VK as independent project manager escalated performance issues with Quest in early April 2008. VK and the State core team conducted multiple escalation meetings with Quest surrounding the system speed and performance issues throughout April 2008.

- Quest made several attempts to resolve the speed and performance issues during the 2008 Primary Election cycle. Quest could not resolve many of the major issues given the lead time required in making the necessary changes as well as the risks entailed with making major system changes during the peak 2008 Primary Election period.

- In May 2008, Quest used a contractual "right to cure" provision and provided the State with a cure plan to resolve the slow system issues (SLA non-conformities). The cure plan entailed over $275,000 in internal investments by Quest and identified 27 action items to resolve the speed and performance issues by early September 2008. This timeframe met the State and County deadline for fixing the system speed and performance issues prior to the 2008 General Election cycle.

- In June 2008, the State core team surveyed all 92 counties during the June Clerk's conference to understand whether the State core team should immediately seek contractual remedies for the slow system experienced during the Primary Election recognizing the risk associated with considering legal action against Quest prior to the General Election. Of the 88 counties that participated in the survey, 81 counties (or 92%) believed the State core team should assess the SVRS speed and performance issues after the November Election and, if Quest's proposed cure plan did not adequately resolve the issues, then the State core team should pursue available remedies. The State core team and VK evaluated the Quest cure plan, the limited options available to address the issues prior to the General Election cycle and the input from the county based survey results and the State core team agreed that allowing Quest to proceed with the cure plan was an appropriate course of action to address the speed and performance issues observed during the Primary Election.

- The 2008 General Election established new records for system transactions based on unprecedented volumes associated with the election cycle. The system speed and performance was significantly improved over the Primary Election cycle with very few contractual service level non-conformities. The non-conformities that remained were addressed by the State core team and VK resulting in appropriate system changes that were implemented to address the non-conformities. The system encountered several days of speed and performance issues in early October based on the Social Security Administration's speed and performance impacts on IN SVRS. We are aware that many other States across the Nation suffered similar speed and performance issues during the SSA system issue in early October.

- The contractual service level agreements for speed and performance are very specific within the contract. VK uses the service level agreement speed and performance formulas based on the contract together with system speed and performance data validated by Quest for accuracy to calculate the number of service level non-conformities for speed and performance on a monthly basis. This data is provided to the State core team and includes a calculation of potential service level credit amounts based on the number of non-conformities and credit amounts as defined by the contract. The data has a footnote that reads *"Reporting SLA penalties and credits have been calculated by Virchow Krause. These are only draft SLA penalties and credits and need to be confirmed by the State and the Office of the Attorney General".* This footnote illustrates that VK does not express an opinion regarding whether the State is owed a service level credit or not. We simply calculate the potential credits as defined within the managed services portion of the contract for the State core team to act upon with Attorney General input and legal support at the State level. The maximum amount of potential service level credits depending on contractual interpretation using the process described above between November 2007 and September 2008 total $2,116,000.

Conclusion

In conclusion, the contract between the State of Indiana and Quest is a negotiated agreement with many details surrounding things like service level agreements and remedies for service level non-conformities. These contractual provisions are intended to provide the State remedies and leverage over Quest in the event of system issues such that the system can be fixed enabling the system to work as the State intended and as the State contracted. The agreement also includes provisions for Quest to cure system non-conformities and to provide the system the State contracted to support IN elections. VK is not a law firm and therefore does not express an opinion on how to interpret the contractual right to cure provisions. We also do not express an opinion, legal or otherwise, on service level agreement non-conformities and associated contractual remedies. VK can report on the facts. Significant service level non-conformities were identified and reported associated with the Primary Election. Quest presented and executed a cure plan to address the non-conformities. The cure plan as executed by Quest did achieve adequate speed and performance of the IN SVRS in the General Election cycle as defined by contractual service level agreements.