

## XTIME API INTEGRATION TERMS AND CONDITIONS

These Xtime API Integration Terms and Conditions (together with all exhibits and attachments hereto, and including the applicable Participation Form, this “**Agreement**”) is entered into and effective as of the effective date set forth on the applicable Participation Form (the “**Effective Date**”) by and between Xtime, LLC a Delaware limited liability company, with its principal place of business located 1400 Bridge Parkway, Suite 200, Redwood City, CA 94065 (“**Xtime**”) and Provider.

### 1. Definitions.

- (a) “**Acceptance Date**” means the earlier of (a) the date upon which the Integration is accepted by Provider in accordance with Section 3, or (b) sixty (60) days after the Effective Date of this Agreement.
- (b) “**Affiliate**” means any entity that directly or indirectly (through one or more intermediaries) Controls, is Controlled by, or is under common Control with Xtime or Provider.
- (c) “**Agreement**” has the meaning set forth in the preamble of this Agreement.
- (d) “**Annual License Fee**” is the annual fee set forth in the applicable Participation Form that is payable by Provider for each Integration Offering selected by Provider.
- (e) “**Confidential Information**” means all information or materials provided or otherwise disclosed by or on behalf of Disclosing Party to the Receiving Party in connection with this Agreement, whether orally or in writing, that are designated as confidential or that reasonably should be understood to be confidential, given the nature of the information disclosed and the circumstances of disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is or becomes generally available to the public other than as a result of a wrongful disclosure by the Receiving Party; (ii) was rightfully in the possession of, or was rightfully known by the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Disclosing Party; (iii) becomes available to the Receiving Party on a non-confidential basis from a source which is not, to the Receiving Party’s knowledge, prohibited from disclosing such information; (iv) is developed independently by the Receiving Party; or (v) was generally made available to third parties by the Disclosing Party without restrictions similar to those imposed under this Agreement. Notwithstanding anything to the contrary in this Agreement, Data will not be deemed to be Confidential Information of either Party.
- (f) “**Control**” means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interests of the subject entity or the legal power to direct or cause the direction of the general management of such entity, whether by contract or otherwise.
- (g) “**Customer Information**” means “customer information” as defined in the Gramm-Leach-Bliley Act’s standards for safeguarding customer information set forth at 16 C.F.R. § 314.2(b).
- (h) “**Data**” means data to be transmitted by or on behalf of Mutual Dealer Clients through the Provider Integration or through the Xtime Interface, in each case as set forth in the applicable Participation Form or as otherwise mutually agreed to in writing by the Parties.
- (i) “**Xtime**” has the meaning set forth in the preamble of this Agreement.

- (j) **“Xtime Dealer Clients”** means Xtime’s automotive dealership clients that have a Subscription to the Xtime Service.
- (k) **“Xtime Interface”** means Xtime’s application programming interface (API) that enables (i) Mutual Dealer Clients to transmit Data generated on the Xtime Service to the Provider System, and (ii) the Xtime Service to receive Data transmitted by Mutual Dealer Clients through the Provider System.
- (l) **“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.
- (m) **“Disclosing Party”** means the Party that provides Confidential Information to the Receiving Party (or on behalf of which Confidential Information is provided) in connection with this Agreement.
- (n) **“Effective Date”** has the meaning set forth in the preamble of this Agreement.
- (o) **“Email Notice”** means: (a) in the case of notice from Provider to Xtime, an email to [xtimeintegrations@coxautoinc.com](mailto:xtimeintegrations@coxautoinc.com) or (b) in the case of notice from Xtime to Provider, an email to the email address provided in the applicable Participation Form.
- (p) **“Feedback”** means any information, suggestions, ideas, enhancement requests, recommendations, comments and other feedback that Provider may disclose, transmit, suggest or offer to Xtime with respect to the Xtime Service or the Xtime Interface.
- (q) **“Fees”** means, collectively, all fees due and payable from Provider to Xtime pursuant to the applicable Participation Form, including the API Setup Fee and the Annual License Fees.
- (r) **“Initial Term”** has the meaning set forth in Section 7(a).
- (s) **“Integration Offerings”** means those Offerings related to the Xtime Service as set forth in Exhibit A, which Provider may select on the applicable Participation Form to be integrated with the Provider Integration.
- (t) **“Laws”** means all applicable federal, state and local laws, regulations, rules, ordinances and other decrees of any governmental authority.
- (u) **“Legal Notice”** means written notification to the following addressees: (i) if from Provider to Xtime, then to Xtime, Inc., 1400 Bridge Parkway, Suite 200, Redwood City, CA 94065, with a copy to Cox Automotive, Inc., 6205 Peachtree Dunwoody Road, Atlanta, GA 30328, Attention: Legal Services, and another copy sent via email to the Xtime email address used for Email Notice, or (ii) if from Xtime to Provider, then to the address provided on the applicable Participation Form.
- (v) **“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- (w) **“Marks”** means any name, logo, trademark or service mark of either Party, as may be changed by such Party from time to time.

- (x) **“Monthly Subscription Fees”** means the monthly fees payable by Provider for each Mutual Dealer Client, as set forth in the Participation Form.
- (y) **“Mutual Dealer Client Agreement”** means an agreement between either Party and a Mutual Dealer Client with respect to access to its respective System.
- (z) **“Mutual Dealer Clients”** means any Provider Dealer Client that is also a Xtime Dealer Client and subscribes to participate in the API Program in accordance with this Agreement.
- (aa) **“API Setup Fee”** means the one-time setup fee payable by Provider to Xtime for participation in the API Program, as set forth in the Participation Form.
- (bb) **“API Program”** means the integration platform offered by Xtime that provides various technology vendors, such as Provider, with the ability to integrate with Data, via Xtime’s suite of API Integration Offerings.
- (cc) **“Participation Form”** means the ordering document between Xtime and Provider, under which Provider selects certain Integration Offerings for Integration with the Xtime Service.
- (dd) **“Party”** means Xtime or Provider, as applicable; and **“Parties”** means Xtime and Provider, collectively.
- (ee) **“Personnel”** means agents, employees, officers, directors or contractors employed, engaged or appointed by a Party hereunder.
- (ff) **“Provider”** means the entity identified as such on the Participation Form.
- (gg) **“Provider Dealer Clients”** means Provider’s automotive dealership clients that have a Subscription to the Provider System.
- (hh) **“Provider Integration”** means the integration between the Provider System and the Xtime Service via the Xtime Interface, as certified by Xtime.
- (ii) **“Provider System”** means the system set forth in the applicable Participation Form, operated by Provider for Provider Dealer Clients.
- (jj) **“Receiving Party”** means the Party that receives Confidential Information from the Disclosing Party in connection with this Agreement.
- (kk) **“Renewal Term”** has the meaning set forth in Section 7(a).
- (ll) **“Specifications”** means the documentation to be provided by Xtime to Provider, which will include, among other things, the specifications, standards, formats and other requirements related to the Provider Integration. The Specifications will be deemed to be the Confidential Information of Xtime.
- (mm) **“System”** means, with respect to Xtime, the Xtime Service, and with respect to Provider, the Provider System.
- (nn) **“Term”** has the meaning set forth in Section 7(a).

- (oo) ***“Third Party Xtime Integration”*** means any integration between the Xtime Service and any system or application other than the Provider System.

2. Integration.

- (a) Specifications. Provider will develop and maintain the Provider Integration and the Provider System in accordance with this Agreement and the Specifications. Provider may not use the Specifications for any other purpose other than in accordance with the foregoing.
- (b) Development Schedule and Testing. The Parties will work together in good faith to finalize a timeline for performing their respective obligations relating to the development of the Provider Integration. Each Party will proceed with its respective obligations diligently and in good faith, and use commercially reasonable efforts to allocate appropriately skilled personnel and other resources as necessary to complete the development of the Provider Integration in accordance with the timeline mutually agreed upon by the Parties. Upon completion of the development work, the Parties will test the Provider Integration based on a review of their workflow. The Parties will work diligently and in good faith to correct any issues that may arise during the testing phase.
- (c) Technology Requirement. Provider acknowledges and agrees that the Provider Integration will be developed and operated in such a way that does not allow Provider to query the Xtime Service for any data not intended to be transmitted through the API Program or any other data not authorized for the Provider to access by the Mutual Dealer Clients.
- (d) Maintenance. Xtime will use commercially reasonable efforts to maintain the Xtime Service and the Xtime Interface, so that the Provider System will be capable of transmitting Data to and receiving Data from the Xtime Service through the Provider Integration. Provider will use commercially reasonable efforts to maintain the Provider System and the Provider Integration so that the Xtime Service will be capable of receiving Data from and transmitting Data to the Provider System through the Xtime Interface.
- (e) Transmission and Acceptance of Data.
- (i) Subject to Provider’s performance of its obligations under the applicable Participation Form (including this Agreement) and without limiting Xtime’s rights under any agreement between Xtime and the Xtime Dealer Clients, Xtime will accept Data submitted by or on behalf of any Mutual Dealer Client via the Provider Integration for processing in the Integration Offerings. Subject to Xtime’s performance of its obligations under the applicable Participation Form (including this Agreement) and without limiting Provider’s rights under any agreement between Provider and the Provider Dealer Clients, Provider will accept Data submitted by or on behalf of any Mutual Dealer Client via the Xtime Interface for processing in such portions of the Provider Solution that are integrated with the Xtime System.
- (ii) Xtime reserves the right to exclude certain data from being transmitted to the Provider Integration via the Xtime Interface in Xtime’s reasonable discretion, including in order to comply with the terms of Xtime’s agreements with its third party licensors and providers.

- (f) Integration Offerings. Provider has the option to select to have the Provider System integrated with one or more Integration Offerings. Provider may not use the Provider Integration for any product or system other than the Provider System set forth in the applicable Participation Form.
- (g) Installation. Each Party will be responsible for promptly installing and setting up the software applications and tools associated with its respective System.
- (h) Cooperation. The Parties will reasonably assist and cooperate with each other with respect to issues that may arise from time to time in connection with the development, maintenance and operation of the Provider Integration and Xtime Interface. Each Party will assign a relationship manager to act as the primary liaison with respect to the relationship established hereunder.
- (i) Acceptance Date. The Parties will use commercially reasonable efforts to cause the Acceptance Date to occur within ninety (90) days after the Effective Date.
- (j) Operation by Provider. Provider may not operate, manage, or modify the Provider System and the Provider Integration in any manner that will knowingly disrupt or degrade the performance of the Xtime Interface or the Xtime Service; provided, however, that the foregoing will not apply to any modifications necessary in order to comply with applicable Laws, in which case Provider will give Xtime reasonable advance Email Notice thereof. In the event of any degradation or adverse impact to the Xtime Service, upon notification from Xtime, Provider will investigate the cause of issue and promptly terminate those processes causing such degradation or adverse impact and implement any necessary changes to the Provider System to prevent such degradation or adverse impact from reoccurring. Notwithstanding the foregoing, Xtime may temporarily suspend Provider's access to the Xtime Interface and Xtime Service until such changes are made. Nothing in this Agreement will: (i) prevent Provider from making changes to the Provider System that will not affect the functioning of the Xtime Interface or the Xtime Service; and (ii) require Xtime to modify the Xtime Service or the Xtime Interface for any changes that Provider makes to the Provider System or the Provider Integration.
- (k) Modifications by Xtime. Xtime may make modifications to the Xtime Service and/or the Xtime Interface as Xtime deems reasonably necessary or appropriate for the operation or improvement of the Xtime Service. If Xtime believes that any such modifications would require Provider to make modifications to the Provider System and/or the Provider Integration in order to maintain its functionality, Xtime will give Provider at least thirty (30) days' advance Email Notice of such modifications; provided, that, Xtime may give less notice if such modification is necessary to comply with applicable Laws. Provider will, at its expense, make the necessary changes to the Provider System and/or the Provider Integration in order to maintain its functionality. The Parties will establish a mutually agreeable schedule for making such changes properly and in a timely and expeditious manner.
- (l) No Guarantees of Dealer Participation. Provider acknowledges that the Provider Integration for each Integration Module will only be provided for those Mutual Dealer Clients that provide explicit permission for Provider to access their Xtime Service. Xtime makes no guarantees or representations regarding the participation of dealers in the API Program, or that Mutual Dealer Clients will provide such explicit permission.

3. API Certification Process.

- (a) Initial Certification. Prior to establishing the Provider Integration, Provider will undergo Xtime's initial certification process, as may be changed from time to time by Xtime in its sole discretion.
- (b) Recertification. Following the initial certification process, upon request by Xtime, Provider will undergo Xtime's recertification process in order to continue participating in Xtime's API Program. The recertification criteria will be determined by Xtime in its reasonable discretion. Xtime may suspend Provider's Integration until Provider completes the recertification process.

4. Fees and Payments.

- (a) Fees. In exchange for the rights granted to Provider herein, Provider will pay to Xtime the Fees in the manner provided in the applicable Participation Form. Unless otherwise specified in the applicable Participation Form, all Fees are: (i) non-refundable; and (ii) payable in United States Dollars. Provider acknowledges that the Fees are based on the integration to Xtime and not, for example, based on Data. If Provider elects to pass through any portion of the Fees to any Mutual Dealer Client, such pass-through fees will not exceed Provider's actual cost per Mutual Dealer Client rooftop per month.
- (b) Late Fees and Payment Disputes. Xtime may charge interest on any payment not made when due at a rate equal to the lesser of one and one-half percent (1.5%) per month, or the maximum rate allowed under applicable Law. Provider will also be liable for all collection agency fees and reasonable attorneys' fees payable by Xtime or its Affiliates in connection with enforcing Provider's payment obligations. In the event of any dispute with respect to an invoice, Provider must notify Xtime in writing of, and provide a good faith basis for, such dispute within sixty (60) days of the date such amounts are due.
- (c) Taxes. Except for taxes based upon the net income and personal property of Xtime, as between the Parties, Provider will be solely responsible for paying to Xtime or the relevant taxing authority, as reasonably applicable, any taxes or other assessments imposed by governmental authorities in connection with this Agreement.
- (d) Fee Adjustments and Increases. After the Initial Term, Xtime reserves the right to increase any of the Fees at any time, but only once each calendar year, by providing Email Notice to Provider at least forty-five (45) days in advance.
- (e) Mutual Dealer Clients. As between the Parties:
  - (i) Charges from Provider. Provider will contract with Provider Dealer Clients, including Mutual Dealer Clients, with regard to, and set its own pricing for, the Provider Solution. Provider will be responsible for the billing and collection from Provider Dealer Clients for amounts owing in connection with the Provider Solution.
  - (ii) Charges from Xtime. Xtime will contract with Xtime Dealer Clients, including Mutual Dealer Clients, with regard to, and set its own pricing for, the Xtime System. Xtime will be responsible for the billing and collection from Xtime Dealer Clients for amounts owing in connection with the Xtime System.

- (f) Rights Grant. Conditioned upon Provider's compliance with the terms and conditions of this Agreement, Xtime hereby grants Provider a limited, non-transferable, non-sublicensable, revocable right and license to access and use the Xtime Interface solely in connection with the Integration Offerings set forth in the applicable Participation Form.
- (g) Ownership. Except for the rights expressly granted to Provider under this Agreement, Provider will not have any right, title or interest in or to the Xtime Service and the Xtime Interface, or any other technology, materials or intellectual property of Xtime and its licensors, and nothing herein will effect a transfer of any intellectual property rights or any other ownership rights away from Xtime or its licensors. Xtime and its licensors reserve and retain all of their intellectual property rights and ownership rights to the Xtime Service and the Xtime Interface, including any and all enhancements thereto conceived, made or implemented during all phases of development and release thereof.
- (h) Provider Feedback. Provider also acknowledges and agrees that any Feedback from Provider or its Personnel is submitted without any restrictions or expectations of confidentiality. As such, Provider hereby permits Xtime to use, to allow others to use, or to assign the right to use, without compensation, restriction or further obligation of any kind, any Feedback for any purpose whatsoever, including publication or the creation of any intellectual property or derivative works of or relating to any Feedback.
- (i) Marketing and Marks.
  - (i) Provider Marks. Provider grants Xtime and its Affiliates a non-exclusive, non-transferable, royalty-free license to use the Provider Marks in connection with the Provider Integration, including the listing of Provider as an API partner in marketing materials and on its website. Xtime acknowledges that no other rights or license are being granted to Xtime with respect to any Provider Marks, and Xtime will obtain the written consent of Provider prior to any use or display of any Provider Mark. Provider will retain all intellectual property rights and all ownership rights in and to the Provider Marks.
  - (ii) Xtime Marks. Xtime grants Provider a non-exclusive, non-transferable, royalty-free license to use the Xtime Marks in connection with marketing the Provider Integration to Provider Dealer Clients. Provider acknowledges that no other rights or license are being granted to Provider with respect to any Xtime Marks, and Provider will obtain the written consent of Xtime prior to any use or display of any Xtime Mark. Xtime will retain all intellectual property rights and all ownership rights in and to the Xtime Marks.
  - (iii) Quality Standards. In connection with the operation of each of its respective business, each Party will not (or allow others under its control or direction to) engage in any practice or other activity that is or likely to be detrimental to the goodwill associated with the other Party's Marks, or the products or services that such other Party offers, or that constitutes a deceptive trade practice or unfair competition or that violates any applicable fair trade laws or advertising rules and regulations. Upon request, each Party will promptly alter or discontinue any particular use of the other Party's Marks if such other Party believes that does not comply with this Section 5(d)(iii).

(iv) Marketing. Provider will use commercially reasonable efforts to market the Provider Integration to Provider Dealer Clients. The Parties will work together in good faith to pursue joint marketing, co-branding and promotional opportunities for the purpose of mutually promoting the Xtime Interface and the Provider Integration. Provider will not promote, market, sell or license any Third Party Xtime Integration without Xtime's prior written consent.

5. Security.

- (a) Each Party acknowledges and agrees that, as between the Parties, it is solely responsible for the security of all Data on its respective System. Each Party will: (i) adopt and maintain physical, technical and administrative safeguards and procedures reasonably designed to prevent unauthorized access or harm to the other Party's System; (ii) use commercially reasonable efforts to avoid introducing Malicious Code into the other Party's System; and (iii) maintain and periodically test the efficacy of appropriate information security programs and measures designed to ensure the security and confidentiality of any Customer Information, protect against anticipated threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information that could result in substantial harm to any customer of either Party (or any customer of either Party's customers). For purposes of this Section 6(a), references to a Party's System shall include, in the case of Provider, the Provider Integration, and in the case of Xtime, the Xtime Interface.
- (b) During the Term, Xtime may, at its expense and upon reasonable advance notice to Provider, audit (or retain a third party to audit) the Provider System (and Provider Integration) to determine compliance with the security obligations under Section 6; provided, however, that (i) any such audits will be conducted during normal business hours on a date mutually agreed upon by the Parties, and (ii) such audits will not unreasonably interfere with Provider's business.

6. Term and Termination.

- (a) Term. The term of this Agreement will commence on the Effective Date, and unless earlier terminated as provided herein, will continue for a period of one (1) year (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement will automatically renew for successive, one (1) year renewal terms (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**"), unless either Party provides written notice of termination to the other Party at least sixty (60) days prior to the end of the then-current Term.
- (b) Termination Rights. Either Party may immediately terminate this Agreement: (i) if the other Party commits a material breach of this Agreement and such breach has not been cured within fifteen (15) days after receiving Legal Notice of such; (ii) upon the initiation of any bankruptcy, insolvency or other similar proceeding against the other Party; or (iii) either Party ceases to offer its respective System generally for any reason. Either Party may terminate this Agreement upon thirty (30) days' Legal Notice if any change occurs in the legal or regulatory requirements applicable to this Agreement that would render the performance of a material obligation of the terminating Party hereunder illegal or otherwise subject to legal challenge, unless performance of such material obligation is waived in writing by the other Party. In addition, Xtime may terminate this Agreement (1) upon sixty (60) days' Legal Notice at any time, (2) immediately upon Legal Notice in the event that any party acquires a controlling interest in Provider after the Effective Date, or (3) with respect to any particular Mutual Dealer Client, upon written instructions from such Mutual Dealer Client to do so, or upon



learning that Provider's agreement with the Mutual Dealer Client has terminated or expired. In this regard, Provider will promptly inform Xtime if Provider's agreement with any Mutual Dealer Client terminates or expires.

- (c) Effect of Termination. Within thirty (30) days following any termination or expiration of this Agreement, all licenses hereunder will terminate, Provider will disable the Provider Integration, and Xtime will terminate Provider's access to the Xtime Interface. Additionally, each Party will discontinue its use of the other Party's Marks in relation to this Agreement, and remove all references to the other Party's Marks on its respective websites and marketing materials.

7. Confidential Information.

- (a) Confidentiality Obligations. The Receiving Party agrees not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the services set forth in this Agreement, and (except as otherwise authorized by the Disclosing Party in writing) disclose Confidential Information of the Disclosing Party only to its Personnel who need to know such information for purposes of fulfilling such Party's obligations or exercising such Party's rights relating to this Agreement. The Receiving Party will keep the Confidential Information of the Disclosing Party confidential and secure, and protect it from unauthorized use or disclosure, by using at least the same degree of care as the Receiving Party employs to protect its own Confidential Information, but in no event less than reasonable care.
- (b) Compelled Disclosure. If the Receiving Party becomes legally compelled to disclose any Confidential Information of the Disclosing Party in a manner not otherwise permitted by this Agreement, the Receiving Party will promptly inform the Disclosing Party of the request with a prompt Legal Notice so that the Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or similar order is not obtained by the date by which the Receiving Party must comply with the request, the Receiving Party may furnish that portion of the Confidential Information that it reasonably determines it is legally required to furnish. The Receiving Party will exercise reasonable efforts to obtain assurances that confidential treatment will be afforded to the Confidential Information so disclosed. This Section 8(b) will survive any termination of this Agreement.
- (c) Injunctive Relief. Each Receiving Party acknowledges and agrees that the wrongful disclosure of any Confidential Information of the Disclosing Party may cause irreparable injury to such Party and its applicable Affiliates, and that remedies other than injunctive relief may be insufficient. Accordingly, the Disclosing Party will have the right to seek equitable and other injunctive relief to prevent any wrongful disclosure of any of its Confidential Information, as well as such damages and other relief to which such Party or its Affiliates may be entitled.
- (d) No Implied Rights. Each Party's Confidential Information will remain the property of that Party. Nothing contained in this Section 8 will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party any implied rights or license to the Confidential Information of the other Party.
- (e) Return of Confidential Information. Upon termination or expiration of this Agreement, or upon the Disclosing Party's request, the Receiving Party will promptly return (or at the Disclosing Party's request, destroy) all Confidential Information of the Disclosing Party (except Confidential Information of the Disclosing Party that is transmitted by or through the

Provider Integration) and certify to the Disclosing Party in writing that it has done so; provided, however, that the Receiving Party may retain one copy for archival purposes.

8. Representations and Warranties. Each Party represents and warrants to the other Party that:
  - (a) It will comply at all times with all applicable Laws; and
  - (b) It has and will have during the Term, sufficient rights to grant the rights it grants in this Agreement, including any necessary rights, approvals or consents from the Mutual Dealer Clients and from any other third party, and any release related to any rights of privacy or publicity, as may be necessary to fulfill its obligations hereunder.
  
9. Indemnification.
  - (a) By Xtime. Xtime will defend and indemnify Provider against any damages, losses, costs and expenses (including reasonable attorneys' fees, court costs, settlement costs and awarded amounts) incurred in connection with any third party claim to the extent such claim arises from (i) any failure of Xtime to obtain any necessary consent to provide the Xtime Interface and/or to transmit Data via the Xtime Interface; (ii) an allegation that the Xtime Service, Xtime Interface or Xtime Marks in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights; or (iii) any claim with respect to the willful misconduct or gross negligence of Xtime.
  - (b) By Provider. Provider will defend and indemnify Xtime against any damages, losses, costs and expenses (including reasonable attorneys' fees, court costs, settlement costs and awarded amounts) incurred in connection with any third party claim to the extent such claim arises from (i) any failure of Provider to obtain any necessary consent to provide the Provider Integration and/or to transmit Data via the Provider Integration; (ii) an allegation that the use of the Provider System, Provider Integration or Provider Marks in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights; or (iii) any claim with respect to the willful misconduct or gross negligence of Provider.
  - (c) Infringement Claims. If a Party's System or Marks are, in such Party's sole discretion, likely to become subject to a claim of infringement, such Party, at its option and expense, will either: (i) procure a license or right for the other Party to continue using the System and/or the Marks; or (ii) modify its System and/or Marks to make it non-infringing in a manner that does not materially impair its functionality. If neither of the foregoing two options is reasonably available to such Party, then either Party may terminate this Agreement upon Legal Notice to the other Party. Except for the indemnity obligations set forth in this Section 10, the foregoing will be the other Party's sole and exclusive remedy and the infringing Party's sole and exclusive obligation with respect to any infringement claims relating to its System and/or Marks.
  
10. Limitations of Liability.
  - (a) LIABILITY LIMITATIONS. NEITHER PARTY (INCLUDING, IN THE CASE OF XTIME, ITS AFFILIATES) WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, MULTIPLE, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM ANY LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF OR IN CONNECTION WITH THE APPLICABLE

PARTICIPATION FORM AND/OR THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING BREACH OF CONTRACT OR WARRANTY, EQUITY, STRICT LIABILITY, TORT OR OTHERWISE). ADDITIONALLY, THE AGGREGATE LIABILITY UNDER THIS AGREEMENT OF XTIME AND ITS AFFILIATES, ON THE ONE HAND, AND PROVIDER, ON THE OTHER HAND, WILL BE EXPRESSLY LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID BY PROVIDER TO XTIME UNDER THE APPLICABLE PARTICIPATION FORM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO (A) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9, (B) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, (C) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (D) A PARTY'S BREACH OF APPLICABLE PRIVACY LAWS.

- (b) DISCLAIMER. THE XTIME INTERFACE AND THE PROVIDER INTEGRATION ARE INTENDED ONLY TO FACILITATE THE MANAGEMENT AND OPERATION OF CERTAIN ASPECTS OF PROVIDER'S (OR MUTUAL DEALER CLIENTS') BUSINESS AT THE APPLICABLE LOCATIONS. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, NEITHER XTIME NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY TO PROVIDER OR ANY OTHER PERSON WITH RESPECT TO THE XTIME INTERFACE OR THE PROVIDER INTEGRATION, EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF SUITABILITY, LEGALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY TYPE OR NATURE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (I) XTIME WILL HAVE NO DUTY TO VERIFY THE CONTENT OR ACCURACY OF, OR TO ANALYZE IN ANY MANNER, THE DATA; (II) XTIME SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY TO PROVIDER RESULTING FROM OR RELATING TO ANY ACTIONS BY A MUTUAL DEALER CLIENT, OR ANY BREACH BY A MUTUAL DEALER CLIENT OF ANY APPLICABLE MUTUAL DEALER CLIENT AGREEMENT; AND (III) XTIME MAKES NO REPRESENTATION, WARRANTY OR COMMITMENT THAT THE XTIME INTERFACE OR THE PROVIDER INTEGRATION WILL OPERATE ERROR-FREE, WITHOUT INTERRUPTION OR IN ACCORDANCE WITH ANY SPECIFICATIONS, OR THAT THE XTIME INTERFACE OR THE PROVIDER INTEGRATION IS SUITABLE FOR ANY SPECIFIC PURPOSE, INCLUDING ANY ADVICE REGARDING THE VALUE, COSTS, PROFIT TARGETS, QUALITY OR SUITABILITY OF ANY PARTICULAR TRANSACTION, SALES STRATEGY OR OTHER BUSINESS PRACTICE. ANY RELIANCE BY PROVIDER UPON ANY DATA OR THE XTIME INTERFACE WILL NOT DIMINISH THIS DISCLAIMER.

11. Arbitration and Class Waiver.

- (a) Arbitration. Provider agrees to arbitrate any dispute or claim that it may have with Xtime or its Affiliates that arises out of or relates in any way to this Agreement or Licensee's use of or access to the Provider Integration. Such arbitration will be final and binding. If Xtime elects in its discretion to submit to arbitration any dispute or claim that it may have against Provider, any such arbitration will be governed by the provisions of this Section 12.

- (b) Class Waiver. Any arbitration proceeding under this Section 12 will take place on an individual basis. Class arbitrations and class or representative proceedings of any kind are not permitted and Provider expressly waives its ability to participate in a class or representative proceeding against Xtime or its Affiliates. If the arbitration clause is found inapplicable to Provider's dispute with Xtime, this class waiver will continue to apply in litigation. Provider agrees that this class waiver is an essential element of the agreement between Provider and Xtime and that this class waiver may not be severed. In the event that this class waiver is deemed invalid or unenforceable, then the entire agreement to arbitrate in this Section 12 will be null and void.
- (c) Arbitrator Authority. Any dispute or claim subject to arbitration pursuant to this Section 12 must be submitted to binding arbitration before a single arbitrator administered by JAMS pursuant to JAMS Streamlined Rules. The arbitrator will be bound by and will strictly enforce this Agreement and any applicable Participation Forms between Provider and Xtime, including any limitations of liability contained therein, and may not limit, expand or otherwise modify any of the provisions of the foregoing. Any arbitration will be held in Atlanta, Georgia, unless otherwise agreed upon by the Parties in writing. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator will award the applicable Party any costs and fees to which it may be entitled under Section 10 in connection with any indemnification claim. Provider agrees that its transactions with Xtime evidence transactions in interstate commerce, and that the Federal Arbitration Act therefore governs the interpretation and enforcement of this Section 12 (notwithstanding the application of Georgia Law to any underlying claims). Provider also agrees that this Section 12 survives any termination of this Agreement.

12. Miscellaneous.

- (a) Mutual Dealer Client Agreements. This Agreement does not alter any rights or obligations of either Party as set forth in any Mutual Dealer Client Agreement, including, for clarity, with respect to Data.
- (b) Notices. All Legal Notices required or permitted to be given by a Party must be (i) in writing, (ii) sent by commercial delivery service or certified mail, return receipt requested, and (iii) deemed to have been given on the date set forth in the records of the delivery service or on the return receipt. Email Notices will be deemed to have been given upon receipt of the email (regardless of whether the email is opened), which may be evidenced by "delivery receipt" received by the sender.
- (c) Governing Law and Forum. This Agreement will be governed and construed in accordance with the Laws of the State of Georgia, without regard to its conflict of Laws principles. Any dispute that arises or relates to this Agreement will be filed exclusively in a state or federal court located in Fulton County, Georgia, and the Parties expressly waive any challenge to the jurisdiction or venue of such courts.
- (d) Order of Precedence. In the event of any conflict in contract terms, and unless otherwise specified expressly on the Participation Form, the order of precedence will be, from highest to lowest priority: (i) the terms appearing in the applicable Participation Form, (ii) the terms of any Exhibits or other attachments, and (iii) the terms of this Agreement. Contract terms will not be interpreted strictly against a Party by virtue of such Party's role in preparing or drafting them.

- (e) Entire Agreement. This Agreement, including all Participation Forms, Exhibits and other attachments, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect to such matters, whether oral or written.
- (f) Counterparts; Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and electronic signatures will be considered original signatures.
- (g) Amendments and Modifications. Any amendments or modifications of this Agreement (including a Participation Form) will only be effective if in writing and signed by each Party.
- (h) Independent Contractor. Each Party, in all matters relating to this Agreement, will act as an independent contractor of the other Party. Neither Party will have authority nor represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, or to represent the other Party as an agent, employee or in any other capacity. Neither execution nor performance of this Agreement will be construed to have established any agency, joint venture or partnership.
- (i) Third Party Beneficiaries. This Agreement is intended for the benefit of the Parties only and nothing contained herein will be deemed to give any third party any intended or incidental claim or right of action against Provider or Xtime that does not otherwise exist without regard to this Agreement.
- (j) Non-Waiver and Severability. The failure of either Party to enforce any provision of this Agreement will not be deemed a waiver of such provision or the right of such Party thereafter to enforce such provision. If any provision is deemed invalid or prohibited by Law, such provision will, if possible, be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law. In any event, the remainder of the provisions will remain in full force and effect.
- (k) Headings. The heading used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- (l) Remedies Cumulative. Except as otherwise expressly provided otherwise, all remedies provided herein are cumulative and in addition to and not in lieu of any other remedies available to a Party in connection with this Agreement, or at law or in equity.
- (m) Survival. Sections 1 (Definitions), 4 (Fees and Payments, but solely until all outstanding Fees not reasonably in dispute have been paid); 5 (Proprietary Rights and Licenses), 7 (Term and Termination), 8 (Confidential Information), 9 (Representations and Warranties), 10 (Indemnification), 11 (Limitations of Liability), 12 (Arbitration and Class Waiver), 13 (Miscellaneous), and any other provisions above that expressly state that they survive termination will survive the termination of this Agreement. In addition, any provisions above that should reasonably survive termination in accordance with their respective terms will also so survive, as will any outstanding payment or tax obligation hereunder, and any cause of action or claim of either Party, whether in Law or in equity.

(n) Assignment. Provider may not assign this Agreement or any rights or obligations hereunder, whether by operation of Law or otherwise, without the prior written consent of Xtime (which may be withheld in its sole discretion). Xtime may assign this Agreement upon Legal Notice to Provider.

