

INTUNE SAAS AGREEMENT

GENERAL. The following terms and conditions (“Terms and Conditions”) provide for terms that are common to this Agreement, including all Ordering Documents and Schedules referenced therein. In the event of a conflict between these Terms and Conditions and any Ordering Document or Schedule, these Terms and Conditions will control, unless expressly stated to the contrary in the Ordering Document or Schedule. The signature page these terms are attached to, any Statement of Work, and any other ordering document incorporating these Terms and Conditions by reference are individually and collectively referred to as “Ordering Document(s).”

2. SERVICES.

2.1 General. All services provided by InTune under this Agreement (“Services”), including the Software Services, will be provided to Customer according to these Terms and Conditions, the Ordering Documents, and all schedules, exhibits, or other attachments made a part of this Agreement.

2.2 Services Delivery. Except as otherwise set forth on an applicable Ordering Document, InTune may provide the Services from any facility and may from time to time transfer any or all of the Services being provided hereunder to any new facility(ies) or relocate the personnel, equipment and other resources used in providing those Services.

3. SOFTWARE SERVICES.

Software Services. InTune will provide Customer, and its authorized employees, contractors and other personnel authorized by Customer (“End Users”) with access to the software products and related services provided by InTune via a web browser and identified on the applicable Ordering Document (“Software Services”) for use with up to the number of devices authorized in the Ordering Document (“Authorized Devices”). During the Term and subject to Customer’s compliance with this Agreement, InTune grants Customer the non-exclusive, nontransferable, non-assignable, and limited right to allow End Users to access the Software Services in connection with Authorized Devices for Customer’s internal business purposes in accordance with the terms of this Agreement.

3.2 Support Services. InTune shall provide support services in accordance with Schedule 1.

3.3 Service Levels. InTune shall use commercially reasonable efforts to make the Software Services available 24 hours a day, 7 days a week.

3.4 Planned Maintenance. InTune shall schedule planned maintenance windows to occur each week for approximately eight (8) hours. During this planned maintenance window Customer may experience slower system response times and intermittent disruptions. InTune will provide Customer with reasonable prior notice of such maintenance.

3.5 Emergency Maintenance. In cases where additional “emergency” maintenance is required, InTune will provide Customer with reasonable prior notice of the maintenance.

3.6 Integration with Non-InTune Applications. Services may contain features designed to interoperate with applications, systems, and technologies not developed or controlled by InTune (“Non-InTune Applications”). In such instances, InTune cannot guarantee the continued availability of Services features connected with Non-InTune Applications, and may cease providing them without entitling Customer to any refund, credit, or other compensation,

3.7 Restrictions. Customer shall not lease, license, sell, sublicense or otherwise transfer its access to or use of the Software Services. The Software Services may only be used by Customer and End Users and only in connection with Authorized Devices. Customer shall not permit, and shall promptly notify InTune in all cases, InTune’s direct competitors’ access to the Services. In addition, Customer shall not modify, create derivative works of, or attempt to decipher, decompile, disassemble or reverse engineer the Software Services. Nothing in this Agreement confers upon either party any right to use the other party’s Marks, except in InTune’s performance of the Services. All use of such Marks by either party will inure to the benefit of the owner of such Marks, use of which will be subject to specifications controlled by the owner.

4. PROFESSIONAL SERVICES.

4.2 Professional Services. InTune may provide integration, implementation, or other professional services (each to the extent identified as professional services on a Statement of Work, “Professional Services”) and Deliverables to Customer as set forth in a Statement of Work. “Deliverables” means all information and materials that are delivered to Customer by or on behalf of InTune as a part of the Professional Services, together with any items identified as such in a Statement of Work.

4.3 InTune Personnel. InTune shall appoint an InTune employee to serve as a primary contact with respect to any Professional Services. InTune shall also appoint InTune Personnel, who shall be suitably skilled, experienced, and qualified to perform the Professional Services. Additionally, InTune may subcontract parts of the Professional Services to affiliated companies or third parties. InTune is responsible for all InTune Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments, disability benefits, pensions, retirement benefits, insurance, and other benefits.

4.4 Tools, Labor, Materials and Supplies. Unless otherwise provided in a Statement of Work, InTune shall provide, at its expense, all tools, materials, supplies, labor, and equipment necessary to perform the Professional Services.

4.5 Change Orders. If either party wishes to change the scope or performance of the Professional Services, it shall submit details

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of the requested change to the other in writing. InTune shall, within a reasonable time after such request, provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Professional Services arising from the change; (c) the likely effect of the change on the Professional Services; and (d) any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties shall negotiate in good faith the terms of such change (if and when mutually agreed in writing, a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing. Any additional, different, or inconsistent terms or conditions contained in any form, acknowledgment, acceptance, or confirmation used by Customer in connection with the implementation of the Agreement or Statement of Work are hereby objected to and expressly rejected by InTune and shall not apply to the Agreement.

a. **RIGHTS RESERVED.** Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Data (as defined below), including all intellectual property rights therein. InTune shall have no right or license to use any Customer Data except during the Term to provide the Services to Customer or as otherwise authorized herein. All other rights in and to the Customer Data are expressly reserved by Customer. All right, title and interest, including all intellectual and proprietary rights, in and to the Software Services, Deliverables, and all InTune service marks, trademarks, trade names, logos, and any modifications to the foregoing ("Marks") (and all suggestions, feedback, contributions, enhancements, improvements, additions, modifications, or derivative works thereto and copies thereof) will remain in possession of InTune. Customer acknowledges that the Software Services in source code form is the Confidential Information of InTune and that the source code is not licensed to Customer by this Agreement or any Schedule and will not be provided by InTune. No right or implied license or right of any kind is granted to Customer regarding the Services, including any right to use, reproduce, market, sell, translate, distribute, transfer, adopt, disassemble, decompile, reverse engineer the Software Services or the documentation thereof, or any portions thereof, or obtain possession of any source code or other technical material relating to the Software Services.

6. FEES AND PAYMENT TERMS.

Fees. For the Services provided under this Agreement, Customer will pay InTune the fees in the amounts set forth on the applicable Ordering Document. Unless otherwise set forth on the applicable Ordering Document, applicable fees will be invoiced to Customer monthly in advance and payable (i) immediately upon invoice if Customer's payment method is on file with InTune, or (ii) if no payment method has been provided to InTune, within thirty (30) days of invoice. If Customer's use of the Services exceeds the authorized use or otherwise requires the payment of additional fees as contemplated herein, Customer should contact InTune to purchase additional Authorized Devices and Customer shall be billed for such usage and agrees to pay the additional fees in the manner provided herein. Fees are non-cancelable and non-

refundable. After the Initial Term, and at the beginning of each Renewal Term thereafter, InTune may adjust the fees applicable during the upcoming Renewal Term upon written notice provided at least sixty (60) days prior to the end of the Initial Term or applicable Renewal Term, as the case may be. All fees paid and expenses reimbursed under this Agreement will be in United States currency.

Late Fees. Customer will pay a late fee of 1.5% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. InTune, at its option, may suspend the Services, in whole or in part, if InTune does not receive all undisputed amounts due and owing under this Agreement within thirty (30) days after delivery of notice to Customer of the failure to pay such overdue balances.

Taxes. The fees and expenses due to InTune as set forth in this Agreement are net amounts to be received by InTune, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by Customer or imposed on InTune in the performance of this Agreement or otherwise due as a result of this Agreement. This section will not apply to taxes based solely on InTune's income.

Offset. Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

7. CUSTOMER OBLIGATIONS.

Technical Requirements. Customer must have required equipment, software, and Internet access to be able to use the Software Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely Customer's responsibility. InTune neither represents nor warrants that the Software Services will be accessible through all web browser releases.

Use of Software Services. Customer shall not and shall not permit others in using the Software Services to: (i) defame, abuse, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as rights of privacy, publicity and intellectual property) of others or InTune; (ii) publish, ship, distribute or disseminate any harmful, inappropriate, profane, vulgar, infringing, obscene, false, fraudulent, tortuous, indecent, unlawful, immoral or otherwise objectionable material or information (including any unsolicited commercial communications); (iii) publish, ship, distribute or disseminate material or information that encourages conduct that could constitute a criminal offense or give rise to civil liability; (iv) engage in any conduct that could constitute a criminal offense or give rise to civil liability for InTune; (v) misrepresent or in any other way falsely identify Customer's identity or affiliation, including through impersonation or altering any technical information in communications using the Software Services; (vi) transmit or upload any material through the Software Services contains viruses, trojan horses, worms, time bombs, cancelbots, or any other programs with the intent or effect of damaging, destroying, disrupting or otherwise impairing InTune's, or any other person's or entity's, network, computer system, or other equipment; (vii) interfere with or disrupt the Software Services,

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networks or servers connected to the InTune systems or violate the regulations, policies or procedures of such networks or servers, including unlawful or unauthorized altering any of the information submitted through the Software Services; (viii) attempt to gain unauthorized access to the Software Services, other InTune customers' computer systems or networks using the Software Services through any means; or (ix) interfere with another party's use of the Software Services, including any parties Customer has done business with or choose not to do business with through the Software Services. InTune has no obligation to monitor Customer's use of the Software Services. However, InTune may at any time monitor, review, retain and disclose any information as necessary to satisfy or cooperate with any applicable law, regulation, legal process or governmental request. Customer shall use commercially reasonable efforts, including reasonable security measures relating to administrator account access details, to ensure that no unauthorized person may gain access to the Services.

Compliance with Law. Customer agrees not to use the Software Services for illegal purposes or for the transmission of material that is unlawful, harassing, libelous (untrue and damaging to others), invasive of another's privacy, abusive, threatening, or obscene, or that infringes the rights of others. Customer is solely responsible for any and all improper use of the Software Services that occurs as a direct or indirect result of any act or omission of Customer. Customer will notify InTune within twenty-four (24) hours of any unauthorized use of the Software Services or any other breach of security that is known or suspected by Customer, including, but not limited to, any unauthorized cyber access or data breach.

7.4 Professional Services. With respect to any Professional Services, Customer shall have the following obligations set forth in this Section 7.4.

a. **Customer Contract Manager.** Customer shall cooperate with InTune in all matters relating to the Professional Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement (the "Customer Contract Manager").

b. **Access and Assistance.** Customer shall provide such access to Customer's premises, facilities, and computer systems and networks as may reasonably be requested by InTune for the purposes of performing the Professional Services. Customer shall respond promptly to any InTune request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for InTune to perform the Professional Services. Customer shall provide such Customer Data as set forth in the applicable Statement of Work or as InTune may reasonably request in order to carry out the Professional Services, in a timely manner, and ensure that it is complete and accurate in all material respects.

c. **Delay in Performance.** If InTune's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, InTune shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each

case, to the extent arising directly or indirectly from such prevention or delay, and InTune's obligation to perform will be extended by the same number of days as Customer's contingent action is delayed.

NON-DISCLOSURE AND CONFIDENTIALITY.

Disclosure. Each party may disclose to the other party certain Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or customers. "Confidential Information" means any information that is of value to its owner and is treated as confidential, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing; "Disclosing Party" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "Recipient" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient's employees or agents.

Requirement of Confidentiality. The Recipient agrees: (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Recipient may disclose the Confidential Information of the Disclosing Party to its, and its affiliates, officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 8; (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations or as otherwise authorized under the Agreement; and (c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party. Customer acknowledges that the Software Services and documentation are the Confidential Information of InTune. The obligations in this Section 8 shall survive termination and continue for so long as the applicable information constitutes Confidential Information. Confidential Information shall not include information that: (a) is already known to the Recipient without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Recipient; (c) is developed by the Recipient independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Recipient from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

8.3 Compelled Disclosure. If the Recipient becomes legally compelled to disclose any Confidential Information, the Recipient shall provide: (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on

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disclosure. If, after providing such notice and assistance as required herein, the Recipient remains required by law to disclose any Confidential Information, the Recipient shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, the Recipient is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

Customer Data; Data Use. "Customer Data" means information and data that is collected directly from Customer or an End User by or through the Services, but does not include any data collected, downloaded or otherwise received, directly or indirectly from any other user of the Services. Customer hereby grants to InTune a non-exclusive, perpetual, irrevocable license to Customer Data to the extent reasonably required for the performance of InTune's obligations and the exercise of InTune's rights under this Agreement. Customer warrants to InTune that Customer has the right to provide such Customer Data to InTune in accordance with this Agreement. Additionally, Customer agrees that data derived by InTune from InTune's performance of the Services or input by or feedback from Customer shall be anonymized so as not to contain any information that identifies or can be reasonably used to identify an individual person ("De-identified Data"). InTune owns all right, title and interest in De-identified Data, and may use the foregoing in its sole discretion.

9. DATA SECURITY. Each party must use appropriate security and privacy measures for the protection of Customer Data and confidential information of the other party. Collection and use of personal information shall be governed by the InTune's Privacy Policy available at <https://www.intuneauto.com/privacy>.

LIMITED WARRANTY.

10.1 InTune represents and warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Software Services will perform substantially in accordance with the documentation under normal use and circumstances. Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

10.2 OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 10.1, EACH PARTY DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO THE OTHER PARTY REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY.

LIMITATION OF LIABILITY.

Exclusion of Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE, REVENUE, PROFIT, OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH

DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Liability Cap. EXCEPT FOR INTUNE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL INTUNE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO INTUNE PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12. INSURANCE. During the Term, each party shall maintain at least the following types and amounts of insurance coverage:

12.1 Commercial general liability with limits no less than \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of the applicable party under this Agreement; and

12.2 Worker's compensation with limits no less than the greater of (i) \$1,000,000 or (ii) the minimum amount required by applicable law.

INDEMNIFICATION.

InTune Indemnification InTune shall defend Customer and its officers, directors, and employees against any third party claim, suit, action or proceeding (each, an "Action") based on a claim that Customer's receipt or use of the Services in accordance with this Agreement infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against Customer to the extent based on such an Action; provided, however, that InTune shall have no obligations under this Section 13.1 with respect to claims to the extent arising out of: (a) any instruction, information, designs, specifications or other materials provided by Customer to InTune; (b) use of the Services in combination with any materials or equipment not supplied to Customer or specified by InTune in writing or Customer's unauthorized use of the Services; (c) any modifications or changes made to the Services by or on behalf of any person or entity other than InTune; or (d) arising from Customer Data (the foregoing 13.1(a) – (d) are referred herein as "Customer Indemnifiable Causes.") If the Services, or any part thereof, become, or in the opinion of InTune may become, the subject of a claim of infringement or misappropriation, InTune may, at its option: (i) procure for Customer the right to use such Services free of any liability; (ii) replace or modify the Services to make them non-infringing; or (iii) terminate this Agreement and refund to Customer any portion of the fees prepaid by Customer for the infringing Services.

Customer Indemnification. Customer shall defend InTune and its officers, directors, employees, agents, affiliates, successors

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and permitted assigns against all Actions based on a claim that any information or materials provided by Customer (including Customer Data), or InTune's receipt or use thereof, infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against InTune to the extent based on such an Action or any Actions arising from a Customer Indemnifiable Cause.

Indemnification Procedures. The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 13 shall not relieve the indemnifying party of its obligations under this Section 13 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

14. TERM AND TERMINATION.

Initial Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for the initial term set forth on the applicable Ordering Document ("Initial Term"), unless earlier terminated as provided for below. Thereafter, except with respect to any Statements of Work (which shall expire in accordance with their terms), the Initial Term shall automatically renew for successive periods of one (1) year each (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party provides written notice to the other party at least 30 days prior to the end of the then-current Initial Term or Renewal Term of its intent to not renew the Agreement.

Termination. Without prejudice to any other remedies and in addition to any other termination rights herein, the parties shall have the right to terminate this Agreement as provided below:

a. By either party if the other party commits a material breach of this Agreement and such breach remains uncured 30 days after written notice of such breach is delivered to such other party including the failure to pay any fees due to InTune; or

b. By either party if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws; or

c. By Customer for its convenience but only if Customer provides written notice to InTune to terminate this Agreement and Statements of Work and such notice is received by InTune prior to the end of the Demo Term. Notwithstanding

anything to the contrary in this Agreement, the terms and conditions in Sections 10.1 and 13.1 shall not apply during the Demo Term.

14.3 **Termination of Statement of Work.** Either party may terminate any outstanding Statement of Work without terminating the entire Agreement if the other party commits a material breach of such Statement of Work and such breach remains uncured 30 days after written notice thereof is delivered to the other party.

Effect. Upon termination of this Agreement for any reason, all rights and licenses granted by InTune hereunder to Customer will immediately cease. Within thirty (30) days after termination or expiration of this Agreement, each party shall return or destroy the Confidential Information of the other party. Termination by customer will not result in any refund or pro-rating of fees whatsoever.

Survival. Termination of this Agreement or any Schedule will not affect the provisions regarding InTune's or Customer's treatment of Confidential Information, provisions relating to the payments of amounts due, indemnification provisions, provisions limiting or disclaiming InTune's liability, or any other terms which by their nature should survive, which provisions will survive such termination.

GENERAL.

15.1 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. The parties agree to submit to the personal jurisdiction of the appropriate courts sitting in New York, New York and agree that venue shall lie there. Each party waives any objection that such a forum would be inconvenient. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement or the transactions contemplated hereunder.

15.2 **Conflicting Terms.** Notwithstanding the content of any Customer purchase order or any other document or record, whether in writing or electronic, relating to the subject matter of this Agreement, the terms of this Agreement shall govern and any conflicting, inconsistent, or additional terms contained in such documents shall be null and void.

15.3 **Notice.** All communications required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered (i) by hand, (ii) by registered or certified mail, postage prepaid, return receipt requested; (iii) by a nationally recognized overnight courier service; to the address set forth on the applicable Ordering Document; or (iv) by electronic mail is confirmed by the recipient within two (2) business days after such electronic mail is sent, addresses and electronic mail addresses as may be amended by the parties by communication to the other party in accordance with this Section 15.3. Notice address and recipient are: 132 West 31st Street, 9th Floor, New York, New

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York 10001, ATTN: Rahul Bhatia, CEO., with copy to geoffrey.starr@troutman.com.

Assignment. Customer may not assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of InTune, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the Customer of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

15.5 **Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another.

15.6 **Severability.** In case any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7 **Attorneys’ Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and court costs from the non-prevailing party.

15.8 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto.

15.9 **Amendment; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this

Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.10 **Force Majeure.** Neither party shall be liable for delay or failure in performing any of its obligations hereunder due to causes beyond its reasonable control.

15.11 **Equitable Relief.** Each party acknowledges that a breach by a party of this Agreement may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

15.12 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Relationship of Parties. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose. Upon the successful launch of the Services, Customer acknowledges and agrees that InTune is authorized to state in advertising or other sales and marketing materials that Customer received the Services successfully.

15.14 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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Schedule 1 Support Services

Support Service Responsibilities

InTune shall provide support services (collectively, “Support Services”) for the Software Services in accordance with the provisions of this Schedule. The Support Services are included in the Software Services, and InTune shall not assess any additional fees, costs or charges for such Support Services.

InTune shall use commercially reasonable efforts to:

- (a) correct material failures of any Software Services to be available or otherwise perform in accordance with this Agreement, including by providing defect repair, programming corrections and remedial programming;
- (b) provide telephone support during the hours of 8 a.m. to 8 p.m. Eastern Time on business days;
- (c) provide online ticket support, capable of receiving such requests during and after hours;
- (d) Provide online access to technical support bulletins and other user support information and forums, to the full extent InTune makes such resources available to its other customers.

Service Monitoring, Management, and Maintenance

InTune planned maintenance activities shall include using commercially reasonable efforts to provide to Customer:

- (a) updates, bug fixes, enhancements, new releases, new versions and other improvements to the Software Services, that InTune provides at no additional charge to its other similarly situated customers; and
- (b) all such Services and repairs as are required to maintain the Software Services or are ancillary, necessary or otherwise related to Customer’s or its End Users’ access to or use of the Software Services, so that the Software Services operate properly in accordance with this Agreement.

Support Requests

Customer shall submit its requests for Service issues and such issues will be classified in accordance with the descriptions set forth in the chart below (each a “Support Request”). Customer shall notify InTune of Support Requests via the InTune Service Desk accessible at <https://share.hsforms.com/1qOu9LGjuSXXK83SuScb1CvAciskw> or www.intuneauto.com/support or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description
Extensive / Widespread	Complete failure of the Software Services and no existing workaround is present; this may include executable crashes or situations where a major feature of the Software Services is inoperable.
Significant / Large	Complete failure of the Software Services and an existing workaround is present; failure of a non-critical feature.
Moderate / Limited	Failure of a minor feature or a Software Services usability problem.
Minor / Localized	Performance related issues, e.g., appearance of Software Services