

**EXHIBIT C**

**DATAPRESERVE FRANCHISE, LLC**

**FRANCHISE AGREEMENT**

**EXHIBIT C TO OFFERING CIRCULAR**

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## DATAPRESERVE FRANCHISE AGREEMENT

**THIS DATAPRESERVE FRANCHISE AGREEMENT** (this "**Agreement**") is made and to be effective as of the date stated in Attachment 1 (the "**Effective Date**"), by and between DataPreserve Franchise, LLC, an Arizona limited liability company, as "**Franchisor**," and the undersigned "**Franchisee**." The Franchisor is also referred to in this Agreement as "**DataPreserve**" or "**we**" or "**us**" or "**our**." The Franchisee may also be referred to as "**you**" or "**your**."

Whenever a term with initial capital letters is used in this Agreement, the term has a defined meaning. Capitalized terms are defined where they appear in this Agreement in bold type and quotation marks. There is an Index of the Defined Terms following the Table of Contents, and it lists the Section of this Agreement where each term is defined.

### RECITALS:

A. We and our affiliates, as a result of the expenditure of time, skill, effort and resources, have developed a system (the "**System**") of certain distinctive methods for establishing, operating and promoting businesses that offer automated encrypted remote computer backup storage services ("**DataPreserve Services**") to small and mid-sized business customers and individual customers under the trade name and trademarks DataPreserve and other identifying logos, trademarks and names we may designate for use with the System (the "**Marks**").

B. We grant franchises for the operation of DataPreserve businesses in designated territories using the System. Franchisees recruit qualified computer service technicians and information technology agents ("**IT Agents**") within their territory, and the Franchisees and the IT Agents market DataPreserve Services and products to small and mid-sized businesses and individuals and provide installation and support services to the customers in the territory. The IT Agents and customers enter into contracts directly with us, and we provide the DataPreserve Services to the customers. We handle all billing and collections, and remit earned Commissions (as defined in Section 11.1) to the Franchisees and IT Agents.

C. You wish to obtain a franchise from us to operate a DataPreserve business within a designated geographic territory using our System (the "**Franchised Business**"), and to receive the training and other assistance we provide in connection with the operation of your Franchised Business; and

D. You understand that it is necessary to operate the Franchised Business in conformity with this Agreement and with our standards and specifications; you have read this Agreement and our Offering Circular; and you understand and accept the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain our high standards of quality, security, appearance and service.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises, commitments and understandings contained in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. GRANT AND ACCEPTANCE OF FRANCHISE

1.1. **License.** We hereby grant to you, and you hereby accept, a license to use the System in connection with the establishment and operation of the Franchised Business, subject to all the terms and conditions of this Agreement.

1.2. **Territory.** You are licensed to conduct your Franchised Business within the geographic area (the "**Territory**") covered by the zip codes listed in Attachment 1, as those zip code areas are established in the 2005A Directory published by the United States Postal Service ("**2005A Zip Codes**"). The Postal Service may have changed the zip code numbers that apply to your Territory after 2005 by adding or deleting zip code numbers, and the Postal Service may change the zip code numbers in the future, but the geographic area and boundaries of your Territory as determined by the 2005A Zip Codes will not change. The boundaries of your Territory will not change if the population within your Territory increases or decreases.

## 2. FEES

2.1. **Franchise Fee.** In consideration of the franchise rights granted under this Agreement, you agree to pay to us a franchise fee in the total amount set forth in Attachment 1 ("**Franchise Fee**"), which is equal to \$50,000, plus fifteen cents (\$0.15) per person for population in the Territory in excess of 400,000. The Franchise Fee is payable in full in immediately available funds when you sign this Agreement. The population is determined by the most currently available U.S. Census Bureau numbers for your Territory. The Franchise Fee is deemed fully earned, and except as provided in Section 2.2, it is non-refundable in consideration of administrative and other expenses we incur in entering into this Agreement and for our lost or deferred opportunity to franchise others.

### 2.2. Refund of Franchise Fee.

A. If we decide in our sole and absolute good faith judgment that you have not successfully completed initial training as required by Section 12.1, or that you are not otherwise qualified to be a DataPreserve franchisee, we may cancel this Agreement at any time up to three Business Days (as defined in Section 40.2) after you complete your initial training, by giving you written notice of our decision to cancel. We do not have to give you any explanation for our decision or any opportunity to be reinstated. This Paragraph applies only to an individual Franchisee or to the Entity Representative (as defined in Section 29.1) for a Franchisee that is a Legal Entity (as defined in Section 12.1).

B. If we cancel this Agreement as provided in Paragraph A above, we will promptly refund the entire amount of your Franchise Fee to you, upon your delivery to us of the Manuals (as defined in Section 20), our proprietary Software (as defined in Section 14.2), all telephone equipment we have provided to you, and a full general release of all claims against us and our affiliates. Your covenants of confidentiality, non-competition and non-interference (as provided in Sections 21, 22 and 23) will continue in full force and effect, but all other rights and obligations under this Agreement will be canceled and of no further force or effect.

**2.3. VoIP Service Fee.** You must pay us a voice over Internet protocol ("**VoIP**") communications service fee of \$75 per month, payable on the first day of each month for that month, for access to and the use of our proprietary VoIP telephone network and unlimited local and toll voice communications. We may increase the monthly VoIP fee by not more than 10% annually.

**2.4. CRM System Fee.** You must pay us fee of up to \$500 per year per user, payable on the first day of the first month after the Effective Date and annually on the same date thereafter, for access to our proprietary computer based customer relationship management system ("**CRM System**"). We may increase the amounts of the annual CRM System fees by not more than 10% annually.

**2.5. Late Charges and Delinquent Interest.** If you fail to pay any amount when due hereunder or under any other agreement with us or any of our affiliates, you must pay a delinquent charge of \$25, plus interest on the delinquent amount at the rate of 1.5% per month (but not more than the maximum rate permitted by applicable commercial usury laws) for each month or portion thereof the amount remains unpaid. In addition, you agree to pay any expenses we or our affiliates incur, including costs and attorneys' fees, in the collection of such delinquent amounts.

### **3. WORKING CAPITAL**

Before you begin initial training, you must establish a separate account in a bank of your choice, in the name of and solely for the benefit and use of your Franchised Business, and deposit a minimum of \$50,000 in the account. Alternatively, you may establish a separate line of credit in the amount of at least \$50,000, or you must have a demonstrated source of sufficient income available to provide at least \$50,000, solely for the benefit and use of your Franchised Business. You agree that these funds will be used solely as working capital for the operating expenses of your Franchised Business.

### **4. TERM AND RENEWAL**

**4.1. Term.** The initial term of this Agreement is for a period of ten years, beginning on the Effective Date stated in Attachment 1.

**4.2. Renewal.** You have the right to renew this Agreement for successive, additional five year periods, provided you have met all of the following conditions at each renewal:

A. You have notified us of your intention to renew this Agreement in writing at least 6 months, but not more than 12 months before the expiration of the current term;

B. You have demonstrated to our satisfaction that you have the right to operate the Franchised Business at the approved location of your Office (as defined in Section 6.1) for the duration of the renewal term; or, if you are unable to operate the Franchised Business at that location, you have secured an approved substitute location;

C. You have completed, to our satisfaction, no later than three months before the expiration of the then-current term, all upgrades to your Franchised Business and your operations and equipment;

D. You are not in material default of any provision of your then current Franchise Agreement, or any other agreement between you and DataPreserve or any of our affiliates, and no event has occurred which, with the passage of time or the giving of notice, would constitute a material default, and you have not been given written notice three or more times of any default under any such agreements ("**Good Standing**");

E. You have satisfied all monetary obligations you owe us, our affiliates and the suppliers and creditors of your Franchised Business;

F. You execute our then-current form of Franchise Agreement, the terms of which may differ materially from the terms of this Agreement and may include advertising obligations; provided, however, that you will not be required to pay any initial franchise fee that may be imposed under our then-current Franchise Agreement, your Territory will not be reduced, and you will continue to have the on-going renewal rights as provided for in this Section 4.2;

G. You pay us a renewal fee in an amount equal to 1% of what would be the then current initial franchise fee for the Territory if we were issuing a new franchise to a third party at the time of the renewal ("**Renewal Fee**"). The Renewal Fee is due and payable upon signing our then-current Franchise Agreement and will be nonrefundable under all circumstances;

H. You satisfy our then-current training requirements for renewing Franchisees as of the date of such renewal, if any, at your expense; and

I. You sign a general mutual release agreement in the form we prescribe, under which we will each release any and all claims against the other and the other's respective affiliates, officers, directors, employees and agents, arising out of or relating to this Agreement, subject to our respective continuing obligations as provided for in Section 33.3, and subject to an exception for any claim as to which either of us has previously given the other written notice. The release shall not be inconsistent with any applicable state statute regulating franchises.

**4.3. Temporary Continuation.** If you continue to operate your Franchised Business following the expiration of this Agreement without a renewal, the continuation shall be construed to be an extension only from month-to-month, governed by all of the provisions of this Agreement, and terminable by either party without cause on 30 days' written notice.

## **5. TERRITORY**

**5.1. Prohibitions on Us.** Subject to your meeting the performance requirements set forth in Sections 8.3 and 9.3, and for so long as you are in Good Standing, we will not establish, or license another person or entity to establish, a DataPreserve Franchised Business that is located within the Territory and that offers DataPreserve Services to small or mid-sized businesses or individuals.

**5.2. Our Reserved Rights.** You expressly acknowledge that the territorial protection afforded to you under this Agreement relates solely to your operation of a Franchised Business within the Territory using the System in compliance with this Agreement. We retain all other rights. Specifically, and without limiting our reserved rights, we have the right to: (1) use, and to license others to use, all or any part of the System for the operation of Franchised Businesses

at any location outside your Territory; (2) sell the same services or products or similar services or products offered by your Franchised Business under names and marks other than the Marks through alternative channels of distribution, including the Internet, within or outside your Territory; (3) use and license the use of different proprietary marks or methods in connection with the development and sale of products and services similar to, or dissimilar from, those which you sell, whether in alternative channels of distribution or in connection with the operation of DataPreserve Services businesses that are the same as, or similar to, or different from Franchised Businesses, at any location and on any terms and conditions as we deem advisable, and without granting you any rights therein; and (4) contract with and offer services and products to Special Accounts (as defined in Paragraph 9.2.B), at any location, whether or not located within your Territory.

**5.3. Performance Requirements.** If you do not achieve the performance minimums set forth in Sections 8.3 or 9.3, we may reduce or eliminate your Territory protections as set forth in Section 5.1, or we may at our option terminate this Agreement pursuant to Section 32.3, but we will not have any claim for monetary losses or damages for your default under Sections 8.3 or 9.3. We must give you three months' notice and opportunity to cure by increasing the number of IT Agents or customers you recruit for us in order to achieve the required year-end minimums before we can exercise any of our options under this Section 5.3. Although we enter into all contracts with the IT Agents and customers in your Territory, it is your responsibility (and not ours) to recruit the IT Agents and customers for your Territory necessary to satisfy the performance requirements in Sections 8.3 and 9.3.

## **6. OFFICE LOCATION**

**6.1. Office.** You must maintain an office for your Franchised Business within the Territory ("**Office**"). You are solely responsible for selecting, leasing, constructing and equipping your Office in compliance with the requirements set forth in the Manuals, entirely at your own expense. The Office may be located in your home or at an outside location. Your home office location is automatically approved; any location outside your home is subject to our prior written approval. You must indicate whether your Office is your home or an outside location. The approved location for your Office is set forth in Attachment 1. If you do not have an approved Office location when this Agreement is signed, we may unilaterally insert the address of your Office location that we later approve in Attachment 1.

### **6.2. Equipment.**

A. While this Agreement is in effect, we will loan you, at no charge, a telephone with VoIP capabilities for use in your Franchised Business. You must have a broadband Internet connection, and you are responsible for obtaining your own Internet service provider (subject to the requirements in the Manuals). You must pay your Internet provider for all local, long distance and other charges you incur.

B. You must also have other equipment for your Franchised Business as specified in the Manuals, including a computer system (see Section 14), facsimile service, and a copier. All equipment must be maintained in good operating condition. You will be solely responsible for all maintenance of your equipment, including the telephone, and for any repairs or upgrades that may be required.

**6.3. Additional Offices.** If you are in Good Standing, you may open one or more additional Offices within the Territory at any time, without the payment of any additional Franchise Fee, subject to our prior written approval. Each additional Office must be fully equipped as provided in the Manuals.

**6.4. Relocation.** Any relocation of an Office (other than your home Office) requires our prior written approval, and must be done entirely at your own cost.

## **7. COMMENCEMENT OF BUSINESS**

You must complete the initial training program described in Section 12.1 within one month after the Effective Date, and you must commence operations of your Franchised Business (the "**Commencement Date**") within one month after you complete the initial training program. You must operate the Franchised Business without interruption following the Commencement Date.

## **8. IT AGENTS**

### **8.1. Recruiting.**

A. You agree to use your best efforts to recruit qualified IT Agents doing business within your Territory. Such IT Agents should have an existing base of customers to whom they provide computer system support and services, and to whom they can offer DataPreserve Services as a "value added" service. We have the absolute sole right to determine whether an IT Agent is qualified, to contract with, and to accept, reject, negotiate, modify or terminate any agreement with an IT Agent. You have no authority to enter into or negotiate any contract with any IT Agent on our behalf, and you agree not to contract with any IT Agent directly yourself.

B. You must not make any representations to any IT Agent or prospective IT Agent that are misleading, incomplete, fraudulent, untrue or contrary to our published policies and standard agreements.

C. We will be solely responsible for establishing the compensation to be paid to IT Agents, and compensating IT Agents with whom we contract.

### **8.2. Services.**

A. You agree to assist us in training, monitoring and managing the performance of the IT Agents operating in your Territory.

B. The IT Agents will assist you and us in marketing DataPreserve Services and providing liaison and technical support to customers in your Territory who receive DataPreserve Services. The IT Agents will continue to provide other computer related services to their customers, and separately charge their customers for those services. Neither you nor we will have any rights or obligations under the separate agreements between the IT Agents and their customers.

**8.3. Minimum Requirements.** By the end of the first full calendar 12 month period following the Effective Date of this Agreement, and by the end of each additional year thereafter, there must be at least the number of qualified IT Agents located within your Territory and under contract with us, recruited by you (who were not already under contract with us on the Effective Date), as shown in the following chart:

Years After Effective Date	Minimum Number of IT Agents	Years After Effective Date	Minimum Number of IT Agents
1	37	6	98
2	74	7	104
3	80	8	110
4	86	9	116
5	92	10	122

**9. DATAPRESERVE CUSTOMERS**

**9.1. Customer Orders.**

A. You agree to use your best efforts, yourself and using IT Agents based in your Territory, to solicit orders for DataPreserve Services to be provided by us or our affiliates, and to provide liaison and support services between us and the customers. All orders for DataPreserve Services must be forwarded immediately to us. We have the absolute sole right to establish order and agreements forms, and to accept, reject, negotiate, modify or terminate any order for DataPreserve Services. Neither you (nor any IT Agent) has authority to accept or negotiate any order for DataPreserve Services, accept payments from customers, modify the terms or conditions of any customer order, or make any agreements with customers on our behalf.

B. You must not engage in any practices or make any representations to any customer or prospective customer that are misleading, incomplete, fraudulent, untrue or contrary to our published policies and standard agreements.

C. We have the sole authority to add, delete and modify the DataPreserve Services we offer, and to set the prices for DataPreserve Services. We may, in our sole and absolute discretion, change the prices for any or all of our DataPreserve Services at any time. We will give you at least one month's advance written notice of any changes.

**9.2. Restrictions and Reserved Rights.**

A. You must refer any lead for DataPreserve Services for a customer with a billing address located outside of your Territory to us. With our prior written approval, you may market DataPreserve Services to customers with billing addresses outside your Territory if we believe that the customer can be properly serviced.

B. Unless you obtain our prior written approval to solicit a particular Special Account, we will have the exclusive right to solicit orders and deal with all Special Accounts. **"Special Account"** means any customer: (1) that conducts its business for its own account or through agents, affiliates, independent contractors or franchisees in

two or more states in the United States; (2) that owns, manages, controls or otherwise has responsibility for businesses in more than one location and whose presence is not confined within any one particular Franchisee's territory; or (3) any educational institution that offers four year degrees.

C. You may not offer our DataPreserve Services to any customer located outside of the United States of America or its territories, or to any federal governmental agency or organization. You may offer DataPreserve Services to any state or local governmental agency or organization within your Territory.

**9.3. Minimum Requirements.** By the end of the first full calendar 12 month period following the Effective Date of this Agreement, and by the end of each additional year thereafter, there must be at least the number of customers having billing addresses within your Territory with whom we have contracts to provide DataPreserve Services (excluding any Special Account customers, and excluding customers who were already under contract with us on the Effective Date), as shown in the following chart:

Years After Effective Date	Minimum Number of Customers	Years After Effective Date	Minimum Number of Customers
1	300	6	5,300
2	1,300	7	6,000
3	2,300	8	6,700
4	3,300	9	7,400
5	4,300	10	8,100

## 10. EQUIPMENT SALES

We may, at our option, provide you with the opportunity to solicit orders for certain computer related equipment and products to be sold by us or our affiliates to qualified customers located within your Territory. All of the conditions and restrictions on your marketing activities as set forth in Section 9 with respect to the marketing of DataPreserve Services shall also apply to the marketing of the equipment and products we sell.

## 11. COMPENSATION

**11.1. Commissions.** You will be paid for your services solely by commission. Commissions will be a percentage of our revenues derived from our sales of DataPreserve Services or equipment and products to certain categories of small and mid-sized business customers and individual customers while this Agreement is in effect, in connection with the operation of your Franchised Business, excluding all sales or equivalent taxes, shipping charges, credits, discounts and refunds ("**Gross Sales**"), as set forth in the chart below ("**Commissions**"). Beginning on the first day of the first month following the Effective Date, we will pay you servicing support Commissions, but not marketing commissions, on any pre-existing customers located in the Territory as of the Effective Date. We will not pay you servicing support commissions on customers who order DataPreserve Services directly from us over the Internet and receive all service and support from us by the Internet. We will not pay you commissions for recruiting IT Agents.

<b>Customer Category</b>	<b>% for Your Marketing of DataPreserve Services</b>	<b>% for Your Servicing Support for DataPreserve Services</b>	<b>% for Your Marketing of Our Products</b>
Customer with a billing address <i>within your Territory</i> and <i>referred by you</i> or an IT Agent located within your Territory	1% of Gross Sales for backup services (excluding one-time set-up fees) for the first 12 months of service	29% of Gross Sales for backup services (excluding one-time set-up fees)	5% of Gross Sales (excluding technical service and installation fees) for products sold
Customer you service with a billing address <i>within your Territory</i> and <i>referred by a third party</i> other than you or an IT Agent located within your Territory	No commission	29% of Gross Sales for backup services (excluding one-time set-up fees)	5% of Gross Sales (excluding technical service and installation fees) for products sold
<b>Special Account</b> customer with locations <i>within your Territory</i> you service who is <i>not referred by you</i> or an IT Agent located within your Territory	No commission	15% of Gross Sales for backup services (excluding one-time set-up fees) for DataPreserve Services provided to locations within your Territory	5% of Gross Sales (excluding technical service and installation fees) for products sold and delivered to locations within your Territory
Customer with a billing address <i>outside your Territory</i> who is <i>referred by you</i> or an IT Agent located within your Territory	No commission	No commission	No commission

## 11.2. Payment.

A. You will not be entitled to any advances. Commissions will be based solely on the total payments we actually receive from customers. If we receive payments from customers in installments, you will be paid a pro rata share of each payment. Commissions will be paid on a monthly basis, no later than the 15th day of each month for all payments we receive during the preceding month. We will have sole responsibility for all customer billing, collections and bad debts. We will have the sole authority to reduce or write off any amount owing by any customer, without liability to you. We will be entitled to full reimbursement of all costs of collection before any remaining proceeds are split between us in the percentages stated above. We will provide you with a monthly report of all Commission payments you are entitled to receive.

B. We may deduct from Commissions owed to you the amounts then due and owing to us or our affiliates from you.

C. If we fail to pay any amount when due to you hereunder, we must pay you a delinquent charge of \$25, plus interest on the delinquent amount at the rate of 1.5% per month (but not more than the maximum rate permitted by applicable commercial usury laws) for each month or portion thereof the amount remains unpaid. In addition, we agree to pay any expenses you incur, including costs and attorneys' fees, in the collection of such delinquent amounts.

**11.3. Expenses.** You must pay all expenses including travel and entertainment expenses you incur in fulfillment of your obligations under this Agreement. Under no circumstances will we be liable for reimbursement of any of your expenses. You will be responsible for all overhead and other costs you incur. Any person you hire will be your employee, and all compensation, payroll taxes, facilities and related expenses for such employees, and for any independent contractors you contract with, shall be your sole responsibility.

**11.4. No Benefits or Withholding.** We will not provide you with any fringe benefits, including vacation or sick pay, life or health insurance, or retirement benefits. Unless otherwise required by applicable law, we will not withhold from your Commissions any amounts for social security or federal, state or local income taxes, worker's compensation or unemployment taxes. You recognize that it is your legal responsibility to pay all applicable federal, state and local income taxes (including estimated taxes), and all applicable federal and state self-employment taxes.

## 12. TRAINING

### 12.1. Initial Training Program.

A. You or, if you are a corporation, partnership, limited liability company or other legal entity ("**Legal Entity**"), then the Entity Representative (as defined in Section 29.1), are required to attend and successfully complete our initial training program within one month after the Effective Date and before you begin operating your Franchised Business. If you or the Entity Representative do not successfully complete our initial training program, we may cancel this Agreement as provided in Section 32.2.

B. Any general manager for the Franchised Business who is someone other than an individual Franchisee or an Entity Representative ("**General Manager**") must attend and successfully complete our initial training program before assuming any responsibilities for the operation of the Franchised Business. If we determine that any proposed General Manager has not successfully completed our initial training program, we will so notify you and that person may not be a General Manager for the Franchised Business. You may then substitute someone else as General Manager, but the substitute must attend and successfully complete the initial training program, and we may charge a Training Fee (as defined in Section 12.3) for training the substitute.

C. We will train an individual Franchisee or an Entity Representative and one additional person (who can be a General Manager) at no charge. The second person need not attend training at the same time as the individual Franchisee or Entity Representative. If you purchase more than one franchise, then for each such additional franchise, the initial training program will not be offered to the individual Franchisee or Entity Representative, but it will be offered at no charge to one other person (who can be a General Manager).

D. The initial training program will be held in Scottsdale, Arizona, or another location designated by us, over a period of five consecutive days.

**12.2. On-Site Start-Up Training.** At your request, we will provide you at our expense with on-site training at your place of business for up to two days during the first three months after the Commencement Date. If you purchase more than one franchise, we will not provide you with any on-site training for any additional franchise.

**12.3. Training for New Personnel.** We will make the initial training program available for replacement or additional General Managers during the term of this Agreement for a fee of \$5,000 per attendee (the "**Training Fee**"). We may also provide appropriate training for your other personnel at your request, at our then current charges, and subject to our mutual agreement on the location, date and content of such training. The availability of training for your replacement and new personnel will be subject to our prior commitments to new DataPreserve Franchisees and will be scheduled on a space and time-available basis.

**12.4. Expenses.** You will be responsible for all travel, food and lodging expenses which are associated with attending our training programs.

### **13. OTHER ASSISTANCE**

**13.1. Initial Supplies.** We will provide you with a package of initial supplies, including forms and materials bearing the Marks.

**13.2. Consultation.** Upon your reasonable request, we will consult with you by telephone, email or facsimile regarding the continued operation and management of your Franchised Business and advise you regarding sales techniques, customer relations and similar advice.

**13.3. New Developments.** We will provide you with ongoing updates of information and programs regarding your Franchised Business and the System, including information about special or new services or products which may be developed and made available to DataPreserve Franchisees.

**13.4. Meetings.** We may offer seminars, conventions or continuing development programs or conduct additional training programs for your benefit. We may require you or your Entity Representative to attend such meetings, on not less than 30 days of prior written notice, but in no event will you be required to attend such a meeting more than once per year. All additional training will be offered without charge of a tuition or fee, but you will be responsible for your travel, food and lodging expenses associated with attending such meetings.

### **14. COMPUTER SYSTEM**

**14.1. Requirements.** You must have a computer system with hardware and software programs that comply with our minimum standards and specifications as set forth in the Manuals, including broadband Internet access, and a high-speed modem permitting our electronic Internet access to your computer data.

**14.2. Proprietary Software.** At the conclusion of your initial training, we will loan you one copy of our proprietary computer software (the "**Software**"). You agree that you acquire no title or ownership in the Software, and that all right, title and interest in the Software is owned by us or our affiliate. We grant you a nonexclusive license to use the Software in the operation of the Franchised Business, subject to the terms and conditions of this Agreement, including all of the following terms and conditions:

A. You may use the Software solely with the computer hardware systems and third party software specified from time to time in the Manuals, and solely at the location approved by DataPreserve pursuant to the terms of this Agreement.

B. One copy of the Software will be provided to you in object code form. You may not make any copies of the Software in any format except for backup copies as permitted in accordance with the Manuals. You may not create by decompilation or otherwise, the source code programs or any parts thereof from the object code program or from other information made available to you. You may not make the Software available to any person or entity, other than to your employees who require access to the Software in order to perform their normal employment duties for you.

C. You may not make any changes or modifications to the Software, except with our prior written consent, which may be granted or withheld for any reason, or for no reason, at our sole and exclusive discretion.

D.

**LIMITED WARRANTY**

OUR PROPRIETARY SOFTWARE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. We do not warrant that the functions contained in the Software or the operation of the Software will be error free.

E. You are solely responsible for making and storing your own periodic and/or permanent archive copies of all data and information on your computer. We have no obligation to make any archive copies of any software programs, data or information for you.

F. We may periodically provide you with revised, updated, enhanced or substitute proprietary computer software at no charge, in which case such new software will be deemed to be Software. Unless such revised, updated, enhanced or substitute Software requires you to obtain an upgraded component or a new computer, you must install the new Software in your computer system within five Business Days after receiving it. If new computer hardware is required, you must obtain it at your expense and install the new Software within ten Business Days after receiving the Software. Immediately after completing such installation, you must return all copies of all prior editions of the Software to us.

**14.3. DataPreserve Backup Services.** You must enter into a separate customer agreement with us pursuant to which we will provide you with automated encrypted remote computer backup storage services for your Franchised Business. We will not charge you any set-up fee. We will not charge you any monthly fee for backup and storage of ten gigabytes or less. We will charge you monthly at our then current published rates for backup and storage of more than ten gigabytes, and for any premium features you elect to use.

## 15. ADVERTISING

**15.1. Submission for Our Approval.** All advertising and promotional communications in any medium (including "web" and Internet "pages" and telephone directory listings and ads), must be conducted in a professional and dignified manner and must conform to the standards and requirements in the Manuals. At least ten Business Days before you use any advertising or promotional plans or materials, you must submit true and complete samples to us for our prior approval. If we do not respond within ten Business Days, your request is deemed denied. You may not use any advertising or promotional plans or materials that we have not approved.

**15.2. Telephone Numbers.** The telephone numbers (including any separate number for facsimile equipment) for your Franchised Business are stated in Attachment 1. You may use these telephone numbers only for your Franchised Business. You must assign us (or our designee) all of the telephone numbers and listings used in connection with the operation of your Franchised Business upon the Termination (as defined in Section 33.1) or Transfer (as defined in Paragraph 30.1.D) of this Agreement. You must notify us prior to changing or adding telephone numbers for your Franchised Business. You are solely responsible for all telephone service and advertising costs you incur. You agree to execute and deliver to us a copy of Conditional Assignment of Telephone Numbers attached to this Agreement as Attachment 6 at the time you execute this Agreement, and in the future at any time you obtain a new telephone number that will be used in connection with the operation of your Franchised Business.

## 16. QUALITY CONTROL

**16.1. Compliance with Standards and Specifications.** You acknowledge and agree that your obligations set forth in this Agreement and the Manuals are reasonable and necessary for the operation of the Franchised Business and to maintain uniformity throughout the System. You must adhere to the standards and specifications set forth in this Agreement and the Manuals as revised or amended from time to time.

**16.2. Modifications.** You acknowledge that we may supplement, improve or otherwise modify our standards, specifications or operating techniques set forth in the Manuals unilaterally under any conditions and to the extent to which we, in our sole discretion, deem necessary to protect, promote or improve the Marks and the quality of the System, but under no circumstances will such modifications be made arbitrarily without such a determination. Such changes may include changing the Marks as provided in Section 19.4, or the offer and sale of new or different products or services. You agree to implement all such changes immediately at your own expense (subject to any reimbursement as provided in Section 19.4).

**16.3. Variances.** We may approve exceptions or changes from the uniform standards of the System which we, in our sole discretion, believe necessary or desirable under particular circumstances or for testing purposes. You understand that you have no right to object to or obtain such variances, and that any exception or change from the uniform standards for your activities must be approved in advance by us in writing.

#### **16.4. Compliance with Laws.**

A. You must conduct and operate your Franchised Business in compliance with all applicable local, state and federal laws, regulations and ordinances, including licensing requirements.

B. You specifically agree to comply with any and all laws, regulations and orders relating to anti-terrorist activities, including Executive Order 13244. You specifically confirm that neither you, nor any of your owners if you are a Legal Entity, is listed on any federally maintained list of specially designated nationals and blocked entities ("**SDN List**"). You agree to not hire or transact any business with any person or entity listed on the SDN List, which is currently available at [www.treasury.gov](http://www.treasury.gov).

**16.5. Customer Service.** You must consistently provide prompt, courteous, efficient and high-quality services and operate the Franchised Business in accordance with the Manuals and in such a manner as not to detract from, or adversely reflect upon, our name and reputation and the goodwill associated with the DataPreserve name and Marks.

#### **17. PURCHASING REQUIREMENTS**

**17.1. Designated and Approved Suppliers.** Preservation of the System depends upon service and product uniformity as we may specify in the Manuals and otherwise in writing. You acknowledge that we and our affiliates may have the right to realize a profit on any products or services that we or our affiliates supply to you.

**17.2. Supplier Approval.** If you wish to purchase any approved item from a supplier whom we have not approved, you must provide us the name, address and telephone number of the proposed supplier, a description of the item(s) you wish to purchase, and the purchase price, if known. At our request, you must provide us a sample of the supplier's product for testing purposes. If we incur any costs in connection with evaluating a supplier at your request, you must reimburse us our reasonable testing costs regardless of whether the supplier is subsequently approved. We have the right to revoke our approval of particular suppliers when we determine, in our sole discretion, that such suppliers no longer meet our standards. You must cease purchasing from these suppliers immediately upon receiving notice of revocation of approval. If you do not receive an approval from us within ten Business Days after we receive your request, your request will be deemed to be denied.

#### **18. OPERATIONS**

**18.1. Best Efforts.** You agree at all times to faithfully, honestly and diligently perform your obligations under this Agreement, and to continuously exert your best efforts to promote the Franchised Business.

**18.2. Permits and Licenses.** You agree to obtain and maintain all appropriate permits, business licenses and certifications, including but not limited to, valid drivers' licenses for all personnel involved in the Franchised Business, as may be required for the lawful operation of the Franchised Business.

**18.3. Employees.** You must have sufficient trained and conscientious staff to render prompt, competent and courteous service to all customers and prospective customers. You and your employees and independent contractors must present a professional appearance as described in the Manuals. You are exclusively responsible for the conduct and control of your employees and independent contractors, including hiring, contracting, compensation, training (other than General Manager training), ensuring compliance with operational standards, and termination.

**18.4. Expenses and Taxes.** You must promptly pay when due all obligations owed to taxing authorities incurred in the operation of the Franchised Business, including unemployment and sales taxes, and any and all accounts or other indebtedness of every kind you incur in the operation of the Franchised Business. In the event of a bona fide dispute as to the amount or liability for any such obligation, you may actively contest the validity or the amount of the tax or indebtedness in accordance with applicable procedures; however, in no event will you permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor to occur against the Franchised Business or its assets.

**18.5. Operating Hours.** You must operate your Franchised Business on a full-time basis during usual and customary days and business hours prevalent in the Territory.

**18.6. Records.** You must at all times maintain complete and accurate business records, reports, accounts, books and data relating to the operation of your Franchised Business. All such information must be subject to back-up storage services pursuant to our Remote Customer Backup Services Agreement with you. Additionally, you must maintain, for at least three fiscal years from their preparation, complete financial records for the operation of the Franchised Business in accordance with generally accepted accounting principles. We and our agents have the right to inspect your business records at any time during normal business hours with five Business Days advance notice, to determine whether you are current with your creditors and are otherwise operating in compliance with the terms of this Agreement and the Manuals.

## **19. MARKS**

**19.1. Ownership.** Pursuant to a license from our affiliate DataPreserve, Inc., we are the exclusive licensor for rights to operate franchised businesses that market DataPreserve Services to small and mid-sized businesses and individuals using the Marks. You hereby acknowledge that, as between you and us, we retain all rights relating to the Marks and that nothing in this Agreement assigns or grants you any right, title or interest in or to the Marks (except for a license to use them in accordance with this Agreement). You may not challenge our title or rights in or to the Marks, or perform any act injurious to the goodwill associated with the Marks or to our affiliates' interest therein. You expressly agree that any and all goodwill associated with the Marks, including any goodwill which may have arisen through your activities, inures directly and exclusively to the benefit of us and our affiliate. You must execute from time to time all necessary papers, documents and assurances to effectuate the intent of this Section. We and our affiliates shall have the right to use and register the Marks as we deem advisable in our sole discretion, including developing and establishing other business systems using the same or similar Marks alone or in conjunction with other marks, and granting licenses or franchises for any such business system without providing you any rights therein.

## 19.2. Use.

A. You must use the Marks solely in the manner prescribed in the Manuals. In addition to the requirements for our approval of your advertising as required by Section 15.1, you must obtain our prior written approval of all of your uses of the Marks.

B. You may not use the Marks or any part thereof in the name of your Legal Entity or as an Internet domain name. You must use the complete legal name of your Legal Entity either alone or followed by a trade name containing "DataPreserve" together with a geographic designation or other appropriate descriptive wording (as shown on Attachment 1) in all contracts and obligations you enter into and in all references about or to the Franchised Business. The name of your Legal Entity and all fictitious and trade names under which you propose to do business must be approved by us in writing before use.

C. You may not use any of the Marks, or either of the words "data" or "preserve," or any trade name or trademark confusingly similar to either of them or the Marks, in connection with the offer or sale of any unauthorized services or products or in any other manner that we have not explicitly authorized in writing. Any such use shall constitute an infringement of the Marks and our rights and the rights of our affiliate in the Marks.

**19.3. Protection.** You agree to notify us promptly of: (i) any possible infringement or suspected unauthorized use of the Marks or confusingly similar Marks by others; (ii) any challenge to the validity of the Marks; (iii) any challenge to the ownership of, our right to use or to license others to use, or your right to use, the Marks. You acknowledge that we will have the sole right, but not the obligation, to determine whether any action will be taken on account of any possible infringement or unauthorized use. We have the sole right to direct and control any administrative proceeding or litigation involving the Marks, including any settlement thereof. We may commence or prosecute such action in our own name and may join you as a party thereto if we determine it to be reasonably necessary for the continued protection and quality control of the Marks and System. We will defend you against any third-party claim, suit or demand arising out of your authorized use of the Marks as provided in Section 27.1.B.

**19.4. Modification.** You acknowledge that we have the exclusive right to add, modify, discontinue or substitute any or all of the Marks on behalf of the System, as we deem appropriate in our sole discretion. Within ten Business Days after receiving our written notification, you must, at your sole cost and expense, discontinue using all Marks which we have modified or discontinued and begin using all additional, modified, or substituted Marks, as we specify. You must change to any new or modified Mark at your sole cost and expense except that we will reimburse you for your actual costs not to exceed \$2,500 for changing to any new or modified Mark that we require you to use.

## 20. MANUALS

To establish and maintain certain uniform standards of service and operation, we have developed proprietary and confidential training and operations manuals, and technical bulletins and other written materials. We may amend and supplement these materials from time to time,

and we may also develop additional materials. **"Manuals"** shall mean, collectively, the training and operations manuals, all technical bulletins, any further manuals or materials we develop, and all changes to any of them. We will loan you one copy of the Manuals. We will provide you with the Manuals by paper copies or electronically. The Manuals will at all times remain our sole property. You must operate your Franchised Business in strict accordance with the Manuals, as they are changed from time to time. If there is any dispute regarding the Manuals, the terms of the master copies we maintain will be controlling.

## 21. CONFIDENTIAL INFORMATION

**21.1. Definition.** Our Manuals, the Software, our trade secrets (including information about our existing, former and prospective IT Agents, customers, manufacturers and suppliers and our contracts with them; our revenues, pricing and compensation data and policies; our sales, marketing and advertising history, plans and strategies; research; mailing, telephone and email lists; accounting systems, operations systems, policies, procedures, systems, compilations of information, records, specifications, and any information, knowledge, know-how, methods, techniques or other data we designate as confidential), and copyrighted materials, are our exclusive and confidential property, which we provide to you in trust and confidence (collectively, the **"Confidential Information"**). Confidential Information shall not include any information that you can demonstrate became known to you independently prior to our disclosure to you, or that has become generally known in the public domain, and in either case, not as a result of wrongful disclosure (whether deliberate or inadvertent).

### 21.2. Ownership.

A. We and our affiliates are the sole owners of the Confidential Information. You agree to use the Confidential Information only for the purposes and in the manner we authorize in writing, which use will inure exclusively to our benefit. You may not directly or indirectly contest our ownership of any Confidential Information or contest our right to register, use or license others to use any of such Confidential Information. You further acknowledge that we and our affiliates have expended a great amount of effort and money in obtaining and developing the Confidential Information, that we have taken reasonable precautions to guard the secrecy of the Confidential Information, that it would be very costly for competitors to acquire or duplicate the Confidential Information, and that any unauthorized disclosure or use of such Confidential Information would be wrongful and would cause us irreparable harm.

B. We will disclose Confidential Information to you by loaning you, while this Agreement is in effect, the Manuals, the Software, and other materials containing the Confidential Information, and through training and other assistance we provide to you. You acknowledge that we are providing you with the Confidential Information solely because of your special status as a Franchisee of the System, and that the Confidential Information is not generally known to the trade or the public and is not known to you except by reason of our disclosure to you.

**21.3. Nondisclosure.** You acknowledge that the Confidential Information is disclosed to you solely on the condition that you agree, and you do hereby agree, that you: (1) Will use the Confidential Information in strict accordance with the instructions and directions given by us from time to time; (2) will not use the Confidential Information in any other business or capacity; (3) will maintain the absolute confidentiality of the Confidential Information while this Agreement is in effect, and after the Transfer or Termination of this Agreement under any circumstances, and will not, at any time, in any manner or form, directly or indirectly, disclose, duplicate, license, sell, reveal, divulge, publish or communicate the Confidential Information, or any portion thereof except as expressly permitted in this Agreement; (4) will disclose the Confidential Information, and permit access to any materials containing the Confidential Information, only to those employees and independent contractors under your control, or to IT Agents with whom we have contracts, who need to know it in order to perform their duties; (5) will not copy any written materials containing the Confidential Information, including the Manuals or the Software, without our prior written consent (which we may refuse to give); (6) will observe and implement all reasonable procedures imposed from time to time by us to prevent the unauthorized use and disclosure of the Confidential Information; (7) will keep the Manuals, the Software, and all other written materials containing any portion of the Confidential Information in a secure place; and (8) if you are legally compelled to disclose any Confidential Information, will do so only if you have used your best efforts to afford us the opportunity of obtaining appropriate protective orders or other assurances of confidentiality satisfactory to us.

## **22. NON-COMPETITION**

**22.1. Purpose.** You acknowledge that as a participant in our System, you will receive proprietary and confidential information and materials and specialized training, and learn trade secrets, and the particular methods, procedures and techniques that we have developed, and that you will have close contacts with our customers, IT Agents and suppliers, and that for these very reasons, you will have the ability to divert trade, and that consequently we have a strong legitimate interest in obtaining the covenants in this Section 22 for the protection of the System and its goodwill.

**22.2. Covenant.** You therefore agree that, without the express prior written of DataPreserve, which we may withhold in our sole absolute discretion, neither Franchisee, nor Franchisee's Entity Representative, nor any of the other Key Individuals (as defined below), shall, directly or indirectly, engage in, render services or provide financing to, or have any interest in, any Competitive Business (as defined below) located or conducting business within the Competitive Region (as defined below) during the Time Period (as defined below). You and the Key Individuals expressly acknowledge that you possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive any of you of your ability to earn a living.

A. **"Key Individuals"** means you (if you are individually the Franchisee), or (if the Franchisee is a Legal Entity) the Entity Representative and all other owners of the Legal Entity, all of the Legal Entity's officers and directors (or managing partners or managing members if the Legal Entity is a partnership or limited liability company), any General Managers, and all of these individuals' spouses, and those of their family members who are active in the Franchised Business; provided, however, that the restrictions of Section 22.2 shall not apply to any Key Individual after two years following the date that the Key Individual is no longer associated in any manner, directly or indirectly, with Franchisee and ceases to be a Key Individual.

B. **"Competitive Business"** means any business located or doing business in the Competitive Region that offers remote computer backup storage services to end users, either directly or indirectly through franchised businesses; provided, however, that the ownership of securities in a Competitive Business will not be a violation of Section 22.2 if such securities are listed on a stock exchange or traded on the over-the-counter market and represent in the aggregate 5% or less of that class of securities issued and outstanding.

C. **"Competitive Region"** means the Territory and if applicable, any additional ZIP code areas in which the Franchisee engaged in advertising or promotional activities during the six months prior to the Transfer or Termination of this Agreement.

D. **"Time Period"** means (1) the period of time while this Agreement is in effect; and (2) after any Transfer of this Agreement, for a period of two years after Franchisee and all Key Individuals have ceased engaging in any Competitive Business in the Competitive Region; and (3) after any Termination of this Agreement under any circumstances, for a period of two years after Franchisee and all Key Individuals have ceased engaging in any Competitive Business in the Competitive Region. You acknowledge that the Time Period is reasonable and necessary in order for us to have sufficient time to find, train and introduce replacements, make the transition and establish a market presence and good relationships with customers and IT Agents.

## 23. NON-INTERFERENCE

**23.1. Employees and IT Agents.** You and each Key Individual agree never to solicit for employment or as an independent contractor, any person who is at the time employed by or under contract with us, our affiliates, or any other DataPreserve franchisee, including IT Agents. You and each Key Individual further agree not to directly or indirectly induce any such person to leave their employment or terminate their contract with us, our affiliates or other franchisees.

**23.2. Customers.** You agree that while this Agreement is in effect, all solicitations for sales of remote computer backup storage services made by you and those under your supervision shall be made on behalf of DataPreserve, and you shall not divert, or attempt to divert, any business or customer of DataPreserve to any competitor by direct or indirect inducement.

## 24. IMPROVEMENTS

All inventions, improvements, enhancements, creations, discoveries, modifications, copyrightable works or trade secrets developed by you or any Key Individual, or by any of your employees or independent contractors under your control, while this Agreement is in effect or in connection with the Franchised Business ("**Improvements**"), shall automatically become our sole property, without compensation to you or them. You hereby assign all proprietary rights, including copyrights, in the Improvements to us without additional consideration. You agree to execute such additional assignments or documentation to effectuate the assignment of all Improvements, as we may deem necessary in order to enable us, at our expense, to apply for, prosecute and obtain copyrights, patents or other proprietary rights in the United States and in

foreign countries, or in order to transfer to us all right, title and interest in any Improvement. You must promptly disclose to us any Improvement which you or any Key Individual, or any of your employees or independent contractors under your control, have made or are developing solely, jointly or commonly with others, and you must promptly create a written record of the same. These obligations shall continue beyond the Termination of this Agreement with respect to Improvements conceived or made while this Agreement was in effect, and shall be binding upon the assigns and personal representatives of Franchisee and the Key Individuals.

## **25. APPLICABILITY OF COVENANTS**

### **25.1. Separate Agreements of Individuals.**

A. You must provide us with a separate copy of the Confidentiality and Non-Competition Agreement, in the form of Attachment 5 to this Agreement, signed by each Key Individual, before that person or their spouse or any other family member assumes their position with Franchisee, or has access to any Confidential Information or receives any training from us or you for the operation of the Franchised Business.

B. Before anyone other than a Key Individual has access to any Confidential Information or receives any training from you for the operation of the Franchised Business, you must provide us with a separate copy of the Confidentiality Agreement (which does not include any covenants of non-competition), in the form of Attachment 4 to this Agreement, signed by that individual.

C. Franchisee shall be primarily responsible for requiring compliance of each of the Key Individuals with the terms of these agreements, and for enforcing them, but DataPreserve shall be a third party beneficiary of all such agreements and may separately and independently enforce them.

**25.2. Survival.** The provisions of Sections 21, 22, 23 and 24 shall survive the Transfer or Termination of this Agreement, and be enforceable notwithstanding the existence of any claim or cause of action of Franchisee against DataPreserve, or any of its affiliates, under this Agreement or on any other basis whatsoever.

### **25.3. Modification.**

A. If any provision in Sections 21, 22, 23 or 24 is void or unenforceable under Arizona law, but would be enforceable as written or as modified under Local Law (as defined in Paragraph 28.1.B), the parties agree that Local Law shall govern any dispute concerning or involving the construction, interpretation, validity or enforcement of the particular provision, but only with respect to that provision.

B. We may unilaterally reduce the scope of any of the obligations in Sections 21, 22, 23 or 24, effective upon giving notice thereof to you. You expressly authorize us to reduce the scope of any covenant in order to conform it to then currently enforceable Arizona or Local Law. You expressly agree, on behalf of Franchisee and each Key Individual, to be bound by any such modified covenant as if originally stated in this Agreement.

## 26. RELATIONSHIP OF PARTIES

**26.1. Independent Contractors.** You and DataPreserve are each independent contractors. Neither of us is the legal representative or general agent of, or has the power to obligate (or has the right to direct or supervise the daily affairs of) the other for any purpose whatsoever. No partnership, joint venture, agency, employment or fiduciary relationship is intended or created by reason of this Agreement, other than our disclosure of Confidential Information to you in trust.

**26.2. Public Notice.** All stationery, business cards and contractual agreements entered into by you shall contain your corporate or fictitious name and a conspicuously displayed notice in the place we designate, that you operate your Franchised Business as an independently owned and operated DataPreserve Franchise and that you independently own and operate the Franchised Business as a System Franchisee. You may not act or represent yourself, directly or by implication, as our agent, partner, employee or joint venture partner, and you may not incur any obligation on our behalf or in our name. Nothing in this Agreement authorizes you to make any contract, agreement, warranty or representation on our behalf, or to incur any debt or other obligation in our name.

## 27. INDEMNIFICATION

### 27.1. By Us.

A. We agree to indemnify and hold you and your affiliates, and your owners and officers ("**Franchisee Parties**"), harmless from and against any and all costs, expenses (including reasonable attorneys' fees and court costs), losses, liabilities, damages, penalties, awards, causes of action, claims and demands whatsoever arising under or based upon the failure by us or our affiliate to perform our obligations under any IT Agent contract, or any customer contract for DataPreserve Services or the purchase of DataPreZerver™ products, and whether arising from bodily injury, death, or property damage, or any other violation or injury to others or their rights or interests, or in any other manner; provided, however, that we shall have no obligation to indemnify you if any such damages, injury or death was caused in whole or in part by your negligence or willful misconduct.

B. We will defend you and the Franchisee Parties against any third-party claim, suit or demand arising out of your authorized use of the Marks. If we, in our sole discretion, determine that you have used the Marks in accordance with this Agreement, we will bear the reasonable cost of any such defense, including the cost of any judgment or settlement and attorneys' fees. If there is any litigation relating to your use of the Marks, you shall execute any and all documents and do such acts as may, in our opinion, be necessary to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Marks in a manner inconsistent with the terms of this Agreement, we agree to reimburse you for your out-of-pocket costs in performing such acts. You agree to fully cooperate with us in any such litigation.

C. We will defend you and the Franchisee Parties against any third-party claim, suit or demand arising out of your authorized use of our proprietary Software. If we, in our sole discretion, determine that you have used the Software in accordance with this Agreement, we will bear the reasonable cost of any such defense, including the cost of any judgment or settlement and attorneys' fees. If there is any litigation relating to your use of the Software, you shall execute any and all documents and do such acts as may, in our opinion, be necessary to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Software in a manner inconsistent with the terms of this Agreement, we agree to reimburse you for your out-of-pocket costs in performing such acts. You agree to fully cooperate with us in any such litigation.

**27.2. By You.** You agree to indemnify and hold DataPreserve and its affiliates, and their owners and officers, harmless from and against any and all costs, expenses (including reasonable attorneys' fees and court costs), losses, liabilities, damages, penalties, awards, causes of action, claims and demands whatsoever arising in whole or in part out of or affecting this Agreement or the operation of your Franchised Business, including your advertising and business practices, and whether arising from bodily injury, death, or property damage, or any other violation or injury to others or their rights or interests, or in any other manner. Your indemnification of us under this Section 27.2 will not apply to any situation where we are obligated to indemnify you under Section 27.1.

**27.3. Notice.** A party entitled to indemnification under this Section 27 must give notice to the other party of a claim or other circumstances likely to give rise to a request for indemnification, promptly after becoming aware of the claim or circumstances. The indemnifying party shall be afforded the opportunity to undertake the defense of and to settle by compromise or otherwise any claim for which indemnification is available, with legal counsel of its own choosing; *provided, however,* that no settlement adversely affecting the indemnified party shall be entered into without the prior consent in writing of the indemnified party. If the indemnifying party so assumes the defense of any claim, the indemnified party may participate in such defense with legal counsel of its own selection and at its own expense. If the party obligated to provide indemnification has not assumed the defense of a matter for which indemnity is required within 15 days after receipt of notice of a claim, the party entitled to indemnification may undertake the defense at the risk and expense of the other party, with all reasonable costs and expenses of such defense to be paid the party obligated to provide indemnification.

## **28. INSURANCE**

**28.1. Policy Requirements.** You must maintain at all times while this Agreement is in effect, at your expense, for your Franchised Business, all insurance that is required by law, the terms of the lease(s) for your Office(s), any leases of equipment used in your Franchised Business, and the Manuals.

A. All your insurance must:

- (1) Have at least the types and amounts of coverage, and no higher deductibles, than as specified in the Manuals;

- (2) Be in forms acceptable to us;
- (3) Be issued by insurers rated A or better in "Best's Insurance Guide";
- (4) Name DataPreserve Franchise, LLC, and any affiliates we designate, as co-insureds as their interests may appear;
- (5) Provide for the same advance notice of cancellation or adverse modification to be given to us as is given to you; and
- (6) Contain a waiver by the insurance carrier of all subrogation rights against us.

B. You are responsible for verifying that each IT Agent, employee and independent contractor who provides DataPreserve Services to customers in the Territory maintains liability insurance meeting or exceeding the minimum statutory requirements under the laws of the state in which the Office for your Franchised Business is located ("**Local Law**") and as required by the Manuals.

**28.2. Policies and Certificates.** You must have your insurance agency send copies of all required insurance policies and certificates of insurance to us at least ten business days before you commence your Franchised Business. The policies and certificates may be retained by us. All required insurance policies must be renewed, and certificates of insurance, together with evidence of payment of premiums, must be delivered to us, at least one month before the respective expiration dates of existing policies.

**28.3. Waiver.** We waive all rights against you for damages to the extent covered by the proceeds we actually receive from insurance policies you have provided. You agree to promptly pay the amount of the deductible applicable to, and in the event of, any covered loss.

**28.4. Adjustments.** We may, not more frequently than annually, require additional types of coverage or adjust coverage minimums or deductibles, based on what is then reasonable and customary in the industry.

## **29. LEGAL ENTITY OWNERSHIP**

**29.1. Entity Representative.** If Franchisee is a Legal Entity, or if we approve a Transfer to a Legal Entity, Franchisee must designate a single individual as the designated representative for the Legal Entity ("**Entity Representative**"). The Entity Representative will be primarily responsible for Franchisee's performance under this Agreement. The Entity Representative must use his best efforts to promote the growth and success of the Franchised Business. We may deal with the Entity Representative as the person who can speak for and bind the Franchisee. To qualify, an Entity Representative must:

- A. Have at least a 51% equity interest in the Franchisee;
- B. Be the president or chief executive officer (or sole managing member if the Legal Entity is a limited liability company) of the Franchisee;

- C. Successfully complete initial training as provided in Section 12.1;
- D. Furnish any personal financial information we reasonably request, and deliver to us a personal guaranty of Franchisee's payment and performance obligations under this Agreement and any other agreement between the Legal Entity and us or our affiliates, and any renewals of such agreements, in the form of Attachment 3, the Guaranty ("**Guaranty**"), which must also be signed by the spouse of the Entity Representative if required by Local Law for the Guaranty to be enforceable;
- E. Provide us with an executed copy of the Confidentiality and Non-Competition Agreement in the form of Attachment 5; and
- F. Be approved by us in writing.

**29.2. Restricted Activities.** The Legal Entity must be newly organized and its business activities must be confined to operating the Franchised Business.

**29.3. Restrictions on Owners.** Any Franchisee that is a Legal Entity must:

A. Provide us with a completed and executed copy of Attachment 2 listing all of the direct and indirect owners (showing the percentages owned) of the Legal Entity, and its officers, directors, managing partners or managers, together with copies of its organizational and governing documents, and keep that information current at all times.

B. Require that all certificates of ownership contain a statement that Transfer of the ownership interests is restricted and subject to the terms of this Agreement. Upon our request, each owner and the owner's spouse must execute an acknowledgment of the restriction on their right to Transfer ownership interests in the Legal Entity.

C. Notify us of any Transfer of ownership or voting interests in the Legal Entity. Any such Transfer is subject to our prior written approval as provided in Section 30.

## **30. TRANSFER BY FRANCHISEE**

### **30.1. Restrictions on Transfer.**

A. You may not sub-franchise or sub-license your rights under this Agreement, in whole or in part, under any circumstances.

B. We are entering into this Agreement in reliance upon you personally, and upon your integrity, skills, ability, attitude, experience and financial resources, and your commitment to own and operate the Franchised Business on a continuing basis. If the Franchisee is a Legal Entity, then we are relying upon the Entity Representative and any other current owners of the Franchisee, for these same reasons. We will not approve any Transfer (other than pursuant to Sections 30.4, 30.5 or 30.7) within the two years following the Effective Date except in the most extraordinary circumstances.

C. Except as provided in this Section 30, you may not make or attempt to make a Transfer (as defined below), nor purport to do so, without our prior written consent, which may be withheld in our reasonable discretion. Any Transfer made without our prior written consent shall be voidable at our option and shall subject this Agreement to termination. You acknowledge that prior to approving any Transfer, we may impose reasonable conditions on you and your purported assignee including those conditions listed in Section 30.2.

D. **"Transfer"** means any sale, assignment, encumbrance, pledge or conveyance, by operation of law or otherwise, of all or any interest in this Agreement, or the Franchised Business, or all or a significant portion of the assets of the Franchised Business, or the direct or indirect ownership or voting interests in any Legal Entity that is the Franchisee or that controls the Franchisee, including any issuance of new direct or indirect ownership or voting interests in any Legal Entity that is the Franchisee or that controls the Franchisee. For example, Transfer includes:

- (1) A change in the percentages of ownership or voting interests in Franchisee due to any Transfer of ownership or voting interests among existing owners or their family members;
- (2) A change in ownership of Franchisee due to a consolidation or merger involving Franchisee or any affiliate that controls Franchisee;
- (3) An order dissolving the marriage of an individual Franchisee, or any owner of a Legal Entity that is the Franchisee or that controls the Franchisee; or
- (4) The death or permanent incapacity of an individual Franchisee, or the Entity Representative of a Legal Entity that is the Franchisee.

E. Our consent to a Transfer upon specified terms and conditions shall not be deemed consent to a Transfer under any other circumstances, nor to any subsequent Transfer.

F. We may disclose or communicate any confidential financial or other information we have about you or the Franchised Business to any proposed assignee in connection with any Transfer by you, or as may be required by law, a court order or government agency.

**30.2. Conditions for Our Approval.** Our consent to your Transfer may not be unreasonably withheld, but you must comply with each of the following conditions before we will have any obligation to consent to any Transfer:

A. You must pay off all amounts owing to us and our affiliates, and to third parties holding a security interest in any asset of the Franchised Business.

B. You must be in Good Standing.

C. The Transfer must be conducted in compliance with all applicable laws, including any required delivery of our then current offering circular or other appropriate disclosures.

D. You must demonstrate to our reasonable satisfaction that the proposed assignee, and if applicable, its Entity Representative, and all other owners of the assignee, satisfy all the then current qualifications for new Franchisees, and possess good moral character, integrity and reputation, requisite general business experience, including management and sales skills, the aptitude, attitude and ability to conduct the Franchised Business, an excellent credit history and rating, and adequate financial resources to fulfill all obligations with respect to the Franchised Business and to both you and us.

E. We may refuse to approve any Transfer if, in our sole reasonable judgment, the material terms and conditions of the proposed Transfer, including the price and terms of payment, are so burdensome as to affect adversely the assignee's operation of the Franchised Business.

F. The proposed assignee must:

- (1) Execute our then-current form of Franchise Agreement (and any applicable standard ancillary agreements, including a Guaranty) for the unexpired term of this Agreement, which shall supersede this Agreement in all respects. The terms of the new Franchise Agreement (and ancillary agreements) may contain materially different terms from your agreements with us, except that the initial franchise fee will be waived, and the Territory will not be reduced.
- (2) Appoint a qualified Entity Representative as provided in Section 29.1 if the assignee is a Legal Entity.
- (3) Satisfactorily complete our initial training program within the time frame we specify, for which we may charge our then-current Training Fee.
- (4) Secure all governmental permits and licenses required to operate the Franchised Business.
- (5) Assume all other agreements relating to the Franchised Business (and all third parties to those agreements must consent in writing to the assumptions).
- (6) Comply with the additional requirements in Section 29 relating to Legal Entity ownership if the assignee is a Legal Entity.

G. You must pay us a nonrefundable "**Transfer Fee**" in an amount equal to 2% of what would be the then current initial franchise fee for the Territory if we were issuing a new franchise to a third party at the time of the Transfer, payable upon our consent to the Transfer.

H. Franchisee and DataPreserve shall have executed a mutual general release of all claims related to the grant and performance of this Agreement and the operation of the Franchised Business, subject to the continuing obligations described in Section 33, and subject to an exception for any claim as to which either party has previously given the other written notice.

I. You and all persons who are subject to the covenants in Sections 21, 22, 23 and 24 must continue to comply with them, as applicable.

J. You must subordinate your rights to all payments from the assignee to all obligations of the assignee to us and our affiliates.

**30.3. Timing.** We have 30 days from the date of receipt of the written notice of any proposed Transfer and all related documentation to approve or disapprove, in writing, the proposed Transfer. If we have not given you notice of our approval or disapproval within the 30-day period, approval is deemed denied.

**30.4. Transfer to a Legal Entity Owned by Individual Franchisee.** We expressly consent to a Transfer of this Agreement together with all of the assets of the Franchised Business by one or more individual Franchisees to a Legal Entity, without payment of any Transfer Fee, and we waive our right of first refusal under Section 30.6 in connection with such a Transfer, provided that:

A. Franchisee is in Good Standing;

B. The individuals who originally were the Franchisees are the sole owners of the Legal Entity and have the same respective percentages of ownership and voting interests in the Legal Entity;

C. Franchisee complies with the requirements of Section 29 relating to ownership by a Legal Entity, including the appointment of a qualified Entity Representative approved by us;

D. The Entity Representative remains fully liable for all past and future obligations to us under this Agreement;

E. The Transfer is made in compliance with all applicable laws;

F. The Legal Entity secures all governmental permits and licenses required to operate the Franchised Business;

G. The Legal Entity assumes all other agreements pertaining to the Franchised Business, and all third parties to those agreements consent in writing to the assumptions; and

H. The Legal Entity provides us with a certified copy of the resolution of its governing body approving the execution and assumption of this Agreement and all other obligations relating to the Franchised Business.