

## INDEPENDENT CONTRACTOR MARKETING AGREEMENT

This Agreement is a proposal by Global Systems Telecom, Inc. to appoint the following described Representative as a non-exclusive independent marketing Agent for services contracted by Global Systems Telecommunications, Inc.

This Independent Contractor Marketing Agreement (“Agreement”)

Date: \_\_\_\_\_, 20\_\_ ,

is between Global Systems Telecommunications, Inc. (“GSTI”), a Florida corporation with its principal offices located at:

3840 Coconut Creek Parkway, Coconut Creek, Florida 33066

and “Agent” \_\_\_\_\_ with its principal

offices located at \_\_\_\_\_.

### **PURPOSE:**

The parties have agreed to an arrangement whereby Agent shall serve as an independent marketing Agent for GSTI.

### **AGREEMENT:**

In consideration of the mutual terms and conditions set forth herein, the parties agree as follows:

### **DEFINITIONS:**

1. “Commissions” shall be amounts payable to Agent under this Agreement as a percentage of Qualified Revenues in accordance with Exhibit “A” (Commission Schedule).
2. “Carriers” shall mean any and all companies with which GSTI has agreements for the sale, enrollment, or referral of any or all services.
3. “Customers” shall consist of commercial or residential end-users solicited by Agent and located within the territory and which have had service orders for the Services accepted by the Carrier during the term of this Agreement.
4. “Qualified Revenues” shall mean the revenues actually collected by Carriers from Customers for usage of the Services. Qualified Revenues shall not include applicable taxes and surcharges, installation and recurring charges, and charges for directory/operator assistance (including international calling card calls made from outside the continental United States), 700/900 network calls and other ancillary services not specified in the definition of Services, revenues from accounts with net Monthly Usage of less than the

current monthly product usage minimum, if any, in effect for a particular Service (the current minimum is set forth in the commission Schedule), and revenues received from Customers' accounts that are in delinquent Status as long as the account remains in Delinquent Status (the "Non-Included Charges"). Net Monthly Usage" is defined to be an amount equal to a Customer's gross monthly charges for the Services, less the amount of any available discounts or credits, and less the amount of Non-Included Charges. Carriers retain the sole right to resolve any dispute regarding the source or characterization of the Qualified Revenues.

5. "Delinquent Status" shall mean a customer with outstanding balances older than ninety (90) days from the due date of an invoice.

6. "Services" shall consist of the standard Carriers' long distance products/services offered by Carriers to the general public from time to time.

7. "Territory" shall consist of the following geographical area: continental United States, except for areas in which Carriers determine the Services to be unavailable.

## **1. APPOINTMENT OF AGENT**

GSTI hereby appoints Agent as its non-exclusive independent marketing Agent to obtain orders for the Services from prospective Customers within the Territory, and Agent hereby accepts such appointment on the terms and conditions herein set forth. Agent acknowledges that GSTI is free to retain other independent Agents or to use its own employees to market the Services in the Territory.

## **2. GSTI OBLIGATIONS**

2.1 GSTI shall pay earned commissions to Agent within thirty (30) days from the date in which commissions are paid to GSTI. Carriers' records shall be deemed correct for purposes of calculation Qualified Revenues and the Commissions. Commissions paid on Qualified Revenues which are subsequently credited back to the Customers shall be deducted from future Commissions due Agent.

2.2 At the time of payment of the Commissions, GSTI shall furnish to Agent a written statement detailing the Commissions payable to Agent for the applicable period.

2.3 GSTI shall designate a person to serve as contact for all communications between GSTI and Agent (the "GSTI Contact").

2.4 GSTI will provide to Agent an initial package (as determined by GSTI in its sole discretion) of sales literature, information and order forms. It is the Agent's responsibility to copy any and all forms in the initial package, which are used to complete and process orders. If GSTI does provide such initial package, it shall use reasonable efforts to supply Agent with reasonable quantities (as determined by GSTI in its sole discretion) of updates to said literature, information and order forms.

2.5 GSTI's Carriers shall provide the services to Customers in accordance with the then current standard Carriers' rate for the Services and the terms and conditions of service set

forth in each Carriers' applicable federal and state tariffs. GSTI's Carriers reserve the right to change their rates and charges at any time as permitted by applicable law or regulation. GSTI's Carriers shall have the right, in their sole discretion to determine whether to accept any service order or to continue providing Services to any Customer. Except in the instances of willful misconduct, GSTI and/or Carriers shall not be liable to Agent, its employees or contractors, or any existing or prospective Customer for claims for losses, damages, or costs incurred as a result of the failure or refusal of GSTI and/or Carriers to accept a service order, or for cancellation of the Services.

2.6 OTHER THAN FOR AGENT'S RIGHTS TO INDEMNIFICATION HEREUNDER, THE SOLE LIABILITY OF GSTI TO AGENT, FOR WHATEVER REASON (OTHER THAN THE WILLFUL MISCONDUCT OF GSTI) SHALL BE FOR COMMISSIONS DUE AGENT UNDER THE TERMS OF THIS AGREEMENT. IN NO EVENT SHALL GSTI OR CARRIER BE LIABLE TO AGENT OR ANY THIRD PARTY FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES IN ANY MANNER RELATED TO THIS AGREEMENT. GSTI AND CARRIERS DISCLAIM ANY EXPRESSED OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES OR CARRIERS' FACILITIES EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SUBSECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

### 3. OBLIGATIONS OF AGENT

3.1 Agent shall use its best efforts to solicit and market the services to prospective customers in the Territory in accordance with the terms of this Agreement. Agent may market the Services by direct mail or any other marketing technique of its choice, except telemarketing, provided it does so in accordance with applicable law. Agent shall at all times conduct its efforts in a commercially reasonable manner.

3.2 A. Agent shall solicit and obtain from prospective Customers signed credit applications, signed service order(s) and/or letter of agency ("LOA's") for subscription to the Services (on forms supplied or approved by GSTI and its Carriers) for submission to the GSTI Contact for acceptance or rejection at the sole discretion of the Carrier.

B. GSTI and Carrier(s) shall have the right to review all service orders submitted to it by Agent for accuracy.

3.3 Agent shall cooperate with GSTI and Carrier in obtaining credit and/or financial information regarding any prospective Customer and shall assist in the orderly processing of all Agent solicited orders which it transmits to GSTI.

3.4 Agent shall maintain accurate and complete records concerning all prospective Customers within the Territory which have expressed an interest in subscribing to GSTI's Carriers' Services. Upon execution of this Agreement and upon request of GSTI thereafter, Agent shall furnish GSTI with copies of said records and any other information relating to said Customers, such as follow-up inquiries and price quotations, which GSTI may retain for its own use during and after termination of this Agreement.

3.5 To the extent Agent makes any statements or representations to third parties, with regard to GSTI, GSTI's Carriers, the Services or the terms of this Agreement, such statements or representations shall be true, accurate and not misleading and shall conform to and be consistent with the terms of this Agreement.

3.6 Agent shall submit to GSTI all printed materials, telephone scripts or other materials, including service proposals, proposed to be used in its marketing activities hereunder at least thirty (30) days prior to use. GSTI shall have the right to prohibit the use of any materials that GSTI or its Carriers determines do not accurately represent GSTI, Carriers, the Services or the terms of this Agreement, or that GSTI or Carriers determine may adversely affect its name, trade names, logos, service marks, trademarks, reputation or business in general.

3.7 Agent shall be responsible for developing its own marketing plan for the Services. Agent shall be responsible for and pay all expenses in connection with its performance of this Agreement. It shall designate a person to serve as contact for all communications between GSTI and Agent.

3.8 Agent shall have no right, obligation or authority to set prices or rates, nor to bill or collect for the Services. GSTI and/or Carriers shall, either directly or through arrangements with third parties, bill and collect its charges from Customers. Agent shall not add any additional fee, commission or surcharge to rates and charges for the services established by Carrier. Agent shall not offer any special discounted rates or special promotions for the Services to prospective Customers without the prior written consent of GSTI but may offer any standard volume discounts and standard promotional discounts for the Service, which are approved by GSTI and its Carriers.

3.9 A. Agent shall not pay any fee or commission nor grant any type of rebate to any existing or prospective Customer with respect to the Services without the prior written consent of GSTI.

B. In the event Agent desires to use third parties (other than Agent's employees) to market the Services, it shall provide GSTI with the following information relative to each such third party prior to engaging it to market the Services: (i) legal name, address and telephone number of the third party; (ii) the name of an officer or principal of the third party that GSTI may contact; and (iii) such other information regarding the third party as GSTI may reasonably request. GSTI reserves the right to disapprove the engagement of any such third party, then GSTI shall provide Agent with notice of such disapproval, the reasons therefore and under what circumstances, if any, the third party would be acceptable to GSTI. If GSTI and Agent cannot mutually agree on acceptability of a third party within ten (10) business days of the GSTI notice of disapproval, then GSTI's disapproval shall be deemed final. GSTI also reserves the right to prior review and approval, in accordance with Subsection 3.6, of the marketing materials to be used by third parties engaged by Agent.

C. Agent shall ensure that all third parties it engages to market the Services on behalf of the Agent shall be made aware of Agent's obligations and Agent shall obtain and provide to GSTI prior to authorizing a third party acceptable to GSTI to market the Services, a copy of the written acknowledgment and commitment (attached hereto as Exhibit 3.9c. and made part hereof) from such third parties. Agent shall be solely responsible of the contracting, training, support and compensation of such third parties.

3.10 Agent shall render such additional support as GSTI may reasonably request regarding sales and marketing in the Territory.

#### **4. RELATIONSHIP OF PARTIES**

4.1 GSTI and Agent acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, agent/principal, partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. Employees of one party shall not be entitled to benefits of any nature whatsoever provided by the other party to its employees. Neither GSTI nor Agent (or their respective agents, employees or Agents) shall have any right, power nor authority to act or create any obligation, expressed or implied, on behalf of the other.

4.2 As an independent contractor, Agent shall be responsible for any and all tax withholding (including FICA, FUTA, and IRS withholding) and Workers' Compensation coverage for him/herself and for their employees.

4.3 Agent shall have no right to enter into any contract or agreement, written or oral, on behalf of GSTI and/or Carrier or to bind GSTI and/or Carrier in any respect whatsoever, and without limiting the generality of the foregoing, Agent shall not sign any contracts or accept or confirm any order for the Services on behalf of GSTI and/or Carrier, or accept any payment from any third party of an obligation due GSTI and/or Carrier, and shall not make any representation, guarantee, condition, or warranty with respect to the Services, unless such representation, guarantee, condition or warranty is expressly authorized in writing by GSTI and/or Carrier.

4.4 Agent shall be solely responsible for and shall save, defend, indemnify and hold each party and/or Carrier and its shareholders, directors, officers, employees, independent contractors or agents free and harmless from and against any and all claims, taxes, expenses, damages, lawsuits, or other liabilities (including without limitation, reasonable attorneys' fees and court costs) relating to or arising out of (i) agents (or its employees', independent contractors' or agents') acts or omissions in the performance of its obligations hereunder, or (ii) the operation of Agent's business(es), or (iii) agreements or understanding between Agent and third parties relating to GSTI and/or Carrier or the Services.

4.5 The provisions of this Section shall survive termination of this Agreement.

#### **5. TERM AND TERMINATION**

5.1 Subject to the early termination provisions set forth below, this Agreement shall be effective upon the date set forth at the beginning of this document and shall continue in effect for a period of one (1) year (the "Initial Term"). Thereafter, if not otherwise terminated as provided below, or by either party upon thirty (30) days notice prior to expiration of the Initial Term, this Agreement shall continue in effect until terminated by either party upon ninety (90) days written notice to the other party.

5.2 This Agreement may be immediately terminated by GSTI upon written notice to Agent after the occurrence of any of the following events:

(a) Upon the insolvency, dissolution or winding-up of Agent;

- (b) The making by Agent of any general assignment or arrangement for the benefit of creditors; the filing by or against Agent of a petition to have it adjudged bankrupt or for a reorganization or arrangement under any federal or state bankruptcy or insolvency laws, unless any such petition shall be dismissed or discharged within thirty days of its filing; the appointment of a trustee or receiver to take possession of all or substantially all Agent's assets, where such fiduciary is not dismissed within thirty days of its appointment; the attachment, execution, or other levy or seizure of all or substantially all of Agent's assets, where such event is not discharged within thirty days of its initiation; or
- (c) The failure of Agent to generate monthly Qualified Revenues of at least \$1,000 by the end of the sixth full month this Agreement is in effect; or the failure of the Agent to maintain said level of Qualified Revenues thereafter.
- (d) Dishonest actions in dealing with GSTO. Their Carriers, or their customers or any action or activity involving moral turpitude which could reflect adversely on GSTI's public esteem.

5.3 Except as otherwise provided in Subsection 5.2, in the event of a breach of any term or condition of the Agreement by a party, the other party may terminate this Agreement upon thirty (30) days written notice to the breaching party unless the breaching party cures the breach prior thereto. Also, a party may, upon written notice to the other party, immediately terminate this Agreement for repeated breaches of any term or condition of this Agreement by the other party, even though such other party may have cured each breach within the proper time limit.

5.4 Either party may terminate this Agreement upon sixty (60) days written notice to the other party if, in the sole discretion of that party the Independent Contractor relationship is not mutually beneficial.

5.5 Upon receipt by Agent of written notice from GSTI of a revision in a Commission Schedule (EXHIBIT A), Agent shall have the right to terminate this Agreement by furnishing GSTI with 30 day written notice of said termination prior to the effective date of said revision.

5.6 Upon termination of this Agreement, GSTI and Carrier(s) shall have the right to continue providing long distance services to non-converted Customers and the right to solicit new subscribers from information provided to GSTI by Agent.

5.7 Upon termination of this Agreement, Agent shall immediately (i) discontinue the use, if any, of all logos, trade names, service marks, trademarks, Proprietary Information, and any other materials provided to it by GSTI and/or Carrier(s), and (ii) deliver to GSTI all Proprietary Information, marketing and informational materials provided by GSTI and/or Carrier(s), including copies thereof.

5.8 GSTI, following termination of this Agreement, will continue to pay residual commissions for as long as GSTI shall receive commissions for those accounts sold by Agent as long as the totality of the accounts sold by Agent continue to bill in excess of \$1,000 in Qualified Revenues per month. This right to residual commissions shall not apply when termination of this Agreement is based upon 5.2.

5.9 DELETED

## **6. TRADE SECRETS AND CONFIDENTIALITY**

6.1 Agent agrees that all information furnished to Agent by GSTI and Carrier(s) shall be considered confidential or proprietary information or trade secrets of GSTI and/or Carrier(s) (collectively referred to as "Proprietary Information"). Agent shall treat the Proprietary Information and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, Agent shall not directly or indirectly disclose the same to any third party without the written consent of GSTI. Agent agrees that Customer lists and pricing information is "Proprietary Information" for the purposes of this Agreement.

6.2 The Proprietary Information is to be used by Agent only for the purposes contemplated herein and Agent shall not disclose the same to any one other than its employees who have a need to know and who have agreed not to disclose the Proprietary Information to any other person. The Proprietary Information shall not be copied or retained by Agent in written form and all originals and any copies and summaries thereof shall be returned to GSTI upon its request and upon termination of this Agreement.

6.3 Agent acknowledges that its breach or threatened breach of this Section may cause GSTI irreparable harm which would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, Agent agrees that GSTI shall be entitled to equitable relief, including restraining orders or preliminary or permanent injunctions, in addition to any other legal remedies to which it may be entitled.

6.4 Neither party shall use the name, logos, trade names, service marks, trademarks, printed materials, or art work of the other party, in any promotional or advertising material, statement, document, press release, broadcast or other communication without the written consent of the other party.

6.5 Provisions of this Section shall survive termination of this Agreement.

## **7. MISCELLANEOUS**

7.1 Limitation on Assignment. Agent shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of GSTI. Any assignment or transfer without such consent shall be void.

7.2 Notices. Any notice, statement, or other report required or permitted by this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by telecopier, or forty-eight hours after deposit in the U.S. mail, mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered to a public or private express mail service, and addressed to the other party at the address set forth in the opening paragraph of this Agreement, or at such other address as either party hereto may designate from time to time in accordance with this paragraph.

7.3 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

7.4 Severability. The illegality or enforceability of any provision or portion of this Agreement shall not effect the legality or enforceability of any other provision or portion. In the event any portion or provision hereof shall be deemed illegal or unenforceable for any

reason, there shall be deemed to be made such minimum change in such portion or provision as is necessary to make it valid and enforceable as so modified.

7.5 Entire Agreement. This Agreement and any documents or tariffs referenced herein contain the entire agreement between the parties concerning the subject matter hereof, and any representation or agreements, oral or otherwise, not embodied herein, are superseded by the terms hereof and shall be of no force or effect.

This Agreement shall not constitute the waiver of any other breach or default, whether or not similar, nor any subsequent breach of the same provision. The election by either party of any right or remedy shall not be deemed exclusive of any other rights or remedies in law or equity other than as may be limited by this Agreement.

**Global Systems Telecommunications, Inc.**

**Independent Contractor**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

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**Printed Name**

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