

APPENDIX E TO DIR-TSO-4040
SAMPLE ANNUAL HOSTING
AGREEMENT

<CUSTOMER NAME>

<DATE>

Purpose

The purpose of this document is to establish or renew the annual hosting agreement between <CUSTOMER Name> (Customer) and 5 Point Solutions, LLC Solutions).

5 Point Solutions, LLC Solutions Responsibilities

- 1) Provide hosted SQL Server databases necessary to support the 5 Point Solutions, LLC system infrastructure required by Customer's system.
- 2) Provide hosted Web Servers necessary to support the 5 Point Solutions, LLC system infrastructure required by Customer.
- 3) Provide daily backups of all data stored in the 5 Point Solutions, LLC SQL databases.
- 4) Provide internet access from the 5 Point Solutions, LLC Web servers to the internet.
- 5) Provide the proper power, networking, firewalls, VPN connectivity, HVAC and security controls to Customer's dedicated servers to meet Service Level requirements set forth in the attached Exhibit A Service Level Agreement.
- 6) Provide proper technical and subject matter expert resource(s) to help troubleshoot and resolve any Data Exchange issues that may be occurring on the 5 Point Solutions, LLC side of the internet.
- 7) Provide the following Server Management (Monitoring, OS, Patch, and AV Management)
 - a. 24x7x365 monitoring of vital system metrics
 - b. Fully managed through the OS by 5 Point Solutions, LLC including issue resolution
 - c. Patch and anti-virus management
 - d. Events are automatically delivered to 5 Point Solutions, LLC engineering
 - e. Up/down (ping) monitoring of server or network device

Customer Responsibilities

- 1) Provide and maintain internet access from any Customer PC and agency server necessary to facilitate the Data Exchanges and user access to Customer servers.
- 2) Provide the proper power, networking, HVAC and security controls on the Customer network side of the internet to meet requirements set forth in the attached Appendix A- Service Level Agreement.
- 3) Provide proper technical and subject matter expert resource(s) to help troubleshoot and resolve any Data Exchange issues that may be occurring on the Customer side of the internet.

Hosting Costs

Description	Unit Amount	Qty	Total Amount
5 Point Solutions, LLC <Start Date> to <End Date>	\$	1	\$
TOTAL:			\$

Invoices and Taxes

Invoices shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 8.I Invoices. Taxes shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 8.E Tax-Exempt. A complete invoice is one that contains the Customer purchase order number, the DIR Contract No. DIR-TSO-4040, invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 8.J Payments. 5 Point Solutions, LLC is liable for any and all taxes on any and all income it receives under this Agreement.

Term and Termination

(a) **Term.** The term of this Agreement (together with any renewals, the "**Term**") begins on the Effective Date and expires 12 months later. Immediately upon expiration this Agreement automatically renews annually for (1) year on each anniversary of the Effective Date, unless either party gives the other party notice that the Agreement does not renew at least thirty (30) days before the end of the then applicable Term.

(b) **Survival.** The following captioned sections survive any termination, expiration or non-renewal of this Agreement: "Disclaimer", "Limitation of Liability", "Indemnification", "Survival" and "General", as well as any other provisions expressly stating that they are perpetual or survive this Agreement.

(c) Termination. Termination shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 11.B Termination.

Warranties

(a) Mutual Warranties. Each party represents, warrants, and covenants to the other that:

(i) General. It: (a) is a company duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization; (b) is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required; and (c) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

(ii) Law Compliance. It complies with all applicable Laws.

(b) Warranties by 5 Point Solutions, LLC. 5 Point Solutions, LLC represents, warrants and covenants to Customer that:

(i) Warranty Length. The Services and Deliverables conform to the requirements of this Agreement, are free from any defect in material and workmanship, and are free of all liens, claims and encumbrances of any kind.

(ii) Infringement. The Services and Deliverables do not violate any patent, trade secret, or other intellectual property or proprietary rights of any third party, and as of the Effective Date.

(iii) No Litigation. There is no actual or threatened litigation: (a) that affects its ability to comply with this Agreement, or (b) concerning the Services or Deliverables.

(iv) Services Performance. The Services are performed in a professional and competent manner, conforming to generally accepted standards applicable to services provided by nationally recognized firms specializing in the area of Services provided under this Agreement. Each of the individuals assigned to provide any Services under this Agreement have the proper skill, training, and background to provide the Services.

(c) Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, 5 POINT SOLUTIONS, LLC AND CUSTOMER EACH MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OR COVENANTS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

Limitation of Liability shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 10.K Limitation of Liability.

INDEMNIFICATION

Indemnification shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 10.A Indemnification.

Force Majeure

Force Majeure shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 11.C Force Majeure.

General

(a) Entire Agreement and Amendments. The DIR Contract No. DIR-TSO-4040, and this Agreement is the entire agreement between the parties. No prior or contemporaneous representation or agreement outside of the DIR Contract No. DIR-TSO-4040, and this Agreement shall have any effect whatsoever on the terms hereof. In the event of a conflict between DIR Contract No. DIR-TSO-4040, and this Agreement, the DIR Contract will control.

(b) Governing Law and Forum.

This Agreement is governed by the laws of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

(c) Assignment. Assignment shall be in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 4.D Assignment.

(d) No Waivers, Cumulative Remedies. A party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.

(e) Severability. If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

(f) Notices. All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the address set forth in this Agreement by each party.

To <CUSTOMER Name>

To **5 Point Solutions, LLC Solutions**

C/o Cicero Lucas

905 Old Cherokee Road

Lexington, SC 29072

(g) Captions and Plural Terms. All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

Signature Page

The undersigned hereby agree that the signatures below are fully authorized to bind the respective parties to this Hosting Agreement. Further, the parties acknowledge that no other action, consent or approval by the respective parties is necessary to enter this Hosting Agreement as a binding and valid agreement.

Customer:

<CUSTOMER Name>

Company:

5 Point Solutions LLC

Customer's Authorized Signature:

Company's Authorized Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

Exhibit A- Service Level Agreement

1. Network Availability Guarantee

5 Point Solutions, LLC, LLC's ("5 Point Solutions, LLC") Network Availability Guarantee is to have the 5 Point Solutions, LLC network available 99.9% of the time and, as set forth below, 5 Point Solutions, LLC will credit the Customer's account if 5 Point Solutions, LLC fails to meet this Availability Guarantee during any given calendar month. Network unavailability consists of the number of minutes that the 5 Point Solutions, LLC Network was not available to the Customer, but will not include unavailability resulting from (a) 5 Point Solutions, LLC Network Maintenance, (b) any Customer or 5 Point Solutions, LLC ordered telephone company circuits, (c) Customer's applications, equipment, or facilities, (d) acts or omissions of the Customer, or any use or user of the service authorized by Customer or (e) reasons of Force Majeure (as defined in the Terms and Conditions). For any 15 minutes of continuous unavailability, Customer will receive one (1) day of credit towards the 5 Point Solutions, LLC Monthly Fee. In the event of network unavailability greater than the fifteen (15) minutes, or more than one network unavailability occurrence in a day, the Customer will receive credit for one (1) day towards the 5 Point Solutions, LLC Monthly Fee for each cumulative hour of network unavailability. Total credits calculated for any given calendar month cannot exceed the total 5 Point Solutions, LLC Monthly Fee. A day will be defined as consecutive 24 hour period beginning at midnight.

2. Reporting Guarantee

5 Point Solutions, LLC's Reporting Guarantee is to notify Customer within 15 minutes after 5 Point Solutions, LLC's determination that the Customer's service is unavailable. 5 Point Solutions, LLC's standard procedure is to ping Customer's router every five (5) minutes. If Customer's router does not respond after two consecutive five- minute ping cycles, 5 Point Solutions, LLC will deem the service unavailable and will contact Customer's designated point of contact by a method mutually agreed upon between Customer and 5 Point Solutions, LLC (email, fax or pager). This Reporting Guarantee is only available for service provided entirely in the contiguous U.S. and is applicable only if Customer fulfills 5 Point Solutions, LLC's Customer Responsibilities defined Attachment A Software License Agreement. Customer is solely responsible for providing 5 Point Solutions, LLC with accurate and current contact information for Customer's designated points of contact. 5 Point Solutions, LLC will be relieved of its obligations under this Reporting Guarantee if 5 Point Solutions, LLC's contact information for Customer is out of date or inaccurate due to Customer action or omission or if 5 Point Solutions, LLC's failure is due to reasons of Force Majeure (as defined in the Terms and Conditions). If 5 Point Solutions, LLC fails to meet this Reporting Guarantee, at Customer's request, Customer's account shall be credited the pro-rated charges for one (1) day of the 5 Point Solutions, LLC Monthly fee for the service with respect to which this Guarantee has not been met; provided, that Customer may obtain no more than one credit per day, irrespective of how often in that day 5 Point Solutions, LLC failed to meet the Reporting Guarantee.

3. Facility Guarantee

Data Warehouse Facility Guarantee is to provide the following:

- Security. Keyless security with electronic card strike and/or biometric hand or fingerprint geometry reader. Digital camera coverage of the facility, integrated with access control and alarm system.
- Back-Up Power. Facility will have back-up power sources, including uninterruptible power supplies and generators that will provide power for a period of at least 24 hours if the primary source of power is unavailable.
- Conditioned Power. All data center power will be conditioned by commercial type UPS units to prevent power surges or brownout conditions.

- Fire Detection and Suppression. Facility will have a fire detection system and fire suppression system.
- HVAC. Facility will have redundant (N+1) HVAC.
- Temperature. Facility will maintain a “cold row” temperature of 68-78 degrees F (+/- 5 degrees F).
Temperatures within Customer cabinets or racks are not guaranteed.
- Humidity Control. Facility will maintain a relative humidity of 30% - 60% (+/- 5%).

In the event of 5 Point Solutions, LLC fails to meet any of the above guarantees, the Customer will receive credit for one (1) day towards the 5 Point Solutions, LLC Monthly Fee for each day the above guarantees go unmet. Total credits calculated for any given calendar month cannot exceed the total 5 Point Solutions, LLC Monthly Fee. A day will be defined as consecutive 24-hour period beginning at midnight.

4. Virtual Dedicated Server -- Uptime Guarantee

The Service Level Agreement (SLA) covers certain aspects of our Virtual Dedicated Server (VDS) environment. Our goal is to achieve 100% availability for all Customers. The SLA serves to provide you confidence and assurance that we stand behind our infrastructure. In the event that one of your Virtual Dedicated Servers falls below the specified availability level you may request a credit per the terms and conditions of the SLA. Requests for credits must be received by 5 Point Solutions, LLC within ten (10) days after the incident for which the review is being requested. If the unavailability is confirmed by 5 Point Solutions, LLC, a credit will be applied within two (2) weeks. Credits are not refundable and can only be used for current or future charges.

A. Coverage; Definitions

This Service Level Agreement (SLA) applies to you ("Customer") if you have ordered any of the following Virtual Dedicated Server services from 5 Point Solutions, LLC (the "Services") and your account is current (i.e., not past due) with 5 Point Solutions, LLC: Virtual Dedicated Server (Standard and High Availability). As used herein, the term "Availability" means the percentage of a particular month (based on 24-hour days for the number of days in the subject month) that the Virtual Dedicated Server environment is available for access as measured by 5 Point Solutions, LLC.

B. Service Level

1. Goal:

5 Point Solutions, LLC's goal is to achieve 100% Availability for all Customers.

2. Remedy:

If the Availability of Customer's Virtual Dedicated Server is less than the specified level, 5 Point Solutions, LLC will issue a credit to Customer in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected Services:

Availability	VDS Credit Percentage
99.9 % to 100%	0%
98% to 99.8%	5%
95% to 97.9%	15%
90% to 94.9%	25%
89.9% or below	75%

C. Exceptions

Customer shall not receive any credits under this SLA in connection with any failure or deficiency of Availability caused by or associated with:

1. circumstances beyond 5 Point Solutions, LLC's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this SLA;
2. failure of access circuits to the 5 Point Solutions, LLC Network, unless such failure is caused solely by 5 Point Solutions, LLC;
3. scheduled maintenance and emergency maintenance and upgrades (Standard VDS only);
4. High Availability VDS – standard maintenance and emergency maintenance and upgrades excluding the VDS platform
5. DNS issues outside the direct control of 5 Point Solutions, LLC;
6. issues with FTP, POP, IMAP, or SMTP Customer access;
7. false SLA breaches reported as a result of outages or errors of any 5 Point Solutions, LLC measurement system;
8. Customer's acts or omissions (or acts or omissions of others engaged or authorized by Customer), including, without limitation, custom scripting or coding (e.g., C+, C++, CGI, Perl, HTML, ASP, PHP, etc), any negligence, willful misconduct, or use of the Services in breach of 5 Point Solutions, LLC's Terms and Conditions and Attachment A Software License Agreement;
9. e-mail or webmail delivery and transmission;
10. DNS (Domain Name Server) Propagation.
11. outages elsewhere on the Internet that hinder access to your account. 5 Point Solutions, LLC is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. 5 Point Solutions, LLC will guarantee only those areas considered under the control of 5 Point Solutions, LLC: 5 Point Solutions, LLC server links to the Internet, 5 Point Solutions, LLC's routers, and 5 Point Solutions, LLC's servers.

Attachment A: Software License Agreement

This is a license agreement and not an agreement for the sale of software or services. This License gives Customer ("Licensee") limited rights to use the Software and Related Materials described below and imposes upon Licensee certain obligations to protect the 5 Point Solutions, LLC ("Licensor") Software and Related Materials from unauthorized use, reproduction, distribution or publication.

1. **Definitions.** In this License the following words and phrases shall have the following respective meanings, unless the context otherwise requires:
 - (a) **"Confidential Information"** as defined in the contract;
 - (b) **"Copyrights"** shall refer to those copyrights or copyright registrations for the Software or the Software and Related Materials and shall include future copyrights belonging to Licensor or any third party related to Licensor for improvements and modifications thereof and applications by Licensor for registration of copyrights for improvements and modifications thereof;
 - (c) **"End User"** as defined in the Contract;
 - (d) **"Enhancements"** means changes and/or improvements to the Software, whether arising out of the particular Software configuration for the specific use of Licensee or otherwise;
 - (e) **"Errors"** as defined in the Contract;
 - (f) **"Know-How"** includes all technology, source code, object code, local area network manager code, technical information, procedures, processes, trade secrets, methods, practices, techniques, information, logic/flow charts, sketches, drawings, Specifications, application and modification manuals and data relating to the design, manufacture, production, inspection, and testing of the Software, which are from time to time in Licensor's possession;
 - (g) **"Manuals"** means the programmer's manuals, the technical manuals and the user manuals and other similar documentation;
 - (h) **"Modifications"** means Enhancements and/or correction of Errors, and Modifications shall be deemed to have been accepted by Licensee upon the lapse of sixty (60) days following successful installation of any Modifications unless Licensee notifies Licensor in

writing prior to the lapse of such period that the Modifications in question do not conform to Specifications;

- (i) "**Related Materials**" means all of the printed materials, user documentation, training documentation and confidential activation code for the Software supplied by Licensor to Licensee, and includes the Manuals;
- (j) "**Software**", as defined in the Contract; and
- (k) "**Specifications**" means the functional performance parameters of the Software.

2. **Grant of License and Reservation of Ownership.** Licensor hereby grants to Licensee and its authorized End Users a personal, non-exclusive, non-transferable license to use the Software and Related Materials. Licensor retains title and exclusive ownership of any and all copies of the Software and Related Materials licensed hereby. Licensee agrees to use its best efforts to protect the Software and Related Materials from unauthorized use, reproduction, distribution or publication.

3. **Copyrights.**

- (a) The Software and Related Materials are owned by Licensor and are protected by U.S. copyright laws and applicable international treaties and/or conventions. Without limiting the prohibition on assignment contained elsewhere in this License, Licensee acknowledges that its rights to use the Software and Related Materials are personal to Licensee. Licensee therefore covenants not to permit the use of the Software and Related Materials by unauthorized persons and to use its best efforts to prevent the exportation of the Software and Related Materials or any portion thereof into any country which does not have copyright laws that will protect Licensor's Copyrights.
- (b) As set forth in the Contract, Licensor, at its own expense, will defend and indemnify Licensee from all claims that the Software and Related Materials infringe or violates any intellectual property rights.
- (c) As to any Software and Related Materials which are or in the opinion of Licensor may become subject to a claim of infringement, Licensor, at its option, will obtain the right for Licensee to continue using the Software and Related Materials or replace or modify the Software and Related Materials so as to make it non-infringing. If none of the aforementioned alternatives are available on commercially reasonable terms, then Licensee agrees to return the Software and Related Materials to Licensor upon Licensor's written request and Licensor shall, upon return, refund to Licensee all license fees paid by Licensee to Licensor, and Licensor shall have no other or further liability to Licensee. Licensee acknowledges that the remedies set out in paragraph 11 hereof constitute the sole and exclusive remedy of Licensee for copyright infringement.

4. **Permitted Uses of the Software and Related Materials.** As each configuration of central processing units and/or networked systems may be unique, Licensee agrees to conform Licensee's use of the Software to the particular Software configuration licensed by Licensor to Licensee. Said configuration is incorporated into this license by reference, inclusive of Modifications created or approved by Licensor. Licensee may make one (1) copy of the Software for archival purposes only, unless Licensor agrees otherwise in writing.
5. **Uses Not Permitted.** Except as permitted in the Contract or this License, Licensee covenants and agrees that it will not:
 - (a) whether in whole or in part, sell, rent, lease, sublease, license, sublicense, lend, time-share, transfer, assign or provide the use of or access to the Software and Related Materials, or any portion thereof, to unlicensed persons;
 - (b) assign, mortgage, charge or otherwise encumber either the Software and Related Materials or its rights under this License.
 - (c) reverse engineer, decompile or disassemble the Software.
 - (d) alter, modify or create any derivative works of the Software and Related Materials or any portion thereof.
 - (e) Except as permitted elsewhere in this License, make additional copies of the Software and Related Materials or any portion thereof.
 - (f) obscure or remove any copyright or trademark notices.
6. **Assignment.** Without limiting anything contained elsewhere in this License, Licensee shall not assign this License or any rights herein without the prior written consent of Licensor, which consent may be arbitrarily withheld. Any purported assignment without Licensor's consent shall be deemed to be null and void.
7. **Term.** The license granted by this License is a perpetual license. Notwithstanding the foregoing, this License will terminate automatically without notice if Licensee fails to comply with any provision of this License. Upon termination of this License, Licensee shall return the Software and Related Materials to Licensor together with any whole or partial copies, codes, Modifications and merged portions in any form. The parties agree that all provisions set out in this License for the protection of Licensor and its Copyrights shall remain in force notwithstanding termination of this License.
8. **Updates.** Provided that Licensee is in compliance with the terms and conditions of this License, Licensor agrees to make available to Licensee all updates, improvements and enhancements for the Software, if any, at Licensor's then current update fee, which fee is currently (incl in Annual

Maintenance) per update. Nothing herein shall be construed or interpreted as requiring Licensor to develop any such updates, improvements or enhancements.

9. **Limited Warranty.**

(a) Licensor warrants that the Software, without Modifications, will substantially conform to the Related Materials for a period of one (1) year from the date of receipt by Licensee. Licensor warrants that the media upon which the Software is provided, and the Related Materials will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt by Licensee.

(b) **LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND RELATED MATERIALS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE FOREGOING EXCLUSIONS MAY NOT APPLY TO COMPANY. COMPANY MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.**

(c) During the warranty period, Licensor's entire liability and Licensee's exclusive remedy shall, at Licensor's option, be one of the following:

(i) Licensor may attempt to correct or work around Errors;

(ii) Licensor may replace the Software and Related Materials;

(iii) Licensor may refund to Licensee the license fees paid to Licensor upon return of the Software and Related Materials to Licensor or its authorized distributor.

(d) Licensor shall not be liable for damages, direct or indirect, special, incidental, consequential, punitive or exemplary, related to Licensee's use of the Software and Related Materials, even if Licensor is advised of the possibility of such damage.

10. **Confidentiality.** All Confidential Information, including the Know-How, shall be treated as confidential by Licensee and shall be used solely to enable Licensee to use the Software in accordance with this License. Nothing contained herein shall prevent Licensee from making disclosure of any of the Confidential Information to any employee of Licensee for the sole purpose of utilizing the Software and Related Materials in accordance with this License, provided that Licensee shall obtain from each employee to whom such disclosure is made a covenant of non-disclosure. Licensee's obligations of confidentiality, if any, are subject to the Oregon Public Records Laws ORS 192.311 to 192.478.

11. **Equitable Relief.** Licensee acknowledges that any breach by it of any of the terms of this License is likely to result in irreparable harm or damage to Licensor and that, in the event of such breach,

in addition to any and all remedies at law, Licensor shall have the right to obtain an injunction, specific performance or other equitable relief to prevent the continuous violation of the terms of this License.

12. **Governing Law.** This License shall be construed in accordance with the laws of the State of Texas.