



REFERRAL CONSULTANT AGREEMENT

GERMANY

This REFERRAL CONSULTANT AGREEMENT (this “**Agreement**”) is made as of _____ (the “**Effective Date**”) by and between Equinix (Germany) GmbH, having its principal place of business at Taubenstrasse 7-9 60313 Frankfurt am Main Germany (“**Equinix**”) and the party identified below (“**Referral Consultant**”). Referral Consultant and Equinix represent that they have read this Agreement, including the terms and conditions detailed below, understand it and agree to be bound by all the terms and conditions stated herein. This Agreement is limited solely to a single lead as provided on the Registration Form, and no other referral.

1. Referral. Referral Consultant has referred the Referred Customer identified on the Referral Consultant’s Registration Form which referral will be deemed effective and a Referral Consultant Fee will only be payable, subject to the terms of this Agreement, upon (1) Equinix’s acceptance of this Agreement and the lead for the Referred Customer, which may be accepted or rejected in Equinix’s sole discretion, and (2) Equinix’s receipt of a fully completed Registration Form. Equinix’s failure to accept a lead and or this Agreement for a Referred Customer shall be deemed an election to refuse such Referred Customer and no Referral Consultant Fee shall be due. Referrals for any other country will be considered on a case-by-case basis, in the sole discretion of Equinix subject to additional terms and conditions, if any, agreed between Equinix and the party providing the referral.

2. Referral Consultant Fee.

(a) A “**Referral Consultant Fee**” shall mean an amount payable pursuant to the terms and conditions of this Agreement, equal to one month of monthly recurring charges equal to the first full month of billing for the Cabinet License Portion as stated on the initial Sales Order signed by Referred Customer for the specific opportunity and facility (or facilities) presented to Equinix by Referral Consultant and confirmed back in writing by Equinix. For any order that includes a ramp or other delayed billing, Equinix will calculate the rate set forth above based on any amount on the initial sales order that becomes billable within 6 months of the date of the Sales Order provided that Equinix may pay the Referral Consultant Fee on any such amounts individually based on the schedule set forth in this Agreement. For example, if a Sales Order includes a ramp which requires payment of €10,000 in month one and an additional €10,000 in month five, the amount of the monthly recurring charges on which the rate is calculated will equal €20,000 but may be paid in two parts, the first part being paid on the payment terms in the Agreement after the first month’s bill and second part paid after month five. Equinix reserves the right, at its sole discretion, to reduce the Referral Consultant Fee if the Referred Customer requires a reduction in the list price of more than 10%. If at the time of registration Equinix decides that more than one third party contributed to the sale, Equinix may apportion the Referral Consultant Fee between parties at its sole discretion. **A Referral Consultant Fee will only be paid on contracts with an initial term of 2 years or more.** In addition, payment of a Referral Consultant Fee is contingent upon Referral Consultant’s participating in a verbal or written (“warm”) handoff of the Referred Customer and Referral Consultant’s briefing the Equinix Sales Contact on the opportunity and referral lead company background. Except with the specific authorization of Equinix as reflected in a separate written agreement, no Referral Consultant Fee will be paid by Equinix related to any current customer or prospect of Equinix.

(b) A Referral Consultant Fee shall be paid only if the Referred Customer and Equinix enter into a Master Services Agreement and Sales Order within 150 days of the Effective Date. As used in this Agreement, “**Cabinet License Portion**” means charges for space, cross-connects, and power only and shall not include charges for any other goods or services, including IP connectivity, services that are pass through costs to the customer or products and



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services resold by Equinix provided by a third party. Any Referral Consultant Fee due Referral Consultant will be paid within 45 days after the end of the first calendar month in which Equinix actually receives payment from the Referred Customer for monthly recurring charges subject to the payment terms on ramps as set forth above and further provided that if any payment under this Agreement exceeds €100,000, Equinix may, at its option, pay such amount in two installments over a maximum period of 6 months. In the event a Referred Customer for which Referral Consultant has been paid a Referral Consultant Fee fails for any reason to fulfill the obligations and payment schedule to which such Referred Customer has agreed, Referral Consultant shall promptly refund to Equinix the portion of the Referral Consultant Fee that Equinix reasonably determines is attributable to charges that have not or will not be paid by such Referred Customer, provided that in each case Equinix has exhausted all of its commercially reasonable remedies in attempting to collect as much as possible of all amounts owed by the defaulting customer. The Referral Consultant Fee shall be the only compensation to which Referral Consultant is entitled in consideration of its referral of the Referred Customer. No Referral Consultant Fee shall be payable to Partner if Equinix fails to timely enter into a contract with Referred Customer for any reason or no reason at all, including the fault of Equinix or any other party. Notwithstanding anything to the contrary in this Agreement, a Referral Consultant Fee will only be paid to individuals who can reasonably document that they are an established commercial or selling agency regularly engaged in advising customers on colocation services.

3. Prohibited Actions/Representations. Referral Consultant hereby represents, warrants, and covenants that Referral Consultant and its subsidiaries, owners, partners, officers, directors, employees, agents, representatives, and subcontractors (collectively, “**Affiliates**”) shall not pay, offer or promise to pay, or authorize any payment or offer of money or anything of value, directly or indirectly to any Government official or employee or any person acting in an official capacity on behalf of the Government for the purpose of securing preferential treatment or action or inaction from any Government official. Referral Consultant also represents that Referral Consultant and its Affiliates shall not offer or receive any gifts, favors, entertainment, secret commissions, bribes, payoffs, kickbacks, hidden gratuities or deals for that purpose. In addition, Referral Consultant shall not attempt to exercise, or exercise, any influence that induces, or tends to induce, a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter. Referral Consultant shall not exert nor propose to exert improper influence to solicit or obtain government contracts, and Referral Consultant does not propose to obtain, nor hold itself out as being able to obtain, any government contract or contracts through improper influence. In the event that Referral Consultant or its employees, agents, or subcontractors exercise, or attempt to exercise, any influence that induces, or tends to induce, a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter, Equinix shall have the right, in its sole discretion, to terminate Referral Consultant’s rights under this agreement and have no further obligation or liability of any kind to Referral Consultant, including the payment of any amount and reimbursement of any expense. For any violation of this Section 3, Equinix shall be entitled to recover from Referral Consultant all damages caused, directly or indirectly, by any violation of this Section 3, including but not limited to consequential damages, lost profits, and punitive damages. In addition, upon any violation of this Section 3, Equinix shall be entitled to recover from Referral Consultant all fees and other compensation paid by Equinix under this Agreement.

4. Confidentiality. Except as specifically provided herein, the existence and terms of this Agreement shall remain strictly confidential and neither party shall make any public comments with respect thereto. Notwithstanding the foregoing, Equinix shall not be prohibited from discussing with any Customer the material terms of this Agreement and being transparent about its relationship with Referral Consultant.

5. LIABILITY LIMITATION. IN NO EVENT SHALL EQUINIX BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, HOWEVER CAUSED, WHETHER UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF EQUINIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



6. WARRANTY. EQUINIX DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO ITS SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. EACH PARTY FURTHER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY WARRANTED HEREIN, ALL SERVICES ARE PROVIDED "AS IS" TO THE MAXIMUM EXTENT PERMITTED BY LAW. REFERRAL CONSULTANT SHALL NOT MAKE ANY WARRANTIES TO ANY REFERRED CUSTOMER.

7. Indemnity. In no event shall Referral Consultant make any representation, guarantee or warranty concerning Equinix or Equinix's products or services. Referral Consultant shall have no authority to accept any offer on Equinix's behalf or to bind Equinix in any manner whatsoever. Referral Consultant represents and warrants that no third party is or will be entitled to any commission or payment in connection with the Referred Customer based upon the acts, communications, dealings or agreements by Referral Consultant. Referral Consultant shall indemnify, defend and hold Equinix harmless from and against any failure by Referral Consultant to adhere to the terms of this Section 7.

8. Miscellaneous. This Agreement shall be governed by the laws of Germany without regard to its conflict of laws provisions. The parties are independent contractors and not partners, joint venturers or otherwise affiliated and neither has any right or authority to bind the other in any way. Referral Consultant shall pay all costs, taxes, fees, expenses and charges incurred by Referral Consultant in the performance of its duties hereunder. If any provision of this Agreement shall be held by a court to be unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes in all proposals, oral or written, all negotiations, conversations, or discussions between or among the Parties with respect to such subject matter. Any modifications of this Agreement must be in writing and signed by both Parties. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other.

Referral Customer:
Legal Name: _____

Equinix (Germany) GmbH
Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for notices:

Address for notices:
Managing Director
Taubenstrasse 7-9
60313 Frankfurt am Main Germany

Phone:
Fax:
Email:

Phone:
Fax:
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EQUINIX

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With a copy to:
Vice President, Legal