



Cucumber Communications
421 W. County Line Rd. Lakewood, NJ 08701
1-800-CUCUMBER Fax (732) 942-7755
www.800cucumber.com

AGENT INFORMATION

Date: _____

Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone #: _____

Fax #: _____

E-mail: _____

Social Security # / Tax ID #: _____

For Cucumber Use:

Sales Rep ID: _____

Password: _____

**CUCUMBER COMMUNICATIONS, INC. INDEPENDENT AUTHORIZED AGENT
AGREEMENT**

THIS AGREEMENT is made this ___th, day of _____, 200_, by and between CUCUMBER COMMUNICATIONS, Inc., having a principal office at 421, West County Line Rd, Lakewood, NJ 08701, hereinafter referred to as 'CCI', and hereinafter referred to as "Authorized Agent", with a principal office located at _____

1. AUTHORIZED AGENT'S RELATIONSHIP AND CONDUCT OF BUSINESS

(a) The relationship of CC and non-exclusive Authorized Agent established by this Agreement is that of independent contractors, Authorized Agent, its agents and employees are not the representatives of CC for any purpose except as expressly set forth in this Agreement, and they have no power or authority as agent, employee or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of CC for any purpose whatsoever. All financial obligations associated with Authorized Agent's business are the sole responsibility of the Authorized Agent. All agreements or other contractual or quasi-contractual obligations undertaken by Authorized Agent are Authorized Agent's exclusive responsibility and shall neither effect Authorized Agent's obligations under this Agreement nor bind CC. Authorized Agent shall be solely responsible for, and shall indemnify and hold CC free and harmless from, any and all claims, damages, or lawsuits arising out of the acts or omissions of Authorized Agent, its employees, servants, agents, contractors or any of them.

(b) Authorized Agent acknowledges the importance of CC's reputation and good will with the public and agrees all of their dealings with members of the public shall be governed by the highest standards of honesty, integrity and fair dealing and shall be in accordance with all applicable laws and State and or FCC rules and regulations, and further agrees that it would do nothing that would tend to discredit, dishonor, reflect adversely upon or in any manner injure the business or reputation of CC. Authorized Agent shall secure and maintain at its own expense all licenses required by law, rule or regulation for Authorized Agents performance of its obligations hereunder.

(c) Authorized Agent agrees to utilize only Letters of Agency (LOAs) and such other forms as are provided to Authorized Agent by CC or in a form pre-approved by and to the standards acceptable to CC.

CC reserves the right to reject, at its sole discretion, any order transmitted to it in a form not pre-approved by CC. Verbal orders solicited by Authorized Agent shall be accepted by CC only when i) CC has pre-approved, the Authorized Agent's solicitation of verbal orders and ii) Authorized Agent has followed procedures consistent with appropriate federal and state regulatory agencies and iii) CC has reviewed and accepted these procedures.

2. SOLICITATION OF ORDERS AND CONTRACTS, INVOICES AND COLLECTIONS

(a) Authorized Agent shall solicit orders for CC's Products and Services at valid CC Rate Class' and/or retail rates.

(b) Authorized Agent agrees that it shall not have any right, power or authority to accept any order or to assume or create any obligation, expressed or implied, on behalf of CC.

(c) CC shall be under no obligation to the Authorized Agent to continue to provide, manufacture, sell or supply any Product or Service; however, CC shall provide Authorized Agent thirty (30) day notification, if at all practicable, in regards to the discontinuance or change of rate(s) of an existing Product or Service currently being provided.

3. COMPENSATION

(a) Subject to the provisions hereof, CC shall pay Authorized Agent, as the latter's sole and exclusive compensation for all of its services hereunder performed in the Service Areas defined by CC, compensation as specified in the attached Addendum, a copy of which is attached hereto and made a part hereof, subject to the provisions of paragraphs 3(b) through 3(g) below. CC reserves the right to change the Addendum, subject to changes in any relevant Carrier Tariff and any other circumstances related to CC's profitability in the operation of its networks. I.e. change in access, backhaul charges etc. Authorized Agent shall be given notification of any such changes and all subsequent compensation due to Authorized Agent thirty (30) days from date of notification shall be paid in accordance with the amended Addendum. Payments on billings shall be made monthly, approximately (60) sixty days after the usage month.

(b) CC shall make payments of subsequent compensation to Authorized Agent only for such Products and Services on which invoices have been rendered to the customers, or on behalf of customers. CC reserves the right to withhold payments until the total payment amount due exceeds \$10.00, at which time all monies due will be paid

(c) CC reserves the right to terminate this Agreement and cease payments if Authorized Agent solicit no new orders for two consecutive months, unless Authorized Agent's monthly billed revenue exceeds \$1,000.00 within six months.

(d) Authorized Agent acknowledges that all customers tendered become the property of CC.

(e) Should an account be canceled for non-payment, commission percent of the outstanding amount due shall be withheld as an adjustment from Authorized Agent's payments.

(g) In the event this Agreement is terminated for cause by CC pursuant to Section 4(b) hereof, compensation earned will still be paid as provided for in Section 3 for the usage months prior to termination for cause of this Agreement by CC.

4. TERM AND TERMINATION

(a) Term of Agreement. Subject to the provisions of Section 3 & 4 (b) below, the term of this Agreement shall be for one (1) year from the date of execution of this Agreement. This Agreement shall automatically renew for subsequent one (1) year periods unless one party gives the other written notice of intent to cancel no later than thirty (30) days prior to the expiration of the original Agreement or subsequent term hereof.

(b) Termination For Cause. Either party pursuant to the terms stated herein may terminate this Agreement for cause. Cause is intended to include any breach of obligations under the terms of this Agreement, including without limitation, the obligation to make payment as provided, "Slamming" by Authorized Agent, which is the submission of an account without proper customer approval based on current regulations, a misuse of any proprietary information, the failure to exert reasonable efforts in carrying out the intent of this Agreement, or any other reason which effectively prevents one or the other party under this Agreement from receiving the benefits intended because of the conduct of the other. A party terminating this Agreement for cause shall give five days prior written notice; provided, however, that if a party has suffered irreparable harm or faces the substantial likelihood of suffering further harm, then no prior notice to termination shall be required. In the event that CCI faces the substantial likelihood of monetary damages due to the acts or omissions of an Authorized Agent in violation of acceptable practices as determined by a State P.U.C., an equivalent regulatory agency in a state, or the FCC, CC reserves the right to withhold future compensation earned by placing such compensation in an escrow account, to satisfy any potential losses, together with any other remedies that CCI may pursue in Law or Equity.

5. INVOICES AND COLLECTIONS

All invoices in connection with sales to customers in the Territory shall be rendered by CC direct to customers. It is expressly understood that full power and authority for all collections rest with CC, which exercises complete control over the approval of all customers' credits, orders, and contracts. Authorized Agent agrees to protect CC to the best of its available time and ability against loss by reporting any available credit information with respect to customers in the Service Areas. CC may ask for Authorized Agents assistance in the collecting of accounts that bill less than \$100 per month.

6. GENERAL

(a) Entire Agreement. This Agreement, together with the Exhibits, as attached hereto and as revised from time to time, constitutes the entire agreement between the parties relating to the subject matter hereunder, and supersedes any and all oral and/or written statements, discussions, representations and agreements made by either party to the other, and may not be assigned without the express written consent of CC. No modification of this Agreement (other than the Schedules and Exhibits) shall be binding on either party unless it is in writing and signed by both parties. Failure on the part of CC to enforce any provision of this Agreement shall not be construed as a general waiver or relinquishment of the right to enforce such provision. If any provision shall be held unenforceable, the validity legality and enforceability of the remaining provisions shall in no way be affected thereby.

(b) Successors of CC. This Agreement shall bind and inure to any successors or assigns of CC.

(c) Notices. All notices, requests, consents and other communications hereunder, shall be in writing and shall be forwarded by either United States first class or air mail, fully prepaid, sent via facsimile or delivered in person to the address of each party as set forth at the beginning of this Agreement, or at

such other address as may have been furnished in writing; provided that any notice of termination shall be sent via certified or registered mail in addition to any other means of communication used. Notices, if mailed, shall be deemed effective when deposited in the US Mail.

(d) Non-Assignment. This Agreement is personal to the parties hereto and the rights and obligations of Authorized Agent hereunder cannot be assigned, delegated, or in any manner transferred, except as approved by CC, and, provided that CC may assign this Agreement to a subsidiary, affiliate, or other entity.

(e) Proprietary Information. Authorized Agent acknowledges that this Agreement creates a relationship of trust and confidence between Authorized Agent and CC. Authorized Agent acknowledges that proprietary data and proprietary information are embodied in the Products and data, information and material supplied by CC to the Authorized Agent or acquired by Authorized Agent in the course of performance of this Agreement. Authorized Agent acknowledges that all such proprietary data and proprietary information, including such data and information as is contained in the Products and Services and their constituent parts, that are designated, marked or described as confidential constitute the sole and exclusive property of CC. Authorized Agent agrees that the rights granted Authorized Agent by CC under this Agreement constitute only a license to solicit orders for the Products and Services in the manner specified herein and Authorized Agent agrees not to disclose to others any such proprietary data or information, except as may be expressly permitted by CC in writing.

(f) Trademarks. CC hereby grants Authorized Agent a license to use the CC trademark and other CC trademarks used to describe the Products and Services solely in connection with the solicitation of orders for the Products and Services and **when such use has been approved by CC in advance**. All CC trademarks are and shall remain the sole property of CC. Authorized Agent shall not do or suffer to be done any act or thing that will in any way impair the rights of CC in and to any CC trademark. Authorized Agent further agrees not to register or use any name or mark similar to CC or that used to describe any of the Products and Services. Upon termination of the herein-granted license for any reason, Authorized Agent agrees to discontinue use of all CC trademarks. **AUTHORIZED AGENT SHALL NOT USE ANY CARRIER OR BELL ATLANTIC MOBILE TRADEMARKS OR ANY CARRIER OR BELL ATLANTIC MOBILE LOGO OR IN ANY WAY REPRESENT ITSELF AS BEING AN AUTHORIZED SALES AGENT OF ANY CARRIER OR BELL ATLANTIC MOBILE IN PURSUING LONG DISTANCE AND/OR CELLULAR CUSTOMERS FOR CCI.**

(g) Customer Service. Upon written receipt of a complaint from a customer regarding the level of service provided by Authorized Agent; CC reserves the right to service said customer directly which may include, but is not limited to, a change in retail rates.

(h) Counterparts. This Agreement shall be executed in two counterparts, each of which shall be deemed an original but both of which shall constitute one and the same instrument.

(i) Hold Harmless. Authorized Agent agrees to save, indemnify and hold CC harmless from any and all claims, demands, actions and liabilities (including attorney's fees) arising out of or in any manner connected with Authorized Agent's performance or failure of performance hereunder, whether on account of Authorized Agent's asserted negligence, gross negligence, malfeasance or otherwise.

(j) Remedies. Any of the remedies set forth herein, are not exclusive of remedies that CC or Authorized Agent may obtain in a Court of Law, on Legal or Equitable grounds.

(k) Interpretation. This Agreement shall be interpreted fairly with respect to CC and the Authorized Agent in accordance with the applicable laws of the Commonwealth of Pennsylvania, and shall not be interpreted for, or against the party drafting the contract.

(l) Applicable Forum. Any legal action arising directly or indirectly from this Agreement shall be brought in either the Courts of NJ, for a State claim, and Philadelphia, PA, for a Federal claim. By execution and delivery of this Agreement, both CC and the Authorized Agent consent to the jurisdiction of the aforesaid Courts; CC and the Authorized Agent further consent to the service of process out of any of the aforementioned Courts in any such action or proceeding. CC and Authorized Agent hereby irrevocably waive any objection which it now or hereafter may have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement, and agrees not to plead or claim in any such Court that any such action has been brought in an inconvenient forum.

(m)Waiver the right to go to the court. Any dispute about this agreement, the parties agree that this dispute shall be adjudicated by a Bais Din to be convened by Machon Lehoru of Monsey or Bais Din Maishorim of Lakewood. CC and Authorized Agent hereby unconditionally agree to waive their rights to a jury trial of any claim or cause of action based upon or arising out of, directly or indirectly, from this agreement, or any other dealings between the Authorized Agent and CC relating to the subject matter herein or any related transactions, and/or the relationship being established between the Authorized Agent and CC. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court, including without limitation, contract claims, tort claims, breach of duty claims, and all other claims whatsoever. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this agreement, or to any other documents or agreements relating to this agreement. In the event of litigation, this agreement may be filed as a written consent to arbitration by a Bais Din to be convened by Machon Lehoru of Monsey or Bais Din Maisharim of Lakewood.

(n) Headings for Convenience. All headings preceding paragraphs and subparagraphs have been inserted for convenience of reference only, and shall not be relied upon in determining the meaning of the rights and obligations of CC or the Authorized Agent.

Wherefore, the parties intending to be legally bound have executed this agreement through their duly authorized representatives as of the day and year first set forth above.

CUCUMBER COMMUNICATIONS, INC.

AUTHORIZED AGENT

Signature: _____

Signature: _____

Printed Name: Arlene Meppen
Title: Office Manager

Printed Name:
Title:

Date ____

Date: _____

**CUCUMBER COMMUNICATIONS, INC. INDEPENDENT AUTHORIZED AGENT
AGREEMENT
CONTRACT ADDENDUM- AGENT PROGRAM**

General Description of Plan:

This document describes the provisions of CUCUMBER COMMUNICATIONS' Agent Program.

Definitions:

Plan: shall refer to CUCUMBER COMMUNICATIONS' Agent Program, paying residual commission percentages against predetermined retail rate structures.

Participant: shall mean the Agent eligible for residual commission compensation under the Plan.

Named Account: shall mean any retail residential or commercial account secured for the Company by Participant Agent submitted to the Company for provisioning under the Agent Program.

Authorized Products: shall mean those products or services associated with that Participant Agent is authorized to offer on behalf of Company, and for which Participant Agent will receive residual compensation under the Plan.

Qualified Usage: shall mean monthly recurring revenue recognized by CUCUMBER COMMUNICATIONS under the Agent Program for which an order has been accepted by the Company, the securing of which required material involvement by the Participant Agent. Qualified Usage is defined by ACIS, as actual usage charges, and does not include one-time charges; taxes of any sort, including PICC and USF, Payphone Surcharge and revenue derived from debit cards sales.

Residual Commission Compensation

Residual Commission will be a percentage of predetermined retail rates (Attachment 1, Schedule II and III (a) and (b)) from Named Accounts brought to the Company directly by the Participant Agent and/or Participant Agents subordinate/sub-Agent(s) for provisioning under the Agent Program.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers as of the day and year so indicated below.

CUCUMBER COMMUNICATIONS, INC.

AGENT:

By: Arlene Meppen

Print Name:

Title: Office Manager

Title:

Date: _____

Date: _____

**CUCUMBER COMMUNICATIONS, INC. INDEPENDENT AUTHORIZED AGENT
AGREEMENT**

**CONTRACT ADDENDUM- AGENT PROGRAM
Attachment A (Switched Services Rates and Commissions)**

Interstate and Intrastate Retail Rates and Residual Commissions (Revised Compensation Schedule III (a), attached).
Interstate and Intrastate usage will be billed in straight six (6) second billing increments.

International Retail Rates and Residual Commissions (Revised Compensation Schedule III (b), attached).
International usage will be billed in six (6) second billing increments, after the initial thirty (30) second billing increment, except for Mexico, which will be billed in full one minute billing increments. *The rates only apply to land-line terminations. Wireless terminations may result in substantial additional charges per minute.*

Calling Cards (Revised Exhibit B)

Billed in six (6) second billing increments after the initial thirty (30) second billing increment. The Volume Discount Table associated with the Agent Program does not apply to Calling Card Usage.

Commission Structure

CUSTOMER BILLING	COMMISSION PERCENTAGE
\$1000 - \$14,999	10
\$15,000 - \$29,999	11
\$30,000 - \$44,999	12
\$45,000 - \$59,999	13
\$60,000 - \$74,999	14
\$75,000 - \$99,999	15
\$100,000+	16

Offshore- Billed in six (6) second billing increments after the initial 30 seconds. 8/877 Origination/Domestic Termination

Canada	\$0.27
Virgin Islands	\$0.21
Alaska	\$0.23
Puerto Rico	\$0.21
Hawaii	\$0.23

Miscellaneous

- a. Customers will be assessed a \$2.50 surcharge if their usage falls below \$15.00.
- b. Authorized Agent is responsible for recognizing if an account is RBOC or ILEC origination (all 1+ and 800/888/877 usage) and/or On-Net or Off-Net (applies to international retail rates and residual commissions only), based upon the NPA/NXX look-up, which may change periodically, and is available via the Internet at www.capsulecom.com.
- c. In the event that an end user customer subscribes for CC Services from a non-RBOC territory, or is a non-RBOC subscriber for local service within an RBOC territory, or otherwise switches its local service to a non-RBOC provider at any time, then CC reserves the right to either terminate the customer or to charge an extra 5cents per minute with a 30 day notice.
- d. All orders should be submitted with a copy of the summary page of the local phone bill clearly identifying the local Telephone Company.

The rates listed in this agreement apply to new business submitted under the Agent Program after the date of execution of this agreement and do not apply to business already with CC under any other sales group.

**CUCUMBER COMMUNICATIONS, INC. INDEPENDENT AUTHORIZED AGENT
AGREEMENT
CONTRACT ADDENDUM- AGENT PROGRAM
(Switched Services Service Areas)**

Interstate/Intrastate- Nationwide RBOC Origination.

All Regional Bell Operating Companies (RBOC), GTE and Sprint United Independent Local Telephone Companies (ILECs) only will be eligible for. CC reserves the right to raise rates and/or reduce commissions if more than 20% of qualifying usage under Authorized Agents portfolio is generated by customers who utilize a CLEC for local service.

International- International retail rate plans and corresponding residual commissions vary by RBOC origination and whether or not origination is CUCUMBER COMMUNICATIONS On-Net or Off-Net. *The rates only apply to land-line terminations. Wireless terminations may result in substantial additional charges per minute.*

[Any of the CUCUMBER COMMUNICATIONS sign up web sites will automatically look up the NPA/NXX and list the International Rates based on the "on" or "off" -net status.]