**NON-COMPETITION, NON- SOLICITATION, NON-DISCLOSURE**

**AND EMPLOYMENT AGREEMENT**

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011, by and between PowerCare and Service Solutions, Inc., a Texas corporation (the “Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Employee”);

WHEREAS, the Company is engaged in the Business (defined below); and

WHEREAS, the Company has provided or will provide specialized training to the Employee, and the Company and Employee would like to hire and/ or expand the functions and opportunities of the Employee, and in connection therewith, Employee will obtain proprietary, non-public and Confidential Information (defined below) regarding Company and its Business; and

WHEREAS, the Company and Employee desire for Employee to be employed by or to continue to be employed by the Company; and

WHEREAS, Employee recognizes and acknowledges that the Company would not hire and/or expand the employment opportunities, including the provision of enhanced incentive compensation opportunities of Employee, unless and until Employee agreed to enter into this Agreement;

NOW, THEREFORE, IN CONSIDERATION of the hire and/or expanded compensation opportunities, in part, of Employee, as well as the promises, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto have agreed and do hereby agree as follows, intending to be legally bound thereby:

1. **Employment Terminable At Will.** Employee’s employment with the Company is terminable at the will and at the option of either the Company or Employee and no contractual right of continued employment is created by this Agreement.

2. **Required Notice or Payment in Lieu Thereof.** Notwithstanding and in conjunction with the at will nature of the Employee’s employment with the Company, Employee agrees to provide the Company with at least fourteen (14) days (ten (10) business days) prior written notice of Employee’s intention to resign or otherwise terminate Employee’s employment with the Company. Further, the Company agrees to provide the Employee with at least fourteen (14) days (ten (10) business days) prior written notice of the Company’s intention to terminate Employee’s employment with the Company, except for misfeasance or malfeasance committed by Employee. In lieu of such required notice to Employee or if the Company fails to provide such notice to Employee of the Company’s intention to terminate Employee’s employment with the Company, except for misfeasance or malfeasance by Employee, the Company shall pay to the Employee a severance payment equal to fourteen (14) (ten (10) business days) days at Employee’s then current rate of pay. Employee acknowledges that this right to the above-described severance payment is a right not generally available to all Company employees and is part of the consideration for Employee’s execution of this Agreement. Employee further acknowledges that Employee’s transfer or acceptance of a position with Company’s parent, affiliate or subsidiary, including but not limited those listed in Paragraph 4, does not constitute termination under this Paragraph 2.

3. **Non-Competition, Non-Solicitation and Non-Disclosure.**

() From the commencement of this Agreement on the date hereof and until the elapse of six (6) months following the termination of the employment of Employee with the Company for any reason (the “Term”), Employee shall not, for his/her own account or for the benefit of any other person or business entity, or through one or more intermediaries without the prior written consent of the Company,:

() Engage or participate in, own any interest in, provide any financing for, perform any services for, or act in any other capacity for, either as an employee, employer, consultant, principal, partner, stockholder, investor, financial participant, corporate officer, director or in any other individual or representative capacity, any other person or legal entity which engages or participates in any business or activity that is in competition with the Business of the Company within the Territory (defined below), without the prior written consent of the Company, which consent the Company may refuse to give for any reason or for no reason at all; or accept any sales commissions, bonuses or other payments, compensation or remuneration from any other person or legal entity which engages or participates in any business or activity that is in competition with the Business of the Company within the Territory;

(ii) Employ, solicit for employment or advise or recommend to any other person or business entity that such other person or business entity employ, or solicit employment of, any employee of the Company or any employee of the Company’s affiliates, subsidiaries or any other entity partially or wholly owned by the Company, unless through no action of Employee, directly or indirectly, such employee is no longer an employee of the Company; or

(iii) Solicit or induce, or in any manner attempt to solicit or induce, any customer or supplier of the Company or of the Company’s affiliates, subsidiaries or any other entity partially or wholly owned by the Company, to cease being a customer or supplier of the Company or to divert any business of such customer or supplier from the Company.

Employee regards the restrictions set forth in this Paragraph 3 as reasonable in geographic territory, scope and duration and recognizes that such restrictions are designed to provide the Company with limited, legitimate and reasonable protection against subsequent diminution of the value of the Business of the Company attributable to any actions of Employee contrary to such restrictions. Employee acknowledges that the Company would suffer irreparable damage in the event Employee were to breach any of the provisions of this Paragraph 3 and, accordingly, agrees that the Company shall be entitled (without the necessity of proving damages or furnishing any bond or other security) to an injunction or injunctions to prevent breaches of this Paragraph 3, and the Company shall be entitled to enforce specifically the provisions of this Paragraph 3, in any court of the United States or any state thereof having jurisdiction, in addition to any other remedy to which the Company may be entitled under this Agreement or in law or in equity. It is the intent and understanding of the Company and Employee that if, in any action before any court or governmental entity legally empowered to enforce the provisions of this Paragraph 3, any term, restriction, covenant or promise in this Paragraph 3 is found to be unreasonable or for any reason unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such court or governmental entity. Additionally, during any period in which Employee is in breach of any term, restriction, covenant or promise contained in this Paragraph 3, the time period of such term, restriction, covenant or promise shall be extended for such amount of time that Employee is in breach thereof. Further, if, during the Term, this Agreement, in whole or in part, is found to contain limitations as to geographic area, time or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to protect the goodwill or other business interests of the Company, Employee agrees to join with the Company to induce the court or other tribunal to reform this Agreement to the extent necessary so as to cause the limitations contained herein as to geographic area, time and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interests of the Company and so as to enforce this Agreement as reformed.

(b) In exchange for Employee’s execution of this Agreement, the Company agrees that it will employ Employee consistent with the provisions herein and that Employee has and/or will obtain proprietary, nonpublic and Confidential Information regarding the Company and its Business. Employee hereby recognizes and understands that such Confidential Information is proprietary, nonpublic, and confidential. Employee understands, acknowledges, covenants and agrees that all Confidential Information relating to the Business of the Company and the services rendered by the Company shall be treated as confidential by Employee at all times during the Term and at all times thereafter. Except with the prior written consent of the Company, which the Company may refuse to give for any reason or for no reason at all, Employee covenants and agrees that Employee shall not, during the Term and at all times thereafter, disclose any such proprietary, nonpublic and Confidential Information to any person, firm, corporation or other business entity except authorized personnel of the Company or otherwise use any such information for any purpose other than as permitted herein. Employee further agrees and acknowledges that nothing contained herein limits or in any way restricts Company’s protection of trade secrets, which are specifically included as Confidential Information.

(c) Employee covenants and agrees that the covenants and agreements contained in Paragraph 3 shall be construed independently and as agreements independent of any provisions of any other agreements between the Company and Employee, and the existence of any claims or causes of action by Employee against the Company, or any of its officers, directors, shareholders, employees or agents, whether predicated on any such agreements or otherwise, shall not constitute a defense to the enforcement by the Company of any of the provisions contained herein.

(d) Employee hereby stipulates and agrees that (i) he/she has carefully considered the covenants and agreements contained herein, (ii) the covenants and agreements contained herein are supported by independent valuable consideration, (iii) the provisions of this Paragraph 3 are ancillary to or part of otherwise enforceable agreements between the parties at the time into which the terms and provisions of this Paragraph 3 are agreed.

(e) The provisions of this Paragraph 3 contain limitations as to geographic area, time and scope of activity to be restrained that are reasonable and do not impose a greater restraint on Employee than is necessary to protect the goodwill or other business interests of the Company.

(f) The fundamental business interests of the Company to be protected hereunder are in preventing Employee from misusing Company’s Confidential Information, the specialized training provided by the Company, and the business contacts and rapport established with fellow employees and the customers, suppliers, business partners and vendors of the Company or of its subsidiaries or affiliates with whom either the Company or Employee have had a business relationship.

(g) Employee hereby represents, warrants, covenants and agrees, as follows, that

() The need of the Company for the protection afforded by this Paragraph 3 is not outweighed by either hardship to Employee or any injury likely to the public;

(ii) Agreeing to terms of this Paragraph 3 and being bound by the restrictions contained herein will not prevent Employee from earning a livelihood;

(iii) The covenants and agreements contained in this Paragraph 3 are not oppressive to Employee;

(iv) The covenants and agreements contained in this Paragraph 3 are not, in the opinion of Employee, injurious to the public through prevention of competition or by depriving the community or communities of needed goods or services in the Business in which the Company is engaged or in which it offers services;

(v) The Company has given or will give valuable consideration to Employee in consideration for Employee entering into this Agreement, including an increased opportunity for incentive compensation and a required notice period as set out in Paragraph 2, and specifically agreeing to the provisions of this Paragraph 3;

(vi) The terms of this Paragraph 3 have been agreed to by Employee of his/her own free will and accord and after arms-length negotiation between Employee and the Company; and

(vii) Employee has all requisite power and authority to execute, deliver and perform Employee’s obligations under this Agreement. This Agreement constitutes the legal, valid and binding obligation of Employee enforceable in accordance with its terms. The execution, delivery and performance by Employee of this Agreement, and the consummation of the transactions contemplated hereby, do not require the consent, waiver, approval, license or authorization of any other person or entity (except to the extent already obtained).

(h) Employee agrees that upon any violation by Employee of any of the provisions of this Paragraph 3, the Company shall be entitled to an accounting and repayment of all profits, compensation and commissions, remuneration or other benefits that Employee, directly or indirectly, may have or has realized arising from or relating to any such violation. These remedies shall be in addition to, and not in limitation of, any injunctive or other relief to which the Company may be entitled.

(i) At the time of providing the Company with at least fourteen (14) days prior written notice of Employee’s intention to resign or otherwise terminate Employee’s employment with the Company, as required by this Agreement, or in any event, on or prior to the effective termination date of Employee’s termination of employment with the Company, Employee covenants and agrees to provide the Company with an inventory of all Company property in the possession of the Employee or otherwise under the direction or control of Employee and further covenants and agrees to make arrangements with Employee’s immediate supervisor to return all such property to the Company on or prior to the effective termination date of Employee’s employment with the Company.

(j) Anything in this Paragraph 3 to the contrary notwithstanding, the Company and Employee intend to strictly comply with all applicable laws, rules and regulations governing, interpreting or construing covenants not to compete, non-solicitation and non-disclosure agreements. It is the intention of the Company and Employee that this Paragraph 3 shall be enforceable in accordance with its terms and provisions; provided, however, that in the event it is ever determined by a court of competent jurisdiction that any of the terms of this Paragraph 3 contravene applicable laws, rules and regulations, it shall be deemed a mutual mistake of the parties with this Paragraph 3 being automatically reformed, without any further action on the part of either the Company or Employee, to the extent necessary to make the provisions of this Paragraph 3 fully enforceable to the extent lawful.

4. **Third Party Beneficiary.** Employee understands and agrees that this Agreement is between Employee and Company, but Employee acknowledges and agrees that Employee’s work and subject matter of this Agreement, including the restrictions agreed to Paragraph 3, may pertain as well to the activities of the Company’s parent, affiliates and subsidiaries. In turn, Employee acknowledges and agrees that the Company’s parent, affiliates and subsidiaries, including but not limited to Interstate Battery System International, Inc., All Battery Centers, Inc., Distributor Operations, Inc., PowerCare and Service Solutions, Inc., Interstate Consolidated Enterprise, Inc., Retail Acquisition and Development, Inc., Distribution Marketing, Inc., Interstate Battery System of Canada, Inc. , Interstate Battery System of Hawaii, Inc., Chase Resources Corporation, Battery Patrol Franchising L.L.C., Interstate Battery Franchising & Development, Inc., Battery Acquisition & Development, Inc., San Francisco Battery, Inc., D-T DO, Inc. and Interstate CODS, Inc., are express, intended beneficiaries of this Agreement.

5. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and are not a part of this Agreement, and shall not be used in construing it.

6. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction or any other provision of this Agreement.

7. **Choice of Law, Forum and Venue.** This Agreement and all matters related thereto shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws principles. This Agreement and all obligations created hereunder are performable, if not wholly, at least in part, in Dallas County, Texas. Any action predicated hereunder shall be maintainable solely in a court of appropriate subject matter jurisdiction, whether state or federal. However, venue of any such action shall be maintainable solely in Dallas County, Texas.

8. **Amendment.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged or amended in any manner other than by an instrument in writing, signed by the party against which the enforcement of the change, waiver, discharge or amendment is sought.

9. **Notices.** All notices and communications pertaining to this Agreement or the transaction contemplated hereby shall be made in writing and shall be deemed sufficiently given when delivered in person or by overnight carrier, when sent by facsimile, telex, telegram or other telephonic communications (provided such notice is also sent by United States mail), or on the second day after being deposited in the United States mail, first class registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below.

10. **Complete Agreement.** This Agreement (and any exhibits hereto) contains the entire agreement between the parties hereto with respect to the contents hereof and supersedes all prior agreements and understandings between the parties with respect to such matters, whether written or not.

11. **Attorneys’ Fees.** If a dispute arises between the parties with respect to any of the terms or provisions of this Agreement, the prevailing party in such dispute shall be entitled to recover its reasonable attorneys’ fees and other costs and from the non-prevailing party.

12. **Time of Essence.** Time shall be of the essence of this Agreement and throughout the Term, as defined in this Agreement.

13. **Definitions.** As used herein, the following terms shall have the following meanings:

() “Business” means the development, marketing, servicing and wholesale and retail distribution of multiple types of batteries, including but not limited to both original and replacement electric storage batteries for automotive, motorcycle, marine, golf cart and other equipment and/or machinery uses, alkaline, household electronics, hearing aid, dry cell, security system, camera, laptop and cell phone batteries. “Business” also includes the development of distributor markets at both the wholesale and retail levels and the extension and control over the financing of battery and other related inventory purchases therefrom. “Business” shall further mean the development, supply and servicing of a network of customers utilizing batteries or other related electrical storage devices as back-up or primary power for machines, systems or other devices.

(b) “Confidential Information” means all trade secrets, devices, designs, patents, prototypes, ideas, developments, know-how, software, methods, techniques, models, object codes, source codes, copyrightable material, processes and other proprietary rights, disclosures, inventions, creations, programs, firm ware, financial records, price codes, distribution methods, payment terms, marketing strategies, contracts, agreements, customer lists, records, employee or customer personal information, and all embodiments of the foregoing, and all modifications, improvements and enhancements thereof and data collected, created or developed by or for the Company or any of the Company’s affiliates, subsidiaries, or any other entity partially or wholly owned by the Company with respect to the above, all of which Employee agrees is property of Company.

(c) “Territory” means the geographic area or areas in which Employee performs or performed his/her duties and/or is or was responsible for the performance of his/her subordinates (e.g., sales territory) at any time during the previous year or, if Employee is no longer employed by the Company, during the year immediately preceding the termination of Employee’s employment with the Company. Employee acknowledges that the duties and responsibilities of his/her position require customer solicitation and/or utilization of Confidential Information in every part of said Territory and that Employee performs his/her duties in all of the Territory and has been provided with contacts with customers or prospective customers generated through the Company’s efforts in the Territory. Employee also represents that any less restrictive definition of Territory would not adequately protect the interest of the Company in that conduct by Employee contrary to this Agreement in all or any part of the Territory would damage important and legitimate interests of the Company.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**PowerCare and Service Solutions, Inc.**

(Signature of Employee) 12770 Merit Drive, Suite 400, Dallas, Texas 75251

 (Attention: Legal Department)

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(Signature)

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(Name of Employee) (Name)

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Employee Address)