

**LICENSE AGREEMENT FOR VENDOR ACCESS TO
SOUTHWEST FLORIDA MLS LICENSED DATA FOR PARTICIPANT**

This Non-Exclusive Limited License Agreement ("Agreement") is made this _____ day of _____, 20__ ("Effective Date"), by and between M.L.S. of Naples, Inc., a Florida corporation ("LICENSOR"), and

Constellation Web Solutions _____, a
[Name of Website Vendor Here]

Delaware Corp _____ ("LICENSEE"),
and is subject to the acknowledgment and covenants of

[Name of Participant]

[Name of Participant's brokerage company]
as indicated on the Signature Page below.

WHEREAS, LICENSOR operates a computerized real estate multiple listing service database compilation ("MLS Database Compilation") for the benefit of its Participants and Subscribers.

WHEREAS, LICENSOR'S MLS Database is included within the common database compilation of the multiple listing services and Associations of REALTORS® that are parties to a Southwest Florida MLS Cooperative Agreement (the "Southwest Florida MLS", as defined below), which presently include the LICENSOR and the Bonita Springs-Estero Association of REALTORS®, Inc. and the Cape Coral Multiple Listing Service, Inc. (each referred to as a "Member" and collectively as "Members" as further defined below).

WHEREAS, the Southwest Florida MLS common database compilation includes (i) the MLS Databases of all each of the Members', (ii) certain real estate public records, and (iii) such other property and business related information as the Members deem appropriate ("MLS Database Compilation", as defined below);

WHEREAS, LICENSOR provides an additional service commonly known as the Internet Data Exchange ("**IDX**") program, which permits MLS Participants to display the Active Listings and Closed Sales information contained in the Southwest Florida MLS Database on the Participant's publicly accessible website.

WHEREAS, LICENSEE is engaged in the business of providing computer and other technology products and services ("LICENSEE Services") to LICENSOR'S Participants and Subscribers to enable such persons or entities, among other things, to operate IDX Sites (as defined below), so long as such Sites are under the control of the Participant.

WHEREAS, LICENSEE wishes to be granted a license to access and use the Licensed Data for the purpose of providing functionality to the IDX Sites of LICENSOR'S Participants and Subscribers who are entitled to access the MLS Database Compilation.

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). "Active Listings" shall mean information about real property parcels that are currently on the market and available for acquisition.

(b). "Closed Sales" shall mean information about Active Listings that have subsequently been sold and closed.

(c). "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, and shall also include the following categories of information whether or not a Disclosing Party identifies the information as confidential or proprietary: financial information or records, actual or potential customers, clients or licensees, business strategies and marketing plans, actual or potential merger partners or joint venturers, and computer software programs and software codes, and any documentation associated therewith. 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 seek to quash any demand for disclosure of the Disclosing Party's Confidential Information, or to secure an appropriate protective order.

(d). "Customer" shall mean a consumer or a buyer or seller of real property to whom the Participant electronically provides, or provides access to, real property information as permitted by LICENSOR and the other Members, whether or not such person has formed a brokerage relationship with the Participant.

(e). "Days" means calendar days.

(f). "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.

(g). "Internet Data Exchange" or "IDX" shall mean LICENSOR'S Program that permits LICENSOR'S Participants and Subscribers, subject to LICENSOR'S MLS Rules and Regulations and the other Members' MLS Rules and Regulations, to use the Licensed Data (as defined below), for display to consumers on a section of a publically accessible website ("IDX

Site”) operated by LICENSEE on behalf of, a Participant or Subscriber without any requirement that consumers first register with the Participant or Subscriber, or form any type of brokerage relationship with the Participant before viewing the Licensed Data.

(h). "LICENSEE'S Software" shall mean the computer programs, source and object codes, and documentation created or otherwise owned by LICENSEE that enables direct access to the Licensed Data or accepts the Licensed Data via an export process, including any software the LICENSEE licenses from third parties and embeds into LICENSEE'S Software, or that the LICENSEE sublicenses to its customers, clients, or licensees as a prerequisite to using the functionality provided by LICENSEE'S Software.

(i). "Licensed Data" shall mean the data fields (and the data contained therein) within the MLS Database Compilation that are included within the Real Estate Transaction Standard (RETS) promulgated by the National Association of Realtors®, as currently in effect or as may be amended from time to time, or such other textual material, data, and digital images that LICENSOR and the other Members have authorized to be collected, compiled and entered, or cause to be entered, into the MLS Database Compilation and that LICENSOR and other Members deem appropriate to permit LICENSEE to access for display on Participants' or Subscribers' IDX Sites using the LICENSEE'S Software. The Licensed Data shall include Active Listings and Closed Sales in the MLS Database Compilation, or such greater or lesser content from each Member's MLS Database as specified in the Member's MLS Rules and Regulations, and shall be subject to the right of individual MLS Participants to withhold information about properties listed with the Participant's firm from inclusion within the "Licensed Data" as defined herein to the extent permitted by LICENSOR'S MLS Rules and Regulations or the MLS Rules and Regulations of the other Members. Unless specifically permitted by agreement among the LICENSOR and one or more other Multiple Listing Services that are not Members, the Licensed Data shall not include any data, text or digital images relating to real property listed for sale or rent, or that has been sold, that is submitted by real estate licensees who are Participants in Multiple Listing Services that are not Members. The Licensed Data shall only include the text, data and digital images that a Member's Participants or Subscribers have collected, compiled, and entered, or caused to be entered, into the Members' MLS Databases that LICENSOR and each Member have designated as available for display on MLS Participants' or MLS Subscribers' IDX Sites.

(j). "Link" shall mean a set of software codes that enable the Licensed Data to be viewed at the Participant's IDX site by downloading the Licensed Data to a computer server subject to the control of the Participant.

(k). "LICENSOR'S MLS Rules and Regulations" shall mean those policies, rules, and regulations currently in effect, or as may be amended from time to time, of LICENSOR and the other Members that govern the use of the Licensed Data.

(l). "Members" shall mean those Multiple Listing Services that participate in the Southwest Florida MLS and have entered into a License Agreement with a common database software licensor that permits the Members' MLS Participants and Subscribers to use the MLS Database Compilation pursuant to the Members' MLS Rules and Regulations, and the terms and conditions of the License Agreement.

(m). "Member MLS Database" means the text, data, images and other content submitted by the Member's Participants and Subscribers to the MLS Database Compilation, and such other content as may be submitted to the MLS Database Compilation by the Member, all

of which shall be the proprietary information of the Member and to which the Member shall own all Intellectual Property Rights.

(n). "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 Members' MLS Rules and Regulations.

(o). "MLS Database Compilation" shall mean the combined MLS Databases of each Member, the Intellectual Property Rights in which shall be owned by the Members.

(p). "MLS Rules and Regulations" shall mean the Rules and Regulations currently in effect, or as may be amended from time to time, of any Member that govern the rights and privileges of the real estate professionals or firms that are granted the right to access and use the Member's MLS Database.

(q). "Participant(s)" shall mean a Participant in a Member's MLS, who is an individual participant or a real estate brokerage firm that is managed by a broker (principal) otherwise qualified to participate in a Member's MLS, or an appraisal office that is managed by a Florida licensed, certified or registered appraiser otherwise qualified to participate in a Member's MLS and that have sought and been granted the right by a Member to access and use the MLS Database Compilation for purposes permitted by a Member's MLS Rules and Regulations.

(r). "Server" shall mean the computer server owned or controlled by the Members' database management vendor on which the MLS Database Compilation is maintained.

(s). "Subscriber" shall mean a licensed real estate sales associate or non-principal broker who is employed by, or affiliated with, a Participant and is eligible under a Member's MLS Rules and Regulations to access and utilize the MLS Database Compilation.

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 directly, or indirectly through an export process determined solely by LICENSOR's database management vendor, the Licensed Data (as defined in Section 1(h)) maintained on the Server for the limited purpose of copying such Licensed Data (or derivatives thereof) by using LICENSEE'S Software or Participant's software to enable LICENSEE to use the Licensed Data to provide the LICENSEE Services to support the operation of IDX sites by Participants or Subscribers in the MLS operated by LICENSOR. LICENSEE agrees that it shall use the Licensed Data only to operate IDX sites for bona fide Participants and Subscribers in good standing in LICENSOR's MLS, as determined by LICENSOR. LICENSEE is permitted to use the Licensed Data pursuant to this Agreement to support IDX sites for all offices of a real estate firm that are Participants in LICENSOR's MLS. For the avoidance of doubt, if LICENSEE provides LICENSEE Services to a real estate firm that is a Participant in more than one Member, LICENSEE may only use the Licensed Data pursuant to this Agreement for IDX sites operated on behalf of Participants or Subscribers in LICENSOR's MLS. LICENSEE must secure a separate license agreement with one or more other Members to support IDX sites for Participants or Subscribers in the other Members' MLSs. Participant agrees to immediately inform LICENSEE and LICENSOR if Participant or any Subscriber affiliated with a Participant becomes ineligible to access and use the Licensed Data, and upon receipt of such notice, LICENSEE agrees immediately to terminate the display of the Licensed Data on the IDX Site(s) of the ineligible Participant or Subscriber and

confirm in writing to LICENSOR the date of such termination. If LICENSEE suspects that a Participant is no longer a Participant, or a Subscriber is no longer affiliated with a Participant, and therefore no longer eligible to display the Licensed Data on the Participant's or Subscriber's IDX Site(s), or access and use the Licensed Data, LICENSEE shall immediately inform LICENSOR. If LICENSOR confirms that the individual or firm is no longer a Participant in, or Subscriber to, LICENSOR'S MLS, or if LICENSOR at any time during the term of this Agreement advises LICENSEE that a Participant or any Subscriber for whom LICENSEE operates an IDX site is no longer a Participant or Subscriber in LICENSOR'S MLS, then LICENSEE shall (1) immediately delete the Licensed Data from any IDX Site(s) operated by LICENSEE for the former Participant or Subscriber and cease any further use of the Licensed Data in the operation of such IDX Site(s), and (2) take immediate steps to insure that the former Participant or Subscriber does not have any further access to the Licensed Data through any of the LICENSEE Services. LICENSEE shall immediately inform LICENSOR, in writing, of its cessation of any further use of the Licensed Data in the operation of the former Participant's or Subscriber's IDX Site(s), and that it has taken sufficient steps to prevent the former Participant or Subscriber from accessing the Licensed Data through any of the LICENSEE Services.

(b) LICENSOR and each Member shall have the right to determine, in its sole discretion, the manner in which LICENSEE shall access and receive the Licensed Data from the Member's MLS Database pursuant to the License granted in **Section 2(a)**, and the time periods and frequencies at which LICENSEE, or LICENSEE'S Software, may receive such Licensed Data from the Server. LICENSOR shall provide LICENSEE with access to the Licensed Data from LICENSOR'S MLS Database contained in the MLS Database Compilation, and upon execution of this Agreement, LICENSOR will notify the other Members to provide LICENSEE with permitted access to the Licensed Data from the other Members' MLS Databases contained in the MLS Database Compilation. LICENSOR and each Member shall have the right to control LICENSEE'S access to the Member's respective Licensed Data for the purposes of Section 2(e) below.

(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 basis upon which LICENSOR may amend, modify, limit, or terminate the License granted in **Section 2(a)** shall include, but not be limited to, (1) the preservation and maintenance of the integrity and optimal performance standards of the computer database management software and hardware that provides the core functionality of LICENSOR'S or any Member's MLS Database, or (2) LICENSEE'S use of the Licensed Data in a manner not permitted by this Agreement or any amendment thereto. If LICENSOR amends, modifies, or limits the License granted in **Section 2(a)**, 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) If LICENSEE ceases to provide LICENSEE Services to LICENSOR'S Participants or Subscribers, LICENSEE shall have the duty and obligation to notify LICENSOR at the earliest practical time of such termination of services, and upon receipt of such notification, this Agreement and the License granted in **Section 2(a)** will automatically and immediately terminate.

(e) If LICENSEE or a Participant or Subscriber for which LICENSEE provides LICENSEE Services uses the Licensed Data in any manner that is not in compliance with (1) the uses permitted in **Section 2(a)** or (2) LICENSOR'S or Member's Rules and Regulations or procedures, LICENSOR shall provide LICENSEE and the Participant or Subscriber with written or electronic notice of the non-compliance and the steps LICENSEE or the Participant or Subscriber, as the case may be, must take to cure the non-compliance. Upon delivery of the notice of non-compliance referenced above, LICENSOR shall have the right to suspend immediately LICENSEE'S access to the Licensed Data for use in the delivery of LICENSEE Services in the manner identified in LICENSOR'S non-compliance notice until LICENSEE, Participant or Subscriber cures the non-compliance as determined in by LICENSOR or the Member whose MLS Rules and Regulations were violated in its sole discretion. At such time as LICENSEE, Participant or Subscriber, as the case may be, establishes that the non-compliance has been cured to LICENSOR'S or Member's satisfaction, LICENSOR will restore LICENSEE'S access to the Licensed Data for the benefit of Participant or Subscriber. LICENSEE agrees that for the purposes of this Agreement, LICENSOR or any Member shall have the right to delegate to its executive staff, whether employed or engaged as independent contractors, the power to determine whether LICENSEE, Participant or any Subscriber has engaged in any conduct not permitted by Section 2(a) or this Section 2(e), the appropriate action to be taken by LICENSEE or Participant or Subscriber to cure such non-compliance, and whether LICENSEE or Participant or Subscriber, as the case may be, has cured such non-compliance. LICENSEE and Participant understand and agree that LICENSOR'S and Members' rights to enforce the terms of this Agreement are separate from, and in addition to, any rights LICENSOR or Members may have to impose discipline upon a Participant or an Subscriber pursuant to LICENSOR'S or a Members' MLS Rules and Regulations or any other provisions of LICENSOR'S or Members' governing documents that impose membership duties upon a Participant.

(f). If a Member dissociates from the Southwest Florida MLS, or otherwise ceases to be a Member {"Former Member"}, the Licensed Data shall no longer include any information, text or images submitted to LICENSOR'S MLS Database Compilation by Participants in the Former Member's MLS ("Former Member's MLS Data") as of the effective date of the Former Member's dissociation or termination of its membership in the Southwest Florida MLS unless, prior to the effective date of the Former Member's dissociation or termination, the Former Member executes an agreement with LICENSOR permitting the Former Member's MLS Data to be included in the Licensed Data as defined herein. Upon receipt of written notice from LICENSOR that a Member has become a Former Member and that the Former Member has not authorized its MLS Data to be included in the Licensed Data, LICENSEE shall immediately remove any of the Former Member's MLS Data from any servers or other computer hardware owned or controlled by LICENSEE on which the Former Member's MLS Data may reside, destroy such MLS Data, and provide a written certification to LICENSOR executed by an appropriate officer of LICENSEE attesting that such removal and destruction of the Former Member's MLS Data has occurred.

(g) LICENSEE shall provide LICENSOR with written notice of the names and contact information of the Participant(s) and Subscribers affiliated with such Participant(s) for whom LICENSEE is providing LICENSEE Services that utilize the Licensed Data and the domain name(s) of any and all IDX Sites at which LICENSEE displays the Licensed Data in the course of providing LICENSEE Services to Participants or Subscribers within five (5) Days of LICENSEE'S use of the Licensed Data to deliver the LICENSEE Services to such Participants or Subscribers.

(h) LICENSEE shall, on a quarterly basis, provide LICENSOR with a written report showing the current Participants and Subscribers, and the offices of such Participants and

Subscribers, for whom LICENSEE is providing LICENSEE Services using the Licensed Data, and the domain names of any IDX Site(s) at which LICENSEE is making the Licensed Data accessible visitors to such Sites.

(i) LICENSOR shall provide LICENSEE with a specific LICENSE Number that identifies this Agreement between LICENSOR and LICENSEE. LICENSEE shall include LICENSEE'S License Number in the following notice that must appear on each page of the IDX Site(s) that LICENSEE operates for Participants in, or Subscribers to, LICENSOR'S MLS:

"The data relating to real estate for sale displayed on this Website comes in part from the Broker Reciprocity Program (BR Program) of M.L.S. of Naples, Inc., under License No. [insert LICENSEE'S License Number]. Properties listed with brokerage firms other than [insert name of Participant's firm] are marked with the "BR House" logo. Detailed information about such properties includes the name of the brokerage firm with which the seller has listed the property. The properties displayed may not be all the properties listed with brokerage firms participating in the M.L.S. of Naples, Inc. BR Program, or contained in the database compilation of the M.L.S. of Naples, Inc."

LICENSEE shall display the required "BR Logo" via a hyperlink to <http://www.naplesarea.com/> as provided by LICENSOR.

3. **Term of Agreement.** The term of this Agreement ("Initial Term") shall be one (1) year from its Effective Date. The Initial Term shall automatically renew for an additional one (1) year term ("Renewal Term"), 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 to allow the Agreement to terminate at the end of the existing Term. LICENSOR may terminate this agreement immediately for cause upon written notice to LICENSEE and Participant if LICENSEE or Participant violates the terms of Sections 2, 4, 5, 6, 8, 9, or 16. LICENSOR'S right to terminate this Agreement for cause shall be in addition to any other rights or remedies available to LICENSOR at law or equity under LICENSOR'S or any Member's Rules and Regulations, or other governing documents.

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 any ownership right, title, security interest, or other proprietary interest, or any Intellectual Property Right in the Licensed Data, in the MLS Database Compilation, or in any of the Members' MLS Databases contained therein, or any compilations or derivative works thereof. Apart from the License granted to LICENSEE in **Section 2(a)**, this Agreement also does not confer on LICENSEE any ownership, right, title, security interest or other proprietary interest, or any Intellectual Property Right, in any editorial, images, or advertising content contributed by LICENSOR or an of its Participants or Subscribers 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 or any Member, 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 necessary to enable a Participant to use LICENSEE'S Software for purposes permitted herein), nor use the Licensed

Data for any purpose other than that specified by this Agreement, without the prior consent of LICENSOR or of the Member whose MLS data it is. If LICENSEE does any of the above, this Agreement shall immediately terminate.

6. **No Right to Relicense or Resell Licensed Data.** LICENSEE shall use the Licensed Data solely for the permitted purpose in conjunction with LICENSEE'S Software. LICENSEE shall not resell, loan, swap or exchange the Licensed Data or any portion thereof without LICENSOR'S, or the Member whose MLS data it is, express written consent, which consent LICENSOR, or the Member, may withhold at its sole discretion.

7. **LICENSEE'S Duty to Maintain and Support Its Products and Services.** LICENSOR shall not have any duty whatsoever to LICENSEE, or to LICENSEE'S customers, clients or licensees with respect to the performance, support, or functionality of LICENSEE'S Software and LICENSEE shall be solely responsible for such matters.

8. **Non-Competition of LICENSEE.** LICENSEE shall not use any of the Licensed Data originating from MLS Database Compilation, 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 a Member's MLS. LICENSEE acknowledges that a breach of this non-compete agreement would cause irreparable harm to LICENSOR and to any affected Member. If LICENSEE does any of the above, this Agreement shall immediately terminate. 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.

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 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, or at the option of the Disclosing Party, destroy the Disclosing Party's Confidential Information, and provide the Disclosing Party with a written certificate signed by an officer of the Receiving Party attesting to such destruction..

(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.

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, and any Member, and their directors, managers, members, officers, agents, or employees (for the purpose of this **Section 10** collectively referred to as "Indemnified Parties") subject to the terms and conditions of this **Section 10**, against any and all losses, judgments, or expenses, including attorneys' fees and other defense costs and expenses at trial or on appeal, arising from claims brought by third parties against an Indemnified Party 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 (a) the Licensed Data, as provided by LICENSOR or any Member, contains errors, infringes upon third party Intellectual Property Rights, or is otherwise unlawful, or inaccurate, (b) the MLS Database Compilation containing the Licensed Data infringes upon the Intellectual Property Rights of such third party, or (c) an Indemnified Party has engaged in conduct that constitutes a breach of this Agreement. LICENSEE further agrees that in the event LICENSEE, its directors, managers, members, agents, employees or independent contractors misappropriates, uses, discloses or disseminates information from the MLS Database Compilation for which authorization has not been granted by LICENSOR, any Participant, or any Subscribers affiliated with such Participants, or any Member, LICENSEE will defend, hold harmless and indemnify the Indemnified Party, its directors, managers, members, employees, agents and assigns from and against any and all 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, an Indemnified Party 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 the Indemnified Party (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 an Indemnified Party, which counsel shall be subject to the Indemnified Party's approval, which approval shall not be unreasonably withheld or delayed. In addition to the counsel provided by LICENSEE, an Indemnified Party shall have the right to engage special counsel, at the Indemnified Party's expense, provided that such counsel's role is limited to monitoring and advising the Indemnified Party about the status and progress of the defense or settlement of any matter subject to indemnification under this Section 10.

11. **Sales and Use Taxes.** 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.

12. **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 Participants will license or utilize the LICENSEE'S Services; 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 Server on which the Licensed Data is maintained. LICENSOR shall not be under any obligation to maintain the current hardware or software on which the MLS Data Compilation is maintained or retrieved, nor is LICENSOR obligated to continue to utilize any computer vendor or any other service provider. LICENSOR shall, however, respond to reasonable inquiries from LICENSEE about any changes to the MLS Database Compilation computer hardware or software, or the Server, that may require changes to LICENSEE'S Software or LICENSEE'S products and services.

13. **LICENSEE'S WARRANTY DISCLAIMERS.** AS TO LICENSEE'S SOFTWARE OR SERVICES EXCEPT AS PROVIDED IN **SECTION 14** HEREOF, LICENSEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. **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 Services of LICENSEE that LICENSEE makes available to Participants. To the extent LICENSEE'S Software or Services 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 Software or LICENSEE'S Services, and that such use does not infringe on the Intellectual Property Rights of any third party or on the Intellectual Property Rights of LICENSOR.

15. **LIMITATIONS OF LIABILITY.** INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER PROVISION OF THIS AGREEMENT, OTHER THAN FOR INFRINGEMENT OF INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS, AND THE TERMS OF **SECTIONS 8, 9, AND 10** OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON THAT CLAIMS RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) 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 WARRANTY OR OTHER TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THIS PARAGRAPH HOWEVER SHALL NOT LIMIT EITHER PARTY'S RIGHT TO ENFORCE CLAIMS FOR VIOLATION OF ITS INTELLECTUAL PROPERTY RIGHTS, OR PROPRIETARY RIGHTS, CLAIMS RELATING TO ANY PROHIBITED DISCLOSURE OF ITS CONFIDENTIAL INFORMATION, OR CLAIMS RELATING TO ANY PROHIBITED USE OF THE OTHER PARTY'S CONFIDENTIAL INFORMATION, LICENSED DATA, PROPRIETARY RIGHTS, OR INTELLECTUAL PROPERTY RIGHTS.

16. **License Fees.** In consideration for the License granted to LICENSEE in **Section 2(a)**, LICENSEE shall pay to LICENSOR a one-time set up fee in the amount of \$250.00, and an annual license fee in the amount of \$500.00. The set-up fee and the first annual license fee shall be due on the Effective Date of this Agreement, and the annual license fee for each subsequent year shall be due on the corresponding day of each year thereafter. In the event any license fee payment is not received by LICENSOR within five (5) Days of the date such payment is due, LICENSOR may either (1) terminate LICENSEE'S access to the Licensed Data immediately upon written notice to LICENSEE until such payment is received or (2) terminate this Agreement and the License granted in **Section 2(a)** immediately upon written notice to LICENSEE.

17. **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. If delivered to the facsimile address set forth herein, notice shall be deemed given with a facsimile receipt that the sent facsimile was successfully sent. If delivered by email, the notice shall be deemed given when sent to the email 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

M.L.S. of Naples, Inc.
1455 Pine Ridge Road
Naples, Florida 34109
Attn: Marty Manion
Facsimile: 239-597-7725
E-Mail: marty@nabor.com

With a copy to:

Arnstein & Lehr LLP
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606-3910
Attn: Robert D. Butters
Facsimile: (312) 876-0288
E-Mail: RDButters@Arnstein.com

If to LICENSEE

[Name of Licensee Here] Constellation Web Solutions

[Street] 6737 W. Washington Street, Suite 2120

[City, State, Zip] Milwaukee, WI 53214

Attn: Dan Dhy

Phone: 425-636-6910

E-Mail: brokersolutions@constellationws.com

18. **Choice of Law.** This Agreement will be interpreted and enforced in accordance with the law of the State of Florida applicable to agreements made and performed entirely in that state by persons domiciled therein. Any suit to enforce this Agreement or any provision thereof will be brought exclusively in the state or federal courts whose territorial jurisdiction includes Collier or Lee Counties, Florida.

19. **Miscellaneous.** As to the subject matter of this Agreement, this document constitutes the entire and exclusive Agreement between the parties and supersedes all other communications, agreements or undertakings, whether written or oral. This Agreement may be amended or modified only in writing executed by both parties. 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.

20. **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.

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

22. **Assignment.**

(a) No party may assign any right under this Agreement and any purported assignment will be null and void and a breach of this Agreement, except for the following or as otherwise provided herein.

(b) Either party may assign some or all of its rights and/or delegate some or all of its obligations under this Agreement with the express prior written consent of the other party, which may be granted or withheld in the other party's sole discretion.

(c) Any party may assign all of its rights and obligations under this Agreement indivisibly to a parent company, subsidiary or affiliate of the party with notice to, but without the consent of, the other party. The assigning party's parent company, subsidiary or affiliate must agree in writing to comply with the assigning party's obligations under this Agreement and to be bound by this Agreement.

(d) Either party may assign all of its rights and obligations under this Agreement indivisibly in connection with a sale or other disposition of all, or substantially all, of the assets of that party's business relating to the subject matter of this Agreement to a single acquiring party. The acquiring party must agree in writing to comply with the assigning party's obligations under, and to be bound by this Agreement. The assigning party must provide notice to the other party, but need not secure the consent of the other party to an assignment pursuant to this Section 21(d).

23. **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.

24. **Representation of Counsel; Mutual Negotiation.** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel and will be interpreted in accordance with its terms without favor to any party,

25. **Survival.** The following provisions of this Agreement shall survive for a period of five (5) years after the expiration or termination of this Agreement: 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, and 25.


26. **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 photo-static copy of any executed original will be admissible in evidence for all purposes in any proceeding as between the parties.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below;

LICENSEE:

[Insert Name of Licensee Here] Constellation Web Solutions Date: _____

By: 
(Signature)

Printed Name: Dan Dlh

Title: Data & Compliance Manager

LICENSOR:

M.L.S. of Naples, Inc., a Florida corporation

By: _____
(Signature)

Printed Name: Marty Manion

Title: Chief Executive Officer

As a registered broker and a Participant of a Member of LICENSOR as defined herein, I hereby (1) give my consent to the execution of this Agreement, (2) represent and warrant to LICENSOR that I or the brokerage company with which I am affiliated has entered into an agreement with LICENSEE pursuant to which LICENSEE will provide Services to me or the company with which I am affiliated and that LICENSEE requires access to the Licensed Data to perform its obligations under such agreement, (3) both I and the company with which I am affiliated shall be liable under the applicable LICENSOR'S or Members' MLS Rules, and at law or equity, for the LICENSEE'S use of the Licensed Data pursuant to this Agreement, and (4) I agree to be bound by all provisions of this Agreement that pertain to me or the company with which I am affiliated, including penalties for noncompliance with LICENSOR'S or Members' applicable Rules and Regulations, and I agree to perform the responsibilities that are mine or the company with which I am affiliated pursuant to this Agreement.

(Insert Name of Broker Office) (Required) Date: _____

(Insert Broker I.D. Number) (Required)

By: _____
(Signature)

Printed Name: _____

Title: _____