# Dodge Data & Analytics Master Services Agreement

This Master Services Agreement ("Agreement") governs all products and services ordered by the entity signing hereunder ("Customer") and furnished by Dodge Data & Analytics ("DDA").

**1. Products & Services** (a) The products, data, software and/or services selected by Customer ("Services") and set forth on DDA's then-current order form, upon acceptance by DDA ("Order Form"), will be furnished by or on behalf of DDA and/or its licensors, vendors and suppliers ("Licensors"). The Services may include, without limitation, data, software, advertising services and/or printing services, as set forth on the Order Form.
(b) Subject to the terms and conditions of this Agreement, DDA hereby grants Customer a limited, non-exclusive, non-transferable license to permit only Authorized Users to access and use (i) the object code version of the software and related documentation (if any) included as part of the Services and identified on the Order Form ("Software") and/or (ii) the information, data, documents, plans, specifications and addenda (if any) included as part of the Services and identified on the Order Form ("Data"), solely for Customer's internal business purposes (the "License"). "Authorized User" means an employee of Customer who Customer authorizes to use the Services on behalf of Customer. The total number of Authorized Users and the term of the License (if any) shall be as specified on the Order Form, subject to termination as provided herein.
(c) Sharing of user passwords or IDs is strictly prohibited. In using the Services, Customer will comply with all laws and will not represent itself as any other party or otherwise provide any false or misleading information, and will ensure that Authorized Users comply with the foregoing. No portion of the Services may: (i) be copied, modified or sold, or disclosed, distributed, transferred or otherwise made available to others, in any way, without DDA's prior written consent; or (ii) be used in any manner that competes with DDA and/or the Services. Customer agrees to certify in writing, at DDA's request, whether Customer and all Authorized Users are in compliance with this Agreement, and DDA reserves the right to monitor and audit the use of the Services by Customer and/or any Authorized Users in order to ensure compliance with this Agreement. DDA may modify, add to or delete the Services or portions thereof, or change the media or the format of the Services, at any time in its sole discretion without liability to Customer, any Authorized Users and/or any other parties. To the extent commercially practicable, DDA will provide Customer with notice of any material change in the Services.

**2. Customer Content** (a) If specified on the Order Form, Customer shall provide DDA with certain content, information and/or materials owned or licensed by Customer ("Customer Content") or alternatively, Customer shall provide DDA with an URL so that DDA can use its automated content collection technology to periodically collect Customer Content from Customer's Web site. The Customer Content shall either be: (i) hosted by DDA on behalf of Customer in connection with Customer's use of the Services ("Hosted Content"); or (ii) published, displayed and/or distributed by DDA in connection with the Services ("Distributed Content"). Customer hereby authorizes DDA to host the Hosted Content in connection with Customer's use of the Services; and to publish, display and distribute the Distributed Content in connection with the Services through DDA's products and services as well as through the products and services of Licensors and DDA's resellers and distributors.
(b) Customer represents and warrants that: (i) Customer owns or possesses sufficient rights to the Customer Content to provide it to DDA hereunder and to allow DDA to use the Hosted Content, and to use, publish, display, distribute and make available the Distributed Content to others, without infringing or violating the rights of third parties; and (ii) the Customer Content is free from viruses or destructive properties (collectively, "Harmful Code"). DDA has the right, but not the obligation, to screen the Customer Content for Harmful Code. Customer and its users assume all risks, and DDA and its Licensors shall not be responsible or liable for disclosure, distribution or replacement of, or loss or damage to, any Customer Content, or for damage caused to Customer or to its users by Harmful Code, or for use by third parties of any Customer Content, whether or not authorized by Customer. DDA reserves the right to limit disk space for data hosted by or on behalf of Customer.
(c) DDA reserves the right to decide in its sole discretion what sections or subsections of the Customer Content (if any) will be classified or indexed. DDA has the right, but not the obligation, to edit or exclude any Customer Content that DDA deems in its sole discretion to be in any way (i) inaccurate, (ii) infringing on any intellectual property rights, (iii) misleading, disparaging, obscene or invasive of privacy, or (iv) otherwise offensive, inappropriate or unlawful. Customer is solely responsible for reviewing the form, content and quality of all Customer Content. DDA and its Licensors, resellers and distributors will have no responsibility or liability for errors or omissions in, or quality of, Customer Content.

**3. Fees and Charges** (a) Customer agrees to pay DDA's fees for the Services ("Fees"), as well as any applicable taxes, upon receipt of each invoice. DDA may increase or decrease the Fees at any time with or without prior notice, effective as of the next Renewal Term.
(b) If Customer elects to pay for the Services by credit card, Customer hereby authorizes DDA to charge Customer's credit card for the amount of the Fees set forth in each invoice, plus applicable sales tax and other charges. DDA will send the Customer an acknowledgement of any charges to the Customer's credit card account.
(c) Advertising services are subject to the following: (i) DDA reserves the right to charge back any multi-year discounts upon premature cancellation or reduction of service during the term of this Agreement; (ii) in the event of a payment default under this Agreement, both agency and advertiser shall be jointly and severally liable for such default; (iii) the agency must agree, and hereby agrees, to assign DDA its rights in any money owed to the agency from the advertiser until such default to DDA is cured; (iv) advertisers will be short-rated if, within a 12-month period from the date of the first insertion, they have not used the amount of space upon which their billing has been based, unless waived by DDA; (v) all bundled products must be published by the end of the Initial Term, and if not so published, DDA is not obligated to refund any related service charges; and (vi) advertisers requesting pre-press services must submit catalog production material by the date specified in DDA's Production Guidelines, and failure to meet specified materials deadlines may result in a penalty; (vii) any production work not included in this Agreement will be quoted and invoiced separately; and (viii) packaged promotional units must appear consecutively starting on the next available run date. Customer requested dates are not guaranteed.

**4. Term/Termination** (a) Services will commence as of the "Effective Date" stated on the Order Form, subject to credit approval, and shall continue for the Initial Term specified on the Order Form. Services cannot be cancelled by Customer during the Initial Term. Services will automatically renew for consecutive Renewal Terms as specified in the Order Form, subject to credit approval, unless a written termination notice is provided by either party at least 10 business days prior to the expiration of the then-current Initial Term or Renewal Term. Services may be cancelled by Customer during any Renewal Term only if Customer provides DDA with at least 10 business days prior written notice, subject to a pro-rated billing for the period; otherwise Customer is liable for the Fees for the entire Renewal Term. This Agreement shall become effective when Customer has returned a signed copy of this Agreement to DDA and its account has been determined to be in good credit standing by DDA. DDA reserves the right to withhold granting of credit and may require prepayment, in whole or in part, for any and all Services.
(b) DDA may terminate this Agreement and/or cease delivery of one or more Services, at any time with or without notice to Customer, for any breach of this Agreement by Customer, any Authorized Users and/or any agents thereof, as determined by DDA in its sole discretion, including, without limitation, for misuse or unauthorized use of Services or non-payment.
(c) Upon any termination of this Agreement and/or any Services, Customer shall immediately discontinue all use of the Services and shall destroy all copies of the Software and Data, along with all copies, adaptations and merged portions thereof in any form, then in the possession or under the control of Customer, any Authorized Users and/or any agents thereof.

**5. Ownership Rights** As between DDA and Customer, all Services (including, without limitation, all Software and Data therein) are proprietary to and owned by DDA and/or its Licensors and are protected by applicable laws, including, without limitation, copyright, trademark and trade secret laws. All rights not expressly granted hereunder are reserved solely for DDA and/or its Licensors. Customer shall take reasonable actions to protect the rights of DDA and its Licensors in the Services. Customer shall not: (i) modify, reverse engineer, disassemble, decompile or store the Services or any portions thereof; (ii) disable any licensing or control features of the Services or any portions thereof; (iii) use any data mining, robots or similar data-gathering or extraction methods, (iv) remove or modify any copyright or other proprietary notices relating to the Services, or (v) create derivative works that are based on any portion of the Services, all rights to which are owned exclusively by DDA and/or its Licensors.

**6. Disclaimer of Warranties** DDA and its Licensors do not represent or guarantee that the Services will be error-free or uninterrupted. ALL SERVICES ARE PROVIDED "AS IS," AND DDA AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. NEITHER DDA NOR ITS LICENSORS WARRANT THE RESULTS TO BE OBTAINED BY USE OF THE SERVICES. Customer shall comply with all laws and assumes all risks of selection and use of the Services. DDA's sole obligation and Customer's sole remedy for defective Services shall be for DDA, at DDA's option, to re-perform the defective Services or to refund the amount paid by Customer for the defective Services, provided that Customer, its Authorized Users and their agents are not in breach of this Agreement.

**7. Limitation of Liabilities** IN NO EVENT SHALL DDA OR ITS LICENSORS BE LIABLE FOR MONETARY DAMAGES UNDER THIS AGREEMENT (REGARDLESS OF THE LEGAL THEORY) IN AN AMOUNT GREATER THAN THE FEES PAID BY CUSTOMER DURING THE MONTH PRIOR TO THE DATE THAT THE CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. NEITHER DDA NOR ITS LICENSORS WILL BE LIABLE FOR LOSS OF OR DAMAGE TO ANY CUSTOMER CONTENT, RECORDS OR DATA; OR FOR CONSEQUENTIAL DAMAGES, LOST PROFITS OR INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. No action or lawsuit may be brought by or on behalf of Customer under this Agreement more than one year after the cause of the action has accrued.

**8. Indemnification** Customer shall defend, indemnify and hold harmless DDA, its affiliates, Licensors and their respective directors, officers, employees and agents (the "Indemnitees") from and against any and all claims, liabilities, judgments, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees) arising from or in connection with or relating to: (i) any breach of this Agreement by Customer or any Authorized User; (ii) the misuse or unauthorized use of the Services or any portions thereof by Customer or any Authorized User; or (iii) the Customer Content and/or any other content, materials, data or information provided to DDA or its Licensors by or on behalf of Customer.

**9. Miscellaneous**. This Agreement shall be governed by the internal laws of the State of New York. Customer irrevocably consents to the exclusive jurisdiction of the courts located in the County and State of New York for adjudicating all claims arising out of this Agreement. If Customer or any Authorized User breaches this Agreement, DDA shall be entitled to recover attorneys' fees and other out-of-pocket expenses incurred in enforcing this Agreement. This Agreement, together with each Order Form, is the complete and entire agreement between the parties with respect to Services and excludes any document or purchase order issued by Customer. Neither DDA nor any Licensor is responsible or liable for events or circumstances beyond its reasonable control. This Agreement may be modified only in writing, signed by an authorized person of each party. No waiver of any term is a continuing waiver. Customer may not assign or transfer this Agreement or any rights hereunder, and any such assignment is null and void. Sections 2(b), 4(c), 5, 6, 7, 8 and 9 shall survive expiration or termination of this Agreement. Customer (or an agency signing this Agreement on behalf of an advertiser for advertising services), represents and warrants that it has the power, authority and right to do so on behalf of itself or for the party that it is representing. DDA's Licensors shall be third-party beneficiaries under this Agreement.

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