

# TERMS & CONDITIONS.

## Sparklight Business Advocate Rewards for Agents.

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### USER AGREEMENT

You agree that by clicking “I accept,” you are entering into a legally binding agreement with Sparklight Business. This “Agreement” includes this User Agreement and the **Privacy Policy** that may be amended by Sparklight Business from time to time. If you do not agree to this Agreement, do NOT click “I accept” and do not access or otherwise use this website.

### I. DEFINITIONS.

- a. **Contractor** shall mean an independent third-party business that provides business services that are complementary in nature to those provided by Sparklight Business; and said business’s customers are likely to need the telecommunication services offered by Sparklight Business services.
- b. **Service Agreement** shall mean an agreement between Sparklight Business and a Customer for the procurement by the Customer of Sparklight Business services/products (i) under which Sparklight Business receives Payments; and (ii) for which Contractor either (A) provided Sparklight Business the original lead no more than thirty (30) days prior to the execution of the Service Agreement or (B) first initiated contact between Sparklight Business and the respective Customer, resulting in the execution of the Service Agreement.
- c. **Customer** shall mean a potential commercial customer for which Contractor has submitted to Sparklight Business a Suggested Lead Form in accordance with Section III hereunder. The Service Location may not be a ‘residence’ (i.e. may not be a residential zoned location).
- d. **Suggested Lead Form** shall mean that form containing both a prospective Customer’s contact information and identification of the Sparklight Business Services in which such Customer is interested as further set forth in Section III.
- e. **Service Payments** shall mean monthly recurring fees paid by Customer(s) to Sparklight Business under a Service Agreement between Sparklight Business and Customer.
- f. **Service(s)** shall mean those Sparklight Business services which Sparklight Business provides to its Customers.

**II. INDEPENDENT CONTRACTOR.** Nothing in this Agreement will be considered to create the relationship of agent, joint venture, partner or employer and employee between the Parties. At all times, Contractor (including its employees and agents) will be considered an independent contractor, and Sparklight Business will not be responsible for any of Contractor’s expenses including, but not limited to, insurance, wages, benefits, and taxes which in any way relate to its personnel (whether employees, agents, contractors, or other representatives). Neither this Agreement nor any of the services contemplated hereby is intended to or shall create a fiduciary relationship between Sparklight Business and Contractor.

**III. SCOPE OF DUTIES.** Contractor shall use its best efforts to successfully identify potential Customers (i.e. provide leads) for entering into Service Agreements with Sparklight Business for services in specified commercial locations (“Professional Services”). Contractor shall submit to Sparklight Business a form in which the detailed information pertaining to the potential commercial customer being referred to Sparklight Business must be included (the “Customer Referral Form”; attached as Exhibit B) for each potential Customer. The scope of Professional Services to be provided and the manner in which those Professional Services are provided is further described in Exhibit A. Contractor shall work with Sparklight Business to determine when and how such Professional Services are provided in accordance with this Agreement and Exhibit A.

**IV. DURATION AND TERMINATION.** This Agreement will commence on the Effective Date and shall remain in effect until twelve (12) months from the Effective Date (“Term”). Upon expiration of the initial Term, this Agreement shall automatically renew for successive one-month terms unless otherwise terminated in accordance with the terms hereunder. Notwithstanding any other terms or conditions of this Agreement, either Party may terminate this Agreement for any reason upon ten (10) days prior written notice to the other Party. In the event Contractor has failed to produce leads to Sparklight Business within six (6) months of the Effective Date of this Agreement, this Agreement shall be considered null and void.

**V. COMPENSATION.** Sparklight Business will compensate Contractor for the Professional Services rendered in accordance with applicable provisions set forth in exhibit A. Sparklight Business shall not pay Contractor any fees for any services, work or other costs or expenses not expressly authorized herein. Only organizations holding property business legal status (e.g. incorporation, LLC, DBA) or legal residents of the United States who are at least eighteen (18) years old may receive compensation for Professional Services. Current employees of Sparklight Business (including its subsidiaries) as well as the immediate family (spouse, parents, siblings and children) and household members of each employee are not eligible for compensation under this Agreement.

**VI. PRIVACY.** Contractor shall not be authorized to conduct any negotiations on behalf of Sparklight Business, conclude any contract on Sparklight Business’s behalf, make any representation, warranty, promise, or take any other action binding upon Sparklight Business. It is confirmed and agreed that in any event, Sparklight Business shall at its sole discretion, determine whether or not to enter into any Service Agreement.

**VII. TAXES.** Contractor shall bear sole responsibility for payment of compensation to its personnel. Contractor will be solely responsible for the withholding and payment of any applicable local, state, or federal taxes for it and its personnel.

#### **VIII. RIGHTS UPON TERMINATION.**

- a. **Compensation.** Notwithstanding any other provision herein, in no event will the Contractor be entitled to the payment of Compensations on any lead that is installed for Service after the termination of this Agreement.
- b. **Contractor Claims.** Upon termination or expiration of this Agreement, all claims of Contractor against Sparklight Business, including without limitation those pertaining to the Compensation hereunder are hereby waived unless made in writing to Sparklight Business by Contractor within sixty (60) days of which such Compensation would have been payable.

**IX. CONFIDENTIAL INFORMATION.** “Confidential Information” shall include any information, whether oral, written or observed, regarding the terms of this Agreement and Sparklight Business’s specifications, requirements, plans, programs, plants, processes, technologies, products, costs, pricing, equipment, operations, finances or customer which may come within the knowledge of Contractor and Contractor’s employees, representatives and agents. Contractor shall hold Confidential Information in trust and confidence for Sparklight Business and shall not disclose such Confidential Information or use it for any purposes other than to perform as required by this Agreement.

**X. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants as follows:

- a. Contractor has the ability, knowledge, and expertise to perform adequately the duties hereunder. Any duties performed by Contractor pursuant to this Agreement shall be so done in a professional manner and in accordance with the highest industry standards.
- b. All services or duties performed by the Contractor in connection with this Agreement shall be performed in compliance with all applicable federal, state and local laws, rules and regulations.

**XI. MISCELLANEOUS.**

- a. **Records.** Each party shall maintain complete and accurate records relating to the performance of its duties hereunder, and Sparklight Business shall have the right to audit Contractor's records pertaining to the terms and subject matter of this Agreement. In the event of any audit of Contractor's records by Sparklight Business in which discrepancies or errors equal to or exceeding five percent (5%) or more, Contractor shall be responsible for reimbursing Sparklight Business for such audit costs within thirty (30) days of Sparklight Business's presentation to Contractor of a detailed invoice thereof.
- b. **Cooperation in Legal and Business Matters.** Each party agrees to cooperate fully with the other in connection with any legal or business matter, dispute, claim or lawsuit, relating to the efforts performed hereunder or such other services provided pursuant to this Agreement.
- c. **Publicity.** Neither the Contractor nor Sparklight Business shall use any name or logo or trademark of the other in any advertising or publicity without the prior written consent of the other.
- d. **Indemnification.** Each party shall indemnify, defend and hold harmless the other, its affiliates, and each of their respective partners, officers, directors, employees and agents from and against any and all damages, claims, liabilities, judgments, actions, lawsuits, executions, costs (including reasonable attorneys' fees and costs and expenses of legal actions) and expenses to the extent arising out of any breach of the indemnifying party's obligations hereunder, any misrepresentation made hereunder or in relation hereto by the indemnifying party, and/or any negligent or willful act or omission of the indemnifying party in relation to the subject matter of this Agreement.
- e. **Limitations of Liability. Sparklight BUSINESS SHALL NOT, BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT, BE LIABLE TO THE CONTRACTOR FOR COMPENSATION, INDEMNIFICATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF ANY LOSS OF PROSPECTIVE PROFITS OR ANTICIPATED SALES OR ON ACCOUNT OF EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE IN CONNECTION WITH THIS AGREEMENT OR THE ANTICIPATION OF EXTENDED PERFORMANCE HEREUNDER.**
- f. **Waiver.** The waiver by either party of a breach or violation of, or failure of either party to enforce, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation or relinquishment of any rights hereunder.
- g. **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall continue in full force and effect without said provision and will be interpreted to reflect the original intent of the Parties.
- h. **Attorney's Fees.** In the event either party brings an action to enforce any portion of this Agreement, the prevailing in such action (whether the party seeking enforcement or the party defending such action for enforcement) shall be entitled to recover its costs and expenses, including reasonable attorney's fees and court costs, incurred in connection therewith.
- i. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and supersedes and cancels any and all previous agreements, understandings or negotiations, whether oral or written, between the Parties relating to the subject matter of this Agreement. This Agreement may only be amended or extended by a written agreement executed by the Parties hereto.

- j. **No Third Party Beneficiaries.** The parties agree that the terms of this Agreement and the Parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each party under this Agreement only runs to the respective Parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective Parties hereto.

**XII. NOTICES.** Any notices pursuant to this Agreement shall be validly given or served in writing and sent by certified mail (return receipt requested and postage prepaid) or nationally recognized courier, to the following addresses: Sparklight Business, Attn: Marketing Department, 210 E. Earll Drive, Phoenix, AZ 85012; and the mailing address the Contractor provided upon registration within the Advocate Rewards platform.

**IN WITNESS WHEREOF, Contractor executes this Agreement by its duly authorized representative, and Contractor understands that such signature on Contractor's behalf on this contract shall bind Contractor to the terms hereof and that signature by an authorized representative of Sparklight Business is not necessary to effect the agreement of the parties hereto provided that Sparklight Business confirms and verifies Contractor's eligibility and qualifications for its lead referral program, notice of which Sparklight Business shall provide to Contractor via email.**

**Contractor hereby acknowledges that it has read and fully understands the foregoing Agreement, including any and all attached Exhibits, and, further, Contractor agrees to each of the terms and conditions contained therein. This Agreement will be effective as of Sparklight Business' confirmation notice to Contractor as described above.**

## **EXHIBIT A**

### **PROFESSIONAL SERVICES: SCOPE, MANNER OF PERFORMANCE AND COMPENSATION**

Contractor acknowledges that it has read and understands the terms and conditions of the Agreement and this Exhibit A. This Exhibit lists additional terms and conditions related to the manner of performance and compensation for the specified Professional Services.

1. **Lead Referrals.** Contractor shall use its best efforts to successfully identify potential commercial Customers (i.e. provide leads) for entering into Service Agreements with Sparklight Business for Sparklight Business's commercial services. Contractor must submit to Sparklight Business a Customer Referral Form listing each potential Customer that Contractor reasonably believes is interested in entering into a Service Agreement with Sparklight Business, substantially in the form of Exhibit B, attached hereto ("Customer Referral Form").
2. **Service Area.** Contractor shall provide leads in Sparklight Business's serviceable footprint.
3. **Manner of Performance.** Contractor will maintain a high level of product knowledge and market Sparklight Business's products and services to each prospect or customer using professional and ethical sales skills.
4. **Contact with Sparklight Business.** Contractor will deliver Leads to Sparklight Business through the approval Referral Platform. A Sparklight Business Account Executive will be responsible for garnering a fully executed contract with that referral. Contractor shall inform Sparklight Business of any issues concerning Sparklight Business customers with which it has in communication. Contractor's Sparklight Business representative shall be the Business Account Executive that recruited the Contractor to participate in this referral program or subsequent representative as assigned by Sparklight Business.
5. **Compensation.** Without abrogating the terms of the Agreement, Contractor shall be qualified to receive compensation for any lead given to Sparklight Business that:
  - i. Contractor has submitted a completed form through the approved Referral Platform; and
  - ii. A Service Agreement is executed between the Customer and Sparklight Business within sixty (60) days of the date the referral was submitted; and
  - iii. The Service Agreement covers a minimum twelve (12) months "Service Period" (commencing on the

- iii. The Service Agreement covers a minimum twelve (12) months "Service Period" (commencing on the date of service turn-up at the Customer location) between Sparklight Business and the Customer referred to Sparklight Business by Contractor; and
  - iv. Customer is not a temporary business (e.g. fireworks stand, holiday kiosk); and
  - v. The Customer has not subscribed to any Sparklight Business services within ninety (90) days prior to referral submission; and
  - vi. The Customer has not received a quote of services from any Sparklight Business associate within thirty (30) calendar days prior to referral submission; and
  - vii. The Customer is not affiliated with the Contractor other than having a provider/customer relationship (no family members, business partnerships, etc.); and
  - viii. The purchase is not categorized as a "One-time" or "Special" event (e.g. state fair, sports tournament, trade show, etc.); and
  - ix. Customer Service Location is not a residential address (e.g. single home, apartment, etc) or an E-rate eligible customer
6. **Compensation Schedule** If the above conditions are met and subject to all the terms under the Agreement, in consideration for the services to be rendered by Contractor hereunder, Sparklight Business shall pay to Contractor compensation in accordance with the following:
- i. Awards for Sparklight Business referrals that result in installation of new services and meet all eligibility requirements will be paid in the form of a check payable to the Contractor.
  - ii. Awards are non-transferable and are not redeemable for bill credits.
  - iii. Awards may be subject to taxes and/or additional fees and will be reported as income on the Contractor's I-9.
  - iv. Contractor is responsible for any such taxes and/or fees.
  - v. Each award payout will equal the new Customer's first month of Monthly Recurring Charges (MRC) before taxes and fees, up to the maximum payout listed below.
  - vi. Award applies to service only; installation fees, one-time charges, taxes, and fees are excluded.
  - vii. Maximum Payout equals a total of \$1,500 for Coax products (Internet, Phone, Cable TV, and others to be developed at a later date) and a total of \$5,000 for Fiber products (Dedicated Internet Access, Ethernet Private Line, and others to be developed at a later date).