

BARR TELL AGENT AGREEMENT

This Agent Agreement (the "Agreement") being made on this day, ("Effective Date") between Barr Tell USA, Inc. ("BARR TELL"), and the undersigned business entity _____ (hereinafter referred to as "Agent").

WHEREAS, BARR TELL and Agent wish to enter into an agreement pursuant to which Agent will be authorized to market BARR TELL's services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, BARR TELL and the Agent agree as follows:

ARTICLE 1

Definitions

1.1 "Agent Accounts" means End Users whose business with BARR TELL was procured through the efforts of, and continues to be administered by, Agent or any of Agent's Subagents or employees.

1.2 "Billed Revenue" means actual billings to end user on which BARR TELL pays commissions

1.3 "Current Term" of this Agreement means that period of time under which the parties are functioning under the terms and conditions of this Agreement. (See also: Initial Term and Subsequent Term.)

1.4 "End User" means any person or entity which utilizes Telecommunications Services provided by or through BARR TELL. The terms "End User" and "Customer" shall be synonymous.

1.5 "Initial Term" of this Agreement shall be the initial period of time over which the terms and conditions of this Agreement are to be effective. (See also: Current Term and Subsequent Term.)

1.6 "Invoice Date" means the date appearing on any invoice to an Agent Account.

1.7 "Promotional Materials" means brochures, sales literature and such other materials used for marketing Telecommunications Services as provided to the Agent by BARR TELL or provided by the Agent and approved by BARR TELL for use.

"Regulatory Approvals" means any and all certifications, permits, licenses, approvals or consents as may be required at any time by the Federal Communications Commission ("FCC"), state or local public utility commissions, or any other regulatory authority of the United States or any state or territory thereof for BARR TELL or any person or entity in privacy with BARR TELL to either (i) provide Telecommunications Services to an End User, or (ii) transfer and assign any rights

- 1.8 or obligations under this Agreement.
- 1.9 "Subagent" means any person or entity who sells BARR TELL on behalf of the Agent.
- 1.10 "Subsequent Term" of this Agreement means the period of time immediately following any Current Term in which this Agreement had been effective. (See also, Current Term and Initial Term)
- 1.11 "Telecommunications Services" means telephone, telecommunications and other related or similar services as BARR TELL may make available to End Users.

ARTICLE 2

Grant of Authority

Except as restricted by this Agreement, the policies and procedures of BARR TELL and limitations imposed by Regulatory Approvals, Agent shall be authorized on a nonexclusive basis to market Telecommunications Services to all persons and entities in the United States. Agent shall be bound by and comply with policies and procedures issued by BARR TELL, as outlined in Agent Sales Handbook, as provided and updated from time to time on BARR TELL's website, and contained herein. Agent shall be given 30 days to review any changes in BARR TELL policies and procedures and if Agent does not approve of such changes, Agent may terminate this Agreement without penalty.

ARTICLE 3

Fees and Commissions

- 3.1 Commissions payable to Agent are set forth in Schedule III.
- 3.2 With the exception of a final commission check, BARR TELL will not send commission checks until the amount of commission reaches \$50.00. For commissions under \$50, BARR TELL shall accrue Agent's commission until the amount reaches \$50, then send Agent the commission. Commissions will be paid on Billed Revenue of Agent's accounts.
- 3.3 Unless this Agreement is terminated as a result of cause on the part of Agent, appropriate Commissions to Agent shall be paid for as long as an Agent Account remains an End User for BARR TELL. Commissions to Agent shall cease should this Agreement be terminated as a result of Cause due to action or inaction of Agent, or should an End User cease to be an Agent Account. Termination for cause shall be any action or inaction by agent as defined in sections 6.2.2; 6.2.3; 6.2.4 and 6.2.5

ARTICLE 4

Relationship of the Parties

4.1 Agent is an independent contractor and not an employee, franchisee, partner or co-venturer of or with BARR TELL. The Agent is solely responsible for its own business expenses, including, without limitation, all federal, state and local payroll taxes for itself and its employees. The Agent shall not represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of BARR TELL, or to otherwise bind BARR TELL, except as provided for herein. Agent shall have no title or interest in or to Agent's Accounts; such accounts are the sole and exclusive property of BARR TELL.

4.2 Limitation on Agent's Authority

4.2.1 Agent shall not market Telecommunications Services to any person or entity which Agent knows or discovers is an End User of BARR TELL and not one of the Agent's Accounts.

4.2.2 The Agent shall market Telecommunications Services in accordance with the scheduled rates, policies, restrictions and conditions prescribed by BARR TELL. Applications for service for Telecommunications Services ("Service Applications") shall be submitted in the form and with the information required by BARR TELL. The Agent shall make no representations and give no guarantees or warranties with respect to the Telecommunications Services, except as expressly authorized in writing by BARR TELL. Agent shall indemnify and hold BARR TELL harmless for any and all damages that may result from such unauthorized representations.

4.2.3 BARR TELL reserves the right to terminate service to any person or entity if BARR TELL determines such service is not in the best interests of BARR TELL. Except as permitted in writing by BARR TELL, Agent shall not modify the standard terms of any BARR TELL service agreement. If BARR TELL terminates service to any account sold by Agent, then Agent may move such account to any other carrier as they determine in their sole discretion without penalty.

4.2.4 The Agent shall forward to BARR TELL for processing all Applications for Service obtained from any prospective End User.

ARTICLE 5

Confidentiality

The terms and conditions of this Agreement, and all non-public information regarding the business of BARR TELL or the Agent are confidential ("Confidential Information"). Without the prior written consent of the other, neither BARR TELL nor the Agent shall disclose to any other person or entity any Confidential Information of the other unless formally required by a court or governmental agency of competent jurisdiction. The

provisions of this Article 5 shall remain in full force and effect after expiration or termination of this Agreement. Violation of the foregoing provision shall entitle the other party to injunctive relief without a showing of irreparable harm or injury and without bond.

ARTICLE 6

Term and Termination of Agreement

6.1 This Agreement shall be for an Initial Term of five years commencing on the date of this Agreement. This Agreement will automatically renew at the expiration of any Current Term, for a Subsequent Term of five years unless any such automatic renewal is canceled by either party in writing and delivered to the other party not later than 60 days before the expiration of a Current Term.

6.2 Either Party may terminate this Agreement at any time, by written notice to the other Party, upon occurrence of any of the following:

6.2.1 The instigation of any action, suit or proceeding, or the adoption or issuance of any law, regulation, ruling or determination, including but not limited to any regulation, ruling or determination of the FCC or any public regulatory agency, which has a substantial likelihood of materially and adversely affecting the business of BARR TELL or the ability of BARR TELL to render all or a material part of the Telecommunications Services.

6.2.2 The willful misconduct or gross negligence of either Party which adversely affects the business or good name of the other Party.

6.2.3 Any material breach of this Agreement and the failure to cure such breach within thirty (30) days of written notice thereof.

6.2.4 Failure of Agent or any Subagent, employee, representative, contractor of Agent to comply with the policies and procedures of BARR TELL including, without limitation, those policies and procedures regarding letters of agency and the prevention of unauthorized switching of Telecommunications Services.

6.2.5 The insolvency or dissolution of either party.

6.2.6 The sale of all or any part of BARR TELL or its customer base.

6.3 Notwithstanding paragraph 6.1, Agent may terminate this Agreement at any time prior to the date six (6) months after the Effective Date of this Agreement, by written notice to BARR TELL. Such termination notice must be received by BARR TELL on or before the date six (6) months after the date of this Agreement.

6.4 Upon any expiration or termination of this Agreement, Agent shall immediately return to BARR TELL any and all manuals, reference information, policies and procedures, rate and commission plans and similar information.

- 6.5 Except as provided in Paragraph 3.3, BARR TELL shall pay commissions to Agents in the event of termination by either Party for as long as BARR TELL receives any revenue or payments from customers sold by Agent that remain Accounts of Agent.
- 6.6 In the event that either Party breaches this Agreement and fails to cure such breach within 30 days, the other Party may terminate this Agreement.
- 6.7 In the event, for whatever reason, Agent is in jeopardy of losing a BARR TELL End User as an Agent Account, Agent shall provide to BARR TELL, in writing, the right of first refusal to salvage said End User and such account will then become a house account of BARR TELL or if salvaged by another agent of BARR TELL will become the account of that Agent.
- 6.8 If after an initial 120 day ramp period, no new business has been submitted by Agent, this agreement shall be rendered null and void. An Agent in inactive status will no longer receive Agent Support Services but will continue to receive commissions on End User Accounts so long as the contract has not been terminated for Cause.

ARTICLE 7

Not Used

ARTICLE 8

Miscellaneous

8.1 If any part of this Agreement is held by any court or administrative agency to be prohibited by any law, regulation or rule applicable to this Agreement, the rights and obligations of the parties shall be construed and enforced to the greatest extent allowed by law, or if such part is totally unenforceable, as if this Agreement did not contain that particular part.

8.2 This Agreement shall in all respects be governed by and construed and enforced in accordance with the laws of the State of New York, including all matters of construction, validity and performance. Any action to enforce or interpret the terms of this Agreement shall be instituted and maintained under the jurisdiction of any qualified Court located in the City and State of New York, New York. The Parties hereby consent to the jurisdiction of such court and waive any objections to such jurisdiction. In any action or proceeding arising out of this Agreement, the Party prevailing in such action

shall be entitled to recover its reasonable attorney's fees and costs.

8.3 Any dispute or claim between the parties to this Agreement arising out of or relating to this Agreement or its breach or termination, which has not been resolved within thirty (30) days after either party shall notify the other in writing of such controversy (the "Dispute"), shall be finally determined by any qualified Court as mentioned in Section 8.2 and in effect on the date of this Agreement.

8.4 The Parties shall mutually indemnify, defend and hold each other and each other's officers, directors, employees and agents (an "Indemnified Party") harmless from and against any and all claims, demands, actions, losses, damages, assessments, charges, liabilities, costs and expenses (including, without limitation, attorney's fees and disbursements, penalties and interest) which may at any time be suffered or incurred by or be asserted against an Indemnified Party, on account or in connection with: (i) any default by or breach under this Agreement, (ii) any negligent acts or omissions of a Party or a Party's Subagent, employee, representative, or contractor, or (iii) the marketing, advertising, sales and promotional activities of a Party or a Party's Subagent, employee, representative or contractor, including, without limitation, charges of "slamming".

8.5 Not used.

8.6 Subject to the prior written consent of BARR TELL, which consent shall not be unreasonably withheld, the Agent may transfer and assign all of its rights and obligations under this Agreement to any other person or entity. In the event of an assignment, the Agent's transferee shall be subject to all of the terms and conditions applicable to the Agent under this Agreement, and all of BARR TELL's rights with respect to Agents Accounts shall be unaffected thereby.

8.7 Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to Agent at Agent's address shown on BARR TELL's records and to BARR TELL at the address of its principal corporate offices (Attention: President) or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto.

8.8 This Agreement, together with any policies and procedures issued by BARR TELL from time to time, shall constitute the entire agreement of the parties and supersedes all prior understandings with respect to the subject matter hereof. No change, modification, addition or amendment of this Agreement shall be enforceable unless in writing and signed by the party against whom enforcement is sought. BARR TELL maintains the right to modify its policies and procedures on an as needed basis and without the prior consent or approval of the Agent.

8.9 BARR TELL warrants that its provision of Telecommunications Services will be in accordance with prevailing standards in the telecommunications industry, and BARR TELL will use reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors with respect to any part of such services.

8.10 THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF ANY DEFECT WHATSOEVER IN THE TELECOMMUNICATIONS SERVICES, NEITHER BARR TELL NOR ANY THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF ANY PART OF SUCH SERVICES SHALL BE LIABLE TO THE AGENT OR ANY END USER FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

8.11 Without the prior written consent of BARR TELL, the Agent shall not use, or authorize or permit any of its agents or representatives to use the name "Tri-M Communications, Inc." or "BARR TELL" or any other trademark or service mark used by, owned by or licensed to BARR TELL for any purpose, except on authorized Promotional Materials.

8.12 The Agent shall maintain at all times and at the Agent's sole expense, (i) comprehensive general liability insurance against claims for bodily and personal injury, death, property damage and other risks, and other risks commonly insured against by

businesses which are similar to that of the Agent's, and naming BARR TELL as an additional insured; (ii) Workers' Compensation, automobile and such other insurance policies as required by law or appropriate for the conduct of a business such as Agent's. Such insurance shall be carried in amounts, which are commercially reasonable for Agent's business.

8.13 **Force Majeure** If BARR TELL's performance is prevented in whole or in part by causes beyond BARR TELL's reasonable control, including but not limited to the "Causes" identified herein, then BARR TELL shall be excused from such performance on a day-to-day basis to the extent of such prevention, and the Agent shall likewise be excused from performance of its obligations on a day-to-day basis to the extent the Agent's obligations relate to the performance so prevented. The "Causes" shall include, but are not limited to, any acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence; any law order, regulation, direction, action or request of the United States government or of any governmental department (including state and local governments or any government agency, commission, court, bureau, corporation or other instrumentality of any one or more of said government(s) or of any civil or military authority; any national emergency, insurrection, riot, war, strike, lockout, work stoppage or other labor difficulty; or any supplier failure, shortage, breach or delay. BARR TELL and the Agent shall use their best efforts to avoid, remove or terminate such Causes of nonperformance and both parties shall proceed to perform with dispatch whenever such Causes are removed or cease.

8.13 Agent has been afforded adequate opportunity by BARR TELL to review this Agreement and consult with legal counsel, and Agent has done so to the extent Agent has deemed necessary. Agent has thoroughly read, reviewed and fully understands to the satisfaction of Agent each and every term and condition of this Agreement. By affixing the signature below, Agent agrees to be bound by said terms and conditions and obtain the benefits of the Agreement.

8.14 This contract supersedes any prior contract between BARR TELL and Agent.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this

Agreement as of the date set forth below.

Agent:

BARR TELL INC.

Name

Title:

(Co. Name if signing as a Rep)

Date

Agent/Company Information:

Name of Company Entity:

Type of Business Organization (check one)

Partnership

Corporation

Sole Proprietorship

FEIN No. or SS No.

State of Incorporation (If applicable)

Address:

City, State, Zip:

Phone Number:

Fax Number:

E-mail:

Referring Agent: (If applicable)

Agent –User Name/Number: (If applicable)

SCHEDULE I GENERAL INFORMATION

Agent's Accounts will be billed monthly for service plus any applicable charges, interest, taxes or fees by BARR TELL or third-party vendors with whom BARR TELL has contracted.

I.1 BARR TELL shall provide the Agent with approved Telecommunications Service rates, fees and surcharges which Agent shall offer to Agent's Accounts for Telecommunications Services. BARR TELL may adjust its rates from time to time based on changes in cost, competitive pressures in the marketplace and other similar costs and expenses. Where more than one "plan" or price is specified for any service, the Agent may choose the plan or price to offer prospective End Users.

I.2 BARR TELL shall provide the Agent with monthly remittance reports containing itemized information with respect to the Agent's Accounts, including a calculation of the commission payment due the Agent for the reported month.

I.3 Commissions are set forth at Schedule III.

I.4 Any Agent's Accounts that maintain an unpaid balance for any reason (including, but not limited to, loss or theft of a calling card or misuse or abuse of services) 30 days after the invoice date, shall be considered "delinquent accounts" by BARR TELL. Agent shall provide reasonable assistance with pursuing delinquent amounts for collection and be responsible to BARR TELL for commissions paid on uncollected amounts, net of any recovery.

I.4.A Late Charges accrue at the maximum amount as allowed by state law, rule or regulation. Late Charges are due to BARR TELL for as long as the Agent Account remains on the BARR TELL network.

I.5 Not used.

I.6 Third Party Verification. For residential accounts in the states of California and Georgia, Third Party Verification shall be required for all Primary Interexchange Carrier changes, as required by law. Third Party Verification shall also be required for all Primary Interexchange Carrier changes if required by state law, rule or regulation. BARR TELL shall bear the expense of Third Party Verification via their contracted system.

SCHEDULE II
TELECOMMUNICATIONS SERVICE RATES, TAXES AND SURCHARGES

Upon request by Agent, or upon request by Customer with approval by Agent, BARR TELL reserves the right in appropriate circumstances to move an account from one plan or program to another based on competitive pressures, volume commitments, services provided and other similar criteria. Similarly, as a result of competitive pressures, Agent may request that BARR TELL increase or decrease the Service Rates for any Agent's Accounts and, unless prohibitive within the confines of BARR TELL cost of service or regulatory constraints, BARR TELL shall honor such request subject to legal and regulatory restrictions. Any increase or decrease will not be effective until required regulatory authorization is received. Any change in Customer rate or plan may result in a change of the commission rate to Agent.

SCHEDULE II-A
SERVICES DESCRIPTION

BARR TELL reserves the right to add or delete service plans from the following Services Description , and will notify Agent of any such additions or deletions. In instances where BARR TELL replaces existing service plans, all existing accounts will be "grandfathered" under the prior rate and commission schedules. Agent will receive new rate schedules at least seven business days prior to Effective Date.

1+ Switched and Dedicated – Presubscribed locations for direct outward dialing.
800 Switched and Dedicated – Presubscribed, direct inward dialing; toll free to calling party. Calling Card – Travel card for calling purposes utilizing other than presubscribed locations. International Calling
Data Services
Conference Calling
Local Dial Tone

SCHEDULE III COMMISSION PLAN

Commission will be paid on billed revenue less any credits (including bad debts) granted to customers. BARR TELL reserves the right to offset overpayment of commissions.

Commission Plans

Agent Commission is determined based on the Service Plan to which the Agent's End User Account is subscribed. Commission checks will be mailed to Agent within 21 days of the close of the billing cycle for which the commission is due.

Commission Overrides

Any agent who has monthly commissionable revenue in excess of \$50,000.00 will receive a 1% override on all commissionable revenue. Any agent who has monthly commissionable revenue in excess of \$100,000.00 will receive a 2% override on all commissionable revenue. The commission override will continue so long as the commissionable revenue exceeds the applicable override level.

Agents will not be permitted to combine accounts with other agents to achieve override levels. All other terms relating to commission accrual and payment, contained elsewhere in this agreement, will apply to the override commission. Any other override commission plan will be superseded by this plan.

BARR TELL reserves the right to exclude special pricing requests and promotional pricing from this override program.

Monthly Recurring Charge

Not Used.

Delinquent Accounts

Agent and BARR TELL will be jointly responsible for collection of delinquent accounts. End User accounts that remain unpaid in any amount, for 60 days, or more, after the date of the invoice shall be deemed delinquent and disconnected from the BARR TELL network, unless BARR TELL, at its sole discretion, has satisfactorily arranged for payment of the unpaid amounts. Agent and BARR TELL will be jointly responsible for the collection of delinquent accounts. BARR TELL sends written notification to End User Accounts on the 30th and 45th days of non-payment status. BARR TELL notifies customer of pending disconnection of service on the 60th day of non-payment status. Agent has access to aging reports via BARR TELL's FTP site, which is updated daily as payments are posted. Agent agrees to assist BARR TELL when BARR TELL requests such assistance from Agent, which shall not include instituting legal proceedings. Bad debt accounts over \$100 will be sent to a collection agency, which retains a fee of 25% of money collected.

Upon notice to Agent of an uncollectible account, the commission previously paid on the amount not collected shall be deducted from future commission payments to Agent.

Upon request from Agent, BARR TELL shall provide data supporting invoice amounts for which collection is sought.

SCHEDULE IV
NON INTERFERENCE OBLIGATION

Agent and BARR TELL agree that Agent Accounts are the exclusive property of BARR TELL and constitute the Customer Base of BARR TELL. Agent has no proprietary interest in or right to the Customer Base. This Customer Base is the primary asset of BARR TELL and Agent agrees that no action or inaction by, or on behalf of, Agent shall occur that will detract from the value of the asset. Any such diminution in value to BARR TELL of the Customer Base by Agent shall constitute breach of the fiduciary responsibility of Agent to BARR TELL and subject this Agreement to immediate termination, for Cause, at the sole option of BARR TELL, and subject Agent to legal and equitable remedies available to BARR TELL.

Agent and BARR TELL fully understand that BARR TELL, at its sole discretion, may enter into a transaction involving the sale of the Customer Base, in whole or in part. Agent shall waive any and all legal or equitable remedies, including without limitation, injunctive relief, that would in any fashion hinder or delay any sale by BARR TELL. The purpose for such waiver is to prevent any single (or group) of Agents from interfering with the lawful transaction of BARR TELL's assets.

As consideration for Agent's commitment to a two-year non-interference obligation, BARR TELL shall enter into this Agreement.

SCHEDULE V
AGENT ACCOUNT TRANSITION

“Current Agent Account”- is defined as an End Use customer for which Agent is currently receiving compensation from a source other than BARR TELL.

Agent shall not transition any Current Agent Accounts to BARR TELL:

1. Without a fully completed and executed Application and/or Service Agreement; and,
2. Without a concurrently executed Letter of Authorization from the End User; and,
3. Where such transition would constitute violation of any Agent agreement, written or otherwise, with either the End User or other entity.

End User Accounts

Any End User Account submitted to BARR TELL under this Agreement and presubscribed to BARR TELL’s network shall be considered an Agent Account and shall not be reflected as Subagent activity within BARR TELL. Agent shall be solely responsible to any Subagent for any compensation related to an Agent Account. BARR TELL shall have no responsibility to Subagent for any compensation related to Agent Accounts and Agent shall indemnify and hold BARR TELL harmless for any claim made upon BARR TELL by any Subagent for compensation.

All End User Account applications shall be submitted to BARR TELL under an effective Agent Identification Number (“AIN”). Any necessity to maintain distinction of Subagent activity shall be the sole responsibility of Agent. Any End User Account submitted by Agent that does not reflect an effective Agent Identification Number shall be rejected.