

## REFERRAL AGENCY AGREEMENT

This Referral Agency Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2020 by and between \_\_\_\_\_, a \_\_\_\_\_ [corporation/limited liability company/proprietorship] with offices at \_\_\_\_\_ (“Agent”) and Crown Castle Fiber LLC, a New York limited liability company with offices at 1220 Augusta Dr., Suite 600, Houston, TX 77057, on behalf of itself, its predecessors and its affiliates (collectively, “Crown Castle Fiber”).

### **1. Appointment and Acceptance.**

Subject to the terms and conditions of this Agreement, Crown Castle Fiber authorizes Agent to serve as a non-exclusive independent contractor to procure customers for the telecommunications products and services offered by Crown Castle Fiber in the state where Agent’s main office is located and, with Crown Castle Fiber’s approval, in other states (the “Territory”). Agent accepts such appointment and agrees to use commercially reasonable efforts to solicit and procure orders on behalf of Crown Castle Fiber. Agent represents to Crown Castle Fiber that it has all licenses, consents, approvals, authorizations, qualifications, and/or registrations necessary to lawfully procure customers for Crown Castle Fiber in those parts of the Territory where Agent procures customers for Crown Castle Fiber, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, commitment, law, or regulation. Notwithstanding anything herein to the contrary, Agent is *not* authorized to solicit, or attempt to procure the sale of services to, telecommunications carriers.

### **2. Term and Termination.**

- (a) This Agreement shall commence on the date first set forth above and shall continue in full force and effect until terminated.
- (b) Either Crown Castle Fiber or Agent may terminate this Agreement for any reason or no reason upon thirty (30) days prior written notice to the other party.
- (c) Notwithstanding clause (b) of this Section 2, but without limiting clause (b) of this Section 2, Crown Castle Fiber shall have the right to terminate this Agreement immediately upon written notice to Agent in the event of (i) material breach of this Agreement by Agent or (ii) the filing of any petition regarding Agent under the Federal Bankruptcy Code or any state receivership or similar law, or admission by Agent of its inability to pay its debts when due.
- (d) Except as specifically provided herein, neither party shall have any liability to the other as a result of the termination of this Agreement, provided that notwithstanding termination of this Agreement each party shall remain obligated under paragraphs 6, 9 and 11 of this Agreement. Without limiting the foregoing, Crown Castle Fiber shall have no liability to Agent for lost profits, lost revenue, loss of business or otherwise as a result of termination of this Agreement for any reason.

**3. Acceptance of Orders.** All orders procured by Agent for Crown Castle Fiber products and services shall be subject to the written acceptance of Crown Castle Fiber, in its sole discretion, before such orders shall become final and binding. Agent shall have no signatory authority to bind Crown Castle Fiber to any agreement, and Crown Castle Fiber reserves the right to reject any order submitted by Agent. Agent shall advise all customers and prospective customers of the restrictions described in this paragraph. All services shall be provided by Crown Castle Fiber solely pursuant to written agreements prepared and supplied by Crown Castle Fiber, and executed by the customer and Crown Castle Fiber. All billing shall be rendered directly to the customer by Crown Castle Fiber.

**4. Pricing/Terms of Service.** The prices and terms and conditions of sale of Crown Castle Fiber's products and services shall be set by Crown Castle Fiber. Crown Castle Fiber expressly reserves the right to change the prices, terms, and conditions of sale, and/or to expand, reduce, or modify the products and services it offers, at any time. Agent shall not offer any discounts or adjustments or make any allowances in accounts pertaining to Crown Castle Fiber without the prior written approval of Crown Castle Fiber. Agent shall not impose any direct or indirect charge on customers relating to Crown Castle Fiber's products and services without Crown Castle Fiber's prior written consent. Agent further agrees that it will make no warranties or representations concerning Crown Castle Fiber's products and services other than those specifically authorized by Crown Castle Fiber.

**5. Compliance With Law.** Agent shall at all times comply with applicable laws and regulations in pursuit of its activities under this Agreement. Without limiting the foregoing, Agent shall not engage or permit any sub-agent or employee to engage in any slamming or similar practices.

**6. Reserved.**

## **7. Referral Fee.**

(a) Agent shall be paid a one-time referral fee (“Referral Fee”) for each new telecommunications service Agent procures for Crown Castle Fiber that meets all of the following conditions: (i) the service is procured by Agent during the term of this Agreement; (ii) the customer is not an existing Crown Castle Fiber customer; (iii) the service order is accepted by Crown Castle Fiber in writing during the term of this Agreement; (iv) the service is installed during the term of this Agreement or within 90 days after expiration of the term of this Agreement; and (v) the customer makes at least six (6) monthly payments for the service according to the terms of the service contract. A service that meets all of the foregoing conditions is a “Commissionable Service”. The amount of the Referral Fee is set forth on Exhibit A and is based on Net Billed Revenue payable by the customer under a written contract executed by the customer and by Crown Castle Fiber. The one-time Referral Fee is the only payment of any kind payable to Agent under this Agreement and no continuing payments are payable under any circumstance.

(b) Net Billed Revenue means the monthly recurring charge payable by the customer under the service contract for the Commissionable Service. Net Billed Revenue does not include the following: (i) non-recurring charges, (ii) late fees, (iii) early termination fees, (iv) discounts, credits and allowances granted in respect of such services, (v) underlying or third-party service provider charges, and (vi) sales tax, use tax, excise tax, usf charges, or other pass-through charges and taxes billed in respect of such services.

(c) The Referral Fee for each Commissionable Service shall be paid within sixty (60) days after the customer makes the first monthly recurring payment under the service contract for the Commissionable Service, so long as such payment is paid in full and within the time period required by the applicable service contract.

(d) If Agent is paid a Referral Fee in respect of a service sold to a customer and that customer either (i) discontinues payment for that service prior to making six (6) monthly payments at the contracted monthly rate or (ii) fails to make at least six (6) monthly payments for the service at the contracted monthly rate together with any installation charges, then the Referral Fee so paid in respect of the discontinued service(s) will be deemed not earned, and Agent shall refund to Crown Castle Fiber any such unearned Referral Fees within thirty (30) days of notice to Agent that such commissions are unearned pursuant to this Section.

(e) The Referral Fee set forth on Schedule A is valid only on standard Crown Castle Fiber products and services. Crown Castle Fiber reserves the right to adjust the Referral Fee on non-standard products and services on a case-by-case basis. Non-standard products and services include, but are not limited to, services requiring construction, custom designs, underlying third-party service providers, and services for which the pricing is negotiated on an individual-case basis.

(f) Any dispute by Agent concerning payment of Referral Fees by Crown Castle Fiber must be presented to Crown Castle Fiber by Agent within thirty (30) days after Agent’s report is mailed or emailed to Agent; if no such dispute is submitted to Crown Castle Fiber within said 30 days, then the report shall be deemed correct and final and Agent may make no claim for additional commissions for the time period covered by the report.

(g) Notwithstanding anything to the contrary contained herein (i) no Referral Fees are payable on contract terms of less than one year and (ii) no Referral Fees are paid on collocation, power, regeneration and HVAC charges.

**8. Independent Contractors; Employment of Additional Personnel.** Agent will be an independent contractor of Crown Castle Fiber, and this Agreement shall not be construed to create any association, partnership, joint venture, employment, or agency relationship between Agent and Crown Castle Fiber for any purpose. Agent has no authority (and Agent shall not Agent out as having authority) to bind Crown Castle Fiber and Agent shall not make any agreements or representations on Crown Castle Fiber’s behalf without Crown Castle Fiber’s prior written consent. Crown Castle Fiber shall not control or direct the manner or means by which Agent, or any sub-agents perform services under this Agreement, including but not limited to, the time and place the services are performed. Agent shall be solely responsible for and shall pay all its expenses incurred in connection with the performance of services under this Agreement and shall not be entitled to participate in any vacation/sick leave, group or medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans of any kind provided by Crown Castle Fiber or affiliated companies to its employees. Agent shall be solely responsible for the payment of all taxes (including estimated taxes) payable with respect to commissions earned by it pursuant to this Agreement. Prior to payment of any commission hereunder, Agent shall provide Crown Castle Fiber with a completed IRS form W-9 indicative of Agent’s tax status. Crown Castle Fiber will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining workers’ compensation insurance on Agent’s behalf. Agent shall be responsible for, and shall indemnify the Company against, all such taxes or contributions, including penalties and interest. Subject to the terms hereof, Agent may hire sales representatives or sub-agents to assist Agent in its performance of this Agreement, provided that in so doing Agent shall act individually and not as agent for Crown Castle Fiber. In no event shall such personnel be considered Crown Castle Fiber employees. Any persons employed or engaged by Agent in connection with the performance of services provided under this Agreement shall be Agent’s employees or contractors, and Agent shall be fully responsible for them and fully indemnify the Company against any claims made by or on behalf of any such employee or contractor. If Agent does engage sub-agents, Agent shall be responsible for ensuring that the sub-Agents comply with all provisions of this Agreement, including without limitation paragraphs 5, 6 and 9 hereof, and any action by a sub-agent, including any violation of this Agreement by a sub-agent, shall be deemed an action and/or violation by Agent.

**9. Confidentiality.** As used herein, the term "Confidential Information" shall include all material information and data furnished by Crown Castle Fiber to Agent or any agent, employee, director, or other representative of Agent (a "receiving party"), whether in oral, written, graphic or machine-readable form, including but not limited to, financial information, customer information, business plans, and marketing plans. All copies of any Confidential Information that are made by a receiving party shall also be considered Confidential Information for purposes of this Agreement. "Confidential Information" does not include information that is or becomes generally available to the public other than as a result of a wrongful disclosure by the receiving party, or information that, at the time it is disclosed, is already in the receiving party's rightful possession, information that, after it is disclosed, is at any time obtained by the receiving party from any other person or entity having no obligation not to disclose it or information independently developed entirely without any use of Confidential Information. Agent agrees to hold the Confidential Information received or acquired from, or on behalf of, Crown Castle Fiber in confidence and not to show or disclose it to any third party without the express written consent of Crown Castle Fiber, unless such disclosure is required by an order of a court or governmental agency of the United States or any state or political subdivision thereof; provided that if disclosure is required by a court or governmental agency the receiving party will notify Crown Castle Fiber, as promptly as possible to enable Crown Castle Fiber to attempt to intervene in the case or action and/or seek injunctive relief. In protecting the confidentiality of the Confidential Information, the receiving party will use a standard of care at least equal to that used to protect its own confidential and proprietary information. The Confidential Information shall be used by the receiving party for the sole purpose of performing its duties under this Agreement, and may be disclosed to financial and legal advisors under an agreement to keep such information confidential or other legal duty to do so. If this Agreement is terminated for any reason, then the receiving party will return all Confidential Information in written form, including any copies thereof, to Crown Castle Fiber, upon the request of Crown Castle Fiber. The provisions of this Agreement with respect to the non-disclosure, misuse and/or misappropriation of the Confidential Information shall remain in full force and effect for a period of three (3) years following the return of the Confidential Information to Crown Castle Fiber. The parties acknowledge that Crown Castle Fiber may be irreparably harmed if the receiving party's obligations under this Section 9 of this Agreement or under Section 6 above ("Non-Solicitation") are not specifically enforced and that Crown Castle Fiber would not have an adequate remedy at law in the event of an actual or threatened violation by the receiving party of its obligations hereunder. Therefore, the parties agree that Crown Castle Fiber shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches of this Agreement by the receiving party, its employees, advisors or agents, without the necessity of Crown Castle Fiber showing actual damages or that monetary damages would not afford an adequate remedy.

Notice of Immunity Under the Defend Trade Secrets Act of 2016 ("DTSA"). Notwithstanding any other provision of this Agreement: (a) Agent will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (i) is made: (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. (b) If Agent files a lawsuit for retaliation by Crown Castle Fiber for reporting a suspected violation of law, Agent may disclose Crown Castle Fiber's trade secrets to Agent's attorney and use the trade secret information in the court proceeding if Agent: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

**10. Intellectual Property/Approval of Advertising.** Agent agrees that Crown Castle Fiber (and/or its affiliates) is the exclusive owner of all trademarks and trade names relating to the products and services provided by Crown Castle Fiber. Agent may use such trademarks and trade names only during the term of this Agreement and only for the purpose of advertising and promoting Crown Castle Fiber's products and services, and Agent shall acquire no proprietary or other rights with respect to such trade names, trademarks or other intellectual property of Crown Castle Fiber. Crown Castle Fiber may revoke the right of Agent to use any or all of Crown Castle Fiber's trademarks upon notice to Agent. All advertising by Agent regarding Crown Castle Fiber's products and services is subject to Crown Castle Fiber's prior written approval.

**11. Indemnification; Limitation of Liability; Exclusion of Warranties.**

(a) Crown Castle Fiber makes no warranty to Agent or anyone claiming through Agent with respect to products or services provided to Crown Castle Fiber's customers (including customers procured by Agent) and Crown Castle Fiber shall not be liable under any circumstances to Agent or anyone claiming through Agent for any loss, liability or damages of any kind based on actions or inaction by Crown Castle Fiber or its employees, subcontractors or agents. All implied warranties, including without limitation warranties of merchantability and fitness for a particular purpose, are expressly disclaimed. Crown Castle Fiber shall have no liability to Agent if Crown Castle Fiber is unable to provide services procured by Agent.

(b) Except with respect to an indemnity obligation specified in clause (c) of this Section 11, in no event shall either party be liable to the other party for any indirect, special, incidental, or consequential damages, or for lost profits.

(c) Agent shall indemnify, exonerate, defend and hold Crown Castle Fiber and its affiliates, employees, directors, members, managers, successors and assigns from any claims, demands, actions, losses, damages, assessments, charges, liabilities, costs and expenses (including without limitation interest, penalties, attorneys' reasonable fees and disbursements) which Crown Castle Fiber may at any time suffer or incur or which may be asserted against Crown Castle Fiber or its affiliates, employees, directors, members, managers, successors and assigns, directly or indirectly, on account or in connection with any misrepresentation, fraud or deceit on the part of Agent.

**12. Insurance.** Agent agrees to carry all insurance required to be carried under the laws of the state in which Agent is performing hereunder; without limiting the foregoing, (i) Agent shall maintain workers compensation insurance as required by law in all states in which Agent has employees, in each case with companies authorized to provide such insurance, and (ii) Agent shall maintain general comprehensive liability insurance with a per incident limit of not less than \$1,000,000.

**13. Assignment.** Agent may not assign its rights or obligations hereunder without the prior written approval of Crown Castle Fiber. Crown Castle Fiber may assign this Agreement to any of its affiliates and to any entity that succeeds to ownership of all or any part of the Crown Castle Fiber network used to provide services to customers procured by Agent hereunder.

**14. Notices.** All notices under this Agreement shall be in writing and shall be given by personal delivery, or by registered or certified mail or overnight courier, return receipt requested, to the addresses set forth at the beginning of this Agreement (or another address designated by notice), and shall be deemed given upon receipt.

**15. Modification of Agreement.** This Agreement, including its Schedule(s), may only be amended, modified, or supplemented by a separate written document duly executed by authorized representatives of the parties.

**16. Waiver.** No term or provision of this Agreement shall be waived, and no breach or default excused, unless such waiver or excuse is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default, by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

**17. Partial Invalidity.** If any provision of this Agreement shall be held to be invalid or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby, but rather this Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

**18. Governing Law/Jurisdiction/Venue.** The laws of the State of Texas shall govern the interpretation, enforcement, and validity of this Agreement. The parties agree that any dispute resolution proceedings, legal suit, action or proceeding in equity, arising out of or relating to this agreement shall be governed by the substantive law of the State of Texas. Any dispute arising out of this Agreement shall be resolved by the state or federal courts in the State of Texas, and both parties agree to venue in Texas.

**19. Rules of Construction.** No rule of construction requiring interpretation against the draftsman shall apply in the interpretation of this Agreement. This Agreement shall be deemed to have been drafted by the parties collectively and, in the event of a dispute, shall not be construed against either party.

**20. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**21. Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The parties agree that fully-executed electronic copies or facsimile copies of this Agreement are legally binding and shall act as originals for the purpose thereof.

**22. Entire Agreement.** This Agreement, together with the attached Schedule(s), represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the parties with respect to its subject matter, including without limitation any prior agent agreements.

*Remainder of page is intentionally blank. Signature page follows.*

IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be legally bound hereby, as of the date set forth at the beginning of this Agreement.

**Agent:** \_\_\_\_\_

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

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Print name

**Crown Castle Fiber LLC**

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

\_\_\_\_\_  
Title

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

**Schedule A**  
**Referral Fee**

Referral Fee:

One-time payment equal to 1.0 x Monthly Net Billed Revenue

For example, if Agent procures for Crown Castle Fiber during the term of this Agreement a service that is accepted and installed by Crown Castle Fiber and for which the Monthly Net Billed Revenue to be charged to the customer by Crown Castle Fiber is \$2,000, then the one-time Referral Fee would be \$2,000, and no other commission, fee or other payment would ever be payable by Crown Castle Fiber to Agent under this Agreement or otherwise.

**No commissions will be paid on contract terms less than one year.**