



## SALES AGENT AGREEMENT:

This sets forth the Agreement made as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Constructure Technologies, LLC. , (“CONSTRUCTURE”), a New York State Competitive Local Exchange Carrier (CLEC) corporation with offices at 425 Broadhollow Road, suite 408, Melville, NY 11747 and

\_\_\_\_\_ (“Agent”), a \_\_\_\_\_ corporation with offices at

Agent’s tax identification number or social security is \_\_\_\_\_.

**1. Appointment and Acceptance.** Subject to the terms and conditions of this Agreement, CONSTRUCTURE authorizes Agent to serve as a non-exclusive independent contractor to procure customers for CONSTRUCTURE’s various telecommunications products and services as described in the attached Schedule A. Agent accepts such appointment and represents to CONSTRUCTURE that it has all licenses, consents, approvals, authorizations, qualifications, and/or registrations necessary to lawfully procure customers for CONSTRUCTURE in the pursuant to the terms of this Agreement, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, commitment, law, or regulation. Agent agrees to use its best efforts to solicit and procure orders on behalf of CONSTRUCTURE, and expressly acknowledges that it is granted no right, privilege, or authority to offer for sale any of CONSTRUCTURE’s products or services that are not approved specifically by Constructure..

### 2. Term and Termination.

(a) This Agreement shall commence on the date set forth at the beginning and shall continue in full force and effect until terminated (i) by either party on thirty (30) days prior written notice to the other or (ii) as provided below.

(b) If either party breaches any provision of this Agreement, the other party may give written notice of such breach. If the breach is not cured within ten (10) days of receipt of the notice, the non-breaching party may immediately terminate this Agreement without liability for such termination.

(c) Either party shall have the right to terminate this Agreement immediately upon written notice to the other party in the event of (i) any misrepresentation made by either party to any respective customer or prospective customer relating to the other party’s products or services; (ii) any fraudulent activity on the part of CONSTRUCTURE or Agent; or (iii) any violation of Section 5 of this Agreement by CONSTRUCTURE or Agent.

(d) Upon any termination of this Agreement, Agent shall immediately return to CONSTRUCTURE the originals and all copies of any information, documents, and other materials provided to it by CONSTRUCTURE.

**3. Acceptance of Orders.** All orders procured by Agent for CONSTRUCTURE products and services shall be subject to the written acceptance of CONSTRUCTURE in its sole discretion before such orders shall become final and binding. Agent shall have no signatory authority to bind CONSTRUCTURE to any agreement, and CONSTRUCTURE 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 CONSTRUCTURE solely pursuant to written agreements prepared and supplied by CONSTRUCTURE and executed by the customer and CONSTRUCTURE. All billing shall be rendered directly to the customer by CONSTRUCTURE. Agent expressly agrees that it will not submit any proposal for CONSTRUCTURE local service to any customer until after a profitability analysis has been performed by CONSTRUCTURE based on information supplied by the Agent, and further provided that such profitability analysis is satisfactory to CONSTRUCTURE and that CONSTRUCTURE has notified Agent that it is authorized to present a proposal to the customer.

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**4. Pricing/Terms of Service.** The prices and terms and conditions of sale of CONSTRUCTURE's products and services shall be set by CONSTRUCTURE. CONSTRUCTURE 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 without prior notice to Agent. Agent agrees that it shall not impose any direct or indirect charge on customers relating to CONSTRUCTURE's products and services without CONSTRUCTURE's prior written consent. Agent further agrees that it will make no warranties or representations about CONSTRUCTURE's products and services other than those specifically authorized by CONSTRUCTURE.

**5. Customers.** All customers accepted by CONSTRUCTURE under this Agreement shall be and shall remain customers of CONSTRUCTURE with respect to CONSTRUCTURE services. Neither party shall terminate, attempt to terminate, or otherwise interfere in any way with the other party's relationship with any such customer. If either party violates this prohibition during the term of this Agreement, the affected party may terminate this Agreement pursuant to Section 2(c) above. If Agent violates this prohibition after this Agreement has been terminated, any obligation of CONSTRUCTURE to pay residual commissions to Agent shall immediately and irrevocably terminate.

**6. Commissions.**

(a) Agent shall be paid commissions under the terms and conditions set forth below and on the attached Schedule A within thirty (30) days following the month in which customers procured hereunder are invoiced by CONSTRUCTURE. Commission payments shall be based on "Net Billed Revenue" and may be accrued until such time as the total payment exceeds \$100.00. "The term "Net Billed Revenue" as applicable to Agent's commissions shall mean the monthly recurring and usage revenue generated from use of the Commissionable Products by CONSTRUCTURE retail customers procured by Agent hereunder for the applicable month, after application of any customer deductions or credits (including without limitation equipment credits) and prior to application of any taxes, surcharges, regulatory assessments, governmental charges (including without limitation NAC, RAS, PICC, USF, SMS database or 800# fee charges, etc), EUCL, equipment charges, feature charges and any one-time or non-recurring fees."

(b) Except in cases where this Agreement is terminated by CONSTRUCTURE in accordance with Section 2(b) or 2(c), Agent shall be entitled to receive commissions for products and services provided by CONSTRUCTURE to customers procured hereunder for as long as such customers remain customers of CONSTRUCTURE. In the event of termination pursuant to Section 2(b) or 2(c), CONSTRUCTURE shall cease to pay commissions to Agent as of the date of termination.

(c) A commission report will be provided to Agent with each commission payment and will (i) reflect those customers procured by Agent for CONSTRUCTURE during the term of this Agreement and (ii) reflect Net Billed revenue for such customer usage for the applicable month.

(d) Agent shall not be entitled to commissions on customer invoices which remain unpaid. Accordingly, CONSTRUCTURE shall have the right to deduct or offset from Agent's commission payments on an ongoing basis, and to retain such deductions or offsets for CONSTRUCTURE's own account, any commission payments previously made to Agent relating to invoices which are not paid.

(e) The commission percentages set forth in Schedule A are valid only on standard CONSTRUCTURE products and services. Commissions on non-standard products and services will be determined on a case-by-case basis.

(f) The commission percentages set forth in Schedule A are subject to change at CONSTRUCTURE's discretion. Any changes shall not retroactively affect any obligation incurred prior to the date of such change. CONSTRUCTURE shall notify Agent at least ninety (90) days prior to any such change.

**7. Withholding.** Agent shall provide CONSTRUCTURE with a completed IRS form W-9 indicative of Agent's tax status. Failure to do so will require CONSTRUCTURE to withhold twenty percent (20%) of all commissions exceeding \$600.00 in any calendar year.

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**8. Independent Contractors.** The relationship created by this Agreement shall be that of independent contractor and not of employer and employee or partners. As independent contractors, the parties shall not have, or hold themselves out as having, the power or authority to bind or create liability for the other by their intentional or negligent acts. Agent shall be solely responsible for and shall pay all its expenses incurred in connection with the performance of its duties under this Agreement and shall not be entitled to receive any fringe benefits or other benefits of any kind provided by CONSTRUCTURE 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.

**9. Employment of Additional Personnel.** Agent may hire salesmen 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 CONSTRUCTURE. In no event shall such personnel be considered CONSTRUCTURE employees, nor shall CONSTRUCTURE be responsible for their compensation, payroll taxes, withholding, direction or control.

**10. Confidentiality.** Agent shall keep confidential all information disclosed by CONSTRUCTURE to Agent for purposes of this Agreement. All such information shall remain the sole and exclusive property of CONSTRUCTURE, and it may not be directly or indirectly disseminated to any third party without the prior written consent of CONSTRUCTURE.

**11. Intellectual Property/Approval of Advertising.** Agent agrees that CONSTRUCTURE is the exclusive owner of all trademarks and tradenames relating to the products and services provided by CONSTRUCTURE. Agent may use such trademarks and tradenames only for the purpose of advertising and promoting CONSTRUCTURE's products and services, and Agent shall acquire no proprietary or other rights with respect to such tradenames, trademarks or other intellectual property of CONSTRUCTURE. All advertising by Agent regarding CONSTRUCTURE's products and services is subject to CONSTRUCTURE's prior written approval.

**12. Indemnification and Limitation of Liability.**

(a) Each party shall indemnify, defend, and hold harmless the other from and against any and all claims, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or alleged to have been caused by their respective negligent, willful, or unauthorized acts, omissions, or misrepresentations.

(b) In no event shall either party be liable to the other or to any customer procured by Agent for any indirect, special, incidental, or consequential damages for any reason whatsoever, nor shall CONSTRUCTURE be liable for damages in excess of those which could be awarded to a customer of CONSTRUCTURE under CONSTRUCTURE's tariffs.

(c) CONSTRUCTURE's entire liability for any failure of its products or services shall be limited to that set forth in its customer contracts or tariffs as filed from time to time with the appropriate state or federal regulatory agency.

**13. Non-Solicitation.**

(a) With respect to the products and services described on Schedule A, both parties agrees that, for as long as Agent is entitled to receive commissions pursuant to this Agreement, both parties shall not (i) solicit in competition with CONSTRUCTURE any CONSTRUCTURE customer, or (ii) induce or attempt to persuade any CONSTRUCTURE employee to terminate his or her employment relationship; nor shall Agent cause or permit its employees and sub-agents to do so.

(b) CONSTRUCTURE may not, under any circumstances, solicit, provide pricing or sell a service to any of Agent's existing or prospective customers, with respect to services that may be provided directly by the Agent without the use of CONSTRUCTURE. Such an exception would only be allowed with the Agent's written consent and/or authorization to CONSTRUCTURE.

(c) Except as expressly permitted by this Agreement, Agent shall not, during the term of this Agreement or at any time following termination of this Agreement, make use of any list of CONSTRUCTURE customers or otherwise divulge any trade secrets or other confidential information of CONSTRUCTURE.

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(d) The following provision shall apply to the interpretation and enforcement of subparagraphs (a), (b) and (c) above: (i) since other remedies cannot fully compensate the affected party for a violation, the affected party shall be entitled, in addition to any other remedies or relief available to it, to injunctive relief to prevent a violation or halt a continuing violation of the covenants set forth in subparagraphs (a), (b) and (c) above; (ii) if, in any action before a court or agency empowered to enforce this Agreement, any covenant is found to be unenforceable, such covenant shall be deemed modified to the extent necessary to make it enforceable; and (iii) if either party must commence litigation to enforce its rights under this Section 13, it may also recover its reasonable attorney's fees from the other party in connection with the litigation.

(e) In the event of a violation by Agent of any of the prohibitions set forth in subparagraphs (a), (b) and (c) above, CONSTRUCTURE may immediately and irrevocably terminate the payment of any and all commissions that may be payable to Agent hereunder, regardless of whether CONSTRUCTURE seeks or obtains injunctive relief pursuant to subparagraph 13(d).

**14. Assignment.**

(a) The rights and obligations of CONSTRUCTURE under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of CONSTRUCTURE.

(b) Agent acknowledges that the services to be rendered by Agent are unique and personal. Accordingly, Agent may not assign any of its rights under this Agreement nor delegate any of its duties or obligations under this Agreement without the prior written consent of CONSTRUCTURE.

**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 both 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 therefore.

**18. Governing Law/Jurisdiction/Venue.** The laws of the State of New York shall govern the interpretation, enforcement, and validity of this Agreement. Any action or proceeding involving this Agreement shall be commenced and maintained only in the courts of the State of New York. Venue for any action or proceeding so commenced shall be in Monroe County. Each party agrees to be subject to the personal jurisdiction of the courts of New York State.

**19. Rules of Construction.** No rule of construction requiring interpretation against the draftsman shall apply in the interpretation of this Agreement.

**20. Survival.** Any obligations of the parties relating to monies owed, as well as any provisions of this Agreement relating to confidentiality, intellectual property, indemnification, limitation of liability, non-solicitation, interference with CONSTRUCTURE's relationship with its customers, and commencement of legal proceedings shall survive any termination of this Agreement.

**21. 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.

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The assent of the parties to this Agreement as of the date set forth at the beginning is established by the following signatures of their duly authorized representatives.

**Constructure Technologies, LLC**

**Agent:**

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

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

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

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

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

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

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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**SCHEDULE "A" - CONSTRUCTURE COMMISSION SCHEDULE**

The commission schedule below applies to total Net Monthly Revenue thresholds.

Commission rates are based upon the retail rates published and/or quoted by Constructure. Anything approved outside of published rates, commissions are on ICB basis. Constructure reserves the right to ICB any proposal that falls below acceptable gross margins.

**Monthly Residual (Circuit MRC & Usage Only) = 8%**

**\* Commission Rates are negotiable base on sales volume and client rate factors**

**\* Constructure will provide a 60/40 split on all revenue increases the agents adds to the clients circuit.**

**MRC=Monthly recurring Charge.**

**Equipment/Hardware =ICB**

ICB = Individual Case Basis determined by actual cost and margin in rural areas of U.S.

Monthly residual based on list price, residual may be adjusted up or down dependent on final price margin to be determined by agent manager in conjunction with agent.

**Constructure Technologies, LLC:**

**Agent:**

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

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

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

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

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

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

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