

# Dodge Data & Analytics Master Services Agreement

This Master Services Agreement ("MSA"), together with the provisions set forth on the order form (the "Order Form") to which this MSA is attached (collectively, this "Agreement"), governs all Services (as defined in Section 1 of this MSA) ordered by the entity named in the Order Form ("Customer") that duly executes the Order Form and delivers it to Dodge Data & Analytics, LLC ("DDA"). The DDA Terms of Use posted on its website at [www.construction.com](http://www.construction.com) are incorporated in and made a part of this Agreement, provided that if there is any manifest conflict between the Terms of Use and this Agreement, the provisions of this Agreement shall control. Customer and DDA are sometimes in this Agreement referred to individually as a "Party" and collectively as the "Parties."

**1. Products & Services** (a) DDA will use commercially reasonable efforts to furnish the reports, products, data, software, advertising, printing and/or other services selected by Customer ("Services") and set forth on the Order Form. The Services will be furnished by or on behalf of DDA and/or its licensors, vendors and suppliers ("Licensors").

(b) Subject to the terms and conditions of this Agreement, DDA hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license for the term of this Agreement in the United States to permit Authorized Users to access and use (i) the object code version of the software and related documentation (if any) identified on the Order Form ("Software") and/or (ii) the information, data, documents, plans, specifications and addenda (if any) included as part of the Services and identified on the Order Form ("Data"), solely for the internal business purposes of customer and its Affiliates (the "License"). "Authorized User" means an employee of Customer or an employee of an Affiliate of Customer who Customer authorizes to use the Services on behalf of Customer or such Affiliate. The total number of Authorized Users shall be as specified on the Order Form. "Affiliate" means any majority-owned subsidiary of Customer and any other Person that is controlled by Customer or by Customer and one or more Affiliates of Customer and is specified on the Order Form. "Control" means the power, through the ownership of stock or other equity interests, by contract or otherwise, to direct the management and policies of such Person. Customer shall be fully responsible for the actions of its Affiliates and Authorized Users and for any breach of this Agreement by any of its Affiliates or any Authorized User.

(c) An Authorized User may not share his or her password or ID. Neither Customer nor any of its Affiliates will represent itself as any other party or otherwise provide any false or misleading information. No portion of the Services may be: (i) copied, modified, sold, licensed or sub-licensed, or disclosed, published, distributed, transferred or otherwise made available to any other Person in any way, without DDA's prior written consent, which consent DDA may provide or withhold in its sole discretion; or (ii) used in any manner that competes with DDA and/or the Services. DDA reserves the right to monitor the use of the Services by Customer, its Affiliates and Authorized Users in order to determine compliance with this Agreement.

(d) DDA may modify, add to or delete the Services or portions thereof, or change the media or the format of the Services, at any time in its sole discretion without liability to Customer, its Affiliates, any Authorized Users and/or any other Person. To the extent commercially practicable, DDA will provide Customer with notice of any material change in the Services. Upon using Services after receipt of notice of any modification, addition or deletion, Customer shall be deemed to have accepted and agreed thereto, provided that if a modification, addition or deletion substantially and adversely affects the functionality of the Services for Customer, Customer may within seven (7) days after receipt of such notice terminate this Agreement.

**2. Customer Content** (a) If specified on the Order Form, Customer shall provide DDA with certain content, information and/or materials owned or licensed by Customer or its Affiliates ("Customer Content"). In addition, or alternatively, Customer shall provide DDA with a URL so that DDA can use its automated content collection technology and other processes periodically to collect Customer Content from Customer's (or such Affiliate's) Web site. Customer shall be fully responsible for the operation and maintenance of any such Web site and DDA shall have no liability in the event it is unable to access the Web site at any time. The Customer Content shall either be: (i) hosted by DDA on behalf of Customer or such Affiliate in connection with Customer's or such Affiliate's use of the Services ("Hosted Content"); or (ii) displayed, disclosed, published, distributed, transferred or otherwise made available (collectively, "Transferred" or "Transfer," as applicable) to any other Person by DDA ("Distributed Content"). Customer hereby authorizes DDA to host the Hosted Content in connection with Customer's or such Affiliate's use of the Services; and to Transfer the Distributed Content through DDA's products and services as well as through the products and services of DDA's Licensors, resellers and distributors.

(b) Customer represents and warrants that: (i) the Customer Content will be free of material errors, (ii) Customer or its Affiliates own or possess sufficient rights to the Customer Content to provide it to DDA pursuant to this Agreement and to allow DDA to use the Hosted Content, and to use and Transfer the Distributed Content, without violating the intellectual property, privacy or other proprietary rights of any third Person or any agreement or other commitment that is binding on Customer or any of its Affiliates; and (iii) the Customer Content will be free from viruses, "worms," "malware" or destructive properties (collectively, "Harmful Code"). DDA has the right, but not the obligation, to screen the Customer Content for Harmful Code, but in no event shall DDA be liable for any damage caused to Customer, any of its Affiliates or any Authorized User, or any other Person, by Harmful Code. Customer is solely responsible for the form, content and quality of all Customer Content, including the accuracy and completeness thereof. Customer, each of its Affiliates and each Authorized User assumes all risks of any use or Transfer of Customer Content by DDA. DDA and its Licensors shall not be liable for any use or Transfer of Customer Content or for any loss, damage or destruction of any Customer Content, or for the replacement of any thereof. DDA reserves the right to limit disk space for data hosted by or on behalf of Customer.

(c) DDA reserves the right to decide in its sole discretion which portions of the Customer Content (if any) will be classified, indexed or transferred. DDA has the right, but not the obligation, to edit or exclude any Customer Content that DDA deems in its sole discretion to be in any way (i) inaccurate, (ii) in violation of the intellectual property, privacy or other proprietary rights of any third Person, (iii) misleading, disparaging, defamatory, obscene or invasive of privacy, or (iv) otherwise offensive, inappropriate or unlawful.

**3. Fees and Charges** (a) Customer agrees to pay DDA's fees for the Services set forth on the Order Form ("Fees"), as well as any applicable taxes (other than taxes on DDA's income), upon receipt of each invoice. DDA may increase or decrease the Fees at any time with or without prior notice, effective as of the next Renewal Term, if any. DDA may charge the Customer one and one-half percent (1.5%) per month on all past due amounts.

(b) If Customer elects to pay for the Services by credit card, Customer hereby authorizes DDA to charge Customer's credit card for the amount of the Fees set forth in each invoice, plus applicable sales tax and other charges. DDA will send the Customer an acknowledgement of any charges to the Customer's credit card account.

(c) All Fees payable under this Agreement shall be non-refundable, except that DDA shall refund any Fees paid for future Services in the event Customer terminates this Agreement pursuant to Section 1(d) or DDA terminates this Agreement pursuant to Section 9(d)(iii), and except as provided in the last sentence of section 7.

**4. Term/Termination** (a) This Agreement shall become binding on Customer when Customer has returned a duly executed counterpart of this Agreement to DDA and its account has been determined to be in good credit standing by DDA. DDA reserves the right to withhold granting of credit and may require prepayment, in whole or in part, for any or all Services.

(b) Services will commence as of the "Effective Date" stated on the Order Form, subject to credit approval, and shall continue for the Initial term specified on the Order Form (the "Initial Term"). Services cannot be cancelled by Customer during the Initial Term, except pursuant to Section 1(d). This Agreement will automatically renew for consecutive renewal terms, if any, as specified on the Order Form (a "Renewal Term," together with the Initial Term, the "Term"), subject to credit approval, unless a written termination notice is provided by either Party at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.

(c) DDA may terminate this Agreement and/or cease delivery of one or more Services at any time, with or without notice to Customer, in the event of any material breach of this Agreement by Customer, any of its Affiliates or any Authorized User and/or any agents thereof, as determined by DDA in its reasonable discretion. For the avoidance of doubt, failure to pay Fees when due shall constitute a material breach of this Agreement by Customer.

(d) Upon any termination of this Agreement and/or any Services, Customer shall immediately discontinue all use of the Services and shall destroy all copies of the Software and Data, including all copies, adaptations and merged portions thereof in any form, then in the possession or under the control of Customer, any of its Affiliates or any Authorized User and/or any agents thereof. Upon request, Customer shall certify such destruction to DDA.

(e) Sections 2(b), 3(a), 3(c), 4(d), 5, 6, 7, 8, 9, 10 and 11 shall survive the expiration or termination of this Agreement.

**5. Ownership Rights** As between DDA and Customer, all Services are proprietary to and owned exclusively by DDA and/or its Licensors and are protected by applicable laws, including copyright, trademark and trade secret laws. Neither Customer, any of its Affiliates nor any Authorized User has any right, title, license of other interest in, to or under any of the foregoing, other than the License. All rights not expressly granted to Customer in this Agreement are reserved exclusively to DDA and/or its Licensors. Customer shall take reasonable actions to protect the rights of DDA and its Licensors in the Services. For the avoidance of doubt, any reference in this Section 5 to the Services includes all Software, Data and other deliverables included therein.

**6. Certain Representations, Warranties, Covenants and Agreements of Customer.** (a) Customer hereby represents and warrants that (i) it is duly authorized to enter into and to perform its obligations under this Agreement; (ii) neither the execution, delivery nor performance of this Agreement by Customer does or will conflict with, violate, breach or cause a default under any agreement or commitment by which it is bound or any law, rule or regulation to which it is subject; and (iii) the use of the Services by Customer, its Affiliates and Authorized Users does not and will not violate the intellectual property, privacy or other proprietary rights of any third Person.

(b) Customer hereby covenants and agrees that it, its Affiliates and all of its Authorized Users will comply in all material respects with all federal, state, local and foreign laws, rules and regulations applicable to the performance of its obligations under this Agreement and its use of the Services and that neither it, any of its Affiliates nor any Authorized User shall (i) modify, reverse engineer, decipher, disassemble or decompile the Services or any portion thereof; (ii) disable any licensing or control features of the Services or any portion thereof; (iii) remove or modify any trademark, service mark, logo, copyright or other proprietary notices relating to the Services or use any of the same except as part of its use of the Services in accordance with the terms and conditions of this Agreement; (iv) create derivative works that are based on any portion of the Services; (v) probe, scan or test the vulnerability of any DDA system or network or breach or otherwise compromise any of DDA's security or authentication measures; (vi) avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by DDA to protect DDA services or information stored by DDA; (vii) access or search DDA services or the information stored by DDA through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the Software and search engines provided by DDA or web browsers generally available to the public; (viii) interfere with any other user's access to DDA services, whether by sending Harmful Code, overloading, flooding, spamming or mail-bombing, or otherwise; (ix) access the account or information of any other user of DDA services; or (x) reproduce, copy, sell, resell, assign, sublicense or otherwise commercially exploit any of the Services other than in connection with the internal use of the Services by Customer and its Affiliates in the ordinary course of their respective businesses.

**7. Disclaimer of Warranties** DDA and its Licensors do not represent, warrant or guarantee that the Services will be error-free, complete or accurate or uninterrupted. ALL SERVICES ARE PROVIDED "AS IS," AND "WHEN AVAILABLE." DDA AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT OF ANY THIRD PERSON'S INTELLECTUAL PROPERTY, PRIVACY OR OTHER PROPRIETARY RIGHTS. NEITHER DDA NOR ITS LICENSORS REPRESENT OR WARRANT THAT THE RESULTS TO BE OBTAINED BY USE OF THE SERVICES WILL BE USED OR USEFUL TO, OR MEET THE NEEDS OR EXPECTATIONS OF, CUSTOMER OR ANY OF ITS AFFILIATES. Customer assumes all risks of selection and use of the Services, including that the Services will be compatible with or usable in connection with the hardware, software or systems of Customer or any of its Affiliates. DDA's sole obligation and Customer's sole remedy for defective Services shall be for DDA, at DDA's option, to re-perform the defective Services or to refund the amount paid by Customer for the defective Services, provided that Customer, its Affiliates and Authorized Users and their agents are not in breach of this Agreement.

**8. Limitation of Liabilities** IN NO EVENT SHALL DDA OR ITS LICENSORS OR CUSTOMER BE LIABLE FOR MONETARY DAMAGES UNDER THIS AGREEMENT (REGARDLESS OF THE LEGAL THEORY) IN AN AMOUNT GREATER THAN THE FEES PAID OR PAYABLE BY CUSTOMER WITH RESPECT TO THE SERVICES PROVIDED BY DDA DURING THE THREE (3) MONTHS PRIOR TO THE DATE THAT THE CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN, PROVIDED THAT THIS SENTENCE SHALL NOT LIMIT THE OBLIGATION OF CUSTOMER TO PAY IN FULL, WHEN DUE, ALL FEES PAYABLE BY IT PURSUANT TO THIS AGREEMENT. NEITHER DDA NOR ITS LICENSORS NOR CUSTOMER WILL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOST OPPORTUNITY COSTS) OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. No action, suit or other proceeding may be brought by or on behalf of DDA, Customer or any of Customer's Affiliates under this Agreement or otherwise more than one year after the cause of the action has accrued. The limitations on monetary liability and the exclusion of certain damages set forth above in this Section 8 shall not apply to a Party's indemnification obligations under Section 9. DDA and its Licensors, resellers and distributors shall have no responsibility or liability for errors or omissions in or the quality, accuracy or completeness of any Customer Content.

**9. Indemnification** (a) Customer shall defend, indemnify and hold harmless DDA, its affiliates and Licensors and their respective directors, managers, officers, employees and agents (collectively, the "DDA Indemnitees") from and against any and all third Person claims, demands and actions, suits and other proceedings with respect thereto, judgments, settlements, losses, liabilities, damages, costs and/or expenses (including reasonable attorneys' fees) (collectively "Claims") arising or resulting from or in connection with or relating to: (i) any breach of this Agreement by Customer, any of its Affiliates or any Authorized User; (ii) any unauthorized use of the Services or any portion thereof by Customer, any of its Affiliates or any Authorized User; (iii) the infringement of such third Person's intellectual property rights as a result of the use of the Services or any portion thereof by Customer, any of its Affiliates or any Authorized User; or (iv) the Customer Content and/or any other content, materials, data or information provided to DDA or its Licensors by or on behalf of Customer.

(b) DDA shall defend, indemnify and hold harmless Customer, its Affiliates and their respective directors, managers, officers, employees and agents (the "Customer Indemnitees") from and against any and all Claims arising or resulting from or in connection with or relating to the infringement of such third Person's intellectual property rights as a result of the provision of the Services by DDA pursuant to this Agreement, provided that Customer (i) promptly notifies DDA of such third Person Claim and permits DDA to assume the complete defense (including the unconditional right to settle or otherwise compromise such third Person Claim in its sole discretion) with counsel of DDA's choice and (ii) fully cooperates with DDA in such defense at the expense of DDA. Customer shall not settle or otherwise compromise any such third Person Claim without the express prior written consent of DDA. For the avoidance of doubt, DDA's indemnity pursuant to this Section 9(b) does not cover or relate to any Claim that the use of the Services by Customer, any of its Affiliates or any Authorized User, or any modification, change, amendment, customization, or adaptation of any Service not made by DDA, infringes the intellectual property rights of such third Person.

(c) Notwithstanding the provisions of Section 9(b), DDA shall not be liable for any infringement or alleged infringement that results from Customer's failure to implement corrections or changes provided by DDA. (d) If a third Person Claim of infringement for which DDA may be obligated to indemnify Customer Indemnitees pursuant to Section 9(b) has been asserted, or in DDA's opinion is about or likely to be asserted, DDA may, at its option either: (i) procure for Customer the right to continue using the Service; (ii) replace or modify the Service so that it becomes non-infringing; (iii) terminate this Agreement and refund all pre-paid fees covering future use of the Service or (iv) defend the action on Client's behalf pursuant to Section 9(b).

**10. Equitable Relief; Remedies not Exclusive.** Customer acknowledges and agrees that any breach of this Agreement by them may result in material damage to DDA that may not be measurable and would not adequately be compensated by monetary damages. Therefore, in the event of any breach or threatened breach of any provision of this Agreement by Customer, any of its Affiliates or any Authorized User, DDA shall be entitled to seek specific performance, preliminary and permanent injunctive and other appropriate equitable relief without posting any bond and without proving that monetary damages would be an inadequate remedy therefor. The equitable remedies contemplated by this Section 10 shall not be exclusive but shall be in addition to any and all other remedies to which DDA may be entitled under this Agreement, applicable law or otherwise, including the remedy of monetary damages. All such remedies shall be cumulative and not exclusive and the exercise by DDA of any one such remedy shall not preclude the exercise of any one or more other remedies.

**11. Miscellaneous.** (a) This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of New York applicable to contracts made and to be performed entirely in such State. Customer irrevocably consents to the exclusive jurisdiction of the federal and State courts located in the City, County and State of New York for adjudicating all disputes and controversies arising out of or relating to this Agreement, including the breach or alleged breach of this Agreement. Customer acknowledges and agrees that any such court is a convenient forum for the resolution of any such dispute or controversy and agrees not to assert in any forum that another forum is a convenient, or more convenient, forum for the resolution of such dispute or controversy. CUSTOMER HERBY KNOWINGLY AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY SUCH DISPUTE OR CONTROVERSY. FURTHER, CUSTOMER AGREES THAT IT WILL NOT COMMENCE OR PARTICIPATE IN ANY CLAIM BROUGHT AS ANY TYPE OF CLASS, COORDINATED OR AGGREGATED SUIT, ACTION OR OTHER PROCEEDING OR RECEIVE OR RETAIN, DIRECTLY OR INDIRECTLY, AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES AND RELEASES ANY RIGHT TO RECEIVE OR RETAIN, ANY MONETARY OR OTHER BENEFIT AS A RESULT OF ANY SUCH SUIT, ACTION OR OTHER PROCEEDING.

(b) This Agreement is the complete agreement between the Parties with respect to Services, excludes any document or purchase order issued by Customer and supersedes any and all prior or contemporaneous representations, understandings, commitments or agreements by a Party or between the Parties, whether written (including by e-mail) or oral.

(c) This Agreement shall inure to the benefit of DDA and Customer and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement other than DDA's Licensors, Customer's Affiliates set forth on the Order Form, the DDA Indemnitees and the Customer Indemnitees.

(d) Neither DDA nor any Licensor is responsible or liable for events or circumstances beyond its reasonable control.

(e) This Agreement may only be modified, and a provision of this Agreement, or any breach of this Agreement, may only be waived, in a writing that expressly sets forth such modification or waiver and is signed by an authorized person of each Party. No waiver of any provision or breach of this Agreement is a continuing waiver. No delay in enforcing any right or remedy under this Agreement or available under applicable law, and no course of dealing by a Party or between the Parties, shall constitute a waiver of any such right or remedy.

(f) Customer may not assign or transfer this Agreement or any rights under this Agreement without the express prior written consent of DDA, and any such assignment is null and void. DDA may assign this Agreement in connection with a merger, consolidation or other business combination to which it is a party or by which its ownership is affected or in connection with the sale of all or substantially all of its business and assets. DDA may delegate the performance of all or any portion of the Services to a third Person but shall be responsible for the actions of such third Person.

(g) The provisions of this Agreement are severable. If any court of competent jurisdiction determines that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall be enforced to the fullest extent permitted by law, and the court making such determination shall modify or otherwise reform such void or unenforceable provision by limiting the duration or scope, adding or deleting words or phrases or otherwise modifying such provision to effect the intent of the Parties to the maximum extent permitted by applicable law.

(h) The headings of the Sections in this Agreement are inserted for convenience of reference only and shall not alter or affect the meaning or interpretation of any provision of this Agreement. Any reference in this Agreement to a "Section" means a Section of this Agreement. Any reference in this Agreement to a "Person" shall include natural persons, corporations, limited liability companies, limited liability partnerships, general and limited partnerships, companies, associations, trusts and other entities of any kind or nature. As used in this Agreement, the words "including" and "includes" shall be read and mean "including, without limitation," or "includes, without limitation," as the case may be, whether or not so expressed. The use of the singular form shall include the plural, and vice versa, and the use of a masculine, feminine or neuter pronoun shall refer to any other appropriate pronoun, as the context requires. All references in this Agreement to "dollars" or "\$" shall mean and refer to US dollars.

(i) The Parties have been represented by counsel, or have been given the opportunity to be represented by counsel, in the preparation and execution of this Agreement and it expresses the mutual intent of the Parties. If any provision of this Agreement is deemed to be ambiguous, such provision shall be enforced in accordance with the intent of the Parties and shall not be construed against a Party because such Party or its representative drafted such provision, nor shall any other principle of "strict construction" apply to the interpretation or enforcement of any provision of this Agreement.

(j) This Agreement may be executed in counterparts, each of which shall be an original but together shall constitute the same agreement. Any counterpart may be executed by electronic signature and delivered by facsimile, e-mail, "pdf" or another form of electronic transmission. Any such transmission shall constitute the delivery of a manually executed instrument for all purposes. This Agreement shall be valid and binding on Customer in accordance with Section 4(a) whether or not DDA executes and delivers to Customer a counterpart hereof.

**Privacy Notice:** Customer's contact information, maintained in a secure database, is used to help DDA process and service Customer's account. Customer's contact information is used by DDA to send Customer information about products or services we feel may be of interest to Customer from DDA and other companies. We may also share Customer information with vendors outside the U.S. who perform services on our behalf and with project owners or architects so they can monitor use of their intellectual property, including plans and specifications. Please contact Dodge Data & Analytics' Privacy Official at 300 American Metro Blvd, Suite 185, Hamilton, NJ 08619-2371 or e-mail [Construction.Privacy.Policy@construction.com](mailto:Construction.Privacy.Policy@construction.com) to Opt Out of sharing, to review your data, or to ask questions. You may also enter your request online at [https://www.construction.com/privacy\\_opt-out/](https://www.construction.com/privacy_opt-out/). For more information on the Dodge Data & Analytics Customer Privacy Policy, see <https://www.construction.com/privacy-notice.asp>