



Dealership Agreement

THIS AGREEMENT GOVERNS YOUR ACCESS TO AND USE OF THE XTIME SERVICE AND YOUR PURCHASE OF CONSULTING SERVICES, IF ANY, UNDER AN ORDER FORM.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A DEALERSHIP OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" WILL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND YOU MAY NOT USE THE XTIME SERVICE.

This Agreement was last updated on September 22, 2016. It is effective between You and Xtime as of the date that You accept this Agreement.

1. Definitions. Capitalized terms used but not defined in the body of this Agreement will have the meanings set forth below.

1.1. "**Affiliate**" means a business entity that, directly or indirectly, controls, is controlled by, or is under common control with, another business entity. For purposes of this definition only, the term "**control**" means legal, beneficial, or equitable ownership, directly or indirectly, of a business entity.

1.2. "**Agreement**" means the terms and conditions contained herein, which govern Your access to and use of the Xtime Service, and any Consulting Services relating thereto, and are incorporated by reference into each Order Form.

1.3. "**Confidential Information**" means non-public information that the Disclosing Party discloses to the Receiving Party during the Term in connection with this Agreement that is marked or otherwise identified in writing by the Disclosing Party at the time of disclosure as confidential or that the Receiving Party reasonably knows is considered confidential by the Disclosing Party, given the nature of the information disclosed and the circumstances of such disclosure.

1.4. "**Consulting Services**" means consulting services that Xtime provides to a Dealership in connection with an Instance (e.g., implementation, project management and/or training) for which You will pay setup fees ("**Setup Fees**"), dealer performance consultant consulting fees ("**DPC Fees**") and/or any other consulting-service related Fees as set forth in an Order Form.

1.5. "**Crossgrade**" means any election by You, for one of Your Dealerships, to access and use an Xtime Service package pursuant to pricing and packaging terms and conditions that were established via an agreement between Xtime and a particular Vehicle Manufacturer.

1.6. "**Dealership**" means each of Your dealership service locations in the United States that sell and service automotive vehicles under an agreement with a Vehicle Manufacturer.

1.7. "**Dealership Data**" means: (i) a Dealership's DMS data, and (ii) any data stored in Dealership's Xtime Service Instance.

1.8. "**Disclosing Party**" means the Party that is disclosing Confidential Information to the



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Receiving Party.

1.9. “**DMS**” means a dealer management system, which is an enterprise management information system designed specifically for automotive industry car dealerships.

1.10. “**Documentation**” means the online help documentation for the Xtime Service, which is available to Your Users at the following weblink: <http://www.xtime-info.com>.

1.11. “**Downgrade**” means any election by You to cancel one or more Xtime Service Packages from one or more of Your Instances while maintaining a Subscription to one or more Xtime Service Packages.

1.12. “**Fees**” means Setup Fees, DPC Fees, Subscription Fees and any other fees referenced in an Order Form.

1.13. “**Feedback**” means any suggestions, enhancement requests, recommendations or other feedback provided by You (including Your Personnel) relating to the Xtime Service.

1.14. “**Force Majeure Event**” means a circumstance whereby a Party’s delay in performing its obligations hereunder is due to causes beyond such Party’s reasonable control, including fire, flood, earthquake, acts of God, acts of war, acts of a public enemy, labor disruptions affecting employers generally, acts of a nation or any state, territory, or other political division, terrorism, riots, civil disorders, epidemics, theft, quarantine restrictions, and internet or other service disruptions involving hardware, software or power systems, including unauthorized network intrusions and denial of service attacks, not within such Party’s possession or reasonable control.

1.15. “**Go Live**” means, subject to the terms of Section 2.4 (Engage Go Live), the earlier of: (a) the date when the applicable Xtime Service Package is ready for active production use by a Dealership (based on Xtime’s system activation records), or (b) sixty (60) days after such Dealership’s date of enrollment in the applicable Xtime Service Package.

1.16. “**Initial Term**” means the initial, non-cancellable period of an Xtime Service Subscription, in accordance with this Agreement and the applicable Order Form.

1.17. “**Instance**” means one representation of one of Your Dealership service departments in the Xtime Service, including one business portal and one customer portal. For avoidance of doubt, one Instance is required for each DMS instance at each physical Dealership location.

1.18. “**Intellectual Property Rights**” means any and all patents, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights and all other intellectual property rights existing now or in the future, internationally.

1.19. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.20. “**Modifications**” means changes, upgrades, updates, modifications and/or enhancements to, and/or derivative works of, the Xtime Service.

1.21. “**Order Form**” means an Xtime ordering document that specifies Your purchase of one or more Xtime Service Package Subscriptions and/or Consulting Services, along with any terms and conditions that are supplemental to this Agreement.

1.22. “**Parties**” means You and Xtime, collectively; and “**Party**” means You or Xtime,



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individually, as applicable.

1.23. “**Performance Data**” means data, other than Dealership Data, that is generated by the Xtime Service including, but not limited to, log, performance, usage, referral, search term, pixel, session, cookie, flash local storage object, beacon, and other web analytics data.

1.24. “**Personnel**” means agents, employees, officers, directors or contractors employed, engaged or appointed by You or Xtime, as applicable.

1.25. “**Privacy Laws**” mean all applicable privacy laws and information security laws, including any applicable state and federal laws, as they exist and are amended from time to time, relating to communications, data use, collection, processing and storage, spamming, junk mail and other unsolicited communications. For avoidance of doubt, “Privacy Laws” include, as applicable, the Gramm-Leach-Bliley Act (i.e., 16 C.F.R. Part 313 (Privacy Rule) and 16 C.F.R. Part 314 (Safeguards Rule)), the CAN-SPAM Act, the Do-Not-Call Implementation Act of 2003, the Do-Not-Call Improvement Act of 2007, and the Telephone Consumer Protection Act of 1991 (“**TCPA**”), including the new TCPA rules effective October 16, 2013.

1.26. “**Receiving Party**” means the Party that receives Confidential Information from the Disclosing Party.

1.27. “**Renewal Term**” means each month’s renewal of a Subscription following the applicable Initial Term.

1.28. “**SaaS**” means an internet-based, Xtime hosted, multi-tenant software-as-a-service offering comprised of application software and associated data with access to and use of such offering being available solely on a subscription basis.

1.29. “**Subscription**” means a Dealership’s right to access and use the Xtime Service during the applicable Term upon current payment of then-applicable Subscription fees (“**Subscription Fees**”) and any other applicable Fees as set forth in one or more Order Forms, subject to the terms and conditions of this Agreement and any supplemental terms and conditions set forth in the applicable Order Form.

1.30. “**Taxes**” means any direct or indirect federal, state and/or local sales, use, excise, withholding, stamp or similar taxes and any duties, tariffs, levies and other similar governmental assessments or charges, but excluding income tax assessed against the actual or potential income of Xtime.

1.31. “**Term**” means the Initial Term and any monthly Renewal Term(s) of the applicable Subscription, collectively.

1.32. “**Third Party**” means an entity that is not: (i) a Party; or (ii) an Affiliate of a Party.

1.33. “**Third Party Licensor**” means a Third Party that has granted Xtime certain rights in connection with operation of, or integration with, the Xtime Service (e.g., DMS integration rights).

1.34. “**Upgrade**” means any election by You to add one or more new Xtime Service Packages to one or more of Your Instances.

1.35. “**Users**” means Dealership Personnel that You have enabled to access and use the Xtime Service.



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- 1.36. “**Vehicle Manufacturer**” means any automotive manufacturer or distributor that builds automotive vehicles for, and/or distributes automotive vehicles to, Dealerships for sale.
- 1.37. “**Vehicle Manufacturer Data**” means all data provided by a Vehicle Manufacturer to a Dealership or Xtime in connection with this Agreement, including Vehicle Manufacturer-provided data that is stored in a Dealership’s DMS and/or the applicable Xtime Service Instance.
- 1.38. “**Xtime**” means Xtime, Inc., a Delaware corporation with offices located at 1400 Bridge Parkway, Suite 200, Redwood City, California 94122.
- 1.39. “**Xtime Service**” means the collective term used herein to describe the Xtime retention system, including Xtime’s SaaS hosting infrastructure used to deliver and support it. Solely with respect to limitations on use of the Xtime Service set forth in this Agreement, Xtime Service includes any interfaces between the Xtime Service and applicable Dealerships’ DMS (“**Third Party Interface**”).
- 1.40. “**Xtime Service Package**” means each Xtime Service offering identified on an Order Form. Your Dealership’s specific Xtime Service Package(s) and the features encompassed therein will be as set forth in the applicable Order Form.
- 1.41. “**You**,” including all of its forms, means the entity or individual executing this Agreement (as a counter- Party to Xtime), and any and all of Your Users, jointly and severally.
- 2. Fees.** Upon Your acceptance or execution of this Agreement, You may purchase an Xtime Service Subscription and/or related Consulting Services for a Dealership by executing an Order Form, whereupon You will be obligated to pay to Xtime the Fees specified in the applicable Order Form in accordance with this Agreement.
- 2.1. General Billing Terms. Prior to Go Live, You will provide to Xtime a billing contact email address to which Xtime will transmit invoices. All Xtime invoices will be: (i) due and payable thirty (30) days from invoice date; and (ii) delivered via email to the billing contact email address. If payment for any invoice not reasonably in dispute is received by Xtime after the applicable due date, Xtime reserves the right to charge You late fees at the rate of 1% per month (or, if lower, the maximum allowed by law) on such outstanding balances. If Xtime incurs collection fees and expenses in connection with any unpaid delinquency that is not reasonably in dispute, then You will also reimburse Xtime for such collection fees and expenses.
- 2.2. Subscription Fees. Subscription Fees for the applicable Xtime Service Package(s) will commence on Go Live. During the Initial Term and any Renewal Terms, Subscription Fees will be billed monthly in advance such that Subscription Fees due for a given calendar month will be invoiced in the immediately preceding calendar month.
- 2.3. Setup Fees and other DPC Fees. Any applicable Setup Fees set forth in an Order Form will be invoiced on Xtime’s receipt of such Order Form. Any DPC Fees associated with the initial implementation of the Xtime Service will be invoiced on Go Live. All other Fees due under any Order Form, including subsequent DPC Fees and travel and expenses not included in DPC Fees, will be billed at the end of the month in which any related Consulting Services were provided by Xtime and the applicable Fees were incurred.
- 2.4. Engage Go Live. If You select the Engage Xtime Service Package (formerly known as



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Check-In 7) ("**Engage**"), You must be enrolled in the Schedule Xtime Service Package (formerly known as Scheduling 7) ("**Schedule**"), and Your order will involve a two-step fulfillment process. After Your Dealership is in production on the Schedule Xtime Service Package, with predefined User adoption and usage characteristics, the Parties will commence configuration and rollout of Engage. Notwithstanding anything to the contrary herein, if Your Dealership elects to implement Engage, whether as a new Xtime Dealership or as an Upgrade to Your Dealership's current Xtime Service Package, "Go Live" for Engage will be deemed to occur on the earlier of: (i) the date when Engage is ready for active production use by Your Dealership based on Xtime's system activation records, or (ii) sixty (60) days after Billing has commenced on Your Dealership's other Xtime Service Package(s).

2.5. Taxes. All Fees are exclusive of all Taxes now or hereafter levied against the provision or use of the Xtime Service. Taxes will be invoiced and collected by Xtime if and to the extent required by any applicable taxing jurisdiction and You will be responsible for the payment of any such Taxes.

2.6. Xtime Service Packages. On Your execution of an Order Form, Your Dealership(s) will be enrolled in the selected Xtime Service Package(s) set forth in that Order Form. During the Term, the Subscription Fees for the selected Xtime Service Package(s) will be billed on the terms set forth above at the prices set forth on each Order Form.

2.7. Downgrades. If You elect a Downgrade of Your current Xtime Service Package(s), this election will be effective on the last day of the calendar month following the calendar month in which notice of such Downgrade was provided by You to Xtime; however, if You elect to Downgrade Your then-current Xtime Service Package(s) during the Initial Term, You will be obligated to remit to Xtime promptly the balance of any Subscription Fees due and owing for Your cancelled Xtime Service Package(s) for the remainder of the Initial Term. If You elect a Crossgrade to a Vehicle Manufacturer's Xtime Service, this election will be effective on the later of: (i) the last day of the calendar month following the calendar month in which notice was provided; and (ii) the date on which Your Dealership goes live on the applicable Vehicle Manufacturer's Xtime Service.

2.8. Right to Increase Fees Annually; DMS Conversion Fees. Following the Initial Term, Xtime reserves the right to increase Fees for the Xtime Service annually on thirty (30) days' prior written notice. In addition to the other Fees set forth herein, Xtime reserves the right to charge conversion or migration Fees as set forth on any Order Form, including on any change in Your DMS vendor during the Term. Such conversion or migrations Fees will be invoiced at the end of the month in which such Fees are incurred.

2.9. Fee Adjustments in Connection with Integrations. Xtime reserves the right to implement integration Fee adjustments in connection with Your Dealerships' use of Third Party vendor technology, software or services integrated with the Xtime Service. If Xtime plans to implement any such integration Fee adjustment(s), Xtime will endeavor to provide You with as much advance written notice as reasonably practicable.

3. Ownership of, Rights to and Restrictions Regarding the Xtime Service. You hereby acknowledge and agree that, as between Xtime and You, Xtime or its Third Party Licensor is and will remain the exclusive owner of all right, title and interest in and to the Xtime Service and Modifications thereto, including all Intellectual Property Rights therein and thereto.



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3.1. Right to Access and Use the Xtime Service. Conditioned upon Your payment in full of all Fees due, owing and not reasonably in dispute hereunder, Your Users may access and use an Instance of the Xtime Service (limited to the applicable Xtime Service Package(s) Subscriptions that You have purchased for such Dealership) for Your internal business purposes only (which may include, without limitation, the solicitation and scheduling of service appointments to the general public over the Internet). All rights not expressly granted to You hereunder are fully reserved by Xtime.

3.2. Third Party Licensor Rights. A Third Party Licensor may enforce this Agreement as a third party beneficiary solely with respect to use of any such Third Party Licensor's technology; and neither You nor Xtime may modify or terminate any of Your obligations in a way that would impact the rights of any such Third Party Licensor adversely.

3.3. Restrictions. You will not: (1) send or store infringing or unlawful material; (2) harvest, collect or assemble personally identifiable information regarding any of Your end customers without such customer's consent; (3) violate any applicable laws or regulations, including Privacy Laws; (4) knowingly send or store Malicious Code; (5) attempt to gain unauthorized access to or disrupt the integrity or performance of the Xtime Service or the data contained therein; (6) disclose any passwords or other security information relating directly to the Xtime Service or any Xtime or Third Party Licensor's interface thereto; (7) make Modifications to the Xtime Service; (8) access the Xtime Service for the purpose of building a competitive product or service or copying its features or user interface; (9) use the Xtime Service for purposes of product evaluation, benchmarking or other comparative analysis without Xtime's prior written consent; (10) permit access to the Xtime Service by a direct competitor of Xtime; (11) make any representations or warranties regarding the functionality or performance of the Xtime Service other than in accordance with its Documentation; (12) attempt to decrypt, reverse engineer, disassemble, decompile, or otherwise attempt to discern, discover, copy or disclose the source code, algorithms, processes or ideas supporting the Xtime Service; (13) copy, license, lease, rent, distribute, sell, make available, assign, sublicense or use the Xtime Service in a timesharing or service bureau arrangement or transfer any of Your rights, duties and obligations hereunder, with any such attempted sublicense, assignment or other transfer being void; (14) remove from or alter any Xtime trademark, logo, copyright or other proprietary notice, legend or symbol on the Xtime Service; or (15) access and/or use data, reports and other information generated via the Xtime Service for any purpose other than for Your internal business purposes in accordance with this Agreement.

3.4. Modifications. Xtime reserves the right, from time to time, to make Modifications to the Xtime Service; provided, however, that Xtime will not materially diminish the functionality of the Xtime Service during the Term. Unless separately agreed in writing by the Parties, each such Modification may be made generally available to all Xtime dealership customers subscribing to the Xtime Service.

3.5. Suggestions. Xtime will have a royalty-free, fully paid, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest via a change of control), and sublicensable right to use, copy, modify and distribute, including by incorporation into the Xtime Service, any Feedback.

3.6. Trademark Cross-License. You will not remove or obscure Xtime's branding from the



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Xtime Service, including the tag line, "Powered by Xtime." Each Party hereby grants to the other a nonexclusive, nontransferable, non- sublicensable, royalty-free license to use, in Your case, "Xtime" and associated logos and, in Xtime's case, the applicable Dealership's name and associated trademarks and logos (collectively, "**Marks**") solely in connection with fulfilling obligations and promoting the Parties' relationship hereunder. Any use of Marks will be in accordance with the granting Party's reasonable trademark usage policies. The granting Party may withdraw any approval of any use of its Marks at any time in its reasonable discretion although no such withdrawal will require the recall of any previously-published or distributed materials. Neither Party will make any express or implied statement or suggestion or use the other Party's Marks in any manner that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on the other Party or its business, products or services. Each Party acknowledges that the other Party's Marks are, and will remain, Marks of the other Party; and neither Party will assert or acquire any right, title or interest in or to the other Party's Marks by use thereof, and all rights or goodwill associated with the other Party's Marks will inure to the benefit of the other Party.

4. Ownership of, Rights to and Restrictions Regarding Data.

4.1. Ownership and Confidentiality of Dealership Data. As between You and Xtime: (i) You own and are responsible for all Dealership Data; and (ii) Xtime owns and is responsible for all Performance Data. You hereby acknowledge and agree that: (i) operation of the Xtime Service requires access to Your Dealership Data, including Dealership Data stored in Your DMS (via the applicable integration); and (ii) Xtime may use Your Dealership Data, Vehicle Manufacturer Data and any other data accessed via or derived from Your Instance(s) (collectively, "**Data**"): (A) for Xtime's and its Affiliates' internal business purposes, including operating, maintaining and improving the Xtime Service and providing the Xtime Service to You, (B) solely in an aggregated (i.e., combined with data from numerous other dealerships, thereby precluding any direct or indirect identification of You or one of Your Dealerships) manner for trend analysis and report- generation purposes, (C) solely in an anonymized or pseudonymized manner to share with Affiliates for purposes of providing integrated features or other enhancements to such Affiliates' software offerings, and (D) in accordance with Your instructions in connection with Your requests from time to time that Xtime transmit Data to Third Parties (such as Third Party call centers that You may utilize). NOTICE TO NORTH CAROLINA DEALERSHIPS: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER-RELATED DATA.

5. Confidential Information.

5.1. Restrictions on Use of Confidential Information. The Receiving Party may only use the Confidential Information of the Disclosing Party for the purpose of fulfilling the Receiving Party's obligations or exercising the Receiving Party's rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party except to Personnel who require access to the Confidential Information to fulfill the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement and who are bound by obligations of confidentiality at least as protective of Confidential Information as the provisions of this Section 5. The Receiving Party will be responsible for any breach of this Section 5 by its Personnel. Neither Party will use a Disclosing Party's Confidential Information to develop products that may be the same as,



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similar to or competitive with the products or services of the Disclosing Party.

5.2. Exclusions. Confidential Information will not include any information that: (i) was previously known to the Receiving Party without obligation of confidentiality prior to disclosure by the Disclosing Party, (ii) was developed independently by or for the Receiving Party without use of or access to the Disclosing Party's Confidential Information, (iii) was acquired by the Receiving Party without restriction on disclosure from a third party not under an obligation of confidentiality with respect to such information, or (iv) is or becomes available publicly through no breach of this Agreement by the Receiving Party. A disclosure of Confidential Information as required by order of a court or governmental agency or as otherwise required by law will not be a breach of this Agreement or a waiver of confidentiality for any other reason on condition that the Receiving Party provides the Disclosing Party with prior written notice of such required disclosure promptly, to the extent permitted by law, to allow the Disclosing Party to seek a protective order or otherwise prevent or limit the disclosure.

5.3. Confidentiality of Agreement, and Order Forms. For the avoidance of doubt, this Agreement and any Order Forms executed by the Parties pursuant to this Agreement are the Confidential Information of both Parties.

5.4. Standard of Care. Each Party agrees to use at least the same care that it uses to protect its own confidential information of like importance, but in no event less than reasonable care, to prevent unauthorized dissemination or disclosure of the other Party's Confidential Information.

6. Representations and Warranties; Disclaimer.

6.1. Mutual. Each Party represents and warrants to the other Party that it: (i) has the legal power to enter into and perform under this Agreement; (ii) has obtained and will maintain any and all consents, approvals, licenses or other authorizations necessary for the performance of its obligations hereunder; (iii) presently maintains, and will continually maintain and test periodically, appropriate information security measures and data protection safeguards consistent with industry standards and all applicable Privacy Laws, to ensure reasonable security and confidentiality of Dealership Data, to include: (1) protecting the security, confidentiality and integrity of such Dealership Data, (2) protecting against anticipated threats or hazards to the security, confidentiality and integrity of such Dealership Data, and (3) protecting against unauthorized access to or use of such Dealership Data; and (iv) will notify the other Party promptly in writing (with email notification being acceptable) upon the discovery of any loss, unauthorized disclosure, or unauthorized access to or use of any Dealership Data in connection with this Agreement.

6.2. Xtime's Representations and Warranties. Xtime represents and warrants to You that: (i) the Xtime Service as delivered will conform, in all material respects, to the specifications set forth in the Documentation (provided that Users only access and use the Xtime Service with systems and/or devices that are certified by Xtime for use with the Xtime Service as described in the Documentation); (ii) the functionality of the applicable Xtime Service Package(s) will not decrease materially during the Term; (iii) it owns or otherwise has sufficient rights to the Xtime Service to grant the rights and licenses granted herein (i.e., the Xtime Service will not infringe a third party's Intellectual Property Rights); and (iv) the Xtime Service is free from Malicious Code introduced by Xtime. Your sole remedy and Xtime's exclusive liability for Xtime's breach



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of warranty under this Sections 6.2 is, at Xtime's sole option, the repair of the Xtime Service or termination of this Agreement with a refund of prepaid and unused Fees, if any.

6.3. Your Representations and Warranties. You represent and warrant to Xtime that: (a) any and all Dealership Data and any other materials or information provided by You to Xtime hereunder are true, accurate and complete in all material respects, (b) You have all necessary rights and authority to provide Data to Xtime as contemplated herein, including with respect to any instructions from You to Xtime that Data be transmitted to a Third Party (e.g., call centers), (c) You will make commercially reasonable efforts to ensure that any and all Dealership Data provided hereunder will be kept true, accurate and complete, in all material respects, throughout the Term, and (d) entering into this Agreement does not conflict with or violate any other agreement You may have with any third party.

6.4. DISCLAIMER. EXCEPT AS PROVIDED HEREIN: (I) THE XTIME SERVICE (INCLUDING THIRD PARTY LICENSOR INTERFACES) IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT; AND (II) XTIME DOES NOT WARRANT THAT THE XTIME SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL MEET YOUR SPECIFIC REQUIREMENTS.

7. **Indemnification**. Each Party (the "**Indemnifying Party**") will defend and indemnify the other Party and such other Party's Personnel (collectively, the "**Indemnified Parties**") against any liabilities, losses, damages and expenses (including reasonable attorneys' fees) suffered or incurred by an Indemnified Party in connection with any action or legal proceeding filed by any Third Party (each, a "**Claim**") to the extent arising directly out of the Indemnifying Party's: (a) gross negligence or willful misconduct hereunder, or (b) breach of any of the Indemnifying Party's representations or warranties hereunder.

7.1. Indemnification Process. Each Indemnified Party will: (i) give prompt written notice to the Indemnifying Party of any Claim known to the Indemnified Party (provided that no failure to do so will relieve the Indemnifying Party of its indemnification obligations unless the Indemnifying Party is materially prejudiced thereby); (ii) give the Indemnifying Party sole control of the defense and settlement of such Claim (provided that the Indemnifying Party may not enter into any settlement that imposes a financial obligation on or otherwise adversely impacts any Indemnified Party without that Indemnified Party's prior written consent); and (iii) provide to the Indemnifying Party, at the Indemnifying Party's cost, all reasonable assistance requested by the Indemnifying Party.

8. **Exclusion of Certain Damages; Limitation of Liability; Exceptions.**

8.1. EXCLUSION OF CERTAIN DAMAGES. NEITHER PARTY HERETO (INCLUDING ANY THIRD PARTY LICENSOR) NOR ITS PERSONNEL WILL BE LIABLE TO THE OTHER PARTY HERETO (REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY) FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING BUSINESS INTERRUPTION, LOSS OF PROFITS, LOSS OF BUSINESS DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR IF THE OTHER PARTY HAD BEEN MADE AWARE OF SUCH DAMAGES.



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8.2. LIMITATION OF LIABILITY. SUBJECT TO SECTION 8.3 BELOW, EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY UNDER THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY) WILL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID OR DUE AND OWING FROM YOU TO XTIME HEREUNDER FOR THE 12 MONTHS PRIOR TO THE DATE SUCH LIABILITY ACCRUED.

8.3. EXCEPTIONS. THE ABOVE EXCLUSIONS AND LIMITATION OF LIABILITY WILL NOT APPLY TO DIRECT DAMAGES TO THE EXTENT ARISING OUT OF: (I) YOUR BREACH OF SECTION 3 (OWNERSHIP OF, RIGHTS TO AND RESTRICTIONS REGARDING THE XTIME SERVICE), (II) A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITH RESPECT TO A PARTY'S BREACH OF SECTION 5 (CONFIDENTIAL INFORMATION) OR APPLICABLE PRIVACY LAWS, AND (III) THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION HEREUNDER.

9. Term and Termination.

9.1. Term. The Initial Term of each Xtime Service Package Subscription will commence on Go Live and continue for the non-cancellable period specified in the applicable Order Form. If You terminate any Subscription prior to the end of its Initial Term for any reason other than Xtime's uncured material breach, You will immediately pay to Xtime the balance of Subscription Fees due and owing for the remainder of such Initial Term. After the Initial Term, the applicable Subscription will renew automatically on a month-to-month basis, with each such month constituting a Renewal Term for that Subscription.

9.2. Termination After the Initial Term. After the Initial Term of the applicable Subscription, either Party may terminate such Subscription on written notice to the other Party, and any such termination will be effective on the last day of the calendar month following the calendar month in which such termination notice was provided. Any termination notice provided hereunder will be considered valid and received only if provided in accordance with Section 10.7 (Notice).

9.3. Termination for Material, Uncured Breach. Either Party may terminate this Agreement on written notice to the other Party on the other Party's material breach of this Agreement, where such material breach remains uncured for: (i) thirty (30) days from the date of such written notice for any reason other than Your non-payment of Fees not reasonably in dispute, and (ii) fifteen (15) days in the case of Your non-payment of Fees not reasonably in dispute. In addition, Xtime may immediately suspend the Xtime Service available to You on Your material breach of Section 3 above or Your nonpayment of any Fees due and owing and not reasonably in dispute hereunder. For the avoidance of doubt, any and all outstanding Fees are due to Xtime on any termination by Xtime of the Agreement pursuant to this Section 9.3.

9.4. Access to Dealership Data Upon Termination. On termination of this Agreement for any reason, You will immediately lose all rights to access and use the Xtime Service. However, for thirty (30) days following termination of this Agreement for any reason other than Your uncured material breach, Xtime will grant You limited access to Your Instance(s) of the Xtime Service for the sole purpose of permitting You to retrieve all Dealership Data resident thereon.

10. General.

10.1. Assignment. Any assignment by either Party of its rights and/or obligations hereunder



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without the non-assigning party's prior written consent will be void; provided, however, that either Party may assign and transfer this Agreement in its entirety to an acquirer of all or substantially all of the assigning Party's assets or operations related to this Agreement, whether via merger, asset sale or like transaction(s). Subject to the foregoing, this Agreement will be binding on and inure to the benefit of Xtime's and Your respective successors and assigns, as applicable.

10.2. Force Majeure. Neither Party will be liable for failure or delay in performing its obligations if such failure or delay is due to a Force Majeure Event.

10.3. Independent Contractor. You will not control the manner or means by which Xtime performs its obligations hereunder. Xtime will perform all services required herein or under any Order Form hereunder as an independent contractor. Xtime will not at any time or in any manner represent that it or any of its Personnel are Your agents or employees. Other than as set forth expressly herein, neither Party may make any representation or commitment on behalf of the other Party.

10.4. Choice of Law. This Agreement will be governed by the laws of the State of California, without regard to its choice of law principles. Each Party agrees to the jurisdiction of the state courts in San Mateo County or the federal courts of San Francisco County in the State of California, and will accept service of process by mail and waive any jurisdictional or venue defenses.

10.5. Entire Agreement. This Agreement, including its recitals and exhibits, if any, that are incorporated herein in full by this reference, constitutes the entire understanding of Xtime and You with regard to the Xtime Service, supersedes and prior or contemporaneous written or oral agreements, and is intended as a final expression of such agreement. Any terms and conditions printed on or otherwise referenced in Your purchase order or any other document issued by You in connection with Your Xtime Service Instance(s) will not apply. Xtime may, from time to time, make changes to this Agreement by posting an updated version to the Xtime website. At any time during the Term, You may elect to accept Xtime's then-current Agreement by providing Xtime notice of such acceptance. By not providing such notice, you agree that the terms of the Agreement in effect as of the Effective Date will control and take precedence over any updates to this Agreement.

10.6. Severability. If, for any reason, any provision of this Agreement is found to be unenforceable, such provision will be enforced to the extent possible, other provisions of this Agreement will remain unaffected and the parties will negotiate in good faith a substitute valid and enforceable provision that gives effect to the Parties' intent in entering into this Agreement.

10.7. Notice. Terminations notices provided by Dealership to Xtime pursuant to Sections 9.2 must be mailed to the address below, or emailed to cancelcontract@xtime.com. All other notices to a Party must be sent via confirmed email, by regular mail or via overnight courier to the addresses set forth on the applicable Order Form.

Xtime, Inc.
Attn: CFO and General Counsel
1400 Bridge Parkway, Suite 200
Redwood City, CA 94065



Dealership Agreement

10.8. Survival. Any provisions in this Agreement that should reasonably survive termination in accordance with their respective terms will so survive, as will any outstanding payment or Tax obligation hereunder, any cause of action or claim of either Party, whether in law or in equity, accrued or to accrue because of any breach or default, and Xtime's right to use aggregated data in accordance with Section 4 hereunder.

10.9. Conflicts. This Agreement and the applicable Order Form will take precedence over any of Your supplemental documents, forms or materials, regardless of date, to the extent any such documents are in conflict with the terms of this Agreement and/or the applicable Order Form.