

SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement (the “Agreement”) is entered into by and between IntactAuto Holdings, LLC having an address at 415 Harding Road Williamsville NY 14221 (“LICENSOR”), and _____ having an address at _____ (“LICENSEE”), as of the Effective Date.

The Agreement sets forth the terms and conditions under which LICENSOR will license to LICENSEE its Licensed Software and perform Services (as defined below).

1. Definitions. The following definitions shall be used for the purposes of this Agreement.
 - a. “Effective Date” means _____, 20__.
 - b. “Error” means a material failure of the Licensed Software to conform to its functional specifications, which failure is demonstrable on the LICENSEE’s computer or server and which material failure causes the Licensed Software to be inoperable, to operate improperly, or to produce results materially different from those described in any written specifications supplied to LICENSEE. Failures resulting from the following are not Errors: (i) LICENSEE’s negligence or improper use of the Licensed Software; or (ii) LICENSEE’s use of the Licensed Software in combination with any third party database or other software not identified as compatible by LICENSOR.
 - c. “Licensed Software” means (a) the spreadsheet-based software developed by LICENSOR for generating various industry related reports, in its standard object code form as made generally available to LICENSEE during the Term and any component thereof, and (b) any customizations which LICENSOR may create specifically for LICENSEE during the Term; including computer software (in object code form only), customized reports, algorithms, data, content, and documentation (in electronic form only) that LICENSOR has developed or may develop during the Term and any component thereof. The Licensed Software shall not include products, functionality or code which (i) is specifically developed on a customized basis for another party other than LICENSEE, or (ii) is outside the scope of the Services.
 - d. “Services” means (i) general support services for operating and maintaining the Licensed Software, (ii) upgrading the reporting capabilities of the Licensed Software, (iii) the uploading and transfer of LICENSEE’s data, as may be necessary upon initial installation of the Licensed Software and subsequent upgrades thereto, and (iv) the customization of the Licensed Software, as may be

requested by LICENSEE from time to time, wherein the cost of such requested customizations shall be negotiated and agreed upon by the parties on a case-by-case basis.

2. Term. The “Term” of this Agreement is _____ year(s), which shall commence on the Effective Date and shall end on the ____ anniversary of the Effective Date, unless sooner terminated by a party hereto in accordance with this Agreement.

3. License.

a. Software License Grant. During the Term, LICENSOR hereby grants LICENSEE a non-exclusive, non-transferable license to run and use the Licensed Software, and any updates thereto, on _____ computers owned or controlled by LICENSEE.

b. Copies and Adaptations.

(1) LICENSEE may copy the Licensed Software provided by LICENSOR in machine readable form and make sufficient copies thereof if necessary for LICENSEE’s own use and for back-up and archival purposes, provided that LICENSEE shall not make more copies than the minimum it needs for these purposes.

(2) LICENSOR is not responsible for any merges or adaptations of the Licensed Software done by or for LICENSEE, or the compatibility of any software, hardware, or service with such adaptations. LICENSEE shall pay LICENSOR for services necessitated by adaptations of any of the Licensed Software or by LICENSEE’s failures to use current software and releases provided by LICENSOR at LICENSOR’s standard consulting rates on a time and materials basis.

(3) LICENSEE shall reproduce and include LICENSOR’s copyright, trademark, and/or trade secret notices on all copies and adaptations in any form of the Licensed Software, including any such notices which may appear on the reports generated by the Licensed Software.

c. Trademark and Marketing Licenses. Each party’s use of the other party’s trademarks will conform at all times with the owning party’s quality and usage requirements and will be subject to prior review and approval by the owning party. Neither party will seek to register any trademarks of the other party in any country in the world. Any trademark use shall be in accordance with each party’s reasonable policies regarding advertising and trademark usage as established from time to time.

- d. Restrictions. LICENSEE will not directly or indirectly: (i) reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from the Licensed software or any component thereof; (ii) modify, adapt, translate, transform, or prepare derivative works of the Licensed Software; (iii) copy, reproduce, rent, modify, sell, lease, lend, transfer, transmit, broadcast, publicly or digitally perform or display, upload or post, convey, assign, sublicense, market, commercially exploit, or otherwise permit access to third parties to the Licensed software or any component thereof other than as expressly provided in this Agreement; (iv) use Licensed Software in any manner that infringes the intellectual property rights or other rights of another party; (v) distribute or redistribute Licensed Software; or (vi) use the Licensed Software to provide service-bureau, software rental, time sharing, or any services to any third party.
4. Delivery and Installation. As soon as practical after the Effective Date, or as soon thereafter as the parties may agree, LICENSOR shall deliver to LICENSEE for its use during the Term of this Agreement, a copy of the Licensed Software programs in machine readable form (object code). Thereafter, LICENSOR will provide Services to LICENSEE as requested.
 5. Support Services and Training. LICENSOR agrees to timely provide support services by email or by telephone to LICENSEE's technical personnel to assist in using the Licensed Software upon LICENSEE's request.
 6. LICENSEE Responsibilities.
 - a. LICENSEE Responsible for System Requirements. LICENSEE shall be responsible for obtaining all hardware, software, and Internet connections needed to load and use the Licensed Software. All such facilities and services shall comply with LICENSOR's specifications. LICENSOR shall have no responsibility for such hardware, software, and Internet connections and LICENSEE's computer systems and networks in general.
 - b. LICENSEE Responsible for System Integration. LICENSEE is responsible for the integration of the Licensed Software into their computer system applications.
 - c. LICENSEE Responsible for Upgrading Software. LICENSEE is responsible for upgrading the Licensed Software as necessary and in order to obtain any desired reporting capabilities.
 7. Fee Payments; Late Charges.
 - a. Fee Payment.

- (1) Licensed Software Fees. Prior to LICENSOR's delivery of a copy of the Licensed Software to LICENSEE, LICENSEE shall pay LICENSOR a one time, paid-up, royalty free license fee of \$_____.
- (2) Service Fees. LICENSEE shall pay LICENSOR a service fee for Services at a rate to be negotiated and agreed upon by the parties on a case-by-case basis. Thereafter, LICENSOR will periodically bill LICENSEE for any such service fees.

8. Ownership.

- a. LICENSOR shall retain and own all right, title, and interest and all intellectual property rights (including without limitation all copyrights, trade secrets, trademarks, and patent rights) in and to the Licensed Software and all copies thereof, and nothing herein transfers or conveys to LICENSEE any ownership rights, title, or interest in or to the Licensed Software or to any copy thereof or any license right with respect to the same not expressly granted herein. LICENSEE will not, either during or after the termination of this Agreement, contest or challenge the ownership of the intellectual property rights in the Licensed Software.
- b. Protection of Proprietary Rights. Neither party shall remove any copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the information or materials provided by the other party, including, in the case of information and materials provided by LICENSOR, the Licensed Software.

9. Confidential Information.

- a. Each party acknowledges that confidential information (including trade secrets and confidential technical, financial, and business information (collectively, "Confidential Information")) may be exchanged between the parties pursuant to this Agreement. In addition, the Licensed Software, related documentation, and this Agreement shall be LICENSOR Confidential Information. The receiving party (the "recipient") shall use no less than the same means it uses to protect its similar confidential information and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information of the disclosing party (the "disclosing party"). The recipient agrees that it will not disclose or use the Confidential Information of the disclosing party except for the purposes of this Agreement and as authorized herein. The recipient will promptly report to the disclosing any unauthorized use or disclosure of the disclosing party's Confidential Information that the recipient becomes aware of and provide (at the

expense of the disclosing party) reasonable assistance to the disclosing party in the investigation and prosecution of any such unauthorized use or disclosure.

- b. Confidential Information shall not include information that is: (i) already known by the recipient without an obligation of confidentiality; (ii) publicly known or becomes publicly known through no unauthorized act of the recipient; (iii) rightfully received from a third party without any obligation of confidentiality; (iv) independently developed by the recipient without use of the Confidential Information of the disclosing party; (v) approved by the disclosing party for disclosure; or (vi) required to be disclosed pursuant to a subpoena or requirement of a governmental agency or law, so long as the recipient provides the disclosing party with notice prior to any such disclosure to afford the disclosing party the opportunity to oppose disclosure, and takes all reasonable steps to maintain the information in confidence.
- c. LICENSEE also agrees not to use LICENSOR's Confidential Information to create any computer software or documentation that is substantially similar to the Licensed Software.
- d. Notwithstanding anything to the contrary herein, the rights and obligations set forth in this section may be enforced by legal action seeking injunctive relief.

10. Limited Warranty; Disclaimer of Liability.

- a. During the Term, LICENSOR warrants that the Licensed Software will function and process data materially in accordance with its specifications and that any Errors will be corrected in a timely manner using commercially reasonable efforts.
- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED BY STATUTE, COLLATERALLY, THE PARTIES' COURSE OF DEALINGS OR OTHERWISE, REGARDING THE LICENSED SOFTWARE, RELATED DOCUMENTATION OR INFORMATION, AND OTHER MATERIALS AND SERVICES, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, MERCHANTABILITY, OR NON-INFRINGEMENT. LICENSOR does not warrant that the functions contained in the Licensed Software or in any update will meet the requirements of LICENSEE or that the operation of the Licensed Software will be uninterrupted or error free or free from Errors or other program limitations.

- c. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR'S SOLE OBLIGATION AND LICENSEE'S SOLE REMEDY FOR ANY FAILURE OF THE LICENSED SOFTWARE IS LIMITED TO THE CORRECTION, ADJUSTMENT, OR REPLACEMENT OF LICENSED SOFTWARE WHICH EXAMINATION INDICATES, TO LICENSOR'S SATISFACTION, TO BE DEFECTIVE OR, AT LICENSOR'S OPTION, REMOVAL OF THE LICENSED SOFTWARE AND REFUND OF ANY FEES PAID BY LICENSEE FOR THE FAILED PORTION DURING THE TWELVE (12) MONTHS PRECEDING FAILURE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, PENALTIES, CLAIMS FOR LOST DATA, REVENUE, PROFITS OR BUSINESS OPPORTUNITIES, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF LICENSOR HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, OF THE POSSIBILITY OF SUCH DAMAGES. Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents, or employees, or for fraudulent misrepresentation or for the breach of confidentiality obligations or of the other party's intellectual property rights as set forth herein.

11. Termination.

a. Events of Termination.

- (1) LICENSOR may terminate this Agreement if LICENSEE fails to make payment when due of any amount which is not subject to a bona fide payment dispute (as substantiated in correspondence between the parties) and LICENSEE fails to cure such default within ten (10) business days of receiving notice in writing of such default.
- (2) Either party may terminate this Agreement effective immediately and without liability upon written notice to the other party, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- (3) Either party may terminate this Agreement upon written notice with immediate effect in the event of a material breach of this Agreement by the other party, which is not remedied to the reasonable satisfaction of the claiming party within thirty (30) day of such party providing written notice of the breach to the defaulting party, which written notice will provide the defaulting party with sufficient detail to remedy the breach.

- b. Effect of Termination. Expiration of the Term or termination of the Agreement shall terminate the licenses granted herein. Except to the extent agreed to in writing by the parties: (i) LICENSEE shall pay forthwith all amounts due and owing under this Agreement on the date of termination; and (ii) within five (5) business days after such termination, LICENSEE will either destroy or return to LICENSOR the originals and all copies of the Licensed Software in its possession or under its control, and an officer of that party shall certify in writing that the party has done so.
- c. Survival. In addition to any other provision in which the parties agree that such provision shall survive termination of the Agreement, the following provisions shall survive termination of this Agreement: Payment Terms; Ownership and Licenses; Confidential Information; Warranty Disclaimer; Limitation of Liability; Termination; and General Provisions.

12. General Provisions.

- a. Successors and Assigns. This Agreement shall bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole nor in part, without the other party's prior written consent, which may not be unreasonably withheld. Notwithstanding the foregoing, each party may assign any of its rights or obligations without prior written consent of the other party in the event of: (i) a merger, reorganization, consolidation or other transaction in which the shareholders of such party before such transaction own less than fifty percent (50%) of the outstanding voting equity securities of the surviving corporation; (ii) a sale or other transfer of all or substantially all of the assets of such party; (iii) a transfer to an entity controlled by, controlling, or under common control with such party provided that the Licensed Software continues to be used by and for LICENSEE's Licensed Software Users; or (iv) a transfer of more than fifty percent (50%) of the outstanding voting equity securities of such party in one transaction or a series of related transactions. Any attempt to assign this Agreement without such consent shall be null and void.
- b. Governing Law. This Agreement shall be governed by and construed in accordance with the state and federal laws applicable in the State of New York.
- c. Severability. If any provision of this Agreement is found to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties and the remaining provisions shall remain in full force and effect.

- d. Relationship of the Parties. The employees of either party shall not be deemed at any time to be employees, servants, or agents of the other party, and each party is and shall remain an independent contractor for all purposes.

- e. Construction; Integration; and Modification. This Agreement shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement, including all attachments, exhibits, and schedules, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties, except as otherwise expressly stated in this Agreement.

- f. Counter parts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In witness hereof, the parties hereto execute this Agreement as of the Effective Date.

LICENSOR:

LICENSEE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____