

**30.5. Transfer of Minority Interest.** If you propose to make a Transfer which separately or together with all prior Transfers results in a Transfer of 49% or less of the ownership or voting interests in a Legal Entity which is the Franchisee, or a Legal Entity directly or indirectly controlling the Franchisee (a "**Minority Interest**"), you must provide us with the name and address of the proposed assignee, and the percentage and type of interest being transferred, and obtain our prior written consent to the Transfer.

A. If the Transfer involves a Minority Interest of 10% or more, the requirement of Paragraph 30.2.H applies, but we hereby waive all of the other requirements of Section 30.2 and our right of first refusal under Section 30.6 in connection with such a Transfer.

B. If the Transfer involves a Minority Interest of less than 10%, we hereby waive all of the requirements of Sections 30.2 and 30.6 in connection with such a Transfer.

**30.6. Right of First Refusal.** If you propose to make a Transfer (other than a Transfer to a Legal Entity pursuant to Section 30.4, or a Transfer of a Minority Interest under Section 30.5, or a Transfer upon death or disability pursuant to Section 30.7), you must first offer to sell such interest to us on the same terms and conditions as offered by the proposed assignee. You shall obtain from the proposed assignee and provide us a statement in writing, signed by the proposed assignee and you, of the terms of the offer ("**Letter of Intent**"). If we do not notify you that we elect to accept the offer within ten Business Days, you shall have a period not to exceed 60 days to complete the Transfer described in the Letter of Intent, to the specific proposed assignee identified in the Letter of Intent, subject to all of the conditions for approval set forth in Section 30.2. Any material change in the terms of the offer shall be deemed a new proposal again subject to our right of first refusal.

**30.7. Death or Disability.**

A. Upon the death or permanent disability of an individual Franchisee, or the Entity Representative, that person's executor, administrator, personal representative, successor, trustee or heir shall have the option as provided in this Section 30.7 to succeed to the interest owned by the individual in accordance with the provisions of the person's last will, trust, or any buy-sell agreement controlling the issue of succession.

B. The option can be exercised only under the following conditions, and unless specifically stated in this Section 30.7, the conditions in Section 30.2 and 30.6 do not apply:

- (1) Franchisee must be in Good Standing;
- (2) The change of ownership must be done in compliance with all applicable laws;
- (3) The successor must give us written notice within three months from the date of death or incapacity;
- (4) The successor must be a qualified assignee according to the criteria in Paragraph 30.2.D;

- (5) The successor must successfully complete our initial training program, for which we may charge our then-current Training Fee;
- (6) If the successor is replacing an individual Franchisee, the successor must also:
  - (a) Secure all governmental permits and licenses required to operate the Franchised Business;
  - (b) Agree in writing to assume all obligations under this Agreement; and
  - (c) Assume all other agreements relating to the Franchised Business (and all third parties to those agreements must consent in writing to the assumptions); and
- (7) If the successor is replacing an Entity Representative, the successor must comply with all of the requirements in Section 29.1.

C. If a successor fails to exercise the option within the time specified, or fails to meet the conditions, then if temporary arrangements for the operation of the Franchised Business are made to our satisfaction in our sole and absolute discretion, the successor will have a reasonable period of time, not to exceed twelve months, in which to sell the interests of the deceased or disabled individual, subject to all of the conditions set forth in Section 30.2, and thereafter if no approved Transfer has occurred, we may, in our discretion, terminate this Agreement.

D. We have no obligation to operate the Franchised Business during or after any period following the death or permanent disability of an individual Franchisee or an Entity Representative.

### **31. TRANSFER BY DATAPRESERVE**

**31.1. Our Right To Transfer.** We have the right to sell, transfer, assign or encumber all or any part of our assets and our interest in, and rights and obligations under, this Agreement in our sole discretion.

**31.2. Delegation by Us.** We have the right to delegate or subcontract for the performance of any portion or all of our obligations and duties hereunder to third parties, including our affiliates or independent contractors we have contracted with to offer such services. You agree in advance to any such delegation by us of any portion or all of our obligations and duties under this Agreement.

## 32. BREACH AND TERMINATION.

**32.1. Our Right To Cure Your Defaults.** If you breach any term of this Agreement, we may, at our election, immediately or anytime thereafter, without waiving any claim for your breach, cure the default for your account, and on your behalf. You must immediately, on demand, pay us the cost of curing the default. We will not be responsible to you for any loss or damage resulting in any manner by reason of our undertaking in good faith any acts to cure any of your defaults.

**32.2. Early Cancellation.** We may cancel this Agreement at any time up to three Business Days after you complete initial training as provided in Section 12.1.

**32.3. Termination for Failure to Meet Performance Requirements.** If you fail to achieve the minimum performance requirements set forth in Sections 8.3 or 9.3, we have the right to terminate this entire Agreement as provided in Section 5.3.

**32.4. Automatic Termination.** This Agreement shall automatically terminate without notice or an opportunity to cure upon the occurrence of any of the following events:

A. If the Franchisee or any Entity Representative becomes insolvent;

B. If the Franchisee or any Entity Representative makes an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, are adjudicated bankrupt or insolvent, file or acquiesce in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consent to or acquiesce in the appointment of a trustee or receiver for the Franchised Business or the Entity Representative; or

C. If proceedings are commenced to have the Franchisee or any Entity Representative adjudicated bankrupt or to seek their reorganization under any state or federal bankruptcy or insolvency law, and such proceedings are not dismissed within 60 days, or a trustee or receiver is appointed for the Franchised Business or Entity Representative, and the appointment is not vacated within 60 days.

**32.5. Upon Notice Without Opportunity To Cure.** We have the right, at our option, to terminate this Agreement and all rights granted to you under this Agreement, without affording you any opportunity to cure, effective upon giving you notice, for any of the following breaches or defaults:

A. If you intentionally or negligently disclose to any unauthorized person any Confidential Information, including the contents of or any part of our Manuals; or

B. If you Abandon the Franchised Business. The term "**Abandon**" means: (1) any conduct which indicates a desire or intent to discontinue operation of the Franchised Business in accordance with the terms of this Agreement; or (2) if you fail to operate the Franchised Business as required under this Agreement for a period of five or more consecutive Business Days without our prior written approval; or (3) if, within any period of three consecutive calendar months, you fail to obtain any additional new customers having billing addresses within your Territory with whom we enter into contracts to provide DataPreserve Services (excluding any Special Account customers, and excluding customers who were previously under contract with us);

C. If a levy of writ of attachment or execution or any other lien is placed against you, any of the assets of the Franchised Business or any Entity Representative or any of the Entity Representative's assets, which is not released or bonded against within 30 days;

D. If the Franchisee or any of its owners is convicted of, or pleads guilty or no contest to, a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in our sole opinion, to materially and unfavorably affect the System, and the goodwill or reputation thereof, or takes part in any criminal misconduct relevant to the operation of your Franchised Business;

E. If you default a third time after having received two notices of default from us within any 12-month period, regardless of the nature of the defaults and whether you cured the first two defaults;

F. If you or your principals commit any fraud or material misrepresentation or omission in connection with either (i) your Franchise application, including but not limited to any financial misrepresentation, or (ii) the operation of the Franchised Business;

G. If you fail to complete initial training as provided in Section 12.1 of this Agreement;

H. If you or any of your owners materially breach any other agreement with us or any of our affiliates, and fail to cure such breach within any cure period provided for in the applicable agreement;

**32.6. Upon Ten Business Days' Notice To Cure.** We have the right, at our option, to terminate this Agreement and all rights granted to you under this Agreement, ten Business Days after giving you notice of any of the following defaults, if the default remains uncured after expiration of the ten Business Day cure period:

A. If you fail to pay as and when due any sums owed to us or any of our affiliates;

B. If you fail to commence operations of your Franchised Business on the Commencement Date;

C. If you materially violate any provision of this Agreement relating to the Marks, or fail to follow the standards in the Manuals relating to use of the Marks;

D. If you fail to maintain the then current operating procedures and standards established by us as set forth in this Agreement or in the Manuals or otherwise communicated to you in writing; or

E. If Franchisee, or any entity affiliated with Franchisee, any Entity Representative, or any individual subject to the restrictive covenants described in Sections 21, 22 or 23 violates one or more of those covenants.

**32.7. Upon 30 Days' Notice To Cure.** We have the right, at our option, to terminate this Agreement and all rights granted to you under this Agreement, 30 days after giving you notice, if you fail to perform or comply with any one or more of the other terms or conditions of this Agreement or any ancillary agreements between you and us or our affiliates and the default remains uncured after expiration of the 30 day cure period.

**32.8. Effective Date of Termination.** If you fail to cure the alleged breach within the applicable period of time set forth in Sections 32.6 or 32.7, then this Agreement will automatically terminate, without further notice to you, effective as of midnight on the last day of the cure period.

### **33. OBLIGATIONS UPON TERMINATION OR TRANSFER**

**33.1. Your Obligations.** Upon the early termination of this Agreement under any circumstances, or upon the expiration and non-renewal of this Agreement (referred to either case as a "**Termination**"), or upon any Transfer (other than a Transfer made in compliance with Sections 30.4 or 30.5), you must immediately:

- A. Cease all operations under this Agreement;
- B. Pay to us all amounts and accounts payable then owed to us or our affiliates pursuant to this Agreement, or any other agreement;
- C. Remain fully liable for, and pay before delinquent, all obligations of the incurred in connection with Franchisee's operation of the Franchised Business;
- D. Cease to identify yourself as a DataPreserve Franchisee or publicly identify yourself as a former Franchisee or having been associated with us and immediately cease use of any of our, or our affiliate's Marks, confidential information, trade secrets, signs, symbols, devices or other materials. You hereby irrevocably appoint us as your attorney-in-fact to execute in your name and on your behalf all documents necessary to discontinue your use of the Marks and Confidential Information;
- E. Surrender to us all marketing materials, forms, samples, pamphlets and other materials bearing any of the Marks, or are otherwise identified with us;
- F. Return to us all copies in your possession or under your control, of the Manuals, including the Software, and Confidential Information we loaned to you, and immediately and permanently cease any use of them;
- G. Return to us the telephone and all related equipment and parts that we loaned to you;
- H. Take such action as may be required to cancel all fictitious or assumed names or equivalent registrations which contain any trade name or other Mark we licensed to you and furnish us evidence satisfactory to us of compliance with this obligation within 30 days after the Termination or Transfer;

I. Cease using all telephone and facsimile numbers and listings used in connection with the operation of the Franchised Business and direct the telephone company and all telephone directory publishers to transfer all such numbers and listings to us or our designee pursuant to the Conditional Assignment of Telephone Numbers attached to this Agreement as Attachment 6 or, if we direct, disconnect the numbers;

J. Immediately cease contact or communication with all IT Agents and customers or prospective IT Agents and customers except as we may direct to facilitate any transition for the provision of services to customers;

K. Comply with the restrictive covenants, including the post-termination covenant of non-competition, as set forth in Sections 21,22 and 23, all of which survive any Termination or Transfer;

L. If applicable, take such action as may be required to remove from the Internet all sites referring to your former Franchised Business or any of the Marks and to cancel or assign to us, in our sole discretion, all rights to any domain names for any sites on the Internet that refer to your former Franchised Business or any of the Marks, and;

M. Permit us to make a final inspection of your financial records, books and other accounting records within six months of the effective date of the Termination or Transfer.

**33.2. Our Obligations.** Upon the Termination of this Agreement, or upon any Transfer (other than a Transfer made in compliance with Sections 30.4 or 30.5), you will be entitled to all Commissions payable pursuant to Section 11 for all orders placed with us and paid for by the customer within one month after the effective date of such Termination or Transfer. You hereby acknowledge that you have no further interest in any IT Agent or customer contract or revenues.

**33.3. Survival of Provisions.** All provisions of this Agreement that expressly, or by their nature, survive the Termination or Transfer of this Agreement shall continue in full force and effect after any Termination or Transfer until they are satisfied in full.

## **34. GOVERNING LAW**

### **34.1. Choice of Law.**

A. This Agreement takes effect upon its acceptance and execution by us in Maricopa County, Arizona. You acknowledge the benefits and desirability of having the entire System governed by one body of law applied uniformly, and therefore you acknowledge that the provisions of this Section 34 are reasonable.

B. The existence, validity, construction and sufficiency of performance of this Agreement and all matters relating to it shall be interpreted and construed under and governed by the laws of the State of Arizona applicable to agreements made and to be entirely performed in Arizona, which laws shall be applied in any arbitration or judicial proceeding to resolve disputes between the parties, and such laws shall prevail without

regard to, and without giving effect to, the application of any conflict of law rules; provided, however, that any law of the State of Arizona now existing or enacted in the future that regulates the sale of franchises or business opportunities, or governs the relationship of a franchisor and its franchisees, will not apply unless its jurisdictional requirements are met independently without reference to this Paragraph. The provisions of this Paragraph 34.1.B are subject to the following exceptions:

- (1) The U.S. Trademark Act, 15 U.S.C. §§ 1051 *et. seq.*, will take priority over any state law;
- (2) The federal Arbitration Act, 9 U.S.C. §§ 1 *et. seq.*, will take priority over any state law;
- (3) If any of the provisions of this Agreement would not be enforceable under the laws of Arizona, then those provisions shall be governed by Local Law; and
- (4) The Uniform Franchise Offering Circular delivered to you contains a State Law Addendum, which is hereby incorporated into this Agreement, referencing and summarizing certain existing local laws of other jurisdictions. If any provision of this Agreement, including the provisions for Transfer, renewal, termination, notice of termination or cure rights, is inconsistent with any valid Local Law, then the valid law or regulation of Local Law applicable to the Franchised Business will supersede any provision of this Agreement that is less favorable to you (unless Local Law conflicts with federal law and is preempted).

**34.2. Venue and Personal Jurisdiction.** Both parties consent and irrevocably submit to the jurisdiction and venue of any state or federal court of competent jurisdiction located in Maricopa County, Arizona. To the fullest extent that it may effectively do so under applicable law, each party waives the defense of an inconvenient forum, and any other objection to jurisdiction and venue, for any proceeding in Maricopa County, Arizona. Each party further agrees not to commence any action against the other, or the other's affiliates, or their respective officers, directors, employees and agents, except in these courts. The provisions of this Section 34.2 are subject to applicable superseding law as provided in Paragraph 34.1.B(4) above. The choice of venue and jurisdiction in this Section does not preclude any party from bringing an action for temporary or preliminary relief as permitted under Section 36, or the enforcement of any judgment obtained, in any other appropriate jurisdiction.

## **35. DISPUTE RESOLUTION**

### **35.1. Negotiation.**

A. To resolve any dispute between the parties promptly and in a manner more likely to preserve their mutually beneficial business relationship, as well as less expensively and with less public notoriety, the parties agree that in the event of any dispute arising under or related to this Agreement, the individual Franchisee, or Entity Representative if applicable, and the president of DataPreserve shall meet in person and attempt in good faith to resolve the dispute.

B. Unless the parties otherwise agree, any such meeting shall be held within ten Business Days after either party requests such a meeting, at a neutral site in the city where the party receiving the request is located (so that the party requesting the meeting travels to the other party). The parties agree that they will each exercise their good faith efforts to fulfill the intent and spirit of this Section 35.1; however, the occurrence of such a meeting is not a precondition to initiating any arbitration or other legal proceeding.

### **35.2. Arbitration.**

A. Subject to exceptions in Paragraph 34.1.B, all disputes and claims relating to this Agreement or any other agreement entered into between the parties, the rights and obligations of the parties, or any other claims or causes of action relating to the making, interpretation or performance of either party under this Agreement shall be settled by arbitration in Scottsdale, Arizona, in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**"). The right and duty of the parties to this Agreement to resolve any disputes by arbitration shall be governed by the Federal Arbitration Act, as amended.

B. If the claim is for less than \$30,000, then the matter shall be heard in front of a single neutral arbitrator familiar with franchising from the AAA's list of arbitrators. If the claim, or a counterclaim, is for \$30,000 or more, the matter shall be heard before a panel of three arbitrators and each party shall appoint its own arbitrator, and the appointed arbitrators shall appoint a "neutral" arbitrator familiar with franchising from the AAA's list of arbitrators. Each party must bear its own costs of arbitration including the fee for their respective arbitrator; provided, however, that the neutral or the single arbitrator's fee shall be shared equally by the parties.

C. Whether the matter is heard by a single arbitrator or three, the arbitrators' award shall be rendered within seven days of the close of the hearing and shall include an award of all fees, costs and attorneys' fees for the prevailing party.

D. The arbitrators shall have no authority to determine class action claims and shall have no authority to amend or modify the terms of the Agreement. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any arbitration, except to the extent such issue may have been determined in another proceeding between the parties.

E. Judgment upon the award of the arbitrator(s) shall be submitted for confirmation to and enforced through any court of competent jurisdiction.

F. This agreement to arbitrate shall survive any termination or expiration of this Agreement, and shall bind the officers, directors and owners of both parties, their respective affiliates, and the officers, directors and owners of the affiliates.

G. Notwithstanding anything to the contrary in this Agreement, we shall not be required to arbitrate the following disputes or claims against you: (1) a collection action for \$15,000 or less; (2) claims regarding the ownership or validity of the Marks or the Software; (3) claims for injunctive or other preliminary relief pursuant to Section 36; or (4) claims which we may assert against you in any action in which there is a third party, *i.e.*, not a party to this Agreement or a Guarantor.



**35.3. Cumulative Rights.** Rights and remedies under this Agreement are cumulative and no exercise or enforcement of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder which a party is entitled by law to enforce, including remedies that may be available to DataPreserve under any applicable laws relating to trade secrets and/or unfair competition.

**35.4. Attorneys' Fees and Costs.** The Prevailing Party in any legal proceeding to enforce the terms of this Agreement or defend any action or proceeding relating to this Agreement will be entitled to receive all the costs, expenses and reasonable attorneys' fees it incurs or pays. The "**Prevailing Party**" is the party who recovers greater relief in the proceeding.

## **36. INJUNCTIVE RELIEF**

Nothing in this Agreement will prevent us from obtaining temporary restraining orders or temporary or preliminary injunctive relief in a court of competent jurisdiction. You acknowledge that you are a member of a System that has many authorized DataPreserve Franchisees, IT Agents and customers, and that your acts and omissions may affect all those entities and individuals. Your failure to comply with the terms of this Agreement is likely to cause incalculable or irreparable damage to the System, to us, to our reputation and the reputation and good will of the Marks, and to some or all of our IT Agents and other Franchisees, for which there is no fully adequate remedy at law. For this reason, you agree that if we can demonstrate to a court of competent jurisdiction that there is a substantial likelihood of your breach or threatened breach of any of the terms of this Agreement that could have any of those effects, we will be entitled, without posting a bond, to a temporary restraining order or preliminary injunction enjoining the breach or to a decree of specific performance, without having to show or prove any actual damage.

## **37. WAIVERS**

**37.1. Time Limitation on Actions.** The parties agree that no cause of action arising out of or under this Agreement may be maintained by either party against the other unless brought before the expiration of two years after the act, transaction or occurrence upon which such action is based or the expiration of one year after the complaining party becomes aware of facts or circumstances reasonably indicating that such party may have a claim against the other party hereunder, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense or setoff.

**37.2. Actual Damages Only.** Each party is limited to equitable relief and recovery of any actual damages sustained, and each waives to the fullest extent permitted by law any right to, or claim for, any punitive, exemplary or consequential damages (including lost profits).

**37.3. Separate Proceedings.** Any dispute, arbitration or court action will be heard and resolved on an individual basis only and not a class-wide, multiple plaintiff or similar basis. A proceeding may not be consolidated with any other proceeding involving any other person or entity, except for disputes involving affiliates of the parties and their owners and officers, each of whom shall also be bound by all of the waivers in this Section 37.

**37.4. No Jury Trial.** The parties each irrevocably waive trial by jury in any action, proceeding or counterclaim, whether at law or in equity.

**37.5. No Implied Waivers.**

A. No failure or delay by either party to execute any power reserved to it by this Agreement, or to insist upon strict compliance by the other party with any obligation or condition under this Agreement, will constitute a waiver of the right to exercise the power or demand exact compliance with any of the terms of this Agreement.

B. No custom or practice of the parties at variance with the terms of this Agreement will constitute a waiver of the right to demand exact compliance with any of the terms of this Agreement.

C. Waiver by one party of any particular default by the other party will not affect or impair the rights of the party not in default with respect to any subsequent default by the other party of the same, a similar or a different nature.

**38. FRANCHISOR'S CONSENT**

Unless otherwise stated in this Agreement, where our consent or approval is required, it will not be unreasonably withheld; however, our failure to respond within any designated time period shall not be deemed to be consent or approval.

**39. NOTICES**

**39.1. Delivery.** All communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given in any of the following ways: When delivered personally; or one Business Day after being sent prepaid by overnight commercial courier service for next Business Day delivery; or five Business Days after being deposited in the United States mail, for certified or registered delivery, return receipt requested, postage prepaid.

**39.2. Addresses.** Notices shall be addressed as follows:

A. Any notice to DataPreserve shall be addressed to:

DataPreserve Franchise, LLC  
15651 North 83<sup>rd</sup> Way, Suite C-3  
Scottsdale, Arizona 85260  
Att'n: President

B. Any notice to Franchisee may be delivered to any of Franchisee's Offices, or to Franchisee's home address, which is the home address of Franchisee's Entity Representative if Franchisee is a Legal Entity. Franchisee's home address is provided in Attachment 1. You must promptly notify us of any change to Franchisee's home address.

**39.3. Relocation.** In the event of relocation, either party may designate another address by appropriate written notice to the other.

**39.4. Disclosure.** You hereby consent to the disclosure and publication of the addresses and telephone numbers you provide us to the extent required by law.

#### **40. TIME**

**40.1. Time of the Essence.** Time is of the essence of this Agreement with respect to each and every provision in which time is a factor.

**40.2. Counting.** Wherever this Agreement refers to a period of days, the first day to be counted will be the first day following the designated action or event. For any period of five or fewer days, only "**Business Days**" (calendar days excluding only Saturdays, Sundays and federal holidays) will be counted. Unless expressly stated otherwise, periods longer than five days will be measured by calendar days, except that if the last day of a period is not a Business Day, the period will automatically be extended to the next Business Day.

**40.3. Force Majeure.** Neither you, we, nor our affiliates will be liable for loss or damage or deemed to be in breach of this Agreement or any related agreement if such party's failure to perform its obligations is not the fault nor within the reasonable control of the person due to perform, but results from fire, flood, natural disasters, acts of God, governmental acts or orders, civil disorders, acts of war or terrorism, or other causes beyond the control of the party required to perform; provided, however, that no failure to perform will be excused or delayed because of financial inability. Any delay resulting from any such cause will extend the time of performance for the period of such delay or for such other reasonable period of time as the parties agree in writing.

#### **41. SEVERABILITY**

If any provision of this Agreement is deemed invalid or inoperative for any reason, that provision will be deemed modified to the extent necessary to make it valid and operative without materially adversely affecting the party against whom the provision is to be enforced or, if it cannot be so modified, it shall be severed, and the remainder of that provision will continue in full force and effect as if this Agreement had been signed with the invalid portion so modified or eliminated.

#### **42. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and supersedes any and all prior negotiations and agreements concerning the subject matter of this Agreement.

#### **43. AMENDMENTS**

Except as otherwise expressly provided in this Agreement, this Agreement may only be modified by a written agreement signed by the party against whom enforcement of the modification is sought.

#### **44. SUCCESSORS**

Subject to the restrictions on Transfer in Section 30, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective permitted assigns, heirs and successors in interest.

#### **45. INTERPRETATION**

**45.1. Attachments.** Each of the Attachments to this Agreement is hereby incorporated into this Agreement by this reference.

##### **45.2. Individual Rights and Obligations.**

A. If Franchisee is two or more individuals or entities, then the rights, privileges and benefits granted under this Agreement to Franchisee may only be exercised and enjoyed by all of the individuals and entities jointly; the liabilities and responsibilities assumed by Franchisee under this Agreement will be both the joint and also the separate obligations of each individual and entity; and the provisions of this Paragraph will apply regardless of any agreement, arrangement or understanding between the individuals and entities.

B. None of the agents, representatives, or any individuals associated with DataPreserve or its affiliates shall be personally obligated or liable to you for any reason.

##### **45.3. Captions and Words.**

A. The table of contents and captions used in this Agreement are inserted for convenience only. They do not affect the meaning or construction of this Agreement.

B. Words in this Agreement will be deemed to refer to whatever number or gender the context requires.

C. The word "including" means including without limiting the scope or generality of any description preceding "including."

D. The word "or" is used in the inclusive sense and means "and/or."

E. The word "writing" or "written" includes any electronic media format so long as the message can be printed out and retained by the party who receives the message.

**45.4. Valid Construction.** It is the intention of the parties that if any provision in this Agreement is capable of two constructions, one of which would make the provision void and the other of which would make the provision valid, then the provision shall have the meaning which makes it valid. The language of this Agreement is to be construed simply according to its fair meaning and not strictly for or against either party.

**45.5. Acceptance.** This Agreement is not submitted to you as an offer. This Agreement will not be effective or binding upon us until accepted by us as evidenced by dating and signing by our designated officer. NO SALESPERSON, REPRESENTATIVE OR OTHER PERSON HAS THE AUTHORITY TO BIND OR OBLIGATE US EXCEPT OUR AUTHORIZED OFFICER BY A WRITTEN DOCUMENT.

**46. REPRESENTATIONS AND ACKNOWLEDGEMENTS**

**46.1. Independent Investigation and Assumption of Risk.** YOU ACKNOWLEDGE THAT:

A. WE HAVE ADVISED YOU TO HAVE THIS AGREEMENT AND OUR UNIFORM FRANCHISE OFFERING CIRCULAR REVIEWED BY AN ATTORNEY, ACCOUNTANT OR OTHER BUSINESS ADVISOR, AND YOU HAVE HAD THE TIME AND OPPORTUNITY TO OBTAIN ADVICE FROM SUCH INDIVIDUALS.

B. YOU HAVE BEEN GIVEN THE OPPORTUNITY TO CLARIFY ANY PROVISION OF THIS AGREEMENT THAT YOU OR YOUR ADVISORS DID NOT FULLY UNDERSTAND.

C. NO REPRESENTATIONS, PROMISES, INDUCEMENTS, GUARANTEES OR WARRANTIES OF ANY KIND THAT ARE NOT SET FORTH IN THIS AGREEMENT WERE MADE BY US OR ON OUR BEHALF WHICH HAVE LED YOU TO ENTER INTO THIS AGREEMENT.

D. YOU HAVE CONDUCTED AN INDEPENDENT INVESTIGATION OF THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND RECOGNIZE THAT IT INVOLVES BUSINESS RISKS WHICH MAKE THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON YOUR OWN BUSINESS ABILITIES, JUDGMENTS AND EFFORTS, THE PERFORMANCE OF YOUR EMPLOYEES, MARKET CONDITIONS AND VARIABLE FACTORS BEYOND OUR CONTROL OR INFLUENCE.

E. WE HAVE NOT REPRESENTED OR PROMISED THAT YOU WILL ACHIEVE ANY SPECIFIC LEVELS OF REVENUE OR PROFIT FROM YOUR FRANCHISED BUSINESS. WE HAVE MADE NO REPRESENTATION THAT YOU WILL DO AS WELL AS ANY OTHER FRANCHISEE.

**46.2. Execution of Agreement.**

A. EACH OF THE UNDERSIGNED PARTIES WARRANTS THAT IT HAS THE FULL AUTHORITY TO SIGN AND DELIVER THIS AGREEMENT.

B. IF THE FRANCHISEE IS A LEGAL ENTITY, THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE LEGAL ENTITY WARRANTS TO US, BOTH INDIVIDUALLY AND IN HIS CAPACITY AS PARTNER, MEMBER, MANAGER OR OFFICER, THAT EVERY ONE OF THE OWNERS OF THE LEGAL ENTITY HAS READ AND APPROVED THIS AGREEMENT, INCLUDING THE RESTRICTIONS WHICH THIS AGREEMENT PLACES UPON THEIR RIGHTS TO TRANSFER THEIR INTERESTS IN THE LEGAL ENTITY.

**DO NOT SIGN THIS AGREEMENT IF YOU HAVE ANY QUESTION CONCERNING ITS CONTENTS OR ANY REPRESENTATIONS THAT HAVE BEEN MADE TO YOU.**

**IN WITNESS THEREOF**, the parties have executed this Agreement as of the Effective Date stated in Attachment 1 hereto.

**FRANCHISEE:**

*If an individual:*

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

***OR if Legal Entity (corporation, LLC, or partnership):***

\_\_\_\_\_  
Name of Legal Entity

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

**FRANCHISOR: DATAPRESERVE FRANCHISE, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT 1  
TO DATAPRESERVE FRANCHISE AGREEMENT  
DATA SHEET**

Section or Paragraph Reference	Subject	Specific Term/Provision
First Paragraph	Franchisee's Full Legal Name	
First Paragraph	Effective Date	_____, 200__
1.2	Territory	<i>Defined by the boundaries of the following 2005A Zip Codes:</i>
2.1	Total Franchise Fee	\$ _____
6.1	Franchisee's Approved Office Location	
15.2	Telephone Number(s) for Franchised Business	
15.2	Facsimile Number for Franchised Business	
19.2.B	Franchisee's Approved Trade Name	
39.2.B	Home Address of Individual Franchisee(s) or Entity Representative	

Franchisee Initials: \_\_\_\_\_

Franchisor Initials: \_\_\_\_\_

**ATTACHMENT 2  
TO DATAPRESERVE FRANCHISE AGREEMENT  
STATEMENT OF OWNERSHIP**

1. Full Legal Name of Franchisee: \_\_\_\_\_

2. Form of Legal Entity (*Circle One*):                      Partnership                      Corporation                      LLC

3. Franchisee is duly organized and in good standing under the laws of the State of \_\_\_\_\_

4. Franchisee's federal employer identification number (EIN) is: \_\_\_\_\_

5. Attached are true, complete and current copies of Franchisee's articles of incorporation and bylaws if Franchisee is a corporation, or the equivalent documents governing Franchisee's formation and governance if Franchisee is a partnership or limited liability company.

6. The individual who is the Entity Representative for the Franchisee is:

Full legal name: \_\_\_\_\_

Residential Street Address: \_\_\_\_\_

\_\_\_\_\_

Residential Telephone Number: \_\_\_\_\_

7. The full legal name of each of Franchisee's owners, and all of Franchisee's directors and officers (or managing partners or managing members if Buyer is a partnership or limited liability company), and each such person's residential address, telephone number, and ownership interest are provided below. Attach additional pages if necessary.

*(If any direct or indirect owner of Franchisee is a legal entity rather than an individual, show that legal entity as an owner of Franchisee and state its percentage ownership interest in Franchisee, and also provide the information and documents required in Paragraphs 1-4 above for that legal entity, and the information below for each of that legal entity's owners, and for its directors and officers or managing partners or managing members.)*

\_\_\_\_\_ %

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Positions/Titles: \_\_\_\_\_



\_\_\_\_\_ %  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Positions/Titles: \_\_\_\_\_

\_\_\_\_\_ %  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Positions/Titles: \_\_\_\_\_

\_\_\_\_\_ %  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Positions/Titles: \_\_\_\_\_

Dated: \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Name of Legal Entity

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

**ATTACHMENT 3  
TO DATAPRESERVE FRANCHISE AGREEMENT  
GUARANTY**

In consideration of, and as an inducement to DataPreserve Franchise, LLC ("**Franchisor**") to grant, or approve the transfer of, that certain Franchise Agreement ("**Agreement**") to the Franchisee identified below (the "**Franchisee**"), the undersigned guarantor, who owns fifty-one percent (51%) or more of the ownership interests in Franchisee and is the designated Entity Representative for Franchisee ("**Guarantor**"), together with all persons and entities who may become guarantors, personally, jointly, severally and unconditionally guarantees to Franchisor, and its successor and assigns, while the Agreement and any extensions or renewals thereof are in effect, that Franchisee shall punctually pay and shall promptly and faithfully perform each and every undertaking, obligation, agreement, duty and covenant set forth in the Agreement and in all other related obligations of Franchisee to Franchisor and its affiliates (collectively, the "**Obligations**").

The obligations of Guarantors hereunder are independent of the Obligations of Franchisee. A separate action or actions may be brought and prosecuted directly against any one or more of the Guarantors, whether or not an action is brought first or at all against Franchisee or any other Guarantor, or whether or not Franchisee or any other Guarantor is joined in any such action or actions, and with or without any exercise of any other remedy Franchisor may have pursuant to the Obligations.

Guarantors each authorize Franchisor, without notice or demand and without affecting any Guarantor's liability hereunder, from time to time to: (1) renew, compromise, settle, adjust, extend, accelerate or otherwise change the time for payment of or otherwise alter the terms of the Agreement, or the obligations or indebtedness of Franchisee pursuant to the Obligations; (2) take and hold security for the performance of this Guaranty or the Obligations guaranteed, and exchange, enforce, waive and release any security held; (3) apply any security and direct the order or manner of sale thereof as Franchisor in its discretion may determine; (4) release or substitute one or more of the Guarantors; and (5) assign this Guaranty in whole or in part.

Guarantors each waive any right to require Franchisor to: proceed against Franchisee or any other Guarantors; proceed against, protect, preserve or exhaust any security from Franchisee; or pursue any other remedy in the power of Franchisor. Guarantors each waive any and all rights accorded to them under the suretyship provisions of applicable state law; waive the defense of the statute of limitations; and waive all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guaranty and of the existence, creation, modification of terms, or incurring of new or additional indebtedness of Franchisee to Franchisor.

Guarantors agree to be personally bound by the provisions of Sections 34 (Governing Law), 35 (Dispute Resolution), 36 (Injunctive Relief), and 37 (Waivers) of the Agreement.

Guarantors agree to pay all reasonable attorneys' fees and other costs and expenses incurred by Franchisor in connection with the enforcement of the Obligations or this Guaranty.

If no spouse signs this Guaranty, then Guarantor represents and warrants that the Guarantor is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

FRANCHISEE: \_\_\_\_\_

DATED: \_\_\_\_\_, 200\_\_

**GUARANTOR:**

**GUARANTOR'S SPOUSE:**

The undersigned spouse of Guarantor hereby consents to, and agrees to be bound by, the foregoing Guaranty.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Spouse's Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

**ATTACHMENT 4  
TO DATAPRESERVE FRANCHISE AGREEMENT  
CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT (this "**Agreement**") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by the undersigned key individual (the "**Undersigned**"), who holds, or has been offered, the position stated below with the Undersigned's signature (the "**Position**") with \_\_\_\_\_, a franchisee ("**Franchisee**") of DataPreserve Franchise, LLC ("**DataPreserve**") under a Franchise Agreement between Franchisee and DataPreserve dated \_\_\_\_\_, 200\_\_ (the "**Franchise Agreement**").

**RECITALS:**

- A. DataPreserve, together with its affiliates, has 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 designated for use with the System (the "**Marks**").
- B. Under the Franchise Agreement, DataPreserve has granted Franchisee a license to operate a DataPreserve franchised business in a designated territory using the System, including confidential and proprietary information of DataPreserve.
- C. The Position held, or to be held, by the Undersigned will place the Undersigned in a position of trust and confidence with both DataPreserve and Franchisee. The Undersigned acknowledges the Position may result in the Undersigned having access to, or generating, "**Confidential Information**", which includes all of the following: (1) The DataPreserve training and operations manuals; (2) DataPreserve's proprietary software; (3) trade secrets (including information about existing, former and prospective computer service technicians and information technology agents ("**IT Agents**") who work with Franchisee and/or DataPreserve, customers, manufacturers and suppliers and contracts with them; revenues, pricing and compensation data and policies; 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 DataPreserve or Franchisee designate as confidential); and (4) copyrighted materials; all of which may be further developed or modified in the future. For purposes of this Agreement, Confidential Information shall not include any information that the Undersigned can demonstrate became known to him or her independently prior to having any contact with Franchisee or DataPreserve, 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).
- D. The Undersigned consequently agrees that it is reasonable and necessary for the protection of the System and for the benefit of both DataPreserve and Franchisee to keep the Confidential Information confidential, and not to compete with any other DataPreserve business, all pursuant to the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and as an inducement to DataPreserve to enter into a Franchise Agreement with Franchisee, or to approve a transfer to Franchisee, and/or in consideration of the Undersigned's employment or continued employment by Franchisee, and/or other valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Undersigned, the Undersigned hereby agrees as follows:

**1. Confidential Information.**

**1.1. Ownership.** The Undersigned acknowledges that DataPreserve and/or its affiliates and/or Franchisee is/are the sole owner(s) of all the Confidential Information; that the Confidential Information is being imparted to the Undersigned in trust and confidence and only by reason of the Undersigned's Position; and that the Confidential Information is not generally known to the trade or public and is not known to the Undersigned except by reason of the Undersigned's Position. The Undersigned further acknowledges that the Undersigned shall acquire no interest in the Confidential Information, other than the right to utilize it in connection with the performance of any duties associated with the Undersigned's Position. The Undersigned agrees not to directly or indirectly contest the ownership of the Confidential Information by DataPreserve, its affiliates and/or Franchisee, or their respective rights to register, use or license others to use any of the Confidential Information. In addition, the Undersigned acknowledges that DataPreserve, its affiliates and/or Franchisee have expended a great amount of effort and money in obtaining and developing the Confidential Information, that they have taken reasonable precautions to guard the secrecy of the Confidential Information, and that it would be very costly for competitors to acquire or duplicate the Confidential Information, so that the use, duplication or disclosure of the Confidential Information except as expressly permitted by this Agreement shall constitute an unfair method of competition and that DataPreserve, its affiliates and Franchisee shall suffer irreparable injury thereby.

**1.2. Confidentiality.** The Undersigned acknowledges that the Confidential Information is disclosed to the Undersigned solely on the condition that the Undersigned agree, and the Undersigned does hereby agree, that the Undersigned: (a) Will use the Confidential Information in strict accordance with the instructions and directions given by Franchisee or DataPreserve from time to time; (b) will not use the Confidential Information in any other business or capacity; (c) will not, at any time, while holding any Position with Franchisee or thereafter, in any manner or form, directly or indirectly, disclose, duplicate, license, sell, reveal, divulge, publish or communicate the Confidential Information, or any portion thereof, to any person or entity other than Franchisee, or employees of Franchisee or DataPreserve who need to have such information in connection with their jobs; (d) will not copy any materials containing the Confidential Information, including without limitation any manuals or computer software, without DataPreserve's prior written consent (which DataPreserve may refuse to give); (e) will observe and implement all reasonable procedures imposed from time to time by DataPreserve and/or Franchisee to prevent the unauthorized use and disclosure of the Confidential Information; (f) will keep all manuals and other materials containing any portion of the Confidential Information in a secure place; and (g) if the Undersigned is legally compelled to disclose any of the Confidential Information, will do so only if the Undersigned has used his or her best efforts to afford DataPreserve and Franchisee the opportunity of obtaining appropriate protective orders or other assurances of confidentiality satisfactory to DataPreserve and Franchisee. Notwithstanding the foregoing, the Undersigned may disclose any of the Confidential Information on a confidential basis to his or her professional advisors.

**1.3. Return of Confidential Material.** Upon termination of his or her Position with Franchisee, the Undersigned shall promptly return to Franchisee all copies of any materials containing the Confidential Information and all property belonging to Franchisee and DataPreserve, or either of them, in the Undersigned's possession, custody or control, including any of such items produced or prepared by the Undersigned.

## **2. Non-Interference.**

**2.1. Employees and IT Agents.** The Undersigned agrees never to solicit for employment or as an independent contractor, any person who is at the time employed by or under contract with DataPreserve, its affiliates, Franchisee, or any other DataPreserve franchisee, including IT Agents. The Undersigned further agrees not to directly or indirectly induce any such person to leave their employment or terminate their contract with DataPreserve, its affiliates, Franchisee, or any other DataPreserve franchisee.

**2.2. Customers.** The Undersigned agrees that while the Franchise Agreement is in effect, all solicitations for sales of remote computer backup storage services made by the Undersigned and those under the control of the Undersigned shall be made on behalf of DataPreserve, and the Undersigned shall not divert, or attempt to divert, any business or customer of DataPreserve to any competitor by direct or indirect inducement.

**3. Improvements.** All inventions, improvements, enhancements, creations, discoveries, modifications, copyrightable works or trade secrets developed by the Undersigned, or by anyone under the control of the Undersigned, in connection with the DataPreserve business operated by Franchisee ("**Improvements**"), shall automatically become the sole property of DataPreserve, without compensation to the Undersigned or anyone else. The Undersigned hereby assigns all proprietary rights, including copyrights, in the Improvements to DataPreserve without additional consideration. The Undersigned agrees to execute such additional assignments or documentation to effectuate the assignment of all Improvements, as DataPreserve may deem necessary in order to enable DataPreserve, at its 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 DataPreserve all right, title and interest in any Improvement. The Undersigned must promptly disclose to DataPreserve any Improvement which the Undersigned, or anyone under the control of the Undersigned, has made or is developing solely, jointly or commonly with others, and the Undersigned must promptly create a written record of the same. These obligations shall continue beyond the termination of the Undersigned's Position with respect to Improvements conceived or made by the Undersigned while holding any Position with Franchisee, and shall be binding upon the Undersigned's assigns and personal representatives.

**4. Modification.** Each of the covenants set forth in this Agreement shall be construed as independent of any other agreement. DataPreserve may reduce the scope of the obligations under any of the covenants in this Agreement unilaterally and without the consent of any other person or entity, effective upon giving notice thereof.

## **5. Remedies.**

**5.1. Trade Secret Laws.** The remedies set forth in this Agreement are in addition to and cumulative of any rights or remedies that may be available to DataPreserve and/or Franchisee under any applicable laws relating to trade secrets and/or unfair competition, and

nothing contained in this Agreement shall be construed as a waiver of any rights or remedies available to DataPreserve and/or Franchisee under any applicable law.

**5.2. Injunctive Relief.** Nothing in this Agreement will prevent DataPreserve or Franchisee from obtaining temporary restraining orders or temporary or preliminary injunctive relief in a court of competent jurisdiction. The Undersigned acknowledges that he or she is part of the DataPreserve network that has many authorized DataPreserve Franchisees, IT Agents and customers, and that the acts and omissions of the Undersigned may affect all those entities and individuals. The failure of the Undersigned to comply with the terms of this Agreement is likely to cause incalculable or irreparable damage to the System, to DataPreserve and Franchisee, and to their reputations and the good will of the Marks, and to some or all of the IT Agents and other Franchisees, for which there is no fully adequate remedy at law. For this reason, the Undersigned agrees that if DataPreserve or Franchisee can demonstrate to a court of competent jurisdiction that there is a substantial likelihood of breach or threatened breach of any of the terms of this Agreement that could have any of those effects, DataPreserve or Franchisee will be entitled, without posting a bond, to a temporary restraining order or preliminary injunction enjoining the breach or to a decree of specific performance, without having to show or prove any actual damage. Nothing herein shall be construed as prohibiting Franchisee and DataPreserve, or either of them, from pursuing any other available remedies for such breach.

**6. Survival.** The provisions of this Agreement shall survive the expiration or termination of any agreement or relationship between Franchisee and the Undersigned for any reason, and shall be enforceable notwithstanding the existence of any claim or cause of action of the Undersigned against Franchisee or DataPreserve, predicated on any contract or other basis whatsoever.

**7. Severability.** In the event any term or provision of this Agreement is declared to be invalid or unenforceable for any reason, the provision shall be modified to the extent necessary to make it enforceable, or if it cannot be so modified, then severed, and the remaining terms of this Agreement shall remain in full force and effect, and it is hereby declared the intention of the parties that they would have executed this Agreement as so modified.

**8. Notice.** Any notice to be given to the Undersigned under this Agreement will be sufficient and deemed delivered if it is in writing and delivered to the U.S. Post Office to be sent prepaid by certified or registered mail addressed to the Undersigned at his or her residential address as provided below, or to such other residential address as the Undersigned shall have provided in writing to both Franchisee and DataPreserve.

**9. Applicable Law.** Except to the extent governed by federal trademark, copyright and arbitration statutes, the existence, validity, construction and sufficiency of performance of this Agreement and all matters relating to it shall be governed by the laws of the State of Arizona applicable to agreements made and to be entirely performed in Arizona, without regard to, and without giving effect to, the application of any Arizona conflict of laws rules; provided, however, that if any of the provisions of this Agreement would not be enforceable under the laws of Arizona, then such provisions shall be governed by the laws of the state in which the office of Franchisee's DataPreserve business is located; and provided further that the Franchise Offering Circular delivered to Franchisee prior to entering into the Franchise Agreement contained a State Law Addendum, which is hereby incorporated into this Agreement, referencing and summarizing certain existing local laws of other jurisdictions, and the application of Arizona law shall not abrogate or reduce any rights of Franchisee or the Undersigned provided for under

such existing local laws which by their terms apply and supersede Arizona law (unless local law conflicts with federal law and is preempted).

**10. General.** Except as otherwise expressly provided herein, this Agreement contains the entire understanding between the parties with respect to the subjects hereof, and supersedes all prior oral and written negotiations and agreements. Except as provided in Section 4, this Agreement may be amended only by an instrument in writing signed by Franchisee and the Undersigned. The waiver of any breach or violation of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other or subsequent breach. Headings are for convenience and shall not limit or control interpretation. Words in this Agreement shall be deemed to refer to whatever number and gender the context requires. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. DataPreserve shall be a third party beneficiary of this Agreement and entitled to enforce it as though DataPreserve were a signatory. Should DataPreserve or Franchisee be required to enforce its rights hereunder, it shall be entitled to recover its reasonable costs and expenses, including without limitation attorneys' fees.

**"UNDERSIGNED"**

**(Individually, and on behalf of all persons and entities under the control of the Undersigned):**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name: Printed or Typed)

\_\_\_\_\_  
(Position with Franchisee)

\_\_\_\_\_  
(Residential Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

**ACCEPTED BY FRANCHISEE**

**(For itself and on behalf of DataPreserve):**

\_\_\_\_\_  
(Full Legal Name of Franchisee)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed or Typed)

Its: \_\_\_\_\_  
(Title)



**ATTACHMENT 5  
TO DATAPRESERVE FRANCHISE AGREEMENT  
CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

*(Separate copy to be executed by each "Key Individual": Franchisee's Entity Representative and all other owners of Franchisee; Franchisee's officers and directors if Franchisee is a corporation, or managing partners or managing members if Franchisee is a partnership or limited liability company; any General Manager of the Franchised Business; and all the spouses of all these individuals, and any other family members active in the Franchised Business)*

THIS CONFIDENTIALITY AND NON-COMPETITION AGREEMENT (this "**Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by the undersigned key individual (the "**Undersigned**"), who holds, or has been offered, an ownership or other interest or position as checked below with the Undersigned's signature (the "**Position**") with \_\_\_\_\_, a franchisee ("**Franchisee**") of DataPreserve Franchise, LLC ("**DataPreserve**") under a Franchise Agreement between Franchisee and DataPreserve dated \_\_\_\_\_, 200\_\_ (the "**Franchise Agreement**").

**RECITALS:**

- A. DataPreserve, together with its affiliates, has 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 designated for use with the System (the "**Marks**").
- B. Under the Franchise Agreement, DataPreserve has granted Franchisee a license to operate a DataPreserve franchised business in a designated territory using the System, including confidential and proprietary information of DataPreserve.
- C. The Position held, or to be held, by the Undersigned will place the Undersigned in a position of trust and confidence with both DataPreserve and Franchisee. The Undersigned acknowledges the Position may result in the Undersigned having access to, or generating, "**Confidential Information**", which includes all of the following: (1) The DataPreserve training and operations manuals; (2) DataPreserve's proprietary software; (3) trade secrets (including information about existing, former and prospective computer service technicians and information technology agents ("**IT Agents**") who work with Franchisee and/or DataPreserve, customers, manufacturers and suppliers and contracts with them; revenues, pricing and compensation data and policies; 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 DataPreserve or Franchisee designate as confidential); and (4) copyrighted materials; all of which may be further developed or modified in the future. For purposes of this Agreement, Confidential Information shall not include any information that the Undersigned can demonstrate became known to him or her independently prior to having any contact with Franchisee or DataPreserve, 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).

D. The Undersigned consequently agrees that it is reasonable and necessary for the protection of the System and for the benefit of both DataPreserve and Franchisee to keep the Confidential Information confidential, and not to compete with any other DataPreserve business, all pursuant to the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and as an inducement to DataPreserve to enter into a Franchise Agreement with Franchisee, or to approve a transfer to Franchisee, or the appointment of the Undersigned, and/or in consideration of the Undersigned's employment or continued employment by Franchisee, and/or other valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Undersigned, the Undersigned hereby agrees as follows:

**1. Confidential Information.**

**1.1. Ownership.** The Undersigned acknowledges that DataPreserve and/or its affiliates and/or Franchisee is/are the sole owner(s) of all the Confidential Information; that the Confidential Information is being imparted to the Undersigned in trust and confidence and only by reason of the Undersigned's Position; and that the Confidential Information is not generally known to the trade or public and is not known to the Undersigned except by reason of the Undersigned's Position. The Undersigned further acknowledges that the Undersigned shall acquire no interest in the Confidential Information, other than the right to utilize it in connection with the performance of any duties associated with the Undersigned's Position. The Undersigned agrees not to directly or indirectly contest the ownership of the Confidential Information by DataPreserve, its affiliates and/or Franchisee, or their respective rights to register, use or license others to use any of the Confidential Information. In addition, the Undersigned acknowledges that DataPreserve, its affiliates and/or Franchisee have expended a great amount of effort and money in obtaining and developing the Confidential Information, that they have taken reasonable precautions to guard the secrecy of the Confidential Information, and that it would be very costly for competitors to acquire or duplicate the Confidential Information, so that the use, duplication or disclosure of the Confidential Information except as expressly permitted by this Agreement shall constitute an unfair method of competition and that DataPreserve, its affiliates and Franchisee shall suffer irreparable injury thereby.

**1.2. Confidentiality.** The Undersigned acknowledges that the Confidential Information is disclosed to the Undersigned solely on the condition that the Undersigned agree, and the Undersigned does hereby agree, that the Undersigned: (a) Will use the Confidential Information in strict accordance with the instructions and directions given by Franchisee or DataPreserve from time to time; (b) will not use the Confidential Information in any other business or capacity; (c) will not, at any time, while holding any Position with Franchisee or thereafter, in any manner or form, directly or indirectly, disclose, duplicate, license, sell, reveal, divulge, publish or communicate the Confidential Information, or any portion thereof, to any person or entity other than Franchisee, or employees of Franchisee or DataPreserve who need to have such information in connection with their jobs; (d) will not copy any materials containing the Confidential Information, including without limitation any manuals or computer software, without DataPreserve's prior written consent (which DataPreserve may refuse to give); (e) will observe and implement all reasonable procedures imposed from time to time by DataPreserve and/or Franchisee to prevent the unauthorized use and disclosure of the Confidential Information; (f) will keep all manuals and other materials containing any portion of the

Confidential Information in a secure place; and (g) if the Undersigned is legally compelled to disclose any of the Confidential Information, will do so only if the Undersigned has used his or her best efforts to afford DataPreserve and Franchisee the opportunity of obtaining appropriate protective orders or other assurances of confidentiality satisfactory to DataPreserve and Franchisee. Notwithstanding the foregoing, the Undersigned may disclose any of the Confidential Information on a confidential basis to his or her professional advisors.

**1.3. Return of Confidential Material.** Upon termination of his or her Position with Franchisee, the Undersigned shall promptly return to Franchisee all copies of any materials containing the Confidential Information and all property belonging to Franchisee and DataPreserve, or either of them, in the Undersigned's possession, custody or control, including any of such items produced or prepared by the Undersigned.

## **2. Noncompetition.**

**2.1. Covenant.** The Undersigned recognizes that: (a) the remote computer backup storage service business is very competitive; (b) by virtue of his or her Position, the Undersigned will have access to the Confidential Information and will have close contacts with customers, IT Agents and suppliers; (c) for these very reasons, the Position also provides the Undersigned with the attendant ability to divert trade; and (d) consequently, DataPreserve and Franchisee each have strong legitimate interests in obtaining the covenants herein for the protection of the System and their respective businesses and goodwill. Therefore, without the express prior written consent of DataPreserve and Franchisee, which either may withhold in its sole absolute discretion, the Undersigned agrees that neither the Undersigned, nor any person or entity under the Undersigned's control, shall, during the Time Period (as defined in Paragraph A of Section 2.2 below), directly or indirectly, engage in, render services or provide financing to, or have any interest in, any Competitive Business (as defined in Paragraph B of Section 2.2 below) within the Competitive Region (as defined in Paragraph C of Section 2.2 below).

## **2.2. Definitions.**

**A. "Time Period"** means (1) the period of time while the Franchise 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; *provided, however,* that at such time as the Undersigned no longer holds any Position with Franchisee, the Time Period defined above shall be reduced to the two year period after the Undersigned no longer holds a Position with Franchisee and has ceased engaging in any Competitive Business within the Competitive Region. The Undersigned acknowledges that the Time Period is reasonable and necessary in order for DataPreserve and/or Franchisee 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.

**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 this Agreement 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 Franchisee's Territory and if applicable, any additional ZIP code areas in which the Franchisee engaged in advertising or promotional activities during the six months immediately prior to the beginning of the applicable Time Period.

### 3. **Non-Interference.**

3.1. **Employees and IT Agents.** The Undersigned agrees never to solicit for employment or as an independent contractor, any person who is at the time employed by or under contract with DataPreserve, its affiliates, Franchisee, or any other DataPreserve franchisee, including IT Agents. The Undersigned further agrees not to directly or indirectly induce any such person to leave their employment or terminate their contract with DataPreserve, its affiliates, Franchisee, or any other DataPreserve franchisee.

3.2. **Customers.** The Undersigned agrees that while the Franchise Agreement is in effect, all solicitations for sales of remote computer backup storage services made by the Undersigned and those under the control of the Undersigned shall be made on behalf of DataPreserve, and the Undersigned shall not divert, or attempt to divert, any business or customer of DataPreserve to any competitor by direct or indirect inducement.

4. **Improvements.** All inventions, improvements, enhancements, creations, discoveries, modifications, copyrightable works or trade secrets developed by the Undersigned, or by anyone under the control of the Undersigned, in connection with the DataPreserve business operated by Franchisee ("**Improvements**"), shall automatically become the sole property of DataPreserve, without compensation to the Undersigned or anyone else. The Undersigned hereby assigns all proprietary rights, including copyrights, in the Improvements to DataPreserve without additional consideration. The Undersigned agrees to execute such additional assignments or documentation to effectuate the assignment of all Improvements, as DataPreserve may deem necessary in order to enable DataPreserve, at its 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 DataPreserve all right, title and interest in any Improvement. The Undersigned must promptly disclose to DataPreserve any Improvement which the Undersigned, or anyone under the control of the Undersigned, has made or is developing solely, jointly or commonly with others, and the Undersigned must promptly create a written record of the same. These obligations shall continue beyond the termination of the Undersigned's Position with respect to Improvements conceived or made by the Undersigned while holding any Position with Franchisee, and shall be binding upon the Undersigned's assigns and personal representatives.

5. **Modification.** Each of the covenants set forth in this Agreement shall be construed as independent of any other agreement. DataPreserve may reduce the scope of the obligations under any of the covenants in this Agreement unilaterally and without the consent of any other person or entity, effective upon giving notice thereof.

### 6. **Remedies.**

6.1. **Acknowledgments.** The Undersigned acknowledges and agrees that his or her experience and capabilities are such that he or she can obtain employment and engage in

business activities which are of a different or non-competing nature from those prohibited hereunder; that the enforcement of a remedy of injunction will not prevent him or her from earning a reasonable living; and that the covenants contained in this Agreement are necessary for the protection of Franchisee and DataPreserve's legitimate business interests and are reasonable in scope and in content.

**6.2. Trade Secret Laws.** The remedies set forth in this Agreement are in addition to and cumulative of any rights or remedies that may be available to DataPreserve and/or Franchisee under any applicable laws relating to trade secrets and/or unfair competition, and nothing contained in this Agreement shall be construed as a waiver of any rights or remedies available to DataPreserve and/or Franchisee under any applicable law.

**6.3. Injunctive Relief.** Nothing in this Agreement will prevent DataPreserve or Franchisee from obtaining temporary restraining orders or temporary or preliminary injunctive relief in a court of competent jurisdiction. The Undersigned acknowledges that he or she is part of the DataPreserve network that has many authorized DataPreserve Franchisees, IT Agents and customers, and that the acts and omissions of the Undersigned may affect all those entities and individuals. The failure of the Undersigned to comply with the terms of this Agreement is likely to cause incalculable or irreparable damage to the System, to DataPreserve and Franchisee, and to their reputations and the good will of the Marks, and to some or all of the IT Agents and other Franchisees, for which there is no fully adequate remedy at law. For this reason, the Undersigned agrees that if DataPreserve or Franchisee can demonstrate to a court of competent jurisdiction that there is a substantial likelihood of breach or threatened breach of any of the terms of this Agreement that could have any of those effects, DataPreserve or Franchisee will be entitled, without posting a bond, to a temporary restraining order or preliminary injunction enjoining the breach or to a decree of specific performance, without having to show or prove any actual damage. Nothing herein shall be construed as prohibiting Franchisee and DataPreserve, or either of them, from pursuing any other available remedies for such breach.

**7. Survival.** The provisions of this Agreement shall survive the expiration or termination of any agreement or relationship between Franchisee and the Undersigned for any reason, and shall be enforceable notwithstanding the existence of any claim or cause of action of the Undersigned against Franchisee or DataPreserve, predicated on any contract or other basis whatsoever.

**8. Severability.** In the event any term or provision of this Agreement is declared to be invalid or unenforceable for any reason, the provision shall be modified to the extent necessary to make it enforceable, or if it cannot be so modified, then severed, and the remaining terms of this Agreement shall remain in full force and effect, and it is hereby declared the intention of the parties that they would have executed this Agreement as so modified.

**9. Notice.** Any notice to be given to the Undersigned under this Agreement will be sufficient and deemed delivered if it is in writing and delivered to the U.S. Post Office to be sent prepaid by certified or registered mail addressed to the Undersigned at his or her residential address as provided below, or to such other residential address as the Undersigned shall have provided in writing to both Franchisee and DataPreserve.

**10. Applicable Law.** Except to the extent governed by federal trademark, copyright and arbitration statutes, the existence, validity, construction and sufficiency of performance of this Agreement and all matters relating to it shall be governed by the laws of the State of Arizona

applicable to agreements made and to be entirely performed in Arizona, without regard to, and without giving effect to, the application of any Arizona conflict of laws rules; provided, however, that if any of the provisions of this Agreement would not be enforceable under the laws of Arizona, then such provisions shall be governed by the laws of the state in which the office of Franchisee's DataPreserve business is located; and provided further that the Franchise Offering Circular delivered to Franchisee prior to entering into the Franchise Agreement contained a State Law Addendum, which is hereby incorporated into this Agreement, referencing and summarizing certain existing local laws of other jurisdictions, and the application of Arizona law shall not abrogate or reduce any rights of Franchisee or the Undersigned provided for under such existing local laws which by their terms apply and supersede Arizona law (unless local law conflicts with federal law and is preempted).

**11. General.** Except as otherwise expressly provided herein, this Agreement contains the entire understanding between the parties with respect to the subjects hereof, and supersedes all prior oral and written negotiations and agreements. Except as provided in Section 5, this Agreement may be amended only by an instrument in writing signed by Franchisee and the Undersigned. The waiver of any breach or violation of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other or subsequent breach. Headings are for convenience and shall not limit or control interpretation. Words in this Agreement shall be deemed to refer to whatever number and gender the context requires. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. DataPreserve shall be a third party beneficiary of this Agreement and entitled to enforce it as though DataPreserve were a signatory. Should DataPreserve or Franchisee be required to enforce its rights hereunder, it shall be entitled to recover its reasonable costs and expenses, including without limitation attorneys' fees.

**"UNDERSIGNED"**

(Individually, and on behalf of all persons and entities under the control of the Undersigned):

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name: Printed or Typed)

Position(s) with Franchisee [check all that apply]:

- \_\_\_\_\_% Owner
- Director
- Entity Representative
- Officer: \_\_\_\_\_ [provide title]
- General Manager
- Spouse of \_\_\_\_\_ [spouse's name]  
\_\_\_\_\_ [spouse's Position]
- Other: \_\_\_\_\_ [specify]

\_\_\_\_\_  
(Residential Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

**ACCEPTED BY FRANCHISEE**

(For itself and on behalf of DataPreserve):

\_\_\_\_\_  
(Full Legal Name of Franchisee)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed or Typed)

Its: \_\_\_\_\_  
(Title)

**ATTACHMENT 6  
TO DATAPRESERVE FRANCHISE AGREEMENT  
CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBERS**

1. \_\_\_\_\_,  
doing business as \_\_\_\_\_,  
a DataPreserve franchisee ("**Assignor**"), in exchange for valuable consideration provided by DataPreserve Franchise, LLC ("**Assignee**"), the receipt and sufficiency of which is hereby acknowledged, hereby conditionally assigns to Assignee all telephone numbers and listings utilized by Assignor in the operation of its DataPreserve franchised business. Those numbers include (without limitation) the following numbers:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

2. This Conditional Assignment will become effective automatically upon the expiration and non-renewal, or upon the termination under any circumstances, of the Franchise Agreement between Assignor and Assignee. Upon the occurrence of any such event, Assignor must do all things required by the telephone company to assure the effectiveness of the assignment of telephone numbers as if the Assignee had been originally issued such telephones, telephone numbers, telephone listings and the usage thereof.
3. Assignor agrees to pay the telephone company on or before the effective date of the assignment all amounts owed for the use of the telephone(s) including, without limitation, Yellow Pages advertising. Assignor further agrees to indemnify Assignee for any sums Assignee must pay the telephone company to effectuate this Assignment, and agrees to fully cooperate with the telephone company and Assignee in effectuating this Assignment.

**ASSIGNOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**ASSIGNEE:**

DataPreserve Franchise, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_