

THIS AGREEMENT GOVERNS YOUR ACCESS TO AND USE OF THE XTIME SERVICE, AND 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 COMPANY 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" SHALL 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 MAY NOT USE THE XTIME SERVICE.

This Agreement was last updated on January 24, 2014. It is effective between You and Xtime as of the date of You accepting this Agreement. Capitalized terms used but not defined in the body of this Agreement will have the meanings set forth in Section 1 (Definitions).

## 1. Definitions.

**"Agreement"** means the terms and conditions contained herein, which are incorporated by reference into each Order Form and govern Your use of the Xtime Service and, if applicable, the provision of Xtime Consulting Services.

**"Confidential Information"** means non-public information that the Disclosing Party provides to the Receiving Party during the Term that is identified in writing at the time of disclosure as confidential or that the Receiving Party knows is considered confidential by the Disclosing Party.

**"Crossgrade"** means any election by Your Dealership to access and use Your then-current Xtime Service Package under a new and separate agreement governed by terms agreed with a particular Vehicle Manufacturer that has contracted directly with Xtime.

**"Dealership"** is each of Your dealership service locations in the United States and/or Canada.

**"Disclosing Party"** means the Party that provides Confidential Information to the Receiving Party.

**"DMS"** means a dealer management system, which is an enterprise management information system offered specifically for an automotive industry car dealership.

**"Documentation"** means the online help documentation for the Xtime Service as set forth at the following weblink:  
<http://www.xtime-info.com>.

**"Downgrade"** means any election by Your Dealership to implement an Xtime Service Package with less functionality than its current Package.

**"Go Live"** means the earlier of: (a) the date when the applicable Xtime Service is ready for active production use by Your Dealership based on Xtime's system activation records, or (b) sixty (60) days from Your Dealership's date of enrollment.

**"Initial Term"** is the initial Subscription period as set forth in this Agreement.

**"Instance"** is one representation of a Dealership service department in the Xtime Service and provides one business portal and one customer portal. One Instance is required for each Dealership location.

**"Intellectual Property Rights"** means any patents, copyrights, trademarks, service marks, trade names, domain name rights and trade secret rights, both in the United States and internationally.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**"Order Form"** is the Xtime ordering document that specifies the applicable Xtime Service Package and any supplemental terms and conditions applicable to Your use of the Xtime Service.

**"Party"** means You or Xtime, individually, as reasonably applicable.

**"Parties"** means You and Xtime, collectively.

**"Personnel"** means agents, employees, officers, directors or contractors employed, engaged or appointed by You or Xtime, as reasonably applicable.

**"Consulting Services"** means the Xtime consulting services that provide implementation, project management, training and other services as required by Your Dealership for the implementation of the Xtime Service (as identified in the applicable Order Form) for which You will pay setup fees ("Setup Fees"), Field Service Consultant ("FSC") consulting fees and any other consulting fees set forth on an Order Form (collectively, all fees hereunder, including Subscription fees, are referred to as "Fees").

**"Receiving Party"** means the Party that receives Confidential Information from the Disclosing Party.

**"Software"** is Xtime's Internet-based on-line Service Marketing 7, Service Scheduling 7 and/or Service Check-In 7 software applications, or any other software applications made available by Xtime, from time to time (as identified in the applicable Order Form), which will be provided to You on a Subscription basis.

**"SOW"** means statement of work for Consulting Services, which is mutually agreed upon and executed by You and Xtime.

**"Subscription"** is Your access and utilization, during the Term, of the Xtime Service upon current payment of the then-applicable Subscription Fees and other applicable Fees as set forth in each Order Form, subject to the terms and conditions of this Agreement.

**"Term"** means the Initial Term and any Renewal Term(s), collectively.

**"Upgrade"** means any election by Your Dealership to implement an Xtime Service Package with increased functionality as compared to its current Package.

**"Users"** are Your Personnel that You enable to access and/or use an applicable Dealership Instance of an Xtime Service as Your authorized users of such Xtime Service Instance.

**"Vehicle Manufacturer"** means any automotive manufacturer or distributor that builds automotive vehicles and/or distributes automotive vehicles to Your Dealership for sale and endorses or prefers the Xtime Service for Dealerships that carry and/or service its vehicles.

**"Xtime Service"** is the collective term used herein to describe the Software and the hosting/Internet infrastructure used to deliver and support the Software. Your Dealership's specific Xtime Service Package and the features encompassed therein are as set forth in the applicable Order Form. Each Xtime Service offering identified on an Order Form is an **"Xtime Service Package."** Solely with respect to limitations on use of the Xtime Service set forth in Sections 2, 3, 4 and 6, "Xtime Service" includes any interfaces between the Xtime Service and each Dealership's DMS (each, a "Third Party Interface").

**"You"** (and all its forms) means You and all Personnel in Your Dealership(s) that use the Xtime Service, jointly and severally.

2. Xtime Ownership. You understand, acknowledge and agree that Xtime (or its licensors (each, a "Third Party Licensor")) is the exclusive owner of all right, title and interest in and to the Xtime Software and Xtime Service, including any and all (i) derivative works, modifications, updates, enhancements and upgrades thereto and thereof (including those made by Xtime under an SOW unless set forth expressly to be otherwise in that SOW) and (ii) any other Intellectual Property Rights. Further to Section 3, You will not (a) make or attempt to make any improvements or modifications to the Xtime Software, (b) create or attempt to create derivative works thereto or therefrom, or (c) reproduce or attempt to reproduce the Xtime Software and Xtime Service. A Third Party Licensor may enforce this Agreement as a third party beneficiary solely with respect to Your use of that Licensor's Third Party Interface; neither Xtime nor You may modify or terminate any of Your obligations in a way that would adversely impact the rights of any such Third Party Licensor.

3. License and Access to Use Xtime Service; Dealership Responsibilities and Restrictions. Conditioned on Your payment in full of the initial Setup Fees, all Subscription Fees and all other Fees set forth on each Order Form hereunder, each Dealership may access and use its Instance of the Xtime Service (limited to the applicable Xtime Service modules selected by such Dealership) as well as any and all data, reports and other information generated therefrom for Dealership's internal business purposes only (which will include the solicitation and scheduling of service appointments to the general public over the Internet). You may add additional Dealership Instances at any time upon written notice and execution of an Order Form, subject to the payment of all applicable Fees. All rights not expressly granted to You by Xtime are fully reserved.

You will use the Xtime Service in compliance with applicable law and will not: (1) send or store infringing or unlawful material; (2) harvest, collect or assemble information or data regarding any end customer, including email addresses, without that customer's consent; (3) violate any U.S. or foreign laws or regulations, including those related to spamming, junk mail, data privacy or other related laws or regulations prohibiting or discouraging unsolicited mail; (4) 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 directly related to any Third Party Interface; (7) modify, copy or create derivative works based on 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 Dealership's rights, duties, and obligations hereunder, and any such sublicense, assignment, or other transfer will be void; (14) modify, frame, link to, translate, or create any derivative works of the Xtime Service; or (15) remove from or alter any Xtime trademark, logo, copyright or other proprietary notice, legend or symbol on the Xtime Service.

4. Limited Warranty; Limitation of Liability; Indemnification. Xtime warrants that the Xtime Service will conform in all material respects to the specifications set forth in Xtime's then-current Documentation when the Xtime Service is: (a) properly accessed and used in conjunction with a properly configured computer and communication device, and (b) used with hardware and devices that are certified as described in the Documentation for use with the Xtime Service (the "Limited Warranty"). The Limited Warranty is the only warranty of any kind given by Xtime under this Agreement and no other oral or written information given by Xtime or any of its representatives or agents will create a warranty or in any way increase the scope of the Limited Warranty. You agree that Your only

remedy during the Limited Warranty period is, at Xtime's sole option, the repair of the Xtime Service (or the applicable portions thereof), or termination of this Agreement with a refund of any prepaid and unused Fees.

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

NEITHER PARTY HERETO (INCLUDING ANY THIRD PARTY LICENSOR) NOR ITS PERSONNEL WILL BE LIABLE TO THE OTHER PARTY HERETO FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUSINESS INTERRUPTION OR LOSS OF BUSINESS DATA. SUBJECT TO THE LAST SENTENCE BELOW, EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION) WILL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID OR DUE AND OWING HEREUNDER FOR THE 12 MONTHS PRIOR TO THE DATE SUCH LIABILITY ACCRUED. THE ABOVE CAP WILL NOT APPLY TO DIRECT DAMAGES ARISING OUT OF (I) YOUR BREACH OF SECTION 2 (XTIME OWNERSHIP) OR SECTION 3 (LICENSE AND ACCESS TO USE XTIME SERVICE; DEALERSHIP RESPONSIBILITIES AND RESTRICTIONS) OF THIS AGREEMENT, (II) A PARTY'S BREACH OF SECTION 5 (CONFIDENTIAL INFORMATION), OR (III) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Each Party will defend and indemnify the other Party and its directors, officers, employees, consultants, agents and other representatives against any loss or damage (including reasonable attorneys' fees) incurred in connection with any third party claim, action or proceeding (each, a "Claim") against any indemnified Party to the extent arising directly out of the indemnifying Party's: (a) gross negligence or willful misconduct hereunder, or (b) breach of any of its representations or warranties hereunder. Accordingly, You will defend and indemnify Xtime against any Claim, to the extent arising out of Your Account Data or any other materials provided by You hereunder, excluding Claims arising directly from Xtime's misuse thereof.

Further to the foregoing, Xtime will defend and indemnify You against any Claim (i) that the Xtime Service infringes a third party's Intellectual Property Rights, or (ii) arising directly out of Xtime's violation of Data Privacy Laws governing the Xtime Service.

Each Party's indemnification obligations hereunder are subject to the following: each indemnified Party will (i) promptly give 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.

**5. Confidential Information.** The Receiving Party shall use the Confidential Information of the Disclosing Party only for the purpose of fulfilling the Receiving Party's obligations under this Agreement. The Receiving Party shall 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 under this Agreement and who are bound by obligations of confidentiality at least as protective of Confidential Information as those in this Agreement. The Receiving Party will be responsible for any breach of this Section 5 by its Personnel. Confidential Information shall not include any information that was (a) previously known to the Receiving Party without obligation of confidence prior to disclosure by the Disclosing Party, (b) independently developed by or for the Receiving Party without use of or access to the Disclosing Party's Confidential Information, (c) acquired by the Receiving Party without restriction on disclosure from a third party not under an obligation of confidence with respect to such information, or (d) is or becomes publicly available 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, shall not be a breach of this Agreement, or a waiver of confidentiality for any other reason, on condition that the Receiving Party promptly provides the Disclosing Party with prior written notice, to the extent permitted by law, to allow the Disclosing Party to seek a protective order or otherwise prevent or limit the disclosure. For the avoidance of doubt, any Order Form or SOW executed by the Parties pursuant to this Agreement is the Confidential Information of both Parties.

**6. Authorization to access Your DMS/Safeguarding of Account Data.** You will cooperate with Xtime to set up the Xtime Service on Your DMS for use by Your Dealerships. You understand and agree that Your use of the Xtime Service requires that Xtime access Your DMS data and, specifically, all relevant operational, resource and customer data (collectively, "Account Data"). All Account Data will constitute Your Confidential Information and will remain Your sole and exclusive property. Xtime will only make use of Account Data in connection with providing You with the Xtime Service under this Agreement. You hereby expressly authorize such access and such use of the Account Data. NOTICE TO NORTH CAROLINA DEALERS: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER-RELATED DATA.

You grant Xtime a royalty-free, nonexclusive right and license to use any and all Account Data solely in connection with this Agreement and the Xtime Service. Xtime represents and warrants to You that it presently maintains and will continually maintain appropriate information security measures and data protection safeguards consistent with industry standards and applicable laws and regulations relating to privacy, security, integrity and confidentiality, including, as reasonably applicable, 16 C.F.R. Part 313 (Privacy Rule) and 16 C.F.R. Part 314 (Safeguards Rule) (collectively, "Data Privacy Laws") to ensure reasonable protection of Your Account Data, to include (1) protecting the security and confidentiality of such information, (2) protecting against anticipated threats or hazards to the security or integrity of such information, and (3) protecting against unauthorized access to or use of such information.

You represent and warrant that You have all right and authority to provide the Account Data to the Xtime Service in compliance with applicable Data Privacy Laws and that You will make commercially reasonable efforts to ensure that any and all Account Data provided hereunder will be true, accurate and complete.

7. **Changes to Xtime Service.** Following the Initial Term, Xtime reserves the right to increase Fees for the Xtime Service annually, on 30 days' prior written notice. In addition to the other Fees set forth herein, Xtime further reserves the right to charge conversion or migration Fees as set forth on any Order Form, including upon any change in Your DMS vendor during the Term.

Xtime reserves the right, from time to time, to make changes, updates, upgrades and modifications (collectively, "Modifications") to the Xtime Service; provided that Xtime will not materially diminish the functionality of the Xtime Service. Unless separately agreed in writing by the Parties, each Modification will be made generally available to all Xtime customers subscribing to the Xtime Service.

Xtime reserves the right to implement Fee adjustments required due to an increase in pass-through fees charged to Xtime by DMS vendors or other integrated vendors for the use of their respective technology or services as part of their respective certified interfaces to the Xtime Service; provided that any such pass-through fee increases will not exceed Xtime's actual cost per Dealership Instance per month. If Xtime plans to implement any such Fee adjustment, Xtime will make commercially-reasonable efforts to provide You with as much advance written notice as reasonably practicable.

8. **Term.** The Initial Term of the Xtime Service commences on Go Live and continues for a non-cancelable period of twelve (12) months; if You terminate this Agreement prior to the end of the 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 the Initial Term.

After the Initial Term, this Agreement will automatically renew on a month-to-month basis (each month, a "Renewal Term"). After the Initial Term, either Party may terminate this Agreement on written notice to the other Party, which termination will be effective on the last day of the calendar month following the calendar month in which notice was provided.

Either Party may terminate this Agreement on written notice to the other Party in the event of the other Party's material breach of this Agreement if such material breach remains uncured for 30 days from the date of written notice. Notwithstanding the foregoing, the notice period applicable for material breach for non-payment of Fees not reasonably in dispute will be 15 days (rather than 30 days). In addition, Xtime may immediately suspend the Xtime Service available to You or any of Your Dealerships on Your material breach of Section 3 above or Your nonpayment of any Fees due, owing and not reasonably in dispute hereunder. For the avoidance of doubt, any and all outstanding Fees are due to Xtime upon any termination of the Agreement hereunder.

On termination for any reason, except as set forth in the next sentence, You will immediately lose all rights to access and use the Xtime Service. However, for 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 Account Data resident thereon.

9. **General Billing Terms ("Billing").** All Xtime invoices are due net 30 days from invoice date. Invoices will be delivered via email to the Billing Contact email address specified on each Order Form. If payments for any invoices not reasonably in dispute are not received by the due date, Xtime reserves the right to charge late fees at the rate of 1% per month (or, if lower, the maximum allowed by law) on outstanding balances. If Xtime incurs collection fees and expenses in connection with an unpaid delinquency, and such Fees are not reasonably in dispute, You will reimburse Xtime its actual collection fees and expenses therefor.

Subscription Fees for each Xtime Service Package are billed in advance, commencing on Go Live.

Setup Fees are incurred on receipt of an Order Form and are due on receipt of invoice. Additional Setup Fees may be assessed for Upgrades that occur after the Initial Term and such Fees will be invoiced at the time of Upgrade. If Xtime provides You with Consulting Services (including training) under any Order Form or SOW, Billing for such Fees will take place at the end of the month in which these Consulting Services are delivered, and will include any related reimbursable expenses that are incurred, with payment due net 30 days from date of invoice. All other Fees due under any Order Form hereunder, including training, conversion or migration Fees, will be billed at the end of the month in which such Consulting Services are provided by Xtime and the applicable Fees incurred with payment due net 30 days from date of invoice.

Service Check-In 7 consulting Fees are invoiced as follows: 1) 50% billed on Order Form signature and the balance immediately following the first onsite visit by an FSC or, if earlier, sixty (60) days from Go Live of Service Scheduling 7; or 2) Billings in advance during continuing Consulting Services as set forth on an Order Form. Travel and related costs will be billed separately, due net 30 days from invoice date.

All Fees are exclusive of all federal, state and local sales, use or like taxes and any duties, tariffs and other governmental charges (collectively, "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 Customer will be responsible for the payment of any such Taxes.

10. **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 will be billed on the terms set forth above at the prices set forth on each Order Form.

At any time during the Term, Customer may elect to move from one Xtime Service Package to another through use of the Xtime Service user interface, subject to the next paragraph and the Fees applicable to the selected Package will apply upon such election.

Further to the foregoing, if You elect a Downgrade of Your current Xtime Service Package, this election will be effective on the last day of the calendar month following the calendar month in which notice was provided; provided that, if You elect to Downgrade Your then-current Xtime Service Package during the Initial Term, You will be obligated to promptly remit to Xtime the balance of any Subscription Fees due and owing for Your previous Xtime Service Package 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 Vehicle Manufacturer's Xtime Service.

If You select the Service Check-In 7 Package, You must be enrolled in the Service Scheduling 7 Package, and Your order will involve a two-step fulfillment process. After Your Dealership is in production on the Service Scheduling 7 Package with predefined Dealership Personnel adoption and usage characteristics, You are ready to commence configuration and rollout on Service Check-In 7.

Notwithstanding anything to the contrary herein, if Your Dealership elects to implement Service Check-In 7, whether as a new Xtime Dealership or as an Upgrade to Your Dealership's current Xtime Service Package, "Go Live" for Service Check-In 7 will be deemed to separately occur on the earlier of: (x) the date when Service Check-In 7 is ready for active production use by Your Dealership based on Xtime's system activation records, or (y) sixty (60) days after Billing has commenced on the other features of Your Dealership's Xtime Service Package.

11. **Miscellaneous/Notices.** Any assignment by either Party of its rights or obligations hereunder will be void without the non-assigning Party's prior written consent; 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. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of Xtime's and Customer's respective successors and assigns, as applicable.

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. This Agreement, including its recitals and exhibits, if any, which are incorporated herein in full by this reference, constitutes the entire understanding of Xtime and You with regard to the Xtime Service and is intended as a final expression of such agreement. Except as otherwise provided for herein, this Agreement will not be modified except in a writing signed by Xtime and You. If, for any reason, any provision of this Agreement is found to be unenforceable, such provision will be enforced to the extent possible and other provisions of this Agreement will remain unaffected. Notices to a Party will be sent via confirmed email, confirmed fax, by regular US mail or via courier, to the addresses first set forth above. This Agreement will take precedence over any other documents or materials on the Xtime Website as well as 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.