

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (*Agreement*) is made on \_\_\_\_\_, 20\_\_ between GDS-Global Dynamic Services LLC, a Florida limited liability company with an address of 14509 Lake Jessup Dr, Jacksonville, Florida 32258 (*GDS-Global Dynamic Services LLC*) and \_\_\_\_\_, an [ ] individual or [ ] \_\_\_\_\_ business entity, with an address of \_\_\_\_\_

\_\_\_\_\_  
(Contractor).

### BACKGROUND

GDS-Global Dynamic Services LLC and Contractor acknowledge the following.

GDS-Global Dynamic Services LLC is in the business of **Noncompete business description**.

GDS-Global Dynamic Services LLC and Contractor want to enter into an independent contractor relationship under which Contractor provides services for GDS-Global Dynamic Services LLC.

In connection with Contractor's services to GDS-Global Dynamic Services LLC, Contractor acknowledges that Contractor will have access to Confidential Information and that GDS-Global Dynamic Services LLC:

has invested and continues to invest significant time, expense, and specialized knowledge in developing this Confidential Information;

enjoys a competitive advantage in the marketplace based on the Confidential Information; and

would be irreparably harmed if Competitors obtained the Confidential Information or if it became publicly available.

The parties therefore agree as follows.

### ARTICLE ONE ENGAGEMENT OF CONTRACTOR

#### Section 1.01 Engagement of Contractor

GDS-Global Dynamic Services LLC engages Contractor on a non-exclusive basis to perform services relating to the business of GDS-Global Dynamic Services LLC and its affiliates as requested by GDS-Global Dynamic Services LLC from time to time during the Term, including the services described on Exhibit A (*Services*).

Contractor accepts this engagement. During the Term, Contractor shall devote the necessary time, energy, and abilities to perform the Services in a timely and productive manner. Contractor shall cooperate with GDS-Global Dynamic Services LLC in any reasonable manner in connection with the Services.

### **Section 1.02 Time, Manner, and Means of Work Conduct**

Contractor will decide when, where, and the manner and means by which Contractor will conduct the activities required to perform the Services. Contractor will perform the Services at such times as are convenient to Contractor. Contractor must remain reasonably available to render the Services.

### **Section 1.03 Other Business Activities**

Except as provided in Section 4.07, Contractor may be engaged or employed in any other business, trade, profession, or other activity that does not place Contractor in a conflict of interest with GDS-Global Dynamic Services LLC.

### **Section 1.04 Tools, Supplies, and Equipment**

Contractor shall supply, at Contractor's sole expense, all equipment, tools, materials, and supplies required to perform the Services.

### **Section 1.05 Contractor's Employees and Subcontractors**

Any persons employed or engaged by Contractor to perform the Services are Contractor's employees or subcontractors. Any employee or subcontractor engaged by Contractor to perform the Services must be qualified to perform the assigned duties. Contractor shall provide any required training. Contractor is solely responsible for paying its employees and subcontractors. Contractor is fully responsible for its employees and subcontractors and shall indemnify GDS-Global Dynamic Services LLC against any claims made by them or on their behalf.

### **Section 1.06 No Employer-Employee Relationship**

Nothing in this Agreement creates an employer-employee, joint-venture, or partnership relationship between GDS-Global Dynamic Services LLC and Contractor. Contractor may not take any position contrary to Contractor's status as an independent contractor. Contractor has no authority to act as an agent of GDS-Global Dynamic Services LLC or for or on behalf of GDS-Global Dynamic Services LLC in any capacity whatsoever or to assume or create any obligation of any kind—express or implied—on behalf of GDS-Global Dynamic Services LLC. Contractor accepts the responsibility placed on an independent contractor by federal and state laws and regulations and other applicable rules and regulations. Contractor shall provide evidence to GDS-Global Dynamic Services LLC of fulfillment of those laws, rules, and regulations if requested.

### **Section 1.07 GDS-Global Dynamic Services LLC Benefits and Obligations**

Contractor is not eligible to participate in any workers' compensation, vacation, group medical or life insurance, disability, profit sharing or retirement benefits or in any other fringe benefits or

benefit plans GDS-Global Dynamic Services LLC offers to its employees. GDS-Global Dynamic Services LLC is not responsible for withholding or paying any income, payroll, Social Security or other federal, state, or local taxes; making any insurance contributions, including unemployment or disability; or obtaining workers' compensation insurance on Contractor's behalf. Contractor is responsible for, and shall indemnify GDS-Global Dynamic Services LLC against, all such taxes or contributions, including penalties and interest.

### **Section 1.08 Indemnification**

Contractor shall defend, indemnify, and hold harmless GDS-Global Dynamic Services LLC and its affiliates and their officers, directors, employees, agents, successors and assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, or expenses of any kind (including reasonable attorneys' fees) arising out of or resulting from:

bodily injury, death of any person, or damage to real or tangible, personal property resulting from Contractor's acts or omissions;

Contractor's breach of any representation, warranty or obligation under this Agreement;

all taxes or contributions, including penalties and interest due to Contractor's failure to properly withhold; and

any claims made by or on behalf of any of Contractor's employees or subcontractors.

GDS-Global Dynamic Services LLC may satisfy an indemnity (in whole or in part) by deducting the amount from any payment due to Contractor.

### **Section 1.09 Insurance**

During the Term, Contractor shall maintain in force adequate workers' compensation, commercial general liability, errors and omissions, and other forms of insurance. Each insurer must be reasonably acceptable to GDS-Global Dynamic Services LLC, with policy limits sufficient to protect and indemnify GDS-Global Dynamic Services LLC and its affiliates, and each of their officers, directors, agents, employees, subsidiaries, partners, members, controlling persons, and successors and assigns, from any losses resulting from the conduct, acts, or omissions of Contractor or of Contractor's agents, subcontractors, servants, or employees. The minimum amount of Contractor's commercial general liability insurance is \$500,000.00. GDS-Global Dynamic Services LLC must be listed as additional insured under each commercial general liability policy, and Contractor shall forward a certificate of insurance verifying the insurance upon GDS-Global Dynamic Services LLC's written request. This certificate must indicate that the insurance policy may not be canceled before a 30-day notification period expires and that GDS-Global Dynamic Services LLC will be immediately notified in writing of any such termination notice.

**ARTICLE TWO  
COMPENSATION AND EXPENSE REIMBURSEMENT**

**Section 2.01 Compensation**

During the Term, GDS-Global Dynamic Services LLC shall pay Contractor [UNANSWERED: intContractorCompensationFormulaTE], unless Contractor is in default of Contractor's duties under this Agreement. If Contractor is in default of Contractor's duties under this Agreement, GDS-Global Dynamic Services LLC is not obligated to pay Contractor. GDS-Global Dynamic Services LLC shall provide an IRS Form 1099-MISC to Contractor. Contractor is solely responsible for all federal, state, and local taxes.

**Section 2.02 No Reimbursement for Business Expenses**

Contractor is responsible for all expenses incurred by Contractor in connection with the Services. GDS-Global Dynamic Services LLC has no duty to reimburse Contractor for any expenses incurred by Contractor in connection with the Services.

**ARTICLE THREE  
TERM**

**Section 3.01 Term of Agreement**

The term of this Agreement begins on \_\_\_\_\_ and ends upon completion of the Services, unless terminated sooner under Section 3.02 (*Term*).

**Section 3.02 Termination**

GDS-Global Dynamic Services LLC may terminate this Agreement under any of the following circumstances:

Contractor's breach of this Agreement;

Contractor's failure to cure a material breach of this Agreement within 15 days of Contractor's receipt of written notice of the breach; or

Contractor's death or bankruptcy.

Termination will be effective immediately upon Contractor's death or receipt of written notice of termination. Upon termination, all earned but unpaid compensation due to Contractor will be prorated based on the work performed up to and through the termination date.

**Section 3.03 Contractor's Duties on Completion or Termination**

When this Agreement is completed or is terminated by either party, Contractor shall promptly deliver to GDS-Global Dynamic Services LLC all Confidential Information that is or has been in Contractor's possession or under Contractor's control. This includes, without limitation, originals and copies—electronic or otherwise—of any Confidential Information.

**ARTICLE FOUR**  
**NON-DISCLOSURE, NON-COMPETITION, AND NON-SOLICITATION PROVISIONS**

**Section 4.01 Non-Disclosure Agreement**

Without limiting the applicability of any other agreement to which Contractor is subject, Contractor may not directly or indirectly disclose or use any Confidential Information at any time during or after Contractor's independent contractor relationship with GDS-Global Dynamic Services LLC. This restriction includes the use of Confidential Information for personal, commercial, or proprietary advantage or profit. Contractor shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss, and theft. Upon GDS-Global Dynamic Services LLC's request, Contractor will promptly return or destroy all copies of the Confidential Information.

**Section 4.02 Confidential Information Defined**

For purposes of this Agreement, *Confidential Information* means trade secrets, proprietary information, and other information belonging to GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC that are not generally known to the public, including information about business plans, financial statements, and other information provided under this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists, or other business documents that GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC treats as confidential, in any format whatsoever including oral, written, and electronic. Examples of Confidential Information include the items on the following list, which is not exhaustive:

all information, formulae, compilations, software programs (including object codes and source codes), devices, methods, techniques, drawings, plans, experimental and research work, inventions, patterns, processes and know-how—whether or not patentable and whether or not at a commercial stage—related to GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

the names, buying habits, or practices of any customers of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

marketing methods and related data of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

the names of any vendors or suppliers of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

the cost of materials to GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

the prices GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC obtains or has obtained or at which it sells or has sold its products or services;

lists or other written records used in the business of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

compensation paid to employees and other employment terms of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC;

all information that GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC has a legal obligation to treat as confidential or that GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC treats as proprietary; or

any other confidential information concerning the business of GDS-Global Dynamic Services LLC or any subsidiary or affiliate of GDS-Global Dynamic Services LLC, their manners of operation, or other confidential data of any kind, nature, or description.

The parties stipulate that Confidential Information derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use and is the subject of secrecy efforts that are reasonable to uphold under the circumstances. All Confidential Information is and will remain GDS-Global Dynamic Services LLC's sole property. Any breach of Contractor's duties with regard to the Confidential Information is a material breach of this Agreement.

#### **Section 4.03 Certain Information Not Considered Confidential**

The restrictions of Section 4.01 do not apply to Confidential Information that:

is or becomes generally available to the public other than as a result of a disclosure by Contractor in violation of this Agreement;

is or becomes available to Contractor on a nonconfidential basis before its disclosure to Contractor in compliance with this Agreement; or

is or has been independently developed or conceived by Contractor without using Confidential Information.

#### **Section 4.04 Permitted Disclosures**

Nothing in Section 4.01 prevents Contractor from disclosing Confidential Information:

upon the order of any court or administrative agency, upon the request or demand of any regulatory agency or authority having jurisdiction over Contractor, or to the extent compelled by legal process or required or requested under subpoena, interrogatories, or other discovery requests;

as necessary in connection with exercising any remedy under this Agreement; or

in connection with Contractor's independent contractor relationship with GDS-Global Dynamic Services LLC, to Contractor's legal counsel and accountants who, in Contractor's reasonable judgment, need to know the Confidential Information and agree to be bound by the provisions of Section 4.01 as if a party.

Contractor must not make any disclosure permitted by this Section (other than disclosure to Contractor's own legal counsel in connection with Contractor's independent contractor relationship with GDS-Global Dynamic Services LLC) before notifying GDS-Global Dynamic Services LLC as far in advance of the disclosure as practicable. Notice to GDS-Global Dynamic Services LLC must state the purpose of the disclosure and the means taken to ensure that any disclosed Confidential Information remains confidential.

#### **Section 4.05 Safeguarding Confidential Information**

Contractor shall take all appropriate steps to safeguard the Confidential Information and to protect it against disclosure, misuse, espionage, loss, and theft. Contractor must not use, reproduce, or store Confidential Information on a computer or electronic device that may be accessible to persons to whom disclosure is prohibited under this Agreement.

#### **Section 4.06 Required Disclosures**

If Contractor is required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar process from a governmental authority, agency, or tribunal) to disclose any Confidential Information, Contractor shall promptly notify GDS-Global Dynamic Services LLC of the request so that GDS-Global Dynamic Services LLC may seek a protective order or other appropriate remedy. Contractor shall cooperate with GDS-Global Dynamic Services LLC with respect to any such proceeding.

#### **Section 4.07 No Competition**

Contractor acknowledges access to Confidential Information and a position of trust and confidence with GDS-Global Dynamic Services LLC. In respect of this, Contractor agrees not to compete against GDS-Global Dynamic Services LLC for the Restricted Period. The *Restricted Period* includes the period of Contractor's independent contractor relationship with GDS-Global Dynamic Services LLC and an additional period of 12 consecutive months beginning on the last day of the period of Contractor's independent contractor relationship with GDS-Global Dynamic Services LLC. During the Restricted Period, Contractor must not:

- provide services or advice to any Competitor;
- affiliate with any Competitor as an employee, partner, consultant, or otherwise; or
- directly, or indirectly through one or more of any of their respective Affiliates, own, manage, operate, control, or participate in the ownership, management, operation, or control of any Competitor or a Competitor's division or other business segment.

For purposes of this Agreement, *Competitor* means any other person directly or indirectly engaged, in whole or in part, in a business the same as or similar to the business of GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC. This specifically includes persons engaged in the business of [UNANSWERED: Noncompete business description] within 50 miles from the GDS-Global Dynamic Services LLC's principal office address.

#### **Section 4.08 No Solicitation of Employees**

Contractor acknowledges access to Confidential Information and a position of trust and confidence with GDS-Global Dynamic Services LLC. In respect of this, Contractor agrees not to directly or indirectly hire, solicit, or encourage any other person to hire or solicit any individual who has been employed by GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC within 18 months before the hiring date or solicitation, or encourage any such individual to leave that employment. This Section does not prevent Contractor from hiring or soliciting any employee or former employee of the GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC who responds to a general solicitation that is a public solicitation of prospective employees and is not directed specifically to the employees of GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC.

#### **Section 4.09 No Solicitation of Clients**

Contractor acknowledges access to Confidential Information and a position of trust and confidence with GDS-Global Dynamic Services LLC. In respect of this, Contractor agrees not to directly or indirectly solicit, entice, or attempt to solicit or entice any clients, customers, or suppliers of GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC to divert their business or services from GDS-Global Dynamic Services LLC or any subsidiary of GDS-Global Dynamic Services LLC during the Restricted Period.

### **ARTICLE FIVE INTELLECTUAL PROPERTY**

#### **Section 5.01 GDS-Global Dynamic Services LLC Ownership of Intellectual Property**

GDS-Global Dynamic Services LLC is the sole and exclusive owner of all right, title and interest throughout the world in and to all the results and proceeds of all Intellectual Property. For purposes of this Agreement, *Intellectual Property* means all ideas, concepts, designs, inventions, discoveries, and improvements that are the direct or indirect result of the Services performed under this Agreement. This includes all patents, copyrights, trademarks, trade secrets, and other intellectual property rights, whether made solely or jointly with others; whether or not patentable; and whether or not the conception, discovery, or making involves the use of GDS-Global Dynamic Services LLC's time, facilities, equipment, or personnel.

#### **Section 5.02 Moral Rights**

Any copyright assignment under this Agreement includes all moral rights. *Moral rights* are paternity, integrity, disclosure, withdrawal, and any other rights in the copyrighted material. Contractor irrevocably waives, if permitted by law, all claims to all moral rights with respect to the Intellectual Property resulting from the Services performed under this Agreement that Contractor may now or later have in any jurisdiction.



### **Section 5.03 Future Cooperation**

At GDS-Global Dynamic Services LLC's request, Contractor shall promptly take any further actions—including signing and delivering all appropriate conveyance documents—necessary to assist GDS-Global Dynamic Services LLC to prosecute, register, perfect, record, or enforce its rights in any Intellectual Property resulting from the Services performed under this Agreement. If GDS-Global Dynamic Services LLC is unable, after reasonable effort, to obtain Contractor's signature on any required documents, Contractor irrevocably appoints GDS-Global Dynamic Services LLC as Contractor's agent and attorney in fact, to act on Contractor's behalf to sign and deliver any required document and to do all other lawful acts to further the prosecution and issuance of patents, copyrights, or other Intellectual Property resulting from the Services performed under this Agreement with the same legal force and effect as if Contractor had signed and delivered them. Contractor agrees that this power of attorney is coupled with an interest.

### **Section 5.04 License to Use Pre-Existing Materials**

Despite the terms of this Agreement, if any of Contractor's pre-existing materials are in the Intellectual Property resulting from the Services performed under this Agreement, Contractor retains ownership of the pre-existing materials and grants to GDS-Global Dynamic Services LLC an irrevocable, worldwide, unlimited, royalty-free license to use, publish, reproduce, display, distribute copies of, and prepare derivative works based upon, the pre-existing materials. GDS-Global Dynamic Services LLC may assign, transfer, and sublicense these rights to others without Contractor's approval.

Except for any pre-existing materials, Contractor has no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any Intellectual Property resulting from the Services performed under this Agreement. Contractor has no right or license to use GDS-Global Dynamic Services LLC's trademarks, service marks, trade names, logos, symbols, or brand names.

### **Section 5.05 Employee and Subcontractor Obligations**

Contractor shall require each of its employees and contractors to sign written agreements securing GDS-Global Dynamic Services LLC's rights provided for in this Article before the employee or subcontractor provides any Services under this Agreement.

### **Section 5.06 Prompt Disclosure**

Contractor shall promptly disclose to GDS-Global Dynamic Services LLC all Intellectual Property that Contractor may conceive, discover, or make during the Term of this Agreement resulting from the Services performed under this Agreement.

### **Section 5.07 Patent Protection**

At GDS-Global Dynamic Services LLC's request, Contractor shall sign:

any instrument necessary for filing and prosecuting patent applications in the United States and elsewhere, including divisional, continuation, revival, renewal, or reissue applications covering any Intellectual Property; and

all instruments necessary to vest title to the Intellectual Property in GDS-Global Dynamic Services LLC (or its nominee).

Contractor further agrees to cooperate and assist GDS-Global Dynamic Services LLC in preparing, filing, and prosecuting all such patent applications and in pursuing or defending any litigation upon Intellectual Property covered by this Agreement. GDS-Global Dynamic Services LLC bears all expenses involved in prosecuting the patent applications it wants to file.

### **Section 5.08 Shop Rights**

GDS-Global Dynamic Services LLC has a perpetual, royalty-free, non-exclusive right to use, make, license, and sell products, processes, and services derived from any Intellectual Property, discoveries, designs, improvements, concepts, ideas, works of authorship—whether patentable or not—including processes, methods, formulae, and related techniques or know-how that are not within the scope of Intellectual Property as defined above, but that are conceived or made by Contractor during regular working hours or with the use of GDS-Global Dynamic Services LLC's facilities, materials, or personnel.

### **Section 5.09 GDS-Global Dynamic Services LLC Owns Developments**

GDS-Global Dynamic Services LLC is the sole and exclusive owner of all Developments. For purposes of this Agreement, *Developments* means all rights, titles, and interests throughout the world in and to all the results and proceeds of all modifications, alterations, enhancements, betterments, ideas, or discoveries that are the direct or indirect result of Contractor's access to Confidential Information.

### **Section 5.10 Development and/or Intellectual Property as Work Made for Hire**

Contractor agrees that any Development and/or Intellectual Property resulting from Contractor's effort is or is deemed to be a *work made for hire* (as defined in 17 U.S.C. § 101) for GDS-Global Dynamic Services LLC. If, for any reason, any Development is not considered a *work made for hire*, Contractor irrevocably assigns Contractor's right, title, and interest in and to all Developments and/or Intellectual Property that Contractor may conceive, discover, or make during the Term of this Agreement to GDS-Global Dynamic Services LLC (or its nominee) without additional consideration.

This applies to all Developments and/or Intellectual Property, whether made solely or jointly with others, whether or not patentable, and whether or not the conception, discovery, or making involves the use of GDS-Global Dynamic Services LLC's time, facilities, equipment, or personnel. If any Development and/or Intellectual Property assigned under this Agreement is based upon, is incorporated into, is an improvement or derivative of, or cannot reasonably be made, used, reproduced, or distributed without using or violating technology or rights owned or licensed by GDS-Global Dynamic Services LLC and not assigned under this Agreement, Contractor shall grant GDS-Global Dynamic Services LLC a perpetual, worldwide, royalty-free, non-exclusive and

sub-licensable right and license to any assigned Developments and/or Intellectual Property (including any modifications, improvements and derivatives).

## **ARTICLE SIX DISPUTE RESOLUTION**

This Article supersedes any rules governing mediation or arbitration under the law of any jurisdiction.

### **Section 6.01 Resolving Disputes between GDS-Global Dynamic Services LLC and Contractor**

GDS-Global Dynamic Services LLC and Contractor shall use the procedure outlined in this Article to resolve any dispute, contest, or claim that may result among them that may relate to this Agreement. The purpose of the alternative dispute resolution procedures in this Article is to resolve all disputes, contests, and claims without litigation.

### **Section 6.02 Notice of Controversy and Designating Authorized Representatives**

Any party (*claimant*) who has any dispute relating to this Agreement shall provide written notice to any other person that has an interest in the controversy (*respondents*) describing the general nature of the controversy. The notice must designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the claimant. Two or more claimants may designate a common authorized representative.

Each respondent shall also designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the respondent. Two or more respondents may designate a common authorized representative.

Written notice of the designation of the authorized representatives must be delivered to each party within 10 business days from the date the respondents receive notice of the controversy.

### **Section 6.03 Beginning the Dispute Resolution Procedure**

The authorized representatives shall conduct an initial meeting within 30 days from the date the claimant's notice is delivered to the respondents. The authorized representatives are entitled to collect and review all relevant evidence pertaining to the controversy and to negotiate and resolve the controversy. Resolution of any controversy by the authorized representatives is conclusive and binds all parties. If the authorized representatives do not resolve the controversy within 30 days from the date of their initial meeting, they shall discontinue direct negotiations and submit the controversy to mediation.

### **Section 6.04 Selecting a Mediator**

Within five days of discontinuing direct negotiations, the authorized representatives shall exchange written lists of natural persons whom they consider to be qualified to serve as a mediator.

Within 15 days after they exchange these lists, the authorized representatives shall agree upon one mediator to mediate the controversy. If the authorized representatives do not agree on a mediator, the controversy will be submitted to binding arbitration under Section 6.10.

#### **Section 6.05 Time and Place for Mediation Conference**

The authorized representatives shall promptly designate a mutually convenient time and place for the mediation. If the authorized representatives fail to do so, the controversy will be submitted to binding arbitration under Section 6.10.

#### **Section 6.06 Discovery and Exchange of Information**

The authorized representatives are entitled to fully discover, obtain, and review all information relevant to resolving any controversy.

#### **Section 6.07 Delivery of Written Summaries; Authority to Obtain Professional Assistance**

At least seven days before the first mediation conference, each authorized representative shall deliver to the mediator a concise written summary of fact and law about the issues. The authorized representatives and the mediator may retain legal counsel, accountants, appraisers, and other experts whose opinions may assist the mediator in resolving the controversy.

#### **Section 6.08 Conducting Mediation**

The mediator shall determine the format for mediation conferences, ensuring the authorized representatives have an equal opportunity to review the evidence and any relevant technical and legal presentations. The mediator shall determine the time schedule for resolving the mediation and shall attempt to facilitate the parties' efforts to achieve final resolution of all disputed issues. If the mediator is unable to facilitate a final resolution of all issues, the unresolved issues will be submitted to arbitration under Section 6.10.

#### **Section 6.09 Final Determinations Bind All Parties**

Any final determination made by the authorized representatives, mediator, or arbitrator binds each party who receives notice of a controversy, even if the party does not respond or designate a representative or the party's authorized representative fails or refuses to participate in the designation of a mediator.

#### **Section 6.10 Arbitration**

If any controversy is not finally resolved according to the alternative dispute resolution procedures in this Article, the parties to the controversy shall submit to mandatory and binding arbitration. The controversy will be settled by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator's judgment may be entered in any court having competent jurisdiction. If the arbitrator determines that the evidence produced through the arbitration process is insufficient to support a decision, the arbitrator may conclude the arbitration proceedings without a decision.

### **Section 6.11 Settlement during Mediation or Arbitration**

At any time before the conclusion of any mediation or arbitration, the authorized representatives may enter an agreement to resolve the controversy. Any settlement agreement will be conclusive and bind all parties.

### **Section 6.12 Right to Seek Equitable Relief**

If a party materially breaches this Agreement and if the other parties determine in good faith that immediate relief is necessary, the parties alleging the material breach may seek temporary restraining orders, preliminary injunctions, or similar temporary and equitable relief in a court of competent jurisdiction.

### **Section 6.13 Prevailing Party Is Entitled to Recover All Reasonable Costs**

The prevailing party in any dispute between the parties is entitled to recover from the losing party all reasonable costs incurred, including any attorney's fees and any costs of mediation, arbitration, court fees, appraisals, and expert witnesses.

## **ARTICLE SEVEN GENERAL MATTERS**

### **Section 7.01 Acceptance**

Each party has reviewed this Agreement, accepts all its provisions, and agrees to be bound by all its terms.

### **Section 7.02 Successors**

Except as otherwise provided in this Agreement, all provisions of this Agreement bind, inure to the benefit of, and are enforceable by and against the respective heirs, executors, administrators, personal representatives, successors, and permitted assigns of any of the parties to this Agreement.

### **Section 7.03 No Waiver**

Any party's failure to insist upon strict performance of any provision or obligation of this Agreement for any period is not a waiver of that party's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this Agreement is not a consent to or waiver of any other breach or default in the performance of the same or of any other obligation.

### **Section 7.04 Governing Law**

This Agreement is governed, construed, and administered according to the laws of Florida, as from time to time amended, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or rule (whether of Florida or any other jurisdiction) that would cause the application of the law of any jurisdiction other than those of Florida.

### **Section 7.05 Venue; Submission to Jurisdiction**

A cause of action arising out of this Agreement includes any cause of action seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated by it. Except as provided in Article Six, the parties agree that any suit, action, or proceeding—whether in contract, tort, or otherwise—arising out of this Agreement must be brought in a state or federal court or courts located in the State of Florida and in the county of or nearest to GDS-Global Dynamic Services LLC’s principal office if one of these courts has subject-matter jurisdiction over the suit, action, or proceeding. Any cause of action arising out of this Agreement is deemed to have arisen from a transaction of business in Florida.

Each party irrevocably consents to the jurisdiction of these courts (and their respective appellate courts) in any cause of action arising out of this Agreement. Each party irrevocably waives—to the fullest extent permitted by applicable law—any objection that it may have now or later to the venue of any action arising out of this Agreement in any of these courts, including an inconvenient forum petition.

Service of process, summons, notice, or other document by registered mail to the address set forth in Section 7.10 is effective service of process for any suit, action, or other proceeding brought in any court.

### **Section 7.06 Waiver of Jury Trial**

Each party to this Agreement acknowledges and agrees that any controversy arising out of this Agreement is likely to involve complicated issues. Therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury for any cause of action arising out of this Agreement.

### **Section 7.07 Equitable Remedies**

Each party to this Agreement acknowledges that its breach or threatened breach of any of its obligations under this Agreement would give rise to irreparable harm to the other parties and monetary damages would not be an adequate remedy. Therefore, each party to this Agreement agrees that if any party breaches or threatens to breach any of its obligations, each of the other parties to this Agreement will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other equitable relief available from a court of competent jurisdiction (without any requirement to post bond). These equitable remedies are in addition to all other rights and remedies that may be available in respect of the breach.

### **Section 7.08 Attorneys’ Fees**

If any party to this Agreement institutes any legal cause of action—including arbitration—against another party arising out of or relating to this Agreement, the prevailing party will be entitled to the costs incurred in conducting the cause of action, including reasonable attorneys’ fees and expenses and court costs.

## **Section 7.09 Remedies Cumulative**

Except to the extent this Agreement expressly provides otherwise, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity, or otherwise.

## **Section 7.10 Notices**

Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this Agreement must be in writing and will be deemed to have been given:

when delivered by hand (with written confirmation of receipt);

when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);

on the date sent by facsimile or email as a PDF document (with confirmation of transmission) if sent during recipient's normal business hours, and on the next business day if sent after normal business hours of the recipient; or

on the 5 day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

If notice is required to be given to a minor or incapacitated individual, notice must be given to the minor or incapacitated individual's parent or Legal Representative.

The written notice must be sent to the respective parties at the party's last known address (or at the address a party has specified in a notice given in accordance with this Section). Notice to Contractor may be sent to the address listed in this Agreement.

## **Section 7.11 Modification for Legal Events**

If any court of competent jurisdiction determines that any provision or any part of a provision set forth in this Agreement is unenforceable because of its duration or geographic scope, the court has the power to modify the unenforceable provision instead of severing it from this Agreement in its entirety. The modification may be made by rewriting the offending provision, by deleting all or a portion of the offending provision, by adding additional language to this Agreement, or by making other modifications as it determines necessary to carry out the parties' intent to the maximum extent permitted by applicable law. The parties expressly agree that this Agreement as modified by the court is binding upon and enforceable against each of them.

## **Section 7.12 Severability**

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Agreement are to be construed as if the invalid provision had never been included in this Agreement.

Subject to Section 7.11, upon a determination that any provision is invalid, illegal, or unenforceable, the parties to this Agreement shall negotiate in good faith to modify this Agreement to give effect to the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this Agreement can be consummated as originally contemplated to the greatest extent possible.

### **Section 7.13 Separate Counsel**

By signing this Agreement, each party acknowledges that this Agreement is the product of arms-length negotiations between the parties and should be construed as such. Each party acknowledges that he or she has been advised to seek separate counsel and has had adequate opportunity to do so.

### **Section 7.14 Entire Agreement**

This Agreement constitutes the sole and entire agreement of its parties with respect to the Agreement's subject matter. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties—both written and oral—with respect to the subject matter. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that, in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained in this Agreement and no others.

### **Section 7.15 No Third-Party Beneficiaries**

This Agreement is for the sole benefit of its parties and their respective heirs, executors, administrators, successors, and assigns. Nothing in this Agreement, express or implied, confers any legal or equitable right, benefit, or remedy of any nature whatsoever upon any other person or the creditors of any person.

### **Section 7.16 Amendments**

No provision of this Agreement may be amended or modified except by a written instrument executed by all parties to this Agreement.

### **Section 7.17 Notice of Immunity from Liability for Certain Disclosures**

Contractor will not be held criminally or civilly liable under any federal or state trade secret law for a disclosure of a trade secret, as long as the disclosure is made:

- in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; or
- in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

This Section is intended to comply with the immunity provided by the United States Code from liability resulting from disclosures of trade secrets under the conditions described in this Section. Nothing in this Independent Contractor Agreement is intended to conflict with 18 U.S.C. §



1833(b). If there is a conflict between this Section and any other Section of this Independent Contractor Agreement, this Section will control.

### **Section 7.18 Multiple Originals; Validity of Copies**

This Agreement may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this Agreement that any party to this Agreement certifies to be a true copy to the same effect as if it were an original.

## **ARTICLE EIGHT DEFINITIONS AND INTERPRETATION**

### **Section 8.01 Definitions**

For purposes of this Agreement, to the extent they appear herein, the following terms have the following meanings.

**(a) Agreement**

*Agreement* means this Independent Contractor Agreement.

**(b) GDS-Global Dynamic Services LLC**

*GDS-Global Dynamic Services LLC* means GDS-Global Dynamic Services LLC, a Florida limited liability company.

**(c) Competitor**

*Competitor* is defined in Section 4.07.

**(d) Confidential Information**

*Confidential Information* is defined in Section 4.02.

**(e) Contractor**

*Contractor* means [UNANSWERED: Contractor Name\_IC Agreement].

**(f) Developments**

*Developments* is defined in Section 5.09.

**(g) Independent Person**

*Independent Person* means any person who is not related to or subordinate to a claimant or respondent and has no personal or financial stake in the resolution of the controversy other than fair and reasonable compensation for services provided to resolve the controversy.

**(h) Intellectual Property**

*Intellectual Property* is defined in Section 5.01.

**(i) Legal Representative**

With respect to any individual, *Legal Representative* means a person’s guardian, conservator, executor, administrator, trustee, or any other person representing a person or the person’s estate. With respect to any person, *Legal Representative* means all directors, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of the person.

**(j) Net Profit**

*Net Profit* means total revenue, less operating expenses, interest, depreciation, and taxes.

**(k) Net Revenue**

*Net Revenue* means the total revenue received, less discounts, rebates, commissions, credits, and returns.

**(l) Restricted Period**

*Restricted Period* is defined in Section 4.07.

**(m) Services**

*Services* is defined in Section 1.01.

**(n) Term**

*Term* is defined in Section 3.01.

**Section 8.02 Interpretation**

The following general provisions and rules of construction apply to this Agreement.

**(a) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this Agreement are included solely for the reader’s convenience and reference. They have no significance in the interpretation or construction of this Agreement.

**(b) Days and Business Days**

In this Agreement, *days*, without further qualification, means calendar days and *business days* means any day other than a Saturday, Sunday or a day on which national banks are allowed by the Federal Reserve to be closed.

**(c) Delivery**

*Delivery* is taken in its ordinary sense and includes:

personal delivery to a party;

mailing by certified United States mail to the last known address of the party to whom delivery is made, with return receipt requested to the party making delivery;

facsimile transmission to a party when receipt is confirmed in writing or by electronic transmission back to the sending party; or

electronic mail transmission to a party when receipt is confirmed in writing or by electronic mail transmission back to the sending party.

The effective date of delivery is the date of personal delivery or the date of the return receipt, if received by the sending party. If no return receipt is provided, the effective date is the date the transmission would have normally been received by certified mail if there is evidence of mailing.

**(d) Include, Includes, and Including**

In this Agreement, the words *include*, *includes*, and *including* mean include without limitation, includes without limitation, and including without limitation, respectively. *Include*, *includes*, and *including* are words of illustration and enlargement, not words of limitation or exclusivity.

**(e) Words of Obligation and Discretion**

Unless otherwise specifically provided in this Agreement or by the context in which used, the word *shall* is used to impose a duty, to command, to direct, or to require. Terms such as *may*, *is authorized to*, *is permitted to*, *is allowed to*, *has the right to*, or any variation or other words of discretion are used to allow, to permit, or to provide the discretion to choose what should be done in a particular situation, without any other requirement. Unless the decision of another party is expressly required by this Agreement, words of permission give the decision-maker the sole and absolute discretion to make the decision required in the context.

**(f) No Presumption against Drafting Party**

This Agreement is to be construed without giving force to any presumption or rule requiring construction or interpretation against the drafting party.

Signed: \_\_\_\_\_.

Print Name: \_\_\_\_\_

Birthday: \_\_\_\_/\_\_\_\_/\_\_\_\_

Social Security # \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Cell Phone #: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Email : \_\_\_\_\_

GDS-GLOBAL DYNAMIC SERVICES LLC

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

Giai "Steven" Nguyen, Manager

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_  
Print Name

**EXHIBIT A  
SERVICES**

- **Business Consultant:** Business research and analysis, business plans, marketing strategy and advertisement services; business management and business growth.
- **Online Business System:** Custom website design, social network integration (Google My Business Setup: Google Plus, Maps, Places; Facebook Business Pages; Yelp Reviews); SEO; Online gift cards; Customer communications system; appointment booking; direct mail via postcard and money mail-out; and all other services stated by writing.
- **Credit Card Processing.**
- **Customer Care System.**
- **Point of Sale (POS) System.**
- **Sale, Setup, and Service for ATM Machine.**
- **VIP and or Loyalty Gift Card System.**
- **Television Commercials (depends on the market).**
- **Digital Signage.**
- **Custom Design and Print (may include):** Brochures, Gift Cards, Business Cards, Posters, Banners, and or Booklets.
- **Access:** Nailconnect.com and the Nailconnect Application via either Android or Apple (Application and or updates are not guaranteed and user agrees that they use these services at their own risk.)
- **Possible Business Loans and or cash advances.**

**EXHIBIT B**

AGENT RESIDUAL INCOME PROGRAM

<b>Position</b>	<b>Account Required</b>	<b>Residual Payout</b>	<b>Team Manager Payout</b>
<b>-Account Manager</b>	<b>1+</b>	<b>60%(Merchant)</b>	<b>20%</b>

\*\*\*Residual payout will reduce to 50% for inactive agent

\*\*\*Active agent must maintain 1 account monthly