

**TECHNOLOGY SERVICES  
MASTER AGREEMENT**

Revision Date: 12/6/18

**THIS TECHNOLOGY SERVICES MASTER AGREEMENT** (the “Agreement”) is between you (“Customer”) and Constellation Web Solutions Inc. (“CWS”). By executing an Order Form with CWS, you are agreeing to the terms of this Technology Services Master Agreement and the Order Form.

WHEREAS, CWS is the owner of certain products, services, software, and user documentation (collectively, the “CWS Products”), and, together with or separate from the CWS Product(s), offers professional services (“Services”), which CWS provides as a service to entities such as Customer; and

WHEREAS, Customer desires to use certain CWS Products and/or engage CWS to provide Services as set forth in the Order Form signed by the parties (each an “ORDER”) incorporated into this Agreement.

NOW THEREFORE, in consideration of these premises and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**1. DEFINITIONS.** When used in this Agreement including any ORDER incorporated herein, the capitalized terms listed below shall have the following meanings:

A. **“Confidential Information”** means all information, whether written or oral, disclosed under this Agreement, including, but not limited to, proprietary and confidential matters concerning either party’s current or proposed business operations, security and financial information, technical data, inventions, developments, research, customer information, marketing strategies, business methods, information related to pricing, the terms and conditions of this Agreement, and other similar information gained in connection with this Agreement, as well as Customer Data, the Services, the software, technology, ideas, formulae, know how, documentation, procedures, algorithms and trade secrets embodied in the CWS Product(s), CWS source code, and other material documents that depict or describe the CWS Product(s) or other proprietary technology of CWS. Confidential Information shall not include information that is (a) available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party; (b) rightfully received from a third party without restriction and without breach of this Agreement; (c) becomes generally available to the public other than as a result of disclosure by the receiving party or its representatives; (d) developed independently by the receiving party without reference to the disclosing party’s Confidential Information; or (e) approved for release by prior written authorization by the disclosing party.

B. **“Consumer”** means a member of the general public that accesses public features of the CWS Product(s).

C. **“Customer Data”** means all information, data and images that Customer or End Users have collected, compiled and entered or caused to be entered into the CWS Product(s) or that are managed through and relate to the Services; Customer Data shall include, but not be limited to, property listings, property sales and comparable data, property history, real estate statistical data, digital images and photographs, real estate transaction data, and data about any persons and/or entities conducting business with Customer and/or End User.

D. **“End User”** means an individual or entity that is a real estate agent that is affiliated

with Customer, or is an individual or entity that works with or for Customer, and is involved in the course of Customer's business operations, that has been authorized by Customer to use the CWS Product(s). "End User" does not include the Consumer.

E. "**End User Documentation**" means any documents and information provided by CWS that describe the functionality of the CWS Product(s).

F. "**Force Majeure**" means any event beyond the reasonable control of a party, which shall include, without limitation, acts of God, fires, floods, earthquakes, wars, sabotage, civil unrest, terrorism, labor disputes, government laws, rules and regulations, whether valid or invalid, shortages or inability to obtain material, equipment or transportation, communication line failures, interruptions of Internet access, and Internet service provider interruptions.

G. "**Fee**" means the amount Customer is required to pay to CWS pursuant to an Order.

H. "**Update**" means any commercially released change to the CWS Product(s) that fixes, corrects, revises, improves or modifies the existing functionality of the CWS Product(s).

## 2. PROVISION OF THE CWS PRODUCT(S) AND/OR SERVICES.

A. General Terms. This Agreement sets forth the terms and conditions under which CWS will provide CWS Product(s) and/or Services to Customer.

B. Orders. Each ORDER shall incorporate by reference and become a part of this Agreement. Changes to the scope of the CWS Product(s) and/or Services described in a ORDER shall be made only in a writing executed by the parties.

C. Conflicts. If there is a conflict between this Agreement and a ORDER, the provisions of this Agreement shall control provided, however, that the ORDER shall control with respect to specific details concerning the CWS Product(s) and/or Services set forth in such ORDER.

D. Rights. During the ORDER Term as specified in the applicable ORDER, CWS grants to Customer and End Users the non-exclusive, non-transferrable, limited right to access and use the CWS Product(s) as specified in each applicable ORDER on the terms and conditions set forth in this Agreement solely to serve the internal business needs of the End Users. If the CWS Product(s) include software that is installed on Customer's or its End User's hardware then Supplier hereby licenses to Customer on a non-exclusive, non-transferable basis the right to use one production copy of the compiled or object-code version (not source code) of the software (and related documentation) on computers owned or leased by Customer or its End User's for the ORDER Term. All rights not expressly granted to Customer and End Users herein are reserved for CWS.

## 3. FEES AND PAYMENT

A. Fees. Customer shall pay to CWS the fees as set forth in the applicable ORDER. All fees shall be paid in U.S. Dollars. For those fees based upon the number of End Users, CWS will calculate the number of authorized End Users on a monthly basis and will invoice Customer accordingly. Customer shall notify CWS in writing within five (5) days of receiving an invoice if Customer disputes the number of End Users calculated by CWS. The parties acknowledge and agree that all fees are exclusive of sales tax, and the payment of any sales tax that may be due shall be the sole responsibility of Customer.

B. Invoices. One-time fees shall be due and payable upon execution of the applicable ORDER. The initial Fee is due the first working calendar day of the month following the ORDER Effective Date unless otherwise stated in the ORDER. CWS will invoice Customer for each additional Fee due as specified in the applicable ORDER. Payment for all invoiced Fees, thereafter, are due and payable to CWS within thirty (30) days of the CWS invoice date. Any sum due CWS that is not paid within the time specified above shall accrue interest until paid at a rate of interest equal to the lesser of one and one-half percent (1.5%) per month, or the maximum rate of interest allowed by applicable law.

C. Fee Increases. Unless otherwise stated in the applicable ORDER, all Fees are subject to annual increase beginning on the first anniversary of the ORDER Effective Date.

D. Suspension of System Access. CWS shall be entitled to suspend Customer's and End Users' access to the CWS Product(s) in the event that any invoice remains unpaid sixty (60) or more days from the invoice date. CWS shall resume service when Customer's account is brought current. CWS's obligation to provide the CWS Product(s) shall be suspended during the period of time that service is suspended.

#### **4. TERM AND TERMINATION.**

A. This Agreement is effective from the Effective Date and will continue in full force and effect so long as any ORDER remains in effect or until terminated in accordance with the rights set forth herein (collectively, the "Term").

B. Termination for Cause. Either party may terminate this Agreement immediately in the event that the other party is in breach of its obligations hereunder, and does not cure such breach within thirty (30) days of receiving written notice of such breach.

#### **5. CUSTOMER RESPONSIBILITIES.**

A. Approvals and Information. Customer acknowledges that CWS's ability to provide the CWS Product(s) and/or Services successfully requires cooperative efforts by both parties and is dependent on Customer providing complete, timely and accurate information to CWS. Where information provided by Customer is incomplete or inaccurate, CWS may request that Customer review and approve assumptions or work-arounds proposed by CWS in writing. Customer will respond promptly to any CWS request to provide information, approvals, decisions or authorizations that are reasonably necessary for CWS to provide the CWS Product(s) and/or Services in accordance with the ORDER.

B. Use and Verification. Customer is responsible for the results of using any CWS Product(s) and/or Services in its business operations and is responsible for acceptance testing the CWS Product(s) and/or Services before using them.

C. Excused Obligations. Any delay by or failure of CWS to provide the CWS Product(s) and/or Services in accordance with this Agreement or the applicable ORDER will be excused to the extent caused by any of the following: (i) Customer not performing its obligations under this Agreement or the ORDER in a timely manner, including Customer not providing data or materials in the prescribed form or in accordance with the requirements of this Agreement or the ORDER; (ii) Customer not providing adequate resources to perform the tasks, functions or other responsibilities it has under this Agreement or the ORDER; (iii) A force majeure event occurs; (iv) Customer changes its priorities in a manner that adversely impacts the performance of the CWS Product(s) and/or Services; and (v) Any action taken by CWS at the request or direction of Customer or any action not taken by CWS as a result of Customer not providing any required

written direction to act.

D. Access Codes. CWS may provide access codes to enable Customer and End Users to access the CWS Product(s). Customer is solely responsible for the security, distribution and use of the CWS Product(s) under Customer's access codes.

## **6. WARRANTIES.**

A. Each party represents and warrants to the other party that it shall perform its respective obligations under this Agreement, including any ORDER incorporated herein, in a professional and workmanlike manner.

B. Disclaimers. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE CWS PRODUCT(S) AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except as otherwise may be specifically set forth in a ORDER, CWS has no obligation or liability, either express or implied, with respect to the compatibility of the CWS Product(s) and/or Services with any other software or service including, but not limited to, Customer's software and/or Customer-provided third party software.

C. Customer Data. Customer represents and warrants to CWS that the Customer Data shall not in any way constitute infringement or other violation of any copyright, trade secret, trade or service mark (whether or not registered), patent, design right, proprietary information or any other intellectual property rights or other rights of any third person or entity.

## **7. INDEMNIFICATION.**

A. CWS shall indemnify and hold Customer harmless with respect to any claim or action made against Customer that any CWS Product(s) and/or Services provided by CWS infringes any U.S. patent, copyright or other intellectual property right of a third party; provided that CWS will have no liability for any infringement claim of any kind to the extent it results from: (i) modifications made other than by CWS or authorized in writing by CWS; (ii) combination of the CWS Product(s) with any other product not provided by CWS to Customer for such purpose; (iii) failure of Customer to use updated, modified or substitute CWS Product(s) provided by CWS to avoid infringement; (iv) use of the CWS Product(s) and/or Services other than as authorized under this Agreement and the pertinent ORDER; or (v) compliance by CWS with designs, plans or specifications furnished by or on behalf of Customer. CWS agrees to give Customer, and Customer agrees to give CWS, as appropriate, prompt written notice of any written threat, warning or notice of any such claim or action against CWS or Customer, as appropriate, or any other user of the CWS Product(s), that could have an adverse impact on Customer's or End Users' use of the CWS Product(s), provided CWS or Customer, as appropriate, knows of such claim or action. CWS shall have the sole right to conduct and control the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed to in writing between the parties hereto. If in any such suit so defended, all or any part of the CWS Product(s) (or any component thereof) is held to constitute an infringement or violation of any other party's intellectual property rights and its use is enjoined, or if in respect of any claim of infringement, CWS deems it advisable to do so, CWS shall at its sole option take one or more of the following actions at no additional cost to Customer: (a) procure the right to continue the use of the CWS Product(s) without material interruption for Customer; (b) replace the same with non-infringing materials; (c) modify said CWS Product(s) so as to be non-infringing; or (d) if, after using commercially reasonable efforts, CWS is not successful in accomplishing (a), (b) or (c), then CWS may immediately terminate this Agreement without cost to CWS by providing written notice to

Customer of such termination. The foregoing represents the sole and exclusive remedy of Customer with regard to any of the above infringements or alleged infringements.

B. Customer shall defend, indemnify and hold CWS harmless with respect to any and all losses and any claim or action made against CWS that any Customer Data or other materials furnished to CWS by Customer or an End User infringe upon the privacy or any U.S. patent, copyright or other intellectual property right of a third party.

## **8. LIMITATION OF LIABILITY.**

A. CWS'S LIABILITY FOR ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, THAT ARISES UNDER OR IS RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LIABILITY FOR PROCESSING ERRORS OR NEGLIGENCE, SHALL BE LIMITED TO CUSTOMER'S DIRECT OUT-OF-POCKET DAMAGES, ACTUALLY INCURRED, WHICH UNDER NO CIRCUMSTANCES SHALL EXCEED IN THE AGGREGATE THE FEES PAID PURSUANT TO THE APPLICABLE ORDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE FIRST CLAIM AROSE.

B. IN NO EVENT SHALL CWS OR ITS AGENTS OR SUBCONTRACTORS BE LIABLE TO CUSTOMER, ANY END USER, THE MEMBERSHIP OF CUSTOMER, OR ANY THIRD PARTY FOR ANY LOSS OF BUSINESS OR ANTICIPATORY PROFITS OR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF CWS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGE, OR EXPENSE OR REASONABLY COULD HAVE FORESEEN THE POSSIBILITY OF SUCH LOSS, DAMAGE, OR EXPENSE.

C. NO CLAIMS, SUITS, OR ACTIONS SHALL BE BROUGHT AGAINST CWS MORE THAN ONE (1) YEAR AFTER THE DATE BY WHICH THE FAULT OR FAILURE WAS OR SHOULD REASONABLY HAVE BEEN DISCOVERED; FAILURE TO MAKE SUCH A CLAIM WITHIN THE ONE (1) YEAR PERIOD SHALL FOREVER BAR THE CLAIM.

## **9. OWNERSHIP/CONFIDENTIALITY.**

A. Confidentiality Controls. Each party shall establish commercially reasonable controls to ensure the confidentiality of the Confidential Information and ensure that the Confidential Information is not disclosed contrary to the provisions of this Agreement, Gramm-Leach-Bliley (15 U.S.C. §§ 6801-6809, as may be amended) or any other applicable privacy laws and regulations.

B. Non-Disclosure Obligations. During the Term and at all times thereafter, both parties shall hold in confidence the Confidential Information of the other party, and shall not use, disclose or allow the disclosure of the Confidential Information of the other party for its own benefit or the benefit of any person or entity without the written consent of the party that owns the Confidential Information. CWS shall have no liability for the misuse, dissemination or breach of confidentiality of Customer Data by Customer or any End User.

C. Remedies. Notwithstanding anything to the contrary in this Agreement, the parties agree that any breach by either party of the provisions of **Article 9** may cause substantial and irreparable harm to the non-breaching party, for which an award of monetary damages would be an inadequate remedy. Accordingly, in the event of any such breach or threatened breach, the non-breaching party may seek injunctive relief in addition to all other rights and remedies available to

such party at law and in equity. The breaching party hereby waives, and will cause its directors, officers, employees, subcontractors, partners, principals and agents to waive, any requirements for the securing or posting of any bond in connection with such injunctive relief. All rights and remedies provided to the non-breaching Party by this **Section 9(E)** are cumulative and are in addition to, and not in lieu of, such party's rights and remedies at law and in equity.

## **10. OWNERSHIP.**

A. Customer Data. Customer retains all right, title and interest in and to any information, including, but not limited to, Customer Data and Customer Confidential Information, that Customer provides to CWS or transmits or captures on the CWS Product(s). CWS will use such information solely to perform its obligations and duties under this Agreement.

B. CWS. CWS retains all right, title and interest in and to all intellectual property rights embodied in the CWS Product(s), Services, and CWS Confidential Information, along with any other CWS proprietary information and technology used by CWS or provided to Customer in connection with the CWS Product(s) and/or Services, including, without limitation, the CWS Product(s) and any and all improvements, updates and modifications thereto. CWS shall have the exclusive right to sell, lease, license or otherwise dispose of any such intellectual property rights which are not the property of Customer and will not affect CWS's ability to provide the CWS Product(s) and/or Services under this Agreement. Any writing or work of authorship, regardless of medium, created or developed by CWS, Customer, or any third party in connection with the CWS Product(s) and/or Services under this Agreement and any contribution by Customer or its employees to the enhancement or modification of the CWS Product(s) and/or Services provided hereunder, including all copyright interests there, shall not be considered "works for hire," but rather shall be owned solely and exclusively by CWS. To the extent any such works may be considered works for hire under applicable law, Customer agrees to assign and, upon their creation, automatically assigns to CWS the ownership of all copyright interests therein including, but not limited to, all software, information, internet services, programs and documentation without the necessity of any further consideration to Customer.

C. No patent, copyright, trademark or trade secret protected right, or technology or other proprietary right and/or all related documentation of CWS is licensed, granted or otherwise transferred to Customer (collectively "Protected Property"), except for the limited right to benefit from the use of such Protected Property strictly in accordance with the terms of this Agreement.

**11. DISPUTE RESOLUTION.** With the exception of those injunctive or declaratory relief remedies expressly granted hereunder, all other disputes arising under or related to this Agreement (each, a "**Dispute**") shall be (a) resolved without resort to courts and (b) subject to the dispute resolution procedures set forth in this **Article 11**. In the event of a Dispute, one party shall provide written notice to the other party, which notice shall set forth in detail the nature of the Dispute, the action requested of the other party, and request a meeting between the parties regarding the Dispute. Within fifteen (15) business days of the receipt of such notice, a confidential meeting of the parties shall be held at a location to be mutually agreed upon, at which the parties shall attempt in good faith to resolve the Dispute (the "**Meeting**"). Each party shall send to the meeting a representative who has the authority to negotiate and settle the Dispute on behalf of such party. It is expressly understood and agreed that the Meeting shall be for purposes of settlement and shall not be used for any purpose whatsoever (including impeachment) in any resulting arbitration or litigation.

If an amicable resolution is not reached at the Meeting, the parties will submit the Dispute to binding arbitration in the jurisdiction listed in Section 12(F), by a single arbitrator who is an attorney with at least ten (10) years of experience in the area of computer technology. The parties further agree that the arbitrator's ruling shall be in accordance with the terms of this Agreement.

## 12. GENERAL TERMS.

A. Notices. All notices required or permitted hereunder will be in writing and will be deemed to have been properly given: (i) upon delivery if delivered personally or by a courier or overnight delivery service; or (ii) five (5) business days after mailing by certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth in the applicable ORDER (or to such other address of which either party may notify the other in a notice that complies with the provisions of this section). Delivery address for each party shall be that listed on the applicable Order.

B. Force Majeure. Neither party to this Agreement shall be liable for delays in performing or failure to perform any part of this Agreement to the extent such delay or failure is due to Force Majeure. The invoking party shall identify such event to the other party as soon as commercially practicable in writing, and shall resume performance as soon as practicable after such conditions of Force Majeure have ceased to exist.

C. Waiver. The waiver by either party of any breach of any provision hereof by the other party shall not be construed to be either a waiver of any succeeding breach of any such provision or a waiver of the provision itself.

D. Construction. The language used in this Agreement shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either party shall apply to any term or condition of this Agreement. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY UNDER THIS AGREEMENT IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES OR OTHER REMEDIES SHALL REMAIN IN EFFECT.

E. Non-Assignment. Customer may not assign, transfer or sublicense this Agreement or any of its rights, interests or benefits granted hereunder or any obligations assumed hereunder without the prior written consent of CWS. Any assignment, transfer or sublicense in violation of this section shall be null and void.

F. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with and governed for all purposes by the internal laws of the State of Maryland, and each of the parties consents to the exclusive jurisdiction of such courts.

G. Taxes. Customer represents and warrants to CWS that it will properly accrue and pay any local, state or federal sales, use or excise taxes imposed by reason of the transactions contemplated by this Agreement except those that are identified in the last sentence of this **Section 12(G)**. Customer shall defend, indemnify and hold harmless CWS from and against any and all actions, claims, demands, liabilities, losses, costs and expenses (including attorney fees) arising from or related to the failure to report or pay any taxes that are Customer's responsibility

H. Entire Agreement. This Agreement, along with any ORDER incorporated herein, sets forth the entire agreement and understanding between the parties as to the subject matter hereof and supersedes all prior discussions and writings between them. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

I. Executed in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same document.

J. Remedies Cumulative. Unless otherwise provided for under this Agreement, all rights of termination or cancellation, or other remedies set forth in this Agreement, are cumulative and are not intended to be exclusive of other remedies to which the injured party may be entitled by law or equity in case of any breach or threatened breach by the other party of any provision in this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing any provision of this Agreement.

K. Amendments. This Agreement may be amended from time to time to meet the needs of both parties. Except as specified in Section 12 (P), amendments may be made only by subsequent agreement in writing and signed by both parties. .

L. No Third Party Beneficiaries. The parties agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any legal rights or benefits on any third party, including any End User, and that there are no third party beneficiaries to this Agreement or any part or specific provision of this Agreement.

M. Severability. If any provision of this Agreement is held to be invalid or unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is invalid or unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent or, if that is not possible, by substituting another provision that is valid and enforceable and achieves the same objective and economic result. If such invalid or unenforceable provision does not relate to the payments to be made to CWS, and if the remainder of this Agreement is capable of substantial performance, then the remainder of this Agreement shall be enforced to the extent permitted by law. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, INDEMNIFICATION OR EXCLUSION OF DAMAGES OR OTHER REMEDIES IS INTENDED TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

N. Press Releases. Customer agrees that CWS may publish a press release, public announcement, news media response or other form of release of information concerning this Agreement or the transactions contemplated hereby that is intended to provide such information to the news media or the public (a "Press Release") announcing the nature of this relationship between the parties prior to or during the Term. Additionally, the Customer agrees that CWS may include the Customer in its Customer lists and publications.

O. Non-Solicitation. During the Term of this Agreement and for twelve months after any termination of this Agreement, neither party will, without the prior written consent of the other party, either directly or indirectly, on behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the other party. The restrictions in this section shall not apply to individuals that respond to general employment advertisements.

P. Modifications to this Agreement. CWS reserves the right to change or modify this Agreement at any time in its sole discretion. If CWS changes or modifies the terms of this Agreement, CWS will provide the modified terms of this Agreement to Customer in writing which may be via email. Modified terms will be effective thirty (30) days after the notice of the modified terms. CWS's continued use of CWS Products or Services thirty (30) days following the notice of the modified terms shall confirm Customer's acceptance of such modified terms.

Q. Survival. The rights and obligations of the parties which by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes



including, without limitation, the provisions of Articles 7 (Indemnification), 8 (Limitation of Liability), 9 (Confidentiality), 10 (Ownership), 11 (Dispute Resolution) and 12 (General Terms) shall survive any termination or expiration of this Agreement.