

# DEALER DOT COM INTEGRATION TERMS

The terms and conditions below (these “*Integration Terms*”) govern any Participation Form that references them. These Integration Terms and the Participation Form collectively are referred to herein as the “*Agreement*.”

## **Terms and Conditions**

1. **Definitions.** The following capitalized terms will have the corresponding meanings provided below:
  - 1.1. “*Affiliate*” means any entity that directly or indirectly (through one or more intermediaries) Controls, is Controlled by, or is under common Control with DDC or Vendor.
  - 1.2. “*Agreement*” has the meaning set forth in the preamble above.
  - 1.3. “*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 the 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. In each case, as applicable, (a) DDC’s Confidential Information includes the DDC Product and DDC Materials, and all information and materials that in any way relate to any of the foregoing or any other aspect of the business or operations of DDC or its Affiliates, including any information or materials relating to the operations, customers, contractors, distributors, software, technology, products, services or marketing plans of DDC or its Affiliates; and (b) Vendor’s Confidential Information includes the Vendor Products and all information or materials that in any way relate to Vendor Products or any other aspect of the business or operations of Vendor and its Affiliates, including any information or materials relating to the operations, customers, contractors, distributors, software, technology, products, services or marketing plans of Vendor or its Affiliates. Confidential Information does not include information that (1) is or becomes generally available to the public other than as a result of a wrongful disclosure by the Receiving Party; (2) 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; (3) 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; (4) is developed independently by the Receiving Party; or (5) was generally made available to Third Parties by the Disclosing Party without restrictions similar to those imposed under the Agreement.
  - 1.4. “*Consumer Information*” means any information that is defined as “personal information,” or any other substantially similar designation, under applicable Privacy Laws.
  - 1.5. “*Control*” means ownership or control, directly or indirectly, of more than 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.
  - 1.6. “*DDC*” means Dealer Dot Com, Inc., a Delaware corporation having an address of 1 Howard Street, Burlington, Vermont 05401.

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- 1.7. “**DDC Customer**” means a dealership client for which DDC (either by itself or through a contractor, reseller or agent) provides one or more DDC Products.
- 1.8. “**DDC Mark**” means any name, logo, trademark or service mark of DDC or its Affiliates.
- 1.9. “**DDC Materials**” means data, content, software or other materials of DDC (but excluding DDC Products) that are made available by DDC to Vendor, including by, through or in connection with the applicable DDC Product.
- 1.10. “**DDC Products**” means the applicable DDC software, service or website with which Vendor may from time to time integrate or attempt to integrate a Vendor Product pursuant to the Agreement.
- 1.11. “**Disclosing Party**” means the Party that provides Confidential Information to the Receiving Party in connection with the Agreement.
- 1.12. “**Email Notice**” means: (a) in the case of notice from Vendor to DDC, an email to DDCproviders@coxautoinc.com; or (b) in the case of notice from DDC to Vendor, an email to the Vendor email address that Vendor has specified on the Participation Form.
- 1.13. “**Feedback**” means any information, suggestions, ideas, enhancement requests, recommendations, comments and other feedback that Vendor may disclose, transmit, suggest or offer to DDC or its Affiliates with respect to any DDC Product, its integration with other products or the Agreement.
- 1.14. “**including**” means “including, without limitation.”
- 1.15. “**Initial Term**” means the initial term of the Agreement, as set forth on the Participation Form.
- 1.16. “**Integration**” means, collectively, any one or more integrations of any Vendor Product with any DDC Product implemented or attempted by or on behalf of Vendor pursuant to the Agreement.
- 1.17. “**Integration Terms**” has the meaning set forth in the preamble above.
- 1.18. “**Laws**” means all applicable federal, state and local laws, regulations, rules, ordinances and other decrees of any governmental authority.
- 1.19. “**Legal Notice**” means written notification to the following addressees: (a) if from Vendor to DDC, then (i) to Cox Automotive, Inc., Attention: Legal Department, 6205 Peachtree Dunwoody Road, Atlanta, Georgia 30328, with a copy sent to (ii) the DDC address specified in the DDC definition in Section 1 and (iii) via email to the DDC email address used for Email Notice; or (b) if from DDC to Vendor, then to the Vendor address specified on the Participation Form.
- 1.20. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.21. “**Modifications**” means changes, upgrades, updates, modifications or enhancements to, or derivative works of, the applicable product or material.
- 1.22. “**Participation Form**” means a DDC-approved form pursuant to which Vendor agrees to integrate

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one or more Vendor Products with one or more DDC Products. A Participation Form may be a written or an electronic agreement, and will incorporate by reference these Integration Terms; collectively, the Agreement may be “executed,” “accepted,” or “agreed” by a Vendor to be enforceable. Sections of a Participation Form describing the Vendor Product and purpose may be modified by a notice duly provided under Section 5.1.

- 1.23. “**Party**” means Vendor or DDC, individually, as applicable; and “**Parties**” means Vendor and DDC, collectively.
- 1.24. “**Privacy Laws**” means all applicable privacy laws and information security laws, and any other applicable federal, state, provincial or local laws, as they exist and are amended from time to time, relating to: (a) data privacy, security, integrity, confidentiality, communications, use, collection, processing and storage; and (b) spamming and other unsolicited communications, including, as applicable, the U.S. Gramm-Leach-Bliley Act of 1999 (e.g., 16 C.F.R. Part 313 (Privacy Rule) and 16 C.F.R. Part 314 (Safeguards Rule)), and the U.S. Telephone Consumer Protection Act of 1991 (TCPA).
- 1.25. “**Receiving Party**” means the Party that receives Confidential Information from the Disclosing Party in connection with the Agreement.
- 1.26. “**Third Party**” means an entity or person that is neither a Party, nor an Affiliate of a Party. Third Parties may include mutual dealer clients and original equipment manufacturers, as applicable.
- 1.27. “**Vendor Products**” means any software, service, code, application, website or other product offered by Vendor from time to time to its customers (or any component or feature of such product).

## 2. Evaluation and Acceptance of the Vendor Products.

- 2.1. Evaluation. Integration of any Vendor Product with a DDC Product remains subject to evaluation and approval by DDC (or re-evaluation, in case of any Vendor Product previously approved) at all times, in DDC’s sole discretion. Upon request by DDC, Vendor shall (a) provide to DDC access to the Vendor Product as required by DDC in order to perform such evaluation, including to test whether the Vendor Product and its integration with the DDC Product meet the applicable acceptance criteria and otherwise are in compliance with the Agreement, and (b) provide to DDC all reasonably requested information, materials, cooperation and assistance, including test scripts, reports and logs.
- 2.2. Vendor Cooperation. To support DDC’s evaluation of Vendor Products, Vendor shall provide to DDC all reasonably requested information, materials, cooperation and assistance, including test scripts, reports and logs.
- 2.3. Approval. Once DDC has completed its evaluation of a Vendor Product, DDC will provide Email Notice to Vendor either noting that the Vendor Product has been approved or providing an explanation of issues that DDC has discovered through the evaluation process that has caused the Vendor Product to be rejected (the “Issues”). For clarity, DDC in its sole discretion may determine whether to approve any Vendor Product, and therefore whether any such Vendor Product will be

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integrated (or, in the case of additional testing, continues to be integrated) with a DDC Product. If DDC withholds approval for a Vendor Product, DDC may give Vendor an opportunity to make the required changes and resubmit such Vendor Product for further evaluation. If DDC withholds or withdraws approval for a Vendor Product that has previously been integrated, DDC will not implement such rejection unless it provides the Issues to Vendor and gives Vendor thirty (30) days to resolve such Issues to DDC's satisfaction (subject to Section 3.4 hereof).

## 3. Term, Termination and Suspension.

- 3.1. Term. The Agreement shall remain in effect until the Integration is terminated with respect to all Vendor Products as set forth below.
- 3.2. Termination by DDC. DDC may terminate the Agreement (or any integration comprising part of the Integration) immediately by notice to Vendor (i) if Vendor is in breach of any material provision of the Agreement and fails to cure such breach within fifteen (15) days of written notice by DDC; or (ii) in the event: (x) that an assignment is made by the Vendor for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of Vendor's property, or (y) Vendor files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against Vendor and is not dismissed within thirty (30) days.
- 3.3. Suspension. DDC may immediately suspend the integration or use of a Vendor Product with one or more DDC Products at any time, in whole or in part (including by disabling such Vendor Product or a portion of its functionality, or by removing it from a DDC Product), if DDC believes that Vendor or the Vendor Product is not in compliance with the terms of the Agreement, or if such integration or use presents an operational, security or other harm, risk or adverse impact to the Vendor Product, DDC Product, any DDC Customers or end users of the DDC Product. DDC will lift such suspension promptly after being reasonably assured that the non-compliance has been remedied or the harm, risk adverse impact is no longer present. DDC may also suspend (or terminate) the integration or use of a Vendor Product with a DDC Product with respect to any particular DDC Customer upon written instructions from such DDC Customer to do so, or upon learning that Vendor's agreement with the DDC Customer has terminated or expired.
- 3.4. Effect of Termination. Upon termination of the Agreement, and unless otherwise set forth herein, each Party shall deliver to the other (or destroy) all Confidential Information of the other Party that it may have in its possession or within its control, except that each Party may retain copies of such materials of the other Party on its systems for archival purposes (subject to all confidentiality obligations hereunder). Upon termination of the Agreement for any reason, those provisions of the Agreement that by their nature are intended to survive will survive in accordance with their terms, including, but not limited to, Sections 1, 3.5, 4, 6.1, 6.2, 6.5, and 7 - 12.

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## 4. **Restrictions.** Vendor agrees that it will not:

- (a) Use or access DDC Products or DDC Materials in a manner not expressly authorized under the Agreement;
- (b) Violate any additional then-current DDC restrictions (e.g., DDC-published OEM-mandated restrictions), including with respect to (i) access and use of DDC Products or DDC Materials, or (ii) collection, use or sharing of any data that is outside of that data which is accessible by or through Vendor Products that are integrated with DDC Products;
- (c) Violate (i) any Law or applicable, DDC-provided compliance requirements, including any original equipment manufacturer (or similar) compliance rules and guidelines relating to the Vendor Products; or (ii) the intellectual property rights or other rights of any Third Party;
- (d) Reverse engineer, decompile, disassemble or otherwise attempt to discern, discover, copy or disclose the source code, algorithms, processes or methods supporting any DDC Product or DDC Materials;
- (e) Use any data collected from the dealer's website: (i) to create audiences for advertising retargeting or (ii) for OEM-facing analytics products, except where expressly permitted to do so by the rightful owner of any such data;
- (f) Attempt to gain unauthorized access to or disrupt the integrity or performance of any DDC Product;
- (g) Transmit to DDC, or otherwise introduce into any DDC Product, Malicious Code;
- (h) Use any means or form of scraping or data extraction to access, query or otherwise collect information from any DDC Products unless approved in advance in writing by DDC;
- (i) Harvest, collect or assemble Consumer Information without such consumer's valid, informed consent; or
- (j) Remove from or alter any DDC Mark on any DDC Product or DDC Materials.

## 5. **Vendor Obligations.**

5.1. Changes to Vendor Products. Vendor shall provide DDC a reasonable advance written notice (which may be an Email Notice) no less than 30 days prior to adding any Vendor Product, purpose or use case in connection with the Integration (or implementing any modification to a then-integrated Vendor Product that may impact a DDC Product), and no less than 10 days prior to discontinuing any then-integrated Vendor Product, purpose or use case. In addition, any actions described in the previous sentence in excess of two (2) times in a rolling twelve (12) month period shall require explicit permission of DDC.

5.2. Customer Relationship.

- (a) Vendor is solely responsible for (and DDC has no responsibility or liability to Vendor or any Third Party for): (a) support of the Vendor Products, (b) entering into agreements with DDC Customers

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for the Vendor Products, and all of Vendor's obligations under such agreements and for the consequences of any breaches of such obligations and (c) billing and collection of fees from DDC Customers for the Vendor Products.

- (b) Vendor shall promptly provide notice to DDC if Vendor's agreement with any DDC Customer terminates or expires.
- 5.3. Costs. Vendor will be solely responsible for any taxes or other assessments imposed by governmental authorities or any other costs Vendor may incur in connection with the Integration or the Vendor Products.
- 5.4. Security Breach Notification. Subject to any prohibitions of Law, Vendor shall provide written Legal Notice to DDC within twenty-four (24) hours of (a) the discovery of any loss, unauthorized disclosure, or unauthorized access to or use of any Consumer Information or DDC Confidential Information collected or obtained by a Vendor Product or otherwise provided or made available to Vendor by DDC or (b) any unauthorized access, or compromise to the security of, the Vendor Product that could in any way impact the DDC Product or its end users. Such Legal Notice shall include, at a minimum, information on the nature of the event, the data that has or may have been compromised, and the steps Vendor is taking to remediate the breach and prevent its or similar recurrences.
- 5.5. Information Requests and Audits. Promptly upon DDC's written request, but no more than once per twelve month period based on the anniversary date of the Participation Form, Vendor shall provide DDC with information, logs and reports to confirm Vendor's compliance with the terms of the Agreement. If such information and materials are not provided, or if DDC has concerns following receipt of such information and materials, then DDC (and/or its auditors) may perform an audit of Vendor to confirm Vendor's compliance. Vendor agrees to cooperate with any such DDC audit and provide reasonably required assistance and access. If the audit uncovers any material breaches of the Agreement by Vendor or underpayment of Fees by greater than 5%, Vendor agrees to pay DDC's costs incurred in conducting the audit within thirty (30) days of written notification of the amounts owed.

## 6. Fees and Payments.

- 6.1. Fees.
  - (a) In exchange for the rights granted to Vendor herein, Vendor will pay to DDC the Fees in the manner provided in the Participation Form, if applicable. All Fees are: (i) non-refundable; and (ii) payable in United States Dollars unless otherwise specified in such Participation Form.
  - (b) DDC may require or permit payment via ACH. If Vendor is to pay DDC via ACH, Vendor acknowledges and agrees that the Fees will be deducted from Vendor's bank account via ACH at the time the Fee is incurred. Vendor hereby authorizes DDC (and/or its designee) to make such deductions.
- 6.2. Late Fees and Payment Disputes. DDC 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. Vendor will also be liable for all collection agency fees and reasonable attorneys' fees payable by DDC or its Affiliates in connection with enforcing Vendor's payment obligations. In the event

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of any dispute with respect to an invoice, Vendor must notify DDC in writing of, and provide a good faith basis for, such dispute within sixty (60) days of the date such amounts are due.

- 6.3. Taxes. Except for franchise taxes, commerce taxes, and taxes based upon the net income and personal property of DDC, Vendor will be solely responsible for any taxes or other assessments imposed by governmental authorities in connection with the Agreement.
- 6.4. Right to Increase Fees Annually. DDC reserves the right to increase Fees (if applicable), once each year beginning on the first anniversary of the Agreement Effective Date, by providing Email Notice to Vendor at least forty-five (45) days in advance.

## 7. Intellectual Property Rights and Data Use Rights.

- 7.1. Vendor Products. During the Term, as between DDC and Vendor, Vendor owns all right, title and interest in the Vendor Products, and any Modifications thereto. Nothing in the Agreement will effect a transfer of any intellectual property rights or any other ownership rights away from Vendor. Vendor reserves and retains all of its intellectual property rights and ownership rights to Vendor Products, including any Modifications thereto. Subject to the terms and conditions of the Agreement, Vendor grants DDC and its Affiliates a worldwide, royalty-free right and license to use, display, perform, copy and create derivative works of the Vendor Products solely in connection with the Integration and otherwise for the purposes of the Agreement, including in order to: (a) internally test, evaluate and perform validation and verification of the Vendor Products; and (b) perform any integration and development efforts between the Vendor Products and DDC Products, as applicable. If the Integration involves placement of Vendor Products (or portions thereof) on DDC websites, then as between the Parties, DDC shall determine the location of such placements, including the particular pages of the DDC websites that may include Vendor Products.
- 7.2. DDC Products, Materials and Work Product. During the Term, as between DDC and Vendor, DDC owns all rights, title and interest in the DDC Products, DDC Materials and any work product or materials developed by DDC in connection with the Agreement, as well as any Modifications to any of the foregoing. Nothing in the Agreement will effect a transfer of any intellectual property rights or any other ownership rights away from DDC. DDC reserves and retains all of its intellectual property rights and ownership rights to such DDC Products, DDC Materials and work product, including any Modifications thereto. For clarity, nothing herein prevents DDC from making Modifications to any DDC Product, at DDC's discretion.
- 7.3. Use Rights for Collected Data.
  - (a) In each case subject to the data collection restrictions set forth in Section 4, as well as any requirements of Law or other compliance restrictions, (i) Vendor Products that have been integrated into DDC Products are permitted to collect data (including user data and analytics data) solely: (i) for reporting and analytics, including demonstrating to dealerships the effectiveness of Vendor's products and services, (ii) to optimize the manner in which Vendor's Dealer Products are operated and managed for mutual dealer clients, including optimizing the Vendor audience to whom advertisements are displayed based on behavior, and (iii) for Vendor's internal business purposes, including the optimization and management of its products and services; in each case, such collection shall be solely in accordance with applicable consumer consents and Privacy Laws,

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as well as the Vendor Product descriptions supplied as part of the Participation Form (as updated from time to time in accordance with the Agreement).

- (b) Vendor acknowledges that DDC reserves the right for DDC (or DDC Products) to collect and use any data, including data that is the same as or similar to that which may be collected by the integrated Vendor Products.
- (c) Solely for DDC's aggregated performance analytics and attribution purposes on behalf of DDC Customers, Vendor hereby agrees to provide DDC upon request with certain attribution data, including lead counts, that it gathers via the applicable Vendor Product.
- 7.4. Vendor Feedback. Vendor acknowledges and agrees that any Feedback from Vendor is submitted without any restrictions or expectations of confidentiality. As such, Vendor hereby permits DDC 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.
- 7.5. Marks.
  - (a) Vendor acknowledges that no rights or licenses are being granted to Vendor with respect to any DDC Marks, and Vendor will obtain the written consent of DDC prior to any use or display of any DDC Mark by Vendor. DDC (and its Affiliates) will retain all intellectual property rights and all ownership rights in and to the DDC Marks.
  - (b) DDC acknowledges that no rights or licenses are being granted to DDC or any Affiliates of DDC with respect to any Vendor Marks, except that DDC may use Vendor Marks in connection with the Integration. DDC otherwise will obtain the written consent of Vendor prior to any use or display of any Vendor Mark by DDC or any DDC Affiliate. Vendor will retain all intellectual property rights and all ownership rights in and to the Vendor Marks.

## 8. Confidential Information.

- 8.1. Confidentiality Obligations. The Receiving Party agrees not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement, and (except as otherwise authorized by the Disclosing Party in writing) to only disclose Confidential Information of the Disclosing Party to its personnel who need to know such information for purposes of the 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.
- 8.2. 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 the Agreement, the Receiving Party will 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



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will exercise reasonable efforts to obtain assurances that confidential treatment will be afforded to the Confidential Information so disclosed.

- 8.3. 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.
- 8.4. No Implied Rights. Each Party's Confidential Information will remain the property of that Party. Nothing contained in this Section 7.4 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, expressly or by implication, any rights or license to the Confidential Information of the other Party.
- 8.5. Vendor Acknowledgement. Vendor acknowledges that DDC may now or in the future provide products and services that may be substantially similar or the same as the Vendor Products. However, DDC will not use Vendor's Confidential Information to develop any such products or services.

## 9. Representations and Warranties.

- 9.1. By Vendor. Vendor represents and warrants to DDC that:
  - (a) Vendor will comply at all times with all applicable Laws (including applicable Privacy Laws) and any other applicable compliance requirements, including any original equipment manufacturer (or similar) compliance rules and guidelines relating to the Vendor Products, including with respect to Vendor's use of data and information collected or obtained by or in connection with the Agreement;
  - (b) Vendor is the owner and/or the licensee of all intellectual property rights in and to all Vendor Products, and otherwise has all necessary rights, licenses, consents and approvals to fulfill Vendor's obligations under the Agreement, including to make the Vendor Products (and any data or information stored therein) available to DDC, and to permit DDC to exercise its rights and perform its obligations hereunder;
  - (c) Vendor's entering into the Agreement does not conflict with or violate any other agreement Vendor may have with any Third Party;
  - (d) Vendor shall not allow any Malicious Code to be introduced into the DDC Products through Vendor's and its Authorized Users' use; and
  - (e) All Vendor and Vendor Product information supplied by Vendor on the Participation Form (as updated from time to time in accordance with the Agreement) is and shall at all times remain accurate and complete.

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- (f) Each Vendor Product will materially conform to its specifications, features and functions, as published by Vendor or as otherwise provided to DDC.

9.2. By DDC. DDC represents and warrants to Vendor that:

- (a) In connection with the Agreement, DDC will comply at all times with all applicable Laws (including applicable Privacy Laws);
- (b) DDC is the owner and/or the licensee of all intellectual property rights in and to all DDC Products and DDC Materials, and otherwise has all necessary rights, licenses, consents and approvals to fulfill DDC's obligations under the Agreement;
- (c) DDC's entering into the Agreement does not conflict with or violate any other agreement DDC may have with any Third Party; and
- (d) DDC will use commercially reasonable efforts to avoid introducing any Malicious Code into the DDC Products or Vendor Products.

## 10. Indemnification.

10.1. By DDC. DDC will indemnify and defend Vendor 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 (a) an allegation that a DDC Product, DDC's integration of a Vendor Product with a DDC Product in accordance with the Agreement, or any DDC Materials infringe or misappropriate such Third Party's intellectual property rights, (b) any breach by DDC of any representations or warranties, or (c) the willful misconduct or gross negligence of DDC.

10.2. By Vendor. Vendor will indemnify and defend DDC and its Affiliates 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 that such claim arises from (a) an allegation that any Vendor Product or Vendor's activities in connection with such product, or DDC's use of any such product consistent with the terms of the Agreement, infringes or misappropriates such Third Party's intellectual property rights, (b) any breach by Vendor of any representations or warranties, (c) the willful misconduct or gross negligence of Vendor, or (d) information or data that Vendor obtains through a Vendor Product, including Vendor's use, collection or custody of such data or information.

## 11. Limitations of Liability and Disclaimers.

11.1. Liability Limitations. NEITHER DDC NOR ITS AFFILIATES WILL BE LIABLE TO VENDOR 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 AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, THE AGGREGATE LIABILITY UNDER THE AGREEMENT OF DDC, ITS AFFILIATES AND ITS THIRD PARTIES WILL BE EXPRESSLY LIMITED TO THE GREATER OF (A) AN AMOUNT EQUAL TO THE AMOUNT PAID BY VENDOR TO DDC UNDER THE AGREEMENT

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IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY OR (B) \$10,000.

- 11.2. DISCLAIMERS. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, NEITHER PARTY NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY TO THE OTHER PARTY, 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, DDC MAKES NO REPRESENTATION OR WARRANTY THAT THE VENDOR PRODUCTS, AS INTEGRATED WITH DDC PRODUCTS, WILL OPERATE ERROR-FREE, WITHOUT INTERRUPTION OR IN ACCORDANCE WITH ANY SPECIFICATIONS.

## 12. Arbitration and Class Waiver.

- 12.1. Arbitration. Vendor agrees to arbitrate any dispute or claim that it may have with DDC or its Affiliates that arises out of or relates in any way to the Agreement or a Vendor Product that is integrated into any DDC Product. Such arbitration will be final and binding. If DDC elects in its discretion to submit to arbitration any dispute or claim that it may have against Vendor, any such arbitration will be governed by the provisions of this Section 12.
- 12.2. 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 Vendor expressly waives its ability to participate in a class or representative proceeding against DDC or its Affiliates. If the arbitration clause is found inapplicable to Vendor's dispute with DDC, this class waiver will continue to apply in litigation or any other forum. Vendor agrees that this class waiver is an essential element of the agreement between Vendor and DDC 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.
- 12.3. 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 the Agreement between Vendor and DDC, including any limitations of liability contained herein, 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 the Agreement in connection with any indemnification claim. Vendor agrees that its transactions with DDC 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). Vendor also agrees that this Section 12 survives any termination of the Agreement.

## 13. Miscellaneous.

- 13.1. Notices. All Legal Notices required or permitted to be given by a Party must be (a) in writing; (b)

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sent by commercial delivery service or certified mail, return receipt requested; and (c) 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 addressee (regardless of whether the email is opened), which may be evidenced by “delivery receipt” received by the sender.

- 13.2. Effectiveness. The Agreement is made effective by Vendor’s execution of the Participation Form. Certain Participation Forms may be executed by means of electronic or digital signatures. Any such electronic or digital signature will be deemed to satisfy all requirements imposed on electronic or digital signatures under the Electronic Signatures in Global and National Commerce Act (E-SIGN), and any similar Laws relating to the validity or enforceability of electronic or digital signatures. Where the Participation Form is an online form or set of terms, such Participation Form will be made effective by Vendor’s acceptance of the terms through the Vendor’s “checkbox” submission or other similar electronic means.
- 13.3. Governing Law. Any disputes arising from or related to the 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 action to enforce any arbitration proceeding, and any other legal action, suit or proceeding that is not otherwise subject to mandatory arbitration pursuant to Section 12 above and arises under or relates to the Agreement, will be filed exclusively in a state or federal court located in Fulton County, Georgia, and Vendor consents to such forum and waives any objection to the laying of venue in such forum.
- 13.4. Amendments and Modifications. Except to the extent notices duly provided under Section 5.1 are permitted to modify Vendor Product and purpose descriptions in the Participation Form, any amendments or modifications of the Agreement will be effective only if in writing and signed by each Party.
- 13.5. Press Releases. Vendor shall not issue any press releases or announcements concerning the Integration without the DDC’s prior written consent.
- 13.6. 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.
- 13.7. Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings between the Parties with respect to such matters, whether oral or written.
- 13.8. Severability. 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.
- 13.9. Remedies Cumulative. Except as otherwise expressly provided in the Agreement, all remedies

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provided herein are cumulative and in addition to and not in lieu of any other remedies available to a Party under the Agreement, at law or in equity.

- 13.10. Assignment. Vendor may not assign the Agreement or any rights or obligations thereunder, whether by operation of law or otherwise, without the prior written consent of DDC (which shall not be unreasonably withheld). DDC may assign the Agreement upon Email Notice to Vendor.