

LICENSE AGREEMENT FOR ACCESS TO RETS (VENDOR AGREEMENT)

This License Agreement is made this _____ day of _____, 2017 ("Effective Date"), between the GREATER ANTELOPE VALLEY ASSOCIATION OF REALTORS, a Corporation ("LICENSOR"), and Constellation Web Solutions ("LICENSEE").

1. **Recitals.** This Agreement is made with reference to the following statement of facts:

(a) LICENSOR owns and operates a computerized real estate multiple listing service database for the benefit of real estate brokers, agents, and licensed or certified real estate appraisers ("MLS Database").

(b) LICENSOR'S MLS Database computer software information management system operates consistently with the Real Estate Transaction Standard ("RETS") promulgated by the National Association of Realtors® in collaboration with real estate industry technology services providers, and LICENSOR has authorized its computer database management software licensor to host the RETS compatible portions of its MLS Database on a separate RETS server.

(c) LICENSEE is a web site developer, builder or designer for real estate brokers, or provides computer software designed to enhance the efficiency and productivity of real estate brokers, real estate salespersons, and the real estate brokerage companies with which they are affiliated.

(d) LICENSEE wishes to be granted a license to enable LICENSEE to assist real estate brokers, real estate salespersons and the real estate companies with which they are affiliated in the development, building or designing of web sites and/or to enable LICENSEE'S software to access the Licensed Data maintained on LICENSOR'S RETS server for the purpose of providing LICENSEE'S customers and clients with the functionality and benefits offered by LICENSEE'S software.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties agree as follows:

1. **Definitions.** The following terms when used herein in capitalized form shall have the definitions set forth below:

(a) "Confidential Information" shall mean information supplied by one party (the "Disclosing Party") to the other party (the "Receiving Party") that the Disclosing Party identifies as confidential or proprietary. Confidential Information shall not include any information supplied by the Disclosing Party to the Receiving Party that (1) is already in the possession of the Receiving Party; (2) in the public domain; (3) is subsequently received by the Receiving Party from a third party source that does not owe any duty of confidentiality to the Disclosing Party; (4) is independently deduced or learned by the Receiving Party without reference to any Confidential Information supplied by the Disclosing Party; and (5) the Receiving Party is required by law to disclose; provided, however, that before any Confidential Information is disclosed by the Receiving Party by operation of law, the Receiving Party shall give prompt written notice to the Disclosing Party for the purpose of allowing the Disclosing Party to pursue any legal proceedings available to it to prevent such disclosure.

(b) "Intellectual Property Rights" shall mean trademark, copyright, patent, trade secret, privacy, and publicity rights defined or created under the laws of any state, federal government, or foreign country, and any common law contract rights restricting access and distribution of confidential or proprietary information.

(c) "Licensed Data" shall mean the data fields (and the data contained therein) within the MLS Database owned and operated by LICENSOR that are included within the Real Estate Transaction Standard promulgated by the National Association of Realtors®, as currently in effect or as may be amended from time to time.

(d) "Multiple Listing Service" or "MLS" shall mean a facility through which Participants share information about real property listed for sale or rent, or that has been sold or rented, for such purposes as are permitted in the MLS Rules and Regulations of LICENSOR.

(e) "MLS Database" shall mean the database compilation owned or controlled by LICENSOR, or any corporation in which LICENSOR owns an interest, and which contains information and images concerning real property listed for sale or rent, or properties that have been sold or rented.

(f) "MLS Rules and Regulations" shall mean the Rules and Regulations of LICENSOR currently in effect, or as may be amended from time to time, that govern the rights and privileges of persons or entities that are Participants in LICENSOR'S MLS, or such other entities that are granted access to some or all of LICENSOR'S MLS Database on terms and conditions deemed appropriate by LICENSOR.

(g) "Participant(s)" shall mean persons or entities engaged in the business of real estate brokerage or real estate appraising and that have sought and been granted the right under LICENSOR'S MLS Rules and Regulations to access and use LICENSOR'S MLS Database for purposes permitted by such Rules and Regulations.

(h) "Real Estate Transaction Standard" or "RETS" shall mean the version of the Real Estate Transaction Standard promulgated by the National Association of Realtors® as is currently in effect, or as may be revised, supplemented or enhanced from time to time by the National Association of Realtors®.

(j) "RETS Server" shall mean the computer server maintained on LICENSOR'S behalf by LICENSOR'S MLS Database computer software database management software licensor or vendor on which the RETS Data is hosted.

(k) "LICENSEE'S Software" shall mean the computer programs, source and object codes, and documentation created by LICENSEE that provides efficiency and productivity enhancing functionality to LICENSEE'S customers and clients, including any software the LICENSEE licenses from third parties and is embedded into LICENSEE'S Software, or LICENSEE sublicenses to its customers, clients or licensees as a prerequisite to using the functionality provided by LICENSEE'S Software.

(l) "RETS Clients" shall mean software compliant with RETS that issues requests for data to and receives data from the RETS Server.

2. **Grant of License.**

(a) Subject to the terms and conditions of this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, LICENSOR grants a non-exclusive and non-transferable License to LICENSEE to access the Licensed Data maintained on LICENSOR'S RETS server for the limited purpose of copying such Licensed Data (or derivatives thereof) through LICENSEE'S Software to enable Participants in LICENSOR'S MLS, or real estate licensees affiliated with such Participants, to use the functionality offered by LICENSEE'S Software. LICENSEE agrees that it shall license LICENSEE'S Software for use with the Licensed Data only to persons or entities who, at the time of such license grant, are bona fide Participants in good standing in LICENSOR'S MLS. LICENSEE agrees, immediately upon notice from LICENSOR, to terminate access to the Licensed Data of any customer, client, or licensee of LICENSEE that LICENSOR advises LICENSEE is no long a Participant in LICENSOR'S MLS, and therefore no longer eligible to access and use the Licensed Data .

(b) LICENSOR shall have the right to determine, in its sole discretion, the time periods and frequencies at which LICENSEE, or LICENSEE'S Software, may access LICENSOR'S RETS Server for the purpose of requesting Licensed Data from that Server.

(c) At any time during this Agreement, LICENSOR may, upon written notice by mail, facsimile or e-mail to LICENSEE, amend, modify, limit, or terminate the License granted in Section 2(a) for the reasons stated in the written notice. LICENSEE shall conform, or cause LICENSEE'S Software to conform, to the terms of such notice, including any amendment or termination of the License granted in Section 2(a), immediately upon receipt of LICENSOR'S notice thereof. The bases upon which LICENSOR may amend, modify, limit, or terminate the License granted in Section 2(a) shall include, but not be limited to, the preservation and maintenance of the integrity and optimal performance standards of the computer database management software and hardware that provides the core functionality that LICENSOR'S MLS delivers to LICENSOR'S Participants. If LICENSOR amends, modifies, limits, or terminates the License granted in Section 2(a), or at any other time that LICENSEE chooses in its sole discretion, LICENSEE may terminate this Agreement in its entirety by written notice to LICENSOR (in which event all provisions governing termination of this Agreement shall apply, and the License granted in Section-2(a) shall immediately terminate.

(d) Fee. LICENSEE shall pay to LICENSOR a fee of One Hundred Fifty Dollars (\$150.00) (the "License Fee") during the term of the License. The License Fee is due and payable prior to activation of the account. The License Fee may be increased for any Renewal Term by written notice served upon Licensee by Licensor of the

amount of the increased License Fee. Said written notice must be served at least sixty (60) days prior to the commencement of the Renewal Term. LICENSEE may upon receipt of the notice of the increase in the License Fee elect to terminate the License Agreement. LICENSEE may do so by serving written notice on LICENSOR within thirty (30) days of receipt of the notice of the increased License Fee of its intent to terminate the Agreement.

3. **Term of Agreement.** The Initial Term of this Agreement shall be one (1) year from its Effective Date. The Initial Term shall automatically renew for an additional one (1) year Renewal Term at the expiration of the Initial Term and at the expiration of any Renewal Term thereafter, unless either party notifies the other in writing not less than sixty (60) days prior to the end of the Initial Term or any Renewal Term of its intention not to renew this Agreement.

4. **No Other Rights Granted.**

(a) Apart from the License Rights enumerated in Section 2(a) of this Agreement, LICENSOR does not confer on LICENSEE by this Agreement any ownership right, title, interest, any security interest, or other interest, or any Intellectual Property Right in the Licensed Data, the MLS Data, or any compilations thereof. Apart from the License granted to LICENSEE in Section 2(a), this Agreement also does not confer on LICENSEE any ownership, right, title, interest, or any security interest or other interest, or any Intellectual Property Right, in any editorial, images, or advertising content contributed by LICENSOR or LICENSOR'S Participants to the Licensed Data.

(b) Nothing in this Agreement shall be construed to convey to LICENSEE any right in or to any trademark, service mark or trade name of LICENSOR, nor shall anything in this Agreement be construed to convey to LICENSOR any right in or to any trademark, service mark, or trade name of LICENSEE.

5. **No Modification of MLS Database.** LICENSEE shall neither modify, nor create derivative works based upon the Licensed Data (except to the extent expressly permitted herein), nor use the Licensed Data for any purpose other than that specified by this Agreement, without the prior consent of LICENSOR. Any modification to or derivative work based upon the Licensed Data (other than the design components and content of LICENSEE'S Software) whether made during or subsequent to the terms of this Agreement shall remain the sole and exclusive property of LICENSOR unless both parties agree otherwise in writing.

6. **No Third Party Direct Use or Access.** LICENSEE shall use the Licensed Data solely for the purposes described in LICENSOR'S MLS and subject to the MLS Rules and Regulations. LICENSEE shall not resell, loan, swap or exchange the Licensed Data or any portion thereof. LICENSOR shall have the right to terminate this Agreement immediately upon notice to LICENSEE if LICENSEE violates the provisions of this Section 6. LICENSOR'S right to terminate this Agreement as permitted in this Section 6 shall be in addition to any other rights or remedies available to LICENSOR at law or in equity by reason of LICENSEE'S breach of this Section 6.

7. **LICENSEE'S Duty to Maintain and Support Its Products and Services.** LICENSOR shall not have any duty whatsoever to LICENSEE with respect to the performance, support, or functionality of LICENSEE'S Software.

8. **Non-Competition of LICENSEE.** LICENSEE shall not use any of the Licensed Data originating from LICENSOR'S MLS Database, or any Intellectual Property Rights related thereto, to create, maintain or assemble data or information for use by any Multiple Listing Service owned, operated by, or affiliated (either as a customer, joint venture partner, shareholder or otherwise) with LICENSEE or any licensee or affiliate of LICENSEE, other than LICENSOR'S MLS, or an MLS in which LICENSOR has an ownership interest. LICENSEE acknowledges that a breach of this non-compete agreement would cause irreparable harm to LICENSOR. Remedies at law being inadequate, the limitations and restrictions in Section 8 may, in addition to any other remedies available at law, be enforced by temporary or permanent injunctive relief, or other appropriate equitable relief. The provisions of this paragraph shall survive the termination of this Agreement.

9. **Confidentiality and Nondisclosure.**

(a) Each party (the "Receiving Party") hereby acknowledges that it may be exposed to Confidential Information (as defined herein) of the other party (the "Disclosing Party"). Except as provided herein, the parties further acknowledge that such Confidential Information shall not include the existence of this Agreement, but shall include the terms and conditions of this Agreement. Subject to the License granted to LICENSEE in Section 2(a) to use the Licensed Data (which for all other purposes shall be treated as LICENSOR'S Confidential Information), the Receiving Party agrees to protect the Disclosing Party's Confidential Information to the same extent as the Receiving Party's protects its own Confidential Information, but in any event using not less than reasonable care.

(b) Each party when acting in the capacity of a Receiving Party hereby agrees, during the term of this Agreement and at all times thereafter, not to use, commercialize or disclose the Disclosing Party's Confidential Information to any person or entity, including customers or potential customers or subscribers of any party, without the express written consent of the Disclosing Party. Upon termination of this Agreement, the Receiving Party shall return to the Disclosing Party all of the Disclosing Party's Confidential Information in whatever form in the Receiving Party's possession or control. This Section 9(b) shall survive the termination of this Agreement.

(c) The Receiving Party acknowledges that unauthorized use, misappropriation or disclosure of the Disclosing Party's Confidential Information or other proprietary information, as described in this Section 9, would cause irreparable harm to the Disclosing Party. Remedies at law being inadequate, the provisions of this Section 9 may be enforced by temporary or permanent injunctive relief. The provision of this Section 9 shall survive the termination of this agreement.

10. **Indemnity and Defense Administration Provisions.** The provisions of this section shall govern all defenses against claims, indemnities against losses or expenses and claims to entitlement to defense or indemnity.

(a) **Covenant to Defend.** LICENSEE will defend, indemnify and hold harmless LICENSOR, its directors, shareholders, officers, agents, or employees (for the purpose of this Section 10 collectively referred to as "LICENSOR") subject to the terms and conditions of this Section 10, from and against any and all demands, claims, costs losses, judgments, or expenses, including attorney's fees and other defense costs and expenses at trial or on appeal (the "claims") by any third party against LICENSOR that arise as a result of activities of LICENSEE in exercising its rights under this Agreement, or as a result of any material breach of any warranty or covenant of LICENSEE contained in this Agreement, except to the extent such claims are based upon any third party's allegations that LICENSOR has engaged in conduct that constitutes a breach of this Agreement by LICENSOR. LICENSEE further agrees that in the event LICENSEE, its directors, shareholders, agents, employees or independent contractors misappropriates, uses, discloses or disseminates information from the LICENSOR'S MLS Database for which authorization has not been granted by LICENSOR, LICENSEE will defend, hold harmless and indemnify LICENSOR, its directors, shareholders, employees, agents and assigns from and against any and all demands, claims, costs, losses, liabilities or damages, including but not limited to, reasonable attorneys' fees and litigation costs or expenses at trial or on appeal.

(b) **Conditions for LICENSEE Defense.** To be entitled to defense by LICENSEE against a third-party claim, LICENSOR shall provide LICENSEE with reasonable notice of the existence of a claim by the most expeditious means possible upon learning of the assertion of a claim against LICENSOR (whether or not litigation or other proceeding has been filed or notice thereof served).

(c) **Separate Counsel.** In any matter giving rise to LICENSEE'S duty to defend LICENSOR pursuant to this Section 10, LICENSEE shall provide counsel to represent LICENSOR, which counsel shall be subject to LICENSOR'S approval, which approval shall not be unreasonably withheld or delayed. In addition to the counsel provided by LICENSEE, LICENSOR shall have the right to engage special counsel at LICENSOR'S expense, provided that such counsel's role is limited to monitoring and advising LICENSOR *about* the status and progress of the defense.

11. **LICENSOR'S Warranty Disclaimers.**

LICENSOR DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES TO LICENSEE WHATSOEVER, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE LICENSED DATA INCLUDING, WITHOUT LIMITING THE GENERALITY OF THIS EXCLUSION, THE FOLLOWING SPECIFIC WARRANTY DISCLAIMERS:

(a) LICENSOR does not warrant that the Licensed Data will be accessible or usable on any hardware configuration or in any operating environment.

(b) LICENSOR does not warrant that the Licensed Data will be accessible or usable in conjunction with computer programs selected, developed, created, or operated by LICENSEE.

(c) LICENSOR does not warrant:

(1) that the Licensed Data will meet LICENSEE'S requirements or will be available in the combinations desired by or required by LICENSEE or LICENSEE'S customers, clients or licensees.

(2) that any of the LICENSOR'S Participants will utilize the LICENSEE'S services, products or software; or

(3) that the Licensed Data will be error free.

(d) LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO, the selection, procurement, installation, operation, and maintenance of the computer hardware or software necessary to access the RETS Server on which the Licensed Data is maintained. LICENSOR shall not be under any obligation to maintain its current hardware or software on which the MLS Data is maintained or retrieved, nor is LICENSOR obligated to continue to utilize any computer vendor or any service provider. LICENSOR shall not have any obligation to provide LICENSEE with any modifications, enhancements or updates that may be provided to LICENSOR by its computer database software supplier or vendor. LICENSOR shall, however, respond to reasonable inquiries from LICENSEE about any changes to the MLS Database computer hardware or software, or the RETS Server, that may require changes to LICENSEE'S Software or LICENSEE'S products and services.

12. **LICENSEE'S Representations and Warranties.** LICENSEE makes the following representations and warranties to LICENSOR:

(a) Capacity. That LICENSEE has all requisite legal power and authority to enter into, execute and deliver this License Agreement, and to carry out and perform its obligations under the terms of this License Agreement.

(b) Rights. That LICENSEE owns, or has secured valid licenses to the Intellectual Property Rights and proprietary rights to the LICENSEE Software, and any other products and services of LICENSEE that LICENSEE makes available to LICENSOR'S Participants. To the extent the LICENSEE Software or other products and services of LICENSEE contain any components owned or created by a third party, LICENSEE warrants that it has the right to allow their use as a component of LICENSEE'S Intellectual Property Rights of any third party.

(c) RETS Compliance. That LICENSEE'S Software shall function as a RETS Client, and, within a commercially reasonable period following the public release of a new version of RETS, shall be made compatible with such new version of RETS unless the parties agree otherwise.

13. **LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AND FURTHER DAMAGE INCLUDING INJURY TO PROPERTY, AS A RESULT OF THE BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER LICENSOR WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

14. **Notices.** All notices or other communications to be given pursuant to this Agreement shall be in writing, facsimile, or e-mail, and shall be given either personally, by courier or certified U. S. Mail, return receipt requested, postage prepaid or by facsimile or e-mail. Notices shall be deemed given upon receipt by the recipient if delivered personally or by courier, or on the date appearing on the receipt if sent by U. S. Mail or delivered to the facsimile or e-mail address set forth herein. Notices shall be forwarded to the addresses set forth in this Agreement, or to such other addresses as each party shall advise the other in writing. If to LICENSOR:

GREATER ANTELOPE VALLEY ASSOCIATION OF REALTORS
1112 West Avenue M-4
Palmdale, CA 93551
Attention: Chief Executive Officer
(661) 726-9199 (Fax)
PamelaVose@gmail.com

If to LICENSEE: To the address, attention, telephone number, fax and email addresses indicated after LICENSEE's signature at the end of this Agreement.

15. **Choice of Law.** This Agreement will be interpreted and enforced in accordance with the law of the State of California applicable to agreements made and performed entirely in that state by persons domiciled therein. Suit to enforce this Agreement or any provision thereof will be brought exclusively in the state or federal courts whose territorial jurisdiction includes Los Angeles County, California.

16. **Miscellaneous.** Any provision of this Agreement found by a court of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of the law, and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.

17. **Binding of Successors.** This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns permitted by this Agreement.

18. **Headings.** Headings are for reference purposes only and have no substantive effect.

19. **Assignment.** LICENSEE may not assign or delegate any or all of its rights, obligations, and duties under this Agreement without the prior written consent of LICENSOR, which may be withheld in LICENSOR'S sole discretion. Nothing contained in this Agreement, whether express or implied, is intended to confer on any person or entity other than the parties to it and their successors in interest and permitted assigns, any rights or remedies under this Agreement.

20. **Injunctive Relief.** LICENSEE acknowledges that any material violation by LICENSEE of its covenants in this Agreement, including those relating to LICENSOR'S Intellectual Property Rights, would result in damage to LICENSOR that is largely intangible but nonetheless real, and that is incapable of complete remedy by an award of damages. Accordingly, any such material violation shall give LICENSOR the right to seek a court-ordered injunction or other appropriate order to specifically enforce those covenants. LICENSEE expressly waives the posting of any bond or guarantee with respect to the entry of an injunction, either permanent or temporary. The entry of an injunction shall not waive LICENSOR'S right to seek appropriate damages at law, including money damages.

21. **Representation of Counsel; Mutual Negotiation.** Each party has had the opportunity to be represented by counsel of its choice in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

22. **Survival.** The provisions of this Agreement that are intended to survive the termination of this Agreement shall survive for a period of Five (5) years after the expiration or termination of the license granted to LICENSEE in Section 2.

23. **Counterparts.** This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photostatic copy of any executed original will be admissible in evidence for all purposes in any proceeding as between the parties.

24. **Taxes.** All taxes and charges of any kind imposed by any national, federal, state, or local government concerning the products, services, or other items covered by this Agreement, or their sale or use, or measured by the gross receipts to LICENSEE under this Agreement, shall be collected and paid by LICENSEE, exclusive of franchise taxes and taxes based on LICENSOR'S income, which shall be paid by LICENSOR. The provisions of this section shall survive the expiration or earlier termination of this Agreement. LICENSEE agrees to hold LICENSOR harmless from all federal, state and local sales, excise, use or similar taxes which may be assessed on any revenues generated by LICENSEE in connection with the operation or distribution of the LICENSEE Software or any other products and services of LICENSEE.

25. **Force Majeure.** If the performance of this Agreement or any obligation under it by LICENSOR is prevented, restricted, or interfered with by reason of fire or other casualty or accident, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or any other act or condition whatsoever beyond the reasonable control of LICENSOR, then by written notice to LICENSEE, LICENSOR shall be excused from performance. If the force majeure condition continues for ninety (90) days, then LICENSEE may, at its option and without liability to LICENSOR, terminate this Agreement.

26. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter of the Agreement and supersedes any and all prior oral or written communications with respect to it, all of which are merged into it. Except as specifically provided for, this Agreement



Greater Antelope Valley Association of REALTORS®

1112 West Avenue M4, Palmdale, CA 93551

Phone: 661-726-9175 www.gavar.org www.avrealestate.com

CREDIT CARD PAYMENT AUTHORIZATION
NO FAXES ACCEPTED -Please Print Legibly-
Please scan and email this form to:

susanmgavar@gmail.com or Natalygavar@gmail.com

Date: _____

Member Name: _____

Name on card: _____

Card billing address: _____

City: _____ St. _____ Zip: _____

Contact Phone #: () _____

Contact email: _____

WE ACCEPT:

VISA



MC



DISCOVER



Credit card #: _____ - _____ - _____ - _____

Expiration Date: _____ / _____

Verification Code (last 3 digits on back of card): _____

Authorized Charge Amount \$ _____

Authorized Signature: _____

Please check box for reason of charge:

- RE-INSTATE MEMBERSHIP
- CLASS SIGN UP: _____
- MLS SEMI-ANNUAL DUES
- MLS VIOLATION: (LISTING # TO REFERENCE) _____
- REALTOR ANNUAL DUES
- BROKER OPEN DRAWING (DATE OF B.O.) ____/____/____
- NON ATTENDANCE OF ORIENTATION FEE
- OTHER, PLEASE EXPLAIN: _____