

**APPENDIX D SOFTWARE LICENSE AND SERVICES AGREEMENT
to DIR-TSO-4038**

This Software License and Services Agreement, dated _____, is made and entered into by and between **NBS Holdings, LLC dba Data Preservation Solutions LLC** ("DPS"), and _____ ("Customer").

RECITALS

- A. DPS has developed and is the owner of software products relating to the archiving and retrieval of computer information, resells products of similar description and provides professional and maintenance services with respect to such software; and
- B. Customer desires to license certain software from DPS, purchase certain hardware products through DPS, and engage DPS to provide professional services and maintenance services with respect to such software, and DPS is willing to provide all of the foregoing to Customer in accordance with the terms and conditions of DIR contract No. DIR-TSO-4038, and this Agreement. In the event of a conflict between the DIR Contract No. DIR-TSO-4037 and this Agreement, the DIR Contract will control.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, DPS and Customer agree as follows:

1. DEFINITIONS

As used in this Agreement, the following definitions shall apply:

- a) "Agreement" means this Software License and Services Agreement, as the same may be amended from time to time in accordance with its terms.
- b) "Application Program(s)" means the Software Product(s) modified by DPS pursuant to a Statement of Work.
- c) "Confidential Information" means any information relating to or disclosed in the course of this Agreement that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, is or should be reasonably understood by the receiving party to be confidential or proprietary. Without limiting the generality of the foregoing, DPS's "Confidential Information" shall include but not be limited to the Software Products, the Documentation, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, software source code, product specifications, methods, designs, new products, developmental work, and the terms and pricing under this Agreement, whether or not such information is identified as confidential. "Confidential Information" shall not include any information that the receiving party can establish: (i) is now, or hereafter becomes widely

and generally known by or available to the public, through no act or omission by the receiving party or its representatives; (ii) is hereafter furnished to the receiving party by a third party without solicitation by the receiving party, without breach of this Agreement, and without otherwise violating any of the disclosing party's rights or any other confidentiality obligation; or (iii) was already known to or in the possession of the receiving party before any disclosure made by the disclosing party to the receiving party.

- d) "Commencement Date" of each Software License shall mean the date on which a Software Product is installed by DPS.
- e) "Documentation" means written or printed materials or materials in non-software media prepared by or on behalf of DPS that are intended for use with a Software Product.
- f) "Effective Date" means the date of this Agreement as set forth above.
- g) "Hardware" means the hardware products purchased by Customer through DPS as set forth in **Exhibit A** attached hereto.
- h) "Maintenance Services" shall mean the support and maintenance services to be provided by DPS for the Software Products pursuant to the terms and conditions set forth in **Exhibit B** attached hereto.
- i) "Professional Services" shall mean the project management, systems analysis, systems configuration, systems design, installation, testing, knowledge transfer, training and/or other services to be provided by DPS with respect to the Software Products as set forth in the Statement of Works.
- j) "Software Product(s)" means those software products, including one or more modules thereof, related to archiving and retrieval of computer information developed by or for DPS, and any Application Program, all as set forth in **Exhibit A** attached hereto.
- k) "Software License(s)" shall mean each license granted to Customer for a User to use a Software Product.
- l) "User(s)" shall mean the concurrent or specified (by password or other user identification) individuals authorized by Customer to use a Software Product, regardless of whether the individual is actively using the Software Product at any given time. Customer may replace authorized Users as necessary to reflect personnel changes provided that the number of individuals authorized to use a Software Product does not exceed the maximum number of authorized Users at any time. The maximum number of Users that may use or access a Software Product is specified in Exhibit A. Customer agrees that it is responsible for ensuring that any usage by its employees and any such third parties are in accordance with the terms and conditions of this Agreement.

2. GENERAL

DIR contract No. DIR-TSO-4038, and this Agreement, and Exhibits shall apply to each Software Product, Software License, and to all Professional Services and Maintenance Services provided by DPS under this Agreement. In the event of a conflict between the DIR Contract No. DIR-TSO-4037 and this Agreement, the DIR Contract will control.

3. PRODUCTS AND SERVICES

- a) **Software Licenses.** Customer hereby licenses from DPS the Software Products set forth in **Exhibit A** at the prices set forth in **Exhibit A**. Customer's license of the Software Products includes the related Documentation. The terms and conditions of the Licensed Software are set forth in Section 4 below.
- b) **Hardware Purchases.** Customer hereby purchases from DPS the Hardware set forth in Exhibit A at the prices set forth in **Exhibit A**. Customer's purchase of the Hardware includes applicable manufacturer documentation made available by each vendor in hard copy or in electronic form and included with the Hardware. Customer agrees the applicable manufacturers of the Hardware are and shall remain the owners of all intellectual property and proprietary rights in and to the Hardware and applicable documentation. No title or ownership of the intellectual property or proprietary rights related to the Hardware or applicable documentation is hereby transferred to Customer. Customer agrees to use all Hardware and applicable documentation in accordance with the license agreements of the applicable manufacturer. DPS provides no warranty with respect to the Hardware. The Hardware is warranted solely by the manufacturer of the Hardware.
- c) **Professional Services.** Customer hereby purchases from and engages DPS to provide the Professional Services set forth in Appendix E Statement of Work to DIR Contract No. DIR-TSO-4038, at the prices set forth in Exhibit A, and in accordance with Appendix C Pricing Index to DIR Contract No. DIR-TSO-4038.
- d) **Annual Maintenance Services.** Customer hereby purchases from and engages DPS to provide the Maintenance Services for a one (1) year period commencing on the Commencement Date, at the prices set forth in Exhibit A. Thereafter, Maintenance Services may renew on an annual basis by giving Customer sixty (60) days advance written notice. Fees for Maintenance Services shall be payable annually in advance and may be increased in accordance with the DIR contract No. DIR-TSO-4038, and prior to the commencement of any annual renewal period by giving sixty (60) days advance written notice. Maintenance Services are required and entitles Customer to updates and technical support for the Software Products pursuant to the terms and conditions set forth in Exhibit B. DPS reserves the right to alter its standard Maintenance Services policy from time to time using reasonable discretion but in no event shall such alterations result in diminished support from the level of support then currently being provided. DPS shall provide Customer with sixty (60) days prior written notice of any change to the Maintenance Services.

4. SOFTWARE LICENSE

- a) **Software License Grant.** DPS hereby grants Customer the nonexclusive, non-transferable, non-assignable, perpetual right and license (i) to use the Software Products for their intended purposes and solely for Customer's own internal business operations; (ii) to use the Documentation solely for purposes of supporting Customer's use of the Software Products and in accordance with the terms of the Documentation; (iii) to make one additional copy of a Software Product solely for archival, emergency back-up, testing, or disaster recovery purposes; and (iv) to copy the Documentation only as necessary to support the maximum number of concurrent Users. Only DPS and its authorized resellers shall install the Software Products on Customer's server systems and personal computers, in each case, only as necessary to support the maximum number of concurrent Users as determined by

DPS in its sole discretion. In addition to other remedies, if Customer makes unauthorized copies of the Software Products or the Documentation, DPS shall be entitled to recover the full amount of any license fees that would relate to such copies.

- b) **Software License Restrictions.** The rights granted in this Section 4 are subject to the following restrictions: Customer may not (i) disassemble, reverse engineer or decompile the object or binary code of any Software Product or attempt to do so, and shall prohibit its employees, contractors and agents from doing so or attempting to do so; (ii) modify or reproduce any Software Product or Documentation or prepare any adaptations derivative works thereof, and shall prohibit its employees, contractors and agents from doing so or attempting to do so; (iii) sell, assign, rent, lease, transfer, sublicense, dispose of, or otherwise make available a Software Product, or any portion thereof, to any other party, or use the Software Products for commercial time-sharing, rental, outsourcing, or service bureau use, or to train persons other than concurrent Users; (iv) use the Software Products that are development tools for general application development purposes; and (v) with regard to any and all permitted copies of the Software Products and Documentation, Customer shall only make exact copies of the versions as originally delivered by DPS. Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original, and all such copies shall be subject to the terms and conditions of this Agreement.
- c) **Retention of Rights.** DPS reserves all rights not expressly granted to Customer in this Agreement. Customer acknowledges and agrees that: (i) except as specifically set forth in this Agreement, DPS retains all rights, title and interest in and to the Software Products and Documentation; (ii) any configuration or deployment of the Software Products shall not affect or diminish DPS's rights, title, and interest in and to the Software Products; and (iii) if Customer suggests any new features, functionality, or performance for the Software Products that DPS subsequently incorporates into the Software Products, Customer hereby grants DPS a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such suggestions into the Software Products. Customer acknowledges that the Software Products incorporating such new features, functionality, or performance shall be the sole and exclusive property of DPS and all such suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon DPS under this Agreement.
- d) **Verification.** At DPS's written request, Customer shall furnish DPS with a certified document listing (i) the number of Users; and (ii) the locations and types of the systems on which the Software Products operate or are installed. DPS reserves the right to audit Customer's use of the Software Products on a semi-annual basis at DPS's expense. DPS shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. If such audit reveals that Customer has underpaid fees to DPS, Customer shall pay to DPS such fees.

5. PAYMENT

Payment shall be handled in accordance with Section 8J of Appendix A of the DIR Contract No. DIR-TSO-4038.

6. TAXES

Taxes shall be handled in accordance Section 8E of Appendix A of the DIR Contract No. DIR-TSO-4038.

7. CONFIDENTIALITY

Confidentiality shall be handled in accordance with Sections 10H of Appendix A of the DIR Contract No. DIR-TSO-4038.

8. OWNERSHIP

Customer acknowledges and agrees that the Software Products and Documentation, and all copies thereof, constitute valuable trade secrets of DPS and/or proprietary and confidential information of DPS. All aspects of the Software Products and Documentation, including programs, methods of processing, design and structure of individual programs and their interaction and programming techniques employed therein, shall remain the sole and exclusive property of DPS and title thereto remains in DPS. Ownership of all applicable copyrights, trade secrets, patents and other intellectual property rights in the Software Products and Documentation are and shall remain vested in DPS.

9. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

Intellectual property matters shall be handled in accordance with Section 5 of Appendix A, DIR Contract No. DIR-TSO-4038. Infringements shall be handled in accordance with Section 10A of Appendix A, DIR Contract No. DIR-TSO-4038.

10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

- a) Software Product Warranty. DPS warrants for ninety (90) days from the Commencement Date that each Software Product for which Customer has a Software License will perform in all material respects in accordance with the functions described in the Documentation when operated on a supported operating system as set forth in the Documentation.
- b) Media Warranty. DPS warrants for ninety (90) days from the Commencement Date that the media upon which DPS delivers each Software Product will be free of defects in materials and workmanship under normal use.
 - a. Services Warranty. DPS warrants for thirty (30) days from the performance of any Professional Services or Maintenance Services, that such services shall be performed in a professional manner with the level of skill exercised by other professionals in performing services of a similar nature under similar circumstances.
 - b. Disclaimers. DPS does not warrant that (i) the Software Products will meet Customer's requirements; (ii) the Software Products will operate in combination with other hardware, software, systems or data not recommended by DPS in the Documentation; (iii) the operation of the Software Products will be uninterrupted, error-free, virus free or secure; or (iv) all Software Product errors will be corrected. DPS does not provide a guarantee to resolve a support service request. THE WARRANTIES CONTAINED IN THIS SECTION 10 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND QUALITY OF SERVICE.

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No agreement or oral or written information or advice by DPS, its employees, distributors, dealers or agents, varying or extending any warranties, remedies or limitations contained in this Agreement, shall increase the scope of the above warranties or create any new warranties unless contained in a writing signed by a duly authorized officer of DPS.

- c. Exclusive Remedies. Customer must report in writing any breach of the warranties contained in this Section 10 to DPS during the relevant warranty period, and Customer's exclusive remedy and DPS's entire liability for any breach of such warranties shall be as set forth below:
 - i. Software Product Warranty. DPS shall use reasonable efforts to correct or provide a workaround for reproducible Software Product errors that cause a breach of this warranty.
 - ii. Media Warranty. DPS shall replace any defective media.
 - iii. Services Warranty. DPS shall promptly correct and re-perform any of the Professional Services or Maintenance Services that are not in compliance with this warranty.

The parties acknowledge and agree that the Software Products are not "consumer goods" as defined by the Uniform Commercial Code and that the Software Products are not governed by, or subject to the United Nations Convention on Contracts for the International Sale of Goods.

11. LIMITATION OF LIABILITY

Limitation of Liability shall be handled in accordance with Section 10K of Appendix A, DIR Contract No. DIR-TSO-4038.

12. INDEMNIFICATION

Indemnification shall be handled in accordance with Section 10A of Appendix A of the DIR Contract No. DIR-TSO-4038

13. TERM; TERMINATION

- a) Term. The term of this Agreement shall commence upon the Effective Date and shall remain in full force and effect until terminated in accordance with this Section 13.
- b) Termination. Termination shall be handled in accordance with Section 11B of Appendix A of the DIR Contract No. DIR-TSO-4038.

14. ADDITIONAL PROVISIONS

- a) Force Majeure. Force Majeure shall be in accordance with Section 11.C. of Appendix A of the DIR Contract No. DIR-TSO-4037.
- b) Export Controls. Customer agrees to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations (collectively, "U.S. Export Controls"). Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-

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export, divert, or transfer the Software Products, Documentation or any direct product thereof to any destination, company or person restricted or prohibited by U.S. Export Controls.

- c) Injunctive Relief. Injunctive Relief shall be in accordance with Section 5F of Appendix A of the DIR Contract No. DIR-TSO-4038.
- d) Relationship of the Parties. Nothing in this Agreement shall be construed in any way as placing either party in the position of being an agent of the other party, and neither party shall have the power to bind the other party, or to contract in the name of, or create a liability against, the other party in any way, for any purpose. Neither party shall be responsible for the acts or defaults of the other party, or any of the other party's employees, representatives or agents.
- e) Notices. Notification shall be in accordance with Section 12 of Appendix A of the DIR Contract No. DIR-TSO-4038.
- f) Severability. If any provision of this Agreement shall be held by any court to be unenforceable or inoperative, the remaining provisions shall be deemed severable and unaffected and shall continue in full force and effect.
- g) Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement, if any ambiguity or question of intent or proper interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
- h) Counterparts. This Agreement may be executed in several identical counterparts, each of which is an original, but all of which taken together shall constitute one instrument.
- i) Assignability. Assignment shall be in accordance with Section 4D of Appendix A of the DIR Contract No. DIR-TSO-4038.
- j) Governing Law. This Agreement is governed by the laws of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- k) Waiver and Amendment. Any breach of this Agreement may only be waived by a written instrument signed by the party against whom enforcement of the waiver is sought. The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. This Agreement and the Exhibits hereto may be amended only by an instrument in writing signed by both parties.
- l) Entire Agreement. DIR Contract No. DIR-TSO-4038, this Agreement and Exhibits constitute the entire understanding of the relationship between the parties. No prior or contemporaneous representation or agreement outside of this Agreement shall have any effect whatsoever on the terms hereof. In the event of a conflict between DIR Contract No. DIR-TSO-4038 and this Agreement, the DIR Contract will control.

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INTENDING TO BE LEGALLY BOUND, the parties have executed and delivered this Agreement by their respective duly authorized officers as of the Effective Date.

	NBS Holdings, LLC dba Data Preservation Solutions LLC
By: <i>Client</i>	By:
(Authorized Signature)	(Authorized Signature)
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
<u>Address for Notice:</u>	<u>Address for Notice</u>
	NBS Holdings, LLC dba Data Preservation Solutions LLC
	2214 Century Center Boulevard
	Irving, Texas 75062
	Attention: ____Michelle Vinson_____

EXHIBIT A: PRODUCT AND SERVICES SCHEDULE

All software/hardware products included in a software implementation project will be included within this area.

Detail will include product name, version #/ID, type of product (on-premise/cloud/SaaS, number of users, named or concurrent licenses, maintenance contract duration(s), and all other applicable information identifying and describing the software products and services including within a single project or multiple projects.

EXHIBIT B: DPS MAINTENANCE SERVICES TERMS AND CONDITIONS

DPS's Maintenance Services terms and conditions for all Software Products consist of the following (capitalized terms used herein shall have the same meaning as set forth in the Agreement between the parties to which this Exhibit is attached):

1. **Standard Maintenance Services.** So long as maintenance fees are timely paid, DPS shall provide the following standard Maintenance Services with respect to the Software Products:
 - a) **Correction of Reproducible Failures/Errors.** Upon notification to DPS that the Software Products fail to operate, in any material respect, in conformance with the then-current Documentation when properly used, DPS shall use commercially reasonable efforts to correct any reproducible failure or error, or provide a workaround to the problem as soon as reasonably possible.
 - b) **Telephone Support.** DPS will provide phone support Monday through Friday from 8:00 AM to 5:00 PM CST, except for established DPS holidays, via the technical support contact information posted on DPS's website at <https://datapreservationsolutions.com/support>, to answer general questions on the use and operation of a Software Product. Such service may include providing file transfers through the DPS web site. Response time: Service will be provided on a priority basis, in accordance with standard industry practices.
 - c) **General Updates.** DPS shall make available to Customer updates to the Software Products which are "updateable products" (i.e., subscription products) and licensed as such. Updates shall include "Major Releases" which consists of changes to an existing execution program that offers extended capabilities or enhanced performance. Error corrections and minor changes may be included as part of the "Major Release." Updates will include Documentation which describes the nature of an Update. Unless otherwise agreed to in writing between DPS and Customer, DPS shall be responsible for the installation of Updates and Customer shall pay for such services at standard times and materials rates which shall be quoted in advance.
 - d) **Non-Updateable Products.** If a Software Product is not an updateable product, it is either custom in nature or developed for a specific application by DPS, or updates are available through a third party (a "Non-updateable Product"). Changes made to a Non-updateable Product developed by DPS will require system engineering and be performed by request and at time and material rates which shall be quoted in advance. Updates for Non-Updateable Products manufactured by a third party but distributed by DPS are available only through such third party.
 - e) **Limitations.** Notwithstanding anything to the contrary contained herein, DPS is under no obligation to provide and may cease providing Maintenance Services for a particular Software Product if DPS determines that (i) Customer's use of a Software Product is in contradiction or violation of the Agreement or the Documentation; (ii) Customer without authorization modified, enhanced or altered a Software Product; (iii) Customer's other hardware/software is defective; or (iv) a Software Product or Upgrade was incorrectly installed by a party other than DPS.
2. **Customer Obligations.** Customer shall be licensed and registered for all Software Products for which Maintenance Services are requested. Service and or phone support will not be administered until a Software Product is properly licensed. Customer shall have written backup procedures that it will abide

by and a plan for disaster recovery in the case of a major hardware failure. **CUSTOMER IS AT ALL TIMES SOLELY RESPONSIBLE FOR HAVING BACK UP EQUIPMENT SUFFICIENT TO PROTECT THE LOSS OF CUSTOMER'S DATA.** Customer agrees to use reasonable efforts to: (i) designate a representative with diagnostic capabilities and systems knowledge who shall to the maximum extent practicable communicate with DPS; (ii) assist DPS in resolving Customer requests by providing written explanation of the problem encountered, and/or supporting documentation (such as an error log or messages file); and (iii) provide DPS upon request with a profile of Customer's hardware/software environmental configuration and a listing of output or other data DPS reasonably believes will assist it in reproducing errors or in otherwise providing the Maintenance Services. Customer shall agree to automatic changes to Exhibit A to the Agreement to reflect new charges for added software or hardware components and additional software Users or "seats."

3. Other Services.

- a) The Maintenance Services excludes any service not listed in this Exhibit Bincluding but not limited to, audits, design and configuration services, installation, moves/changes, programming, data conversion, testing, training, or administration of systems all of which shall be separately agreed upon in writing by the parties. All services other than the Maintenance Services shall be billed separately and due upon receipt of invoice.
- b) If DPS determines a service request is not within the scope of Maintenance Services as provided herein, DPS will inform Customer and provide a written explanation supporting such determination. At Customer's written request, DPS may undertake work on such a service request at DPS's standard times and materials rates unless otherwise separately agreed upon in writing by the parties. All time during which DPS personnel are on stand-by, and/or at the service site awaiting access to equipment or software will be considered chargeable time.
- c) Configuration Charge: If it is determined by DPS that unauthorized personnel have changed Customer's system, DPS will bill Customer for all time and materials required to return the system to functional operation.
- d) Travel Time Charge: If travel to Customer's location is required for on-site integration, support, training or installation in connection with a service request, Customer will reimburse DPS for all reasonable out-of-pocket and travel expenses incurred. Such amounts shall be billed separately.

End of Maintenance Services Terms and Conditions