

Appendix F to DIR-TSO-4040  
Sample Annual Maintenance  
and Support Agreement

<Customer Name>

<Date>

This Maintenance Agreement ("**Agreement**") is made as of <Month, Day>, <Year> (the "**Effective Date**") between 5 Point Solutions LLC, a company d.b.a. as 5 Point Solutions, LLC Solutions with an address at 905 Old Cherokee Road, Lexington, SC 29072 ("5 Points Solutions LLC"), and **<Customer Name>** with an address at \_\_\_\_\_ **<Customer Address>** ("**Customer**").

This Agreement describes 5 Point Solutions, LLC's sale of Services and Deliverables to Customer. 5 Point Solutions, LLC and Customer therefore agree as follows:

## 1 Definitions

- (a) "**Business Hours**" means the hours between 8:30 a.m. and 5:00 p.m. in the time zone where 5 Point Solutions, LLC' address is located, except for weekends and 5 Point Solutions, LLC holidays.
- (b) "**After Hours**" means the hours between 5:00 p.m. and 8:30 a.m. in the time zone where 5 Point Solutions, LLC' address is located, and any hours on weekends and 5 Point Solutions, LLC holidays.
- (c) "**Contract Year**" means any twelve (12) month period during the Term beginning on <Start Month Day> and ending on <End Month Day>.
- (d) "**Correction**" means the correction of a Malfunction at any and all priority levels to ensure that the Maintained Item performs in accordance with the requirements of this Agreement.
- (e) "**Deliverables**" means the deliverables 5 Point Solutions, LLC provides to Customer as described in the separate Statement of Work and Functional Requirements documents between 5 Point Solutions, LLC and Customer.
- (f) "**Government Authority**" means any governmental authority or court, tribunal, agency, department, commission, arbitrator, board, bureau, or instrumentality of the United States of America or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.
- (g) "**Law**" means all laws, statutes, ordinances, codes, regulations and other pronouncements having the effect of law of any Government Authority.
- (h) "**Maintained Item**" means the Software Deliverables, Hardware Deliverables, and/or Hosted Service. If now or in the future 5 Point Solutions, LLC will provide Maintenance Services for any hardware Deliverables, then ownership, title to, and risk of loss for spare parts Deliverables, which 5 Point Solutions, LLC may install in the hardware Deliverables, passes to Customer upon installation. For Malfunctioning spare parts that 5 Point Solutions, LLC removes for purposes of performing the Maintenance Services, ownership, title to, and risk of loss for these Malfunctioning spare parts passes to 5 Point Solutions, LLC upon removal.

- (i) "**Maintenance Services**" means the specific Services consisting of Corrections, Revisions and Upgrades.
- (j) "**Malfunction**" means a malfunction of the Maintained Item that prevents the Maintained Item from performing in accordance with the requirements of this Agreement.
- (k) "**Priority 1**" means a severe Malfunction exists which makes the use of one or more Maintained Item critical functions inoperable or materially decreases the functionality required by this Agreement.
- (l) "**Priority 2**" means a non-severe Malfunction exists which makes the use of one or more Maintained Item functions less operable or decreases functionality as required by this Agreement, but is not a Priority 1 Malfunction.
- (m) "**Revision**" means a version of the Maintained Item with updates, modifications, patches, fixes, or changes that is a less substantial change to the Maintained Item than an Upgrade, as the version is made generally available to the Maintained Item's customers, and as indicated by a change in the release number to the right of the decimal point.
- (n) "**Services**" means the services 5 Point Solutions, LLC provides to Customer as described in this Agreement.
- (o) "**Upgrade**" means a version of the Maintained Item with major new features or significant enhancements, as the version is made generally available to the Maintained Item's customers, and as indicated by a change in the release number to the left of the decimal point.
- (p) "**Named Contacts**" means the Customer personnel that are authorized to contact 5 Point Solutions, LLC in the event of a support or maintenance request. Customer is authorized to name up to three (3) individuals as Named Contacts.
- (q) "**Back-Log**" means the items listed in the original Requirements Document that have not been completed as of Go-Live of the system.

## 2 Maintenance Services

**(a) Revisions and Upgrades.** 5 Point Solutions, LLC agrees to provide Maintenance Services for the current Upgrade as of the Effective Date. Revisions are included with the Maintenance Services fee and are not subject to an additional charge. Upgrades are subject to additional fees (based on the 5 Point Solutions, LLC hourly rate shown in Exhibit A) over and above the fee for Maintenance Services. 5 Point Solutions, LLC agrees to offer Revisions and Upgrades to Customer when and if available. Each Revision and Upgrade must be functionally compatible with the prior release or version of the Maintained Item, and must comply with the requirements of this Agreement that apply to the Maintained Item. 5 Point Solutions, LLC may not be required to install any Revision or Upgrade except: (i) as a prerequisite to installing a subsequent Revision or Upgrade; (ii) to avoid violation of intellectual property or proprietary rights of a third party, in which case the Revision or Upgrade will be provided at no charge; or (iii) when the Maintained Item is hosted on 5 Point Solutions, LLC servers.

**(b) Response Times.** 5 Point Solutions, LLC agrees to provide a four (4) hour response time to any request for support received from the designated Customer Named Contacts via phone or email. Responses from 5 Point Solutions, LLC may be in the form of an email or phone to the designated Customer Named Contacts. Upon execution of this Contract, 5 Point Solutions, LLC will provide Customer the phone numbers and email contact information necessary for requesting support during Normal Business Hours as well as After-Hours Support.

**(c) Corrections.** After Customer has informed 5 Point Solutions, LLC of a Malfunction, and subject to 5 Point Solutions, LLC reasonably assisting Customer in attempting to recreate and diagnose the Malfunction, 5 Point Solutions, LLC agrees to: (i) provide a progress report to Customer within twenty four (24) hours of receiving each request to do so from Customer, (ii) for Priority 1 level Malfunctions, promptly assign a 5 Point Solutions, LLC employee to address the Malfunction, provide a response within four (4) hours during Business Hours, and ensure that the assigned employees work continuously during Business Hours until a Correction is provided and (iii) for Priority 2 level Malfunctions, within twenty four (24) hours respond and assign technical support resources, and provide a Correction within a reasonable amount of time and at the same time or sooner than 5 Point Solutions, LLC provides the Correction to its other customers. During Business Hours, 5 Point Solutions, LLC agrees to provide Customer with telephone access to qualified employees able to provide Corrections. In order to remotely address Malfunctions and provide Corrections, Customer consents to 5 Point Solutions, LLC remotely accessing the Maintained Item to do so. If Priority 1 Malfunction support request is received during Business Hours but is not resolved during Business Hours, 5 Point Solutions, LLC and Customer will jointly decide whether the Correction will be worked on during After Hours or during Business Hours the next Business day. Any time spent After Hours will be counted as After Hours support.

**(d) Back-Log Items.** 5 Point Solutions, LLC will complete any items currently in the Back-Log without counting time spent working on Back-Log items against monthly allotted support hours.

**(e) Grace period.** For up to thirty (30) days after Go-Live, 5 Point Solutions, LLC will correct any Malfunction in the system at no extra charge so long as the Malfunction is associated with an original Customer Requirements Document.

### 3 Fee Schedule

Except as expressly stated in this Agreement, there are no additional fees, charges or expenses incurred. In consideration for 5 Point Solutions, LLC providing each of the following, Customer agrees to pay 5 Point Solutions, LLC in accordance with DIR Contract No. DIR-TSO-4040, and as follows:

Maintained Item	Amount
<b>Annual Maintenance Services</b> <List of products/services under maintenance and support>	\$ <AMOUNT>
<b>Total</b>	<b>\$ &lt;AMOUNT&gt;</b>

### 4 Maintenance Service Fees

5 Point Solutions, LLC will invoice Customer for Maintenance Service Fees annually and in advance on the first day of each Contract Year. The Maintenance Service Fee may not be increased during any particular Contract Year, but 5 Point Solutions, LLC may increase the Maintenance fee for any subsequent Contract Year with 30-day written notice to the Customer and before any renewal. License purchases subsequent to the start of the Contract Year will require separate Maintenance fees, prorated to the end of the Contract Year.

### 5 Invoices and Taxes

Invoices shall be handled in accordance with DIR Contract No. DIR-TSO-4040 Appendix A Section 8I 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, the invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms consistent with and not additional to any provisions under this Agreement. 5 Point Solutions, LLC is liable for any and all taxes on any and all income it receives under this Agreement.

### 6 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.

## 7 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.

## 8 INDEMNIFICATION

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

## 10 Term and Termination

(a) **Term.** The term of this Agreement (together with any renewals, the "**Term**") begins on the Effective Date and expires 1 year later. Immediately upon expiration this Agreement automatically renews on the same terms and conditions for additional successive periods of one (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 sixty (60) 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.

## 11 Force Majeure

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

## 12 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.

**(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.

### 13 Signature Page

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

Customer:

\_\_\_\_\_

Company:

**5 Point Solutions LLC**

Customer's Authorized Signature:

\_\_\_\_\_

<Name>

<Title>

Company's Authorized Signature:

\_\_\_\_\_

<Name>

<Title>

Date: \_\_\_\_\_ Date: \_\_\_\_\_