

**INDEPENDENT CONTRACTOR AGREEMENT  
AND  
COVENANT NOT TO COMPETE  
AND CONFIDENTIALITY AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT AND COVENANT NOT TO COMPETE AND CONFIDENTIALITY AGREEMENT ("Agreement"), is made this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between GUARDIAN PORTFOLIO SERVICES, INC. ("GPS") of Seminole, Florida, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter referred to as "INDEPENDENT CONTRACTOR") and is made with reference to the following facts:

- A. GPS is engaged in the business of providing collection services to business clients who retain GPS in order to perform various duties, including the contacting, collecting and/or verifying various accounts.
- B. INDEPENDENT CONTRACTOR is engaged in the business of performing collection services and desires to perform collection services for the benefit of GPS, subject to the terms and conditions of this agreement. INDEPENDENT CONTRACTOR recognizes that no employment relationship with GPS will be established by the performing of the above collection services or by the execution of this Agreement.
- C. GPS desires to engage INDEPENDENT CONTRACTOR to furnish collection services pursuant to the terms hereof.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. **RECITALS.** The foregoing recitals are true and correct and are made a part of this Agreement as if set forth verbatim hereunder.
- 2. **PURPOSE.** This Agreement is executed in order to induce GPS to refer certain accounts and business, for collection purposes, to INDEPENDENT CONTRACTOR based upon the terms and conditions set forth herein.
- 3. **STATUS.** INDEPENDENT CONTRACTOR shall, for all purposes, be deemed an independent contractor and shall not be an employee or agent of GPS. Neither the execution of this Agreement, nor any actions of INDEPENDENT CONTRACTOR performed pursuant to this Agreement shall create a relationship of partnership, joint venture, agency, employment or other common enterprise.
- 4. **DUTIES OF INDEPENDENT CONTRACTOR.** INDEPENDENT CONTRACTOR is subject to the direction of GPS merely and only as to the results achieved by the INDEPENDENT CONTRACTOR. Such direction may include the establishment of reasonable guidelines for the assurance that collection efforts are properly executed on behalf of GPS's clients. However, INDEPENDENT CONTRACTOR shall use its own discretion and judgment with respect to performing collection services and shall be solely responsible with respect to the means and methods for accomplishing such collection results. INDEPENDENT CONTRACTOR shall be responsible for setting all collection schedules, supplying transportation, providing all personal equipment necessary to perform collection services and shall generally be responsible for all details regarding the performance of collection services hereunder. GPS shall have no right to directly control or direct the activities of INDEPENDENT CONTRACTOR, except as may be limited to insuring that suitable results are achieved for GPS 's clients.
- 5. **NO AGENCY.** INDEPENDENT CONTRACTOR acknowledges and agrees that INDEPENDENT CONTRACTOR is not an agent of GPS and has no authority to bind GPS or its clients or otherwise assume, enter into or act on behalf of GPS or its clients with respect to any obligation, agreement or understanding, unless INDEPENDENT CONTRACTOR is expressly authorized to do so in writing by an officer of GPS.

6. **INSURANCE.** INDEPENDENT CONTRACTOR shall be responsible for purchasing and maintaining all insurance as may reasonably be necessary to perform independent contractor services hereunder including, without limitation, the purchase of all motor vehicle collision, liability and PIP insurance coverage as may be required to perform collection services hereunder. Both GPS and INDEPENDENT CONTRACTOR acknowledge and agree that GPS shall provide no insurance coverage or liability insurance whatsoever for any injury or damages or liabilities of any kind related to, arising from or directly or indirectly caused by INDEPENDENT CONTRACTOR or INDEPENDENT CONTRACTOR'S operation of motor vehicles.

7. **INDEMNIFICATION.** INDEPENDENT CONTRACTOR hereby agrees to indemnify, defend and hold harmless GPS and its officers, directors, shareholders and employees from any and all claims, losses, damages, costs, judgments or expenses which arise out of INDEPENDENT CONTRACTOR's performing any services hereunder including, without limitation, any and all claims and damages arising out of INDEPENDENT CONTRACTOR's performing collection services for clients of GPS. INDEPENDENT CONTRACTOR shall further indemnify GPS from all attorney's fees, courts costs and other settlement sums or payments made upon judgments, which sums are paid or incurred by GPS as a result of any claims by third parties that arise out of or result from any act or omission of INDEPENDENT CONTRACTOR in the performance of this Agreement or the collection services described hereunder.

8. **BUSINESS EXPENSES.** INDEPENDENT CONTRACTOR shall incur and be solely responsible for paying all costs and expenses associated with the maintenance of INDEPENDENT CONTRACTOR's collection activities hereunder. INDEPENDENT CONTRACTOR shall pay all costs associated with INDEPENDENT CONTRACTOR's transportation and motor vehicles and shall pay all repair costs, parking expenses, travel charges and other expenses associated with the performance of collection services described herein. INDEPENDENT CONTRACTOR shall further procure an occupational license or other license as may be required to perform the services described hereunder at INDEPENDENT CONTRACTOR's sole expense. Said INDEPENDENT CONTRACTOR shall also pay all taxes, assessments or other governmental charges, fees, fines or penalties or other expenses relating to INDEPENDENT CONTRACTOR's performance of services hereunder, including all such costs and expenses associated with the operation of INDEPENDENT CONTRACTOR's motor vehicle. All of INDEPENDENT CONTRACTOR's activities performed pursuant to this agreement are conducted at INDEPENDENT CONTRACTOR's own risk. INDEPENDENT CONTRACTOR shall not be entitled to recover worker's compensation or any other benefit or insurance protection of any nature from GPS. INDEPENDENT CONTRACTOR shall pay all of its business costs and expenses, including hospital and medical costs, incurred in connection with any injury or illness incurred by INDEPENDENT CONTRACTOR in the performance of the responsibilities under this Agreement. INDEPENDENT CONTRACTOR further agrees to conduct all of its business activities and operations in conformity with all state, local and federal laws and regulations and shall further indemnify and hold harmless GPS from any damages or expenses arising out of the violation of such laws and regulations.

9. **TAXES.** INDEPENDENT CONTRACTOR shall be responsible for the payment of all state, local and federal taxes including, but not limited to, all of INDEPENDENT CONTRACTOR's federal and state income taxes, self-employment taxes and local occupational taxes. GPS shall not be required to withhold any taxes or pay and social security taxes or liabilities on behalf of INDEPENDENT CONTRACTOR, nor shall GPS be responsible for preparing any documents or tax paperwork which might otherwise be applicable to GPS's employees.

80. **TERM OF AGREEMENT.** This Agreement shall commence on the date of execution and shall continue for a period of one (1) year. At the end of the first year, this Agreement shall automatically renew for additional one (1) year periods, unless terminated by either party pursuant to the termination provisions set forth herein below. In the event of a renewal of this Agreement, all parties shall continue to be bound by all terms and provisions hereof.

91. **TERMINATION OF AGREEMENT.** GPS and INDEPENDENT CONTRACTOR may voluntarily terminate this agreement, at any time, with or without cause, by furnishing written notice to the other party electing to terminate this Agreement and by furnishing such written notice not less than ten (10) days prior to the date of termination. Notice by either party shall be effective if given to the other party at the party's last known business address, by regular U.S. mail. Notwithstanding the foregoing provisions, GPS may terminate this Agreement without prior notice of any nature in the event that GPS determines that INDEPENDENT CONTRACTOR has violated, or appears to be violating, any of the terms and provisions of this Agreement or if INDEPENDENT CONTRACTOR fails to provide collection services hereunder in a timely and professional fashion, in the sole judgment of GPS. Grounds for such termination, without notice, include, but are not limited to, the violation of any state, local or federal laws or regulation, inadequate performance due to drunkenness, dependence on drugs, insubordination or acts of dishonesty or INDEPENDENT CONTRACTOR's conviction of a felony.

102. **MEDICAL INSURANCE.** INDEPENDENT CONTRACTOR shall be responsible for maintaining INDEPENDENT CONTRACTOR's own hospital and medical insurance, and INDEPENDENT CONTRACTOR acknowledges that GPS shall not be responsible for furnishing any medical coverage of any nature.

113. **CONFIDENTIALITY AGREEMENT.** Commencing upon the execution of this Agreement and ending on a date two (2) years after the termination of INDEPENDENT CONTRACTOR's relationship with GPS hereunder (regardless of the grounds for INDEPENDENT CONTRACTOR's termination and regardless of whether INDEPENDENT CONTRACTOR is terminated by GPS), INDEPENDENT CONTRACTOR shall maintain strict confidence and privacy with respect to all customer lists, price sheets, technical data, forms, collection materials and other proprietary information and shall not use or disclose any proprietary information to any other party or entity, including any competitors of GPS. INDEPENDENT CONTRACTOR shall safeguard all such information and data during the term of this contract and for a period of time ending two (2) years after the termination of this agreement. For purposes of construction hereunder, the term "proprietary information" shall mean all information, data, customer lists, technical information, or other information or materials having any commercial value to GPS that is created, discovered, developed, obtained, researched or assembled by GPS and which is not generally available to competitors of GPS. Said proprietary information also includes all information that is created, discovered, developed by or otherwise becomes known to INDEPENDENT CONTRACTOR during the term of this Agreement and which information is not generally available to companies in competition with GPS.

All proprietary information furnished by GPS to INDEPENDENT CONTRACTOR shall, at all times, be the sole property of GPS. Upon termination of this Agreement, INDEPENDENT CONTRACTOR shall immediately return to GPS all files, writings, customer lists, pricing information, tapes, transcripts, photographs, books, sales literature or other matters or things evidencing or relating to the business of GPS or otherwise consisting of proprietary information. INDEPENDENT CONTRACTOR further acknowledges that the methods and materials used by GPS in the conduct of its collection business, and all information pertaining to GPS's customers and product lines and collection techniques, are valuable, special and unique assets of GPS. INDEPENDENT CONTRACTOR will not, during the term of this Agreement and for a period of two (2) years after the termination of this Agreement, disclose any such information, customer lists, materials or methods, or any part thereof, to any other firm, person or corporation or to any other entity for any reason or purpose whatsoever without the prior permission of GPS.

124. **RESTRICTIVE COVENANT.** As a material provision of this Agreement, INDEPENDENT CONTRACTOR hereby agrees to this restrictive covenant. INDEPENDENT CONTRACTOR acknowledges that the services rendered to GPS are of a special and unique character with unusual value to GPS. Accordingly, for a period of two (2) years after the expiration or termination of this agreement, for any reason whatsoever,

whether at the request of INDEPENDENT CONTRACTOR or the request of GPS, the undersigned INDEPENDENT CONTRACTOR shall:

- a. Not divert, influence or attempt to divert or influence a customer or prospective customer of GPS existing during the term of this Agreement to refrain from utilizing the services of GPS or to otherwise refer business to INDEPENDENT CONTRACTOR;
- b. Not Contact or otherwise have any dealings with any customers of GPS, which clients or customers existed during the term of this Agreement for any reason; and
- c. Not contribute, in any fashion, to the solicitation or diversion of any employees of GPS to any other company or entity.

Because GPS's business, customers and activities are located throughout the United States of America, the geographical restrictions for this restrictive covenant shall be the United States of America. Such restrictions are reasonable, fair and appropriate, given the business activities of GPS. For purposes of this restrictive covenant, INDEPENDENT CONTRACTOR agrees that the two (2) year restricted period, and the geographic territory of the United States, shall be deemed fair and reasonable, and INDEPENDENT CONTRACTOR waives all challenges to such provisions in the event of any litigation arising out of this Agreement.

135. **GENERAL PROVISIONS**. INDEPENDENT CONTRACTOR has carefully read and considered the provisions of this Agreement and hereby agrees to be bound by all of the terms and conditions hereof including, without limitation, the restrictive covenants and confidentiality agreement set forth herein. INDEPENDENT CONTRACTOR further acknowledges that in the event his relationship with GPS terminates, for any reason, then INDEPENDENT CONTRACTOR will still be able to earn a livelihood without violating the restrictive covenants and confidentiality agreement described hereunder. The parties to this Agreement further acknowledge that injunctive or equitable relief may make enforcement of this Agreement, and such relief shall not be contrary to the public health, safety or welfare period. The parties further agree that the enforcement of the restrictive covenants and confidentiality agreement hereunder are necessary to protect the interests of GPS and, in the event that these covenants are violated, then GPS will suffer irreparable injury, which cannot be fairly compensated by money damages alone. GPS shall, therefore, be entitled to injunctive relief, both temporary and permanent, against INDEPENDENT CONTRACTOR from any court of competent jurisdiction, restraining the INDEPENDENT CONTRACTOR from undertaking actions, which are prohibited herein. Nothing herein shall be construed as prohibiting GPS from pursuing other remedies or rights which may be available to GPS for breach of contract, including the recovery of damages from INDEPENDENT CONTRACTOR. Further, should legal action be required to enforce the terms of this Agreement, then INDEPENDENT CONTRACTOR shall be responsible to pay GPS's reasonable attorney's fees and court costs incurred. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida. Venue for the enforcement of this Agreement shall be fixed in Pinellas County, Florida. In the event that any portion of this Agreement is deemed too broad to be enforceable, or is otherwise unenforceable, then a court of competent jurisdiction shall alter the geographic area and length of time described under the restrictive covenants hereunder in order to enforce such reasonable restrictions as may be appropriate. The unenforceability of any specific provision of this Agreement shall not invalidate this Agreement, nor shall such unenforceability render the remainder of this Agreement invalid or unenforceable.

14. **ASSIGNMENT**. This Agreement may not be assigned by INDEPENDENT CONTRACTOR without the written approval of GPS. This Agreement shall be binding upon all of the parties hereto, together with their respective heirs, personal representatives, successors and assigns.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and may not be modified or amended except by subsequent written agreement executed by all of the parties hereto.

IN WITNESS WHEREOF, this Agreement is made on the day and year first above written.

**WITNESSES:** GUARDIAN PORTFOLIO SERVICES, INC. ("GPS")

By:

\_\_\_\_\_  
\_\_\_\_\_, INDEPENDENT CONTRACTOR  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by; who is personally known to me/has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Print/Typed Name: \_\_\_\_\_  
Notary Public-State of: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

\_\_\_\_\_  
Jay R. Romer, COO / Managing Director  
Guardian Portfolio Services, Inc.  
9011 Park Boulevard, Suite 207  
Seminole, FL 33777

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by; who is personally known to me/has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Print/Typed Name: \_\_\_\_\_  
Notary Public-State of: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

**Exhibit B**  
**PERFORMANCE STANDARDS**

1. Assignment

- a. GPS will identify Accounts in its sole discretion for which it desires to have the Independent Contractor perform the Services as outlined in the Agreement and the Performance Standards.
- b. The GPS may remove an Account from Independent Contractor at any time in its sole discretion at which time Independent Contractor agrees to discontinue the performance of the Services and return all information regarding the Account to GPS.
- c. GPS warrants that it will assign Accounts "Field Call Assignments" directly to the Independent Contractor via the GPS website. Independent Contractor will receive an email notification that Independent Contractor has an Account online and to go to the GPS website to acknowledge receipt of the Account by either accepting or declining the Account.
- d. GPS warrants a date "Due" for all Field Call Reports. Independent Contractor agrees to submit the Field Call Reports to GPS **before 11:59PM (EST) of the listed date "Due"** and acknowledges that payment for services may not be issued to Independent Contractor if the receipt of the Field Call Report is received beyond such a date and time without prior approval from the GPS Corporate Office.

2. Performance of the Services

- a. The Independent Contractor will attempt contact with a Debtor under an Account as directed by GPS at a given address within three (3) days of receipt of the assignment.
  - 1) If contact is made with the Debtor, the Independent Contractor will identify that they are there on behalf of GPS and Creditor, unless specifically requested, and provide the Debtor with a letter that is supplied by GPS (the "Letter") in a sealed envelope addressed to the Debtor.
  - 2) If Independent Contractor is unable to contact the Debtor at the provided address, the Contractor will attempt to contact a minimum of three (3) of the Debtor's neighbors in compliance with all applicable laws to identify location information regarding the Debtor. Independent Contractor will identify the neighbors attempted contact with by address in the Field Call Reports.
  - 3) If the location information provided by the neighbors leads Independent Contractor to believe that the Debtor does or does not reside in the home, Independent Contractor will leave the Letter in a sealed envelope addressed to the Debtor. The Letter shall be left for the Debtor in a manner that complies with all Federal, State and Local applicable laws and regulations.
- b. Independent Contractor agrees that they will only attempt to contact the Debtor between the hours of 8:00 a.m. and 9:00 p.m., except on Major Holidays.
- c. Independent Contractor agrees that they will request the Debtor and/or Co-Debtor to call the Creditor in their presence. If the Debtor and/or Co-Debtor refuse to contact the client in the Independent Contractor's presence, the Independent Contractor will notify the Creditor from the Account location and notate as such the field visit report.
- d. The Independent Contractor will request updated contact information from Debtor, including the home telephone number, all employment information and alternate telephone number to reach the debtor.

- e. The Independent Contractor may communicate to the Creditor any information received during contact with Debtor/Co-Debtor or Third Party.
- f. Independent Contractor agrees that they will request proof of insurance and reason for delinquency from Debtor/Co-Debtor.
- g. Independent Contractor agrees to utilize the GPS website to submit the Field Call Reports detailing the Independent Contractor's efforts. The Independent Contractor shall promptly provide all required information to GPS regarding any contact that has been made with a Debtor or with any other person identified above. The information provided by Independent Contractor shall be sufficient to allow GPS and the Creditor to adequately, in GPS's sole discretion, maintain records regarding the Account.

3. Re-Chase Policy

- a. GPS does not offer our clients a free re-chases at this time. However, GPS may ask you to re-run an assignment in the event the report was incomplete or Client directives were not followed. This policy may change for marketing conditions or demands.

4. Compliance with Applicable Laws

- a. Independent Contractor agrees to perform the Services in a manner that complies with the Fair Debt Collection Practices Act (FDCPA) and all applicable Federal, State and Local laws and regulations. In the event that Independent Contractor believes that the requirements for the performance of the Services are in violation of any applicable laws or regulations, Independent Contractor shall immediately notify GPS.
- b. Independent Contractor agrees to maintain all licenses and bonds that may be required for the performance of the Services.

5. Miscellaneous

- a. The term "Creditor" as used in this Exhibit shall include any Client of GPS and any of the Clients subsidiaries or affiliate which has assigned Accounts to Contractor.
- b. In the event that GPS permits the Independent Contractor to utilize subcontractors, Independent Contractor shall require that the subcontractor comply with Performance Standards and each subcontractor shall sign this form acknowledging their agreement hereto. Independent Contractor will not utilize any subcontractor that has been convicted of a felony.

By signing below, Independent Contractor agrees to comply with all of the requirements contained above.

\_\_\_\_\_ Independent Contractor

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

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

Title: Independent Contractor