

## WEBSITE “SOFTWARE AS A SERVICE” AND HOSTING AGREEMENT

This Website “Software as a Service” and Hosting Agreement (“Agreement”) is made by and between **Real Savvy, Inc.** (“Real Savvy”) and you, the Client (“Client”). Real Savvy and Client may be individually referred to as a “Party” or collectively as the “Parties” to this Agreement. This Agreement has an effective date (the “Effective Date”) as of the date of the invoice, purchase order, or subscription (the “Initial Invoice”) delivered by Real Savvy to Client. Client evidences its intent to be bound by this Agreement by accepting the Initial Invoice.

**This Agreement (v.20180507) is dated May 7, 2018, and supersedes any Website “Software as a Service” and Hosting Agreement dated prior to such date.**

### 1) Hosting and Development of Website.

- a) The Website. Real Savvy will provide design, programming, and other consulting services as necessary to design and develop the Client website (the “Website”) to conform to the specifications set forth in any proposal or statement of work between Real Savvy and Client, where such proposal or statement of work has been agreed to and signed by both Real Savvy and Client. The Parties acknowledge that the Website will incorporate intellectual property that is proprietary to each of the Parties. The Website may include a “Powered by RealSavvy” notice, or a substantively equivalent notice, and a hypertext link to the Real Savvy Website.
- b) Website Features, Functionality.
  - i) As part of the Website features and functionality, Real Savvy will integrate the design and front-end elements of the Website with Real Savvy’s proprietary back-end CRM functionality that incorporates full IDX integration and other standard features and functionality (the “Real Savvy Technology”). The Real Savvy Technology also includes any programming necessary to integrate the Real Savvy Technology into the Website, as well as Real Savvy’s pre-existing design elements, templates, and any other pre-existing code proprietary to Real Savvy.
  - ii) Real Savvy shall, at all times, retain title in and to the Real Savvy Technology. Real Savvy grants Client a nonexclusive right and license to use the Real Savvy Technology solely as a “software as a service” in furtherance of the provision of the Website to Client and to Client’s Website Users (as defined below).
  - iii) Real Savvy will enhance and update the Real Savvy Technology from time to time and will make such enhancements and updates available to Client without additional charge upon commercial release by Real Savvy. Real Savvy will not diminish the features and functionality of the Real Savvy Technology as integrated with the Website without Client’s prior written consent.
- c) Hosting of the Website.
  - i) Real Savvy will provide the infrastructure and network capacity and availability to host the Website. Other than scheduled maintenance, the Website will be available via web access 99.9% of the time. Real Savvy will advise Client in advance of scheduled maintenance windows, and will use reasonable efforts to schedule such downtime during non-business hours.
  - ii) Real Savvy will implement and maintain current industry standard measures to protect the security of the Website. Real Savvy will promptly notify Client of any unauthorized intrusion or access to the equipment, networks, or software supporting the Website that affects or compromises or is likely to have compromised the security or performance of the Website or any Client data or content included therein. Real Savvy will maintain regular backups of the Website.
- d) Service Requests. Client will submit change orders and other service requests with respect to the

Website to Real Savvy's designated contact. Real Savvy will respond to all such service requests and change orders within five (5) business days of Client's submission. Real Savvy cannot warrant that such service requests and change orders will be completed during this five (5) business day period.

- e) Technical Support. Real Savvy will make technical support resources available to Client and Client's users via online chat and email during the hours of 8 a.m. to 6 p.m. CST, Monday through Friday.
  - f) No License or Assignment. Nothing in this Agreement shall be construed as Real Savvy granting Client a license to, the assignment of, the right to develop a derivative work from, or the right to obtain a copy of the software component of the Real Savvy Technology used to host or provide the Website.
  - g) Third-Party Ads. The Website will not display third-party ads. Client may request Real Savvy to modify the Website to provide third-party ads but any such modifications will be subject to a proposal by Real Savvy.
- 2) Terms of Use and Privacy Policy on Website. The terms of use and privacy policy on the Website (collectively, the "Terms Of Use") will govern use of the Website by third party users who use the Website, who have registered to use the Website, or who have established a business relationship with Client or one of Client's real estate agents (collectively the "Website Users"). The Terms of Use shall clearly indicate that use of the Website is governed under the Terms of Use and that the Terms of Use is made by and between Client and the Website Users.
- 3) Client's Content.
- a) Proprietary Nature of Client's Content. The Website will host electronic files and information pertinent to Client's proprietary brand and business endeavors (the "Client's Content"). Client's Content will include the logos, marks, and other brand identifiers of Client. Client's Content may include agent biographies and information related to Client's company background. Client shall at all times retain all ownership right, interest, and title in the Client's Content. Client hereby grants Real Savvy a limited, non-exclusive, non-transferable license, during the term of this Agreement, to use, copy, and modify the Client Content solely to the extent required for performance of its obligations to Client hereunder.
  - b) Confidentiality.
    - i) Real Savvy shall use its best commercial efforts to protect Client's Confidential Information as confidential, excepting that Real Savvy may disclose the Confidential Information or portions thereof to those of its employees, consultants, independent or third party consultants, independent contractors and representatives of its affiliates and agents (collectively "Representatives") who need to know such information for the sole purpose of performing the services related to the Website.
    - ii) The term "Confidential Information" shall mean any information labeled as "confidential" by Client when such information is delivered to Real Savvy. "Confidential Information" shall include information related to Client's customers and leads uploaded to Real Savvy's customer relationship management (CRM) system that operates in conjunction with the Website.
    - iii) Confidential Information shall not include any information which (a) at the time of disclosure or thereafter is generally available to and known by the public (other than a result of a disclosure directly or indirectly by Real Savvy or its Representatives), (b) was available to Real Savvy or its Representatives on a nonconfidential basis from a source other than Client, provided that such source is not and was not bound by a confidentiality obligation owed to Client, (c) has been independently acquired or developed by Real Savvy or its Representatives without violating any of its obligations under this Agreement, or (d) Client has specifically approved a release by Real

Savvy or its Representatives in writing.

- iv) Real Savvy agrees that it will not use Client's Confidential Information in any manner, other than solely in connection with performing the services related to the Website.
  - v) All Confidential Information remains the property of Client and this Agreement shall not be interpreted as an assignment of Confidential Information to Real Savvy.
- 4) Local Association of Realtors. The Website may be required to include notices or other information as required by the Client's local association of realtors or local real estate association. Aspects of the Website's design may be determined by rules set forth by the Client's local association of realtors or local real estate association.
- 5) Term. This Agreement's term shall commence on the Effective Date and shall continue according to the subscription terms of the Initial Invoice. This Agreement will auto-renew for subsequent terms, if any, according to the subscription terms of the Initial Invoice.
- 6) Consideration.
- a) Payments. As consideration under this Agreement, Client will pay the payments (each a "Payment") to Real Savvy set forth in the Initial Invoice according to the payment terms of the Initial Invoice. Client will pay the payments to Real Savvy set forth in any subsequent invoices according to the payment terms of the subsequent invoices.
  - b) Commencement of Work. Real Savvy shall have no obligation to begin development of the Website until after receipt of payments identified as set-up fees in the Initial invoice.
  - c) Website "Go-Live." Client agrees that, should the Initial Invoice or any subsequent invoice indicate that the Website shall not "go live" until after Real Savvy receives payment of the Initial invoice or such subsequent invoice, the Website shall not "go live" until after Real Savvy receives such payment.
  - d) Modifications. If Client deserves modifications to the Website beyond its basic functionality then Client will submit, in writing, a description of the desired modifications. Real Savvy will submit a proposal with the proposed costs of such modifications and any such modifications will be subject to a separate invoice. Such proposal will include additional fees for such modifications.
  - e) Subsequent Renewal Terms. For the development and hosting of the Website during any subsequent term(s), Client will pay to Real Savvy the amount(s) invoiced on subsequent invoice(s) according to the payment terms of such invoice(s).
  - f) Realtor Association Payment(s). In addition to the payments described on the Initial Invoice and any subsequent invoices, Client will remit payments to Real Savvy equal to any IDX or Virtual Office Website annual fee charged to Real Savvy by Client's local association of realtors or local real estate association.
  - g) Disputes Regarding Invoices. In the event of any disputed charges or fees on the Initial Invoice or any subsequent invoices, Client shall timely pay all undisputed amounts as invoiced and provide a written description of the disputed amounts for which payment has not been made, and the Parties will make good faith efforts to promptly resolve the dispute.
- 7) Limitation of Liability.
- a) Claims. Neither Party may assert a claim against the other Party after the later of (i) two (2) years after the termination, expiration, or cancellation of this Agreement, or (ii) two (2) years from the date that the claiming Party has or should have actual knowledge of the facts giving rise to such claim. This Section shall survive any termination, expiration, or cancellation of this Agreement.

b) Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, ADDITIONAL OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE UNDER, OR OTHERWISE ARISING IN CONNECTION WITH, THIS AGREEMENT. The maximum liability that Real Savvy may incur under this Agreement is equal to the amounts paid by Client under this Agreement. This Section shall survive any termination, expiration, or cancellation of this Agreement.

8) Representations and Warranties; Indemnification.

a) Representations by the Parties. Each Party represents and warrants that it is duly organized and validly existing under the laws of the jurisdiction in which it was formed and has all governmental authorizations required to carry on its business as now conducted. Each Party represents and warrants that its execution of this Agreement and its required performance under this Agreement are within its powers and that this Agreement constitutes a valid and binding agreement enforceable in accordance with its terms (except where such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws).

b) Representations by Client. Client hereby represents and warrants that it holds title in and to the Client's Content and has the power to license the Client's Content to Real Savvy for display on the Website. To the best of Client's knowledge, the Client's Content does not violate or infringe upon the intellectual property rights of any third party.

c) Indemnification.

i) Each Party shall defend, indemnify and hold harmless the other Party (and the other Party's officers, directors, agents, and employees) from and against any and all obligations or liabilities, including without limitation, any and all claims, losses, damages, debts, injuries, objections, assertions, proceedings, actions, judgments costs and expenses (including reasonable attorney fees) in connection with a third party claim, demand, or cause of action arising out of a breach or alleged breach of the indemnifying Party's representations or warranties under Section 8(a) of this Agreement or otherwise arising from the indemnifying party's gross negligence or willful misconduct.

ii) Client shall defend, indemnify and hold harmless Real Savvy (and Real Savvy's officers, directors, agents, and employees) from and against any and all obligations or liabilities, including without limitation, any and all claims, losses, damages, debts, injuries, objections, assertions, proceedings, actions, judgments costs and expenses (including reasonable attorney fees) in connection with a third party claim, demand, or cause of action arising out of any claims made by any third party alleging that Client's Content infringes its intellectual property rights.

iii) In claiming any indemnification under this Agreement, the indemnified Party will promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of this indemnity. The indemnifying Party may, at its own expense, assist in the defense of any such claim, provided that the indemnified Party controls such defense and all negotiation relative to the settlement of any such claim and that any settlement intended to bind the indemnifying Party will not be final without the indemnifying Party's written consent, which shall not be unreasonably withheld.

d) Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS PROVIDED IN SECTION 8(a) OF THIS AGREEMENT, THE WEBSITE AND ALL SERVICES AND SOFTWARE PROVIDED BY REAL SAVVY TO CLIENT ARE PROVIDED "AS-IS" AND REAL SAVVY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. REAL SAVVY MAKES NO WARRANTY

THAT THE WEBSITE IS SECURE FROM "HACKING" OR THAT THE WEBSITE WILL PERFORM WITHOUT INTERRUPTION OR ERROR. Notwithstanding this warranty disclaimer, Real Savvy shall exert its best commercial efforts to cause the Website to operate properly.

9) Termination.

- a) Termination for Bankruptcy. In the event either Party be adjudicated as bankrupt or insolvent, files a voluntary petition for bankruptcy, files an arrangement with creditors to take advantage of any insolvency law, or is liquidated by any state or federal regulatory agency, this Agreement shall automatically terminate.
- b) Termination for Non-Payment. Real Savvy shall have the right to terminate this Agreement if Client does not pay the Initial Invoice, any subsequent invoices, or any fee or charge when due and such failure continues for a period of thirty (30) days after Real Savvy gives written notice thereof. This provision shall not apply to a fee or charge that has been disputed by Client.
- c) Termination for Cause. Either Party shall have the right to terminate this Agreement in the event of a material breach of this Agreement by the other Party and failure of the breaching Party to cure such breach within thirty (30) days after receipt of written notice specifying the breach claimed.
- d) Termination with Notice.
  - i) Client shall have the right to terminate this Agreement with thirty (30) days written notice.
  - ii) Upon any termination by Client, Real Savvy will not be required to issue any refunds to Client for any payments or invoiced amounts (including invoiced annual subscriptions) unless an invoice or signed Statement of Work indicates otherwise. Should any conflict arise between this Agreement and an invoice or signed Statement of Work as pertains to refunds or cancellation of invoices, the invoice or signed Statement of Work shall control.
- e) Termination by Real Savvy.
  - i) Real Savvy reserves the right to terminate this Agreement with thirty (30) days written notice.
  - ii) Upon any termination by Real Savvy, Real Savvy will, unless a signed Statement of Work indicates otherwise (in which case such signed Statement of Work will control), refund a pro-rated amount of any payment received if such payment represented hosting for a yearly period. The pro-rated amount will be calculated by dividing the relevant payment by twelve (12) and multiplying such quotient by the months remaining in the yearly period in which the termination occurred. Notwithstanding the foregoing, setup fees are not refundable.
- f) Website Status upon Termination. Upon any termination, cancelation, or expiration of this Agreement, Real Savvy shall have no further obligation to host the Website and the functionality of the Website shall cease. In connection with any termination or expiration of this Agreement and subject to Client's payment of applicable charges, Real Savvy will, if requested by Client in writing, provide Client or Client's contractor general specifications relating to the layout and formatting of the Website for migration to Client's subsequent website.

10) Miscellaneous.

- a) Use of Subcontractors. Nothing herein shall be deemed to prohibit Real Savvy's use of subcontractors to perform its obligations to Client. Notwithstanding the foregoing, Real Savvy shall remain at all times directly responsible to Client for performance of all Real Savvy covenants and obligations.

- b) Force Majeure. Each Party shall be excused from performance and shall have no liability for any period and to the extent that such Party is prevented or delayed from performing any services or other obligations under this Agreement as a result of third party nonperformance; failure or malfunction of computer or systems not under the control of Real Savvy or Real Savvy's contracted hosting services provider; failure or malfunction of telecommunications systems not under the control of Real Savvy or Real Savvy's hosting services provider, including the systems of wireless telecommunications carriers; breach or other nonperformance by either Party's vendors or suppliers, strikes or labor disputes; war; terrorist acts; fire; acts of God; governmental regulations; or other events which are beyond the reasonable control of such Party.
- c) Waiver. The failure of either Party to enforce at any time any provision of this Agreement or to exercise any right herein provided shall not in any way be construed to be a waiver of such provision or right and shall not in any way affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of such Party subsequently to enforce such provision or exercise such right.
- d) Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws, and venue for any actions pertaining to this Agreement shall be exclusively in the courts of law in Travis County, Texas.
- e) Entire Agreement. This Agreement represents the entire understanding between the Parties with respect to the matters contained herein. The Parties may amend this Agreement by written amendment signed by the duly authorized representative of each Party.
- f) Survival. The provisions of this Agreement described as surviving any termination or cancellation of this Agreement shall survive.
- g) Notices. Any notice required or permitted hereunder shall be in writing and may be given by personal service, by depositing same in the United States mail, first class postage prepaid, by overnight delivery service, or by electronic means.
- h) Binding Effect/Assignment. This Agreement is binding on the Parties and their respective successors and assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- i) Severability. If any provision of this Agreement, or the applicability of such provision to any Person or circumstance, shall be determined to be invalid by any court of competent jurisdiction, such provision shall be altered to the extent necessary to render it valid and enforceable, consistent with the parties' intentions, and the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law or equity.