

THIS MITCHELL 1 BUSINESS PERFORMANCE MASTER AGREEMENT (the "Agreement") is by and between MITCHELL REPAIR INFORMATION COMPANY LLC and/or Partners, P.O. BOX 509044, San Diego, California 92150-9044 ("Mitchell 1") and the purchaser identified on the Mitchell 1 Sales Order Form ("Customer") attached to this Agreement and incorporated herein.

1. **Term.** The term of this Agreement will commence upon the date the Customer signs the Order Form (defined below) to which this Agreement relates ("**Effective Date**") and unless terminated earlier in accordance with the Agreement, will remain in full force and effect for a period of twelve (12) months ("Initial Term") and will renew automatically for additional periods of twelve (12) months (each a "**Renewal Term**") unless Customer cancels this Agreement in writing within 30 days prior to the end of the Initial Term or any Renewal Term, as the case may be. An early termination fee equivalent to two full month's service will be charged should the customer choose to cancel the contract during the Term.
2. **Order Forms.** Each Mitchell 1 Business Performance Service (as defined in **Section 3** below) shall be ordered pursuant to one or more Mitchell 1 order forms that reference this Agreement and are signed by Customer and Mitchell 1 ("**Order Form**"). Each Order Form shall be accepted by Mitchell 1 only when signed by an authorized representative of Mitchell 1. Any terms set forth on a purchase order or other written documentation from Customer shall be considered void and of no force and effect. In the event of any conflict between the terms and conditions of this Agreement and those contained on an Order Form, the terms and conditions of this Agreement shall prevail, provided that the Agreement may be supplemented or modified by the Order Form only if the Order Form specifically identifies the term of this Agreement to be superseded, supplemented or modified.

3. M1 Business Performance Services

3.1 Overview. The products and services being offered by Mitchell 1 under this Agreement consist of Customer Retention Marketing Service Reminders ("**CRM**"), Target Market Promotions ("**TMP**"), Custom Web Services ("**CWS**"), Mitchell 1 ServiceIntelligence ("**MSI**"), Performance Center, and Performance Reporting, and DataProtection ("**DP**") and are hereinafter collectively referred to as "**M1 Business Performance Services**".

3.2 Customer Retention Marketing Service Reminders. If Customer subscribes to CRM as set forth on the Order Form, Mitchell 1 agrees to provide the following services:

- (a) Extract customer and vehicle information from the automotive facilities management system for the use of Marketing Services (defined below).
- (b) Provide "Marketing Services" that include service reminder postcards via mail, e-mail service reminders, and thank you e-mails for new customers. Service reminders via mail and e-mail service reminders are limited to unique vehicle/customer records defined as eligible for solicitation based on the payment level chosen on the Order Form. E-mail service reminders will be sent only when a customer preference for email is identified via the extraction process.
- (c) Manage a database of customer and vehicle information for the Customer.
- (d) Send customer and vehicle data to print vendor of Mitchell 1's choice for Marketing Services.
- (e) Use data hygiene cleansing processes for data integrity and provide a secure environment for customer data storage.
- (f) Provide Customer technical and customer support for CRM services during the Term of the Agreement.
- (g) If Customer has opted for service recommendations on the Order Form, such recommendations will be added to service reminder postcards and e-mails. Service recommendations will be pulled from the Mitchell 1/ShopKey Manager program.
- (h) If Customer has opted for the Target Market Promotions ("**TMP**") on the Order Form, Mitchell 1 agrees to provide promotional marketing services to the Customer at the listed price. Data for TMP will be provided either from: (i) the Customer's existing customer database and uploaded for use on mailing campaigns, or (ii) for an additional fee and as indicated on the Order Form, Customer may elect to "rent" a customer mailing list through Mitchell 1 from a Third Party Provider (defined below). If Customer elects to rent a mailing list as provided in this **Section 3.2(h)**, such rented mailing list shall be used only for one (1) mailing event and Mitchell 1 is not permitted and will not in any event provide a list of customers included in a rented mailing list. Standard promotional artwork templates are provided. At Customer's option, Mitchell 1 will create custom templates for a one time fee of \$150 for each unique template requested. The \$150 charge includes one (1) change or revision to the custom template.

3.3 Mitchell 1 PerformanceCenter

Mitchell 1 agrees to provide PerformanceCenter / PerformanceReports services, to customer including:

- (a) Extract database information from the customer management system.
- (b) Provide PerformanceReports reporting services.
- (c) Mitchell 1 reserves the perpetual right to, including but not limited to, aggregate and market data collected from the automotive facility for the purposes of, benchmarking, research and data analysis.
- (d) Mitchell 1 is not liable for any incorrect PerformanceReports data. The PerformanceReports reporting data should be used for business benchmarking only, and not for official governmental financial reporting.
- (e) Mitchell 1 will make a reasonable effort to offer live on-line training classes at times convenient to the customer. Due to varying timezones and individual customers' schedules Mitchell 1 can not guarantee that every possible timeslots for all courses will be offered.

3.4 Custom Web Services. If Customer subscribes to CWS as set forth on the Order Form, Mitchell 1 agrees to provide the following services:

- (a) **Customer License for CWS.** Subject to the terms of this Agreement, Mitchell 1 grants Customer a nonexclusive, non-transferable, revocable, limited license, without right of sublicense, to use the web development software provided by Mitchell 1 ("**CWS Software**") and to promote the web page created by Mitchell 1 for Customer with the CWS Software ("**CWS Web Site**"). Customer agrees that the CWS Software shall be installed on a single computer system (to be defined by Mitchell 1), and Customer shall not (i) install the CWS Software on any other computer system, (ii) use the CWS Software in any other location or (iii) allow third parties to use, copy, or otherwise distribute the CWS Software without Mitchell 1's prior written consent.
- (b) **Mitchell 1 License for CWS.** Customer grants to Mitchell 1, a nonexclusive, nontransferable, revocable, nonsublicensable, worldwide license to use, display, transmit and broadcast Customer's name in promoting CWS Software and CWS Web Site, including, but not limited to, web site development, design and creation services on the Internet and otherwise in our advertising and marketing materials distributed to customers and potential customers.
- (c) **CWS Web Site.** Mitchell 1 will notify Customer via e-mail or telephone call when the CWS Web Site is available for Customer's review. Within three (3) business days of Mitchell 1 sending such notice to Customer, the CWS Web Site shall be deemed activated, unless Mitchell 1 receives written notice from Customer during such three (3) business day period of Customer's request for material changes to the CWS Web Site. Mitchell 1 will make any reasonable changes to the CWS Web Site that Customer requests and resubmit Mitchell 1's notice that the CWS Web Site is available for Customer's review, restarting the three (3) business day review period. The date of activation of the CWS Web Site and Services will determine the date of the beginning of the term of the Services.
- (d) **CWS Service and Maintenance.** Solely in connection with the CWS Software and in Mitchell 1's sole discretion, Mitchell 1 agrees to make available updates/upgrades that m1 makes generally available to all its customers as part of the fees for the services.cws
- (e) **CWS Customization Services.** CWS Software, CWS Web Site and CWS service and maintenance under **Section 3.4(d)** DOES NOT include any custom modifications to the functionality of the CWS Software or the CWS Web Site or any special features. Such additional customization or special features are outside the scope of this Agreement and terms and conditions for such additional customization or special features will be agreed upon mutually by the parties and billed out by Mitchell 1 at standard rates.

3.5 Mitchell 1 ServiceIntelligence and Database Conversions. Mitchell 1 agrees to provide ServiceIntelligence and/or Database Conversion services, in partnership with eAutoClub to customer including:

ServiceIntelligence

- a) Extract database from the customer management system. High-speed connectivity is required.
- b) Provide ServiceIntelligence reporting services, which may be delivered via Windows Internet Explorer web-browser and/or via a Windows application and limited to unique vehicle/customer records for the last two years of invoices.
- c) Manage a database of information for the customer. Use data cleansing processes for data integrity and provide a secure environment for customer data storage.
- d) Provide customer technical support for ServiceIntelligence services during the term of the agreement.
- e) The ServiceIntelligence vehicle service profiling system is accurate, but, due to inaccuracy of the English language and differences in spelling and/or differences in management system database structures, different or incorrect conclusions may result. Automotive Facility sole remedy is to report to Mitchell 1 in writing any incorrect conclusions by 1) printing the ServiceIntelligence report together with the corresponding invoice from the management system, 2) notating the error found and 3) faxing supporting documents to Mitchell1. Mitchell 1 and eAutoClub will attempt to resolve any errors within 10 working days of submittal at no charge.
- f) Mitchell 1 / eAutoClub is not liable for any incorrect ServiceIntelligence service recommendation, offensive material or improper grammar pulled out of the management system and printed on ServiceIntelligence vehicle profile reports.
- g) The basic monthly ServiceIntelligence subscription price includes reporting for 3,500 eligible vehicles from the customer's management system database. An additional \$50 per month (US) will be charged for each additional 1,000 vehicles, or partial 1,000 vehicles, beyond the 3,500 vehicles covered in the original subscription price.

Database Conversions

- a) Extract database records from the Customer's Shop Management System (SMS).
- b) Use data hygiene cleansing processes for data integrity and provide a secure environment for customer data storage.
- c) Client is responsible for transferring to Mitchell 1 SMS database and maintaining the confidentiality of the passwords to these Accounts.
- d) Data conversion service scope is limited to the following data elements: customer records and history, vehicle history, historical invoices, recommendations, inventory and customer totals.

ServiceIntelligence and Database Conversions

Mitchell 1 / eAutoClub reserve the perpetual right to, including but not limited to, aggregate and market data collected from the automotive facility for the purposes of, benchmarking, research and data analysis.

Initials

3.6 Mitchell 1 DataProtection Services. If Customer activates DataProtection Services (DataProtection), MRIC agrees to provide the following:

- (a) **DataProtection Services.** Periodic web based electronic copying and storage of files, including, and limited to, Mitchell 1/ShopKey shop management product database files.
- (b) MRIC customer service personnel to provide web based restoration of electronically stored files, including, and limited to, Mitchell 1/ShopKey shop management product database files.
- (c) **Rights and Restrictions.** MRIC reserves the right to use third parties to provide any of the DataProtection services under this Agreement ("Third Party Provider").
- (d) MRIC reserves the right to modify or discontinue, temporarily or permanently, all or a part of the DataProtection services to the extent such services are modified or discontinued for substantially all of its customers.
- (e) MRIC's Third Party Providers are direct beneficiaries of this Agreement and shall have the right to enforce this Agreement against Customer with respect to any violation by Customer affecting the products of Third Party Providers licensed to Customer under this Agreement.

3.7 Other Rights and Restrictions.

- (a) Mitchell 1 reserves the right to use third parties to provide any of the M1 Business Performance Services under this Agreement ("Third Party Provider").
 - (b) Mitchell 1 reserves the right to modify or discontinue, temporarily or permanently, all or a part of the M1 Business Performance Services to the extent such M1 Business Performance Services are modified or discontinued for substantially all of its customers.
 - (c) Mitchell 1 reserves the right to suspend or terminate provision of any M1 Business Performance Services in a particular jurisdiction if Mitchell 1 determines, in its reasonable discretion that the M1 Business Performance Services cannot be provided in accordance with applicable laws.
 - (d) All software deemed outdated by Mitchell 1 must be removed from Customer's computer and returned to Mitchell 1 upon Mitchell 1's request.
 - (e) Mitchell 1 reserves the right to enforce its legal rights against anyone who uses the M1 Business Performance Services without its consent or in violation of this Agreement.
 - (f) Mitchell 1 reserves the right to make changes in rules of operation, security measures, accessibility, procedures, types of terminal equipment, types of system equipment, operating system requirements, programming languages and any other matters relating to the M1 Business Performance Services and its use, without prior notice.
 - (g) Customer, and not Mitchell 1, shall bear sole responsibility to obtain, maintain and operate, or cause to be obtained, maintained and operated at its own expense, any and all equipment and non-Mitchell 1 software that may be used in conjunction with the M1 Business Performance Services.
 - (h) Mitchell 1 agrees not to disclose or use any personal data shared with Mitchell 1 except to the extent necessary to carry out its obligations under this Agreement, which may include sharing such data with Third Party Providers. Mitchell 1 reserves the right to aggregate and market data collected from a Customer for the purposes of benchmarking, research and data analysis.
 - (i) To the extent any of the M1 Business Performance Services involve the use of software by Customer, Customer shall not: (i) sell, transfer, rent, lease, sublicense or dispose of the M1 Business Performance Services, or any part or copies thereof; (ii) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the M1 Business Performance Services in any way for any reason or otherwise attempt to discern the source code to the software; (iii) provide, disclose, divulge or make available to, or permit use of the M1 Business Performance Services by, any third party; or (iv) copy or reproduce all or any part of the M1 Business Performance Services except as expressly permitted in this Agreement.
 - (j) In addition to any restrictions set forth in this Agreement, use of the M1 Business Performance Services is limited to the restrictions set forth in the Order Form. All rights not expressly granted to Customer in this Agreement or the Order Form are reserved by Mitchell 1.
 - (k) Mitchell 1's Third Party Providers are direct beneficiaries of this Agreement and shall have the right to enforce this Agreement against Customer with respect to any violation by Customer affecting the products of Third Party Providers licensed to Customer under this Agreement.
- 4. Ownership Rights Reserved.** No title or ownership in and to the M1 Business Performance Services or any part thereof, are transferred to Customer under this Agreement. Mitchell 1 retains all right, title and interest and all copyright, trade secret rights and other proprietary rights in and to the M1 Business Performance Services and all updates, corrections, enhancements, modifications and derivative works thereof. Customer shall not alter, distort or remove any proprietary notices or legends from the M1 Business Performance Services and shall include such notices on any authorized copies of the M1 Business Performance Services.
- 5. Publicity.** Neither party shall use the name or marks of the other party or refer to or identify the other party in advertising or publicity releases, promotional or marketing correspondence to others without first securing the written consent of such other party, except that Mitchell 1 shall have the right to: (a) use Customer's name in oral sales presentations, client lists, press releases, brochures, marketing materials and financial reports indicating that Customer is a customer of Mitchell 1; and (b) disclose the terms of this Agreement, or any part thereof, to potential investors or acquirers of Mitchell 1 or for purposes of complying with the disclosure requirements of federal and state securities laws.

6. Payments. In consideration of the rights granted to Customer herein, Customer shall pay to Mitchell 1 the initial fees as set forth in the Order Form. Payments shall be due within thirty (30) days of the date of Mitchell 1's invoices. Late payments will earn interest charged to Customer at the lesser of: (a) the monthly rate of 1.5 percent; and (b) the maximum interest amount allowed by local law. In the event a payment is more than thirty (30) days late, Mitchell 1 shall have the right to suspend any or all of the M1 Business Performance Services until the account is made current. Mitchell 1 shall have the right to take possession of the system and all related materials in Customer's possession and cease delivery of any updates or upgrades. Customer shall be responsible for all collection costs, including costs incurred by Mitchell 1 in taking possession of the system software and documentation, plus attorney's fees.

7. Confidentiality. Customer acknowledges and agrees that the M1 Business Performance Services and all portions thereof and all information and data contained therein, together with such other materials, data and information that Customer has access to or receives from Mitchell 1 (all such information and materials collectively called "**Proprietary Materials and Information**"), are the unique, valuable, confidential and proprietary product of Mitchell 1 and contain substantial trade secrets of Mitchell 1 and are entrusted to Customer in confidence to use only as expressly authorized in this Agreement. Customer shall, and shall cause its employees and any other third party, including its independent contractors, representatives, affiliates and agents, who, with the express consent of Mitchell 1, has access to such Proprietary Materials and Information to keep all Proprietary Materials and Information confidential and shall not disclose or permit access to the Proprietary Materials and Information to any person or entity other than its employees for the purpose of attaining the objects of this Agreement; and to not use the Proprietary Materials and Information for any purpose other than as expressly permitted herein. Customer shall be required to apply the same standard of care that it uses with respect to its own valuable confidential information and Customer represents that it uses commercially reasonable efforts at all times to protect such information. Customer shall promptly notify Mitchell 1 in writing of any unauthorized knowledge, possession or use of the Proprietary Materials and Information of which it becomes aware. Customer's obligations under this Section 7 shall survive termination or expiration of this Agreement.

8. WARRANTY AND DISCLAIMER. THE M1 BUSINESS PERFORMANCE SERVICES ARE DELIVERED "AS IS" AND MITCHELL 1 MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, INFORMATION CONTENT, DATA ACCURACY, NON-INFRINGEMENT, INTERFERENCE WITH ENJOYMENT OR OTHERWISE. MITCHELL 1 ALSO DOES NOT WARRANT THAT THE OPERATION OF THE M1 BUSINESS PERFORMANCE SERVICES OR ANY SOFTWARE RELATED THERETO WILL BE UNINTERRUPTED OR ERROR FREE.**9.**

LIMITATION OF LIABILITY.

- (a) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF USE, TRADING LOSSES, LOSS OF SAVINGS, BUSINESS INTERRUPTION, OPPORTUNITY, LOSS OF DATA, OR OTHER PECUNIARY LOSS) ARISING OUT OF OR RELATED TO THE M1 BUSINESS PERFORMANCE SERVICES, THE USE OF OR INABILITY TO USE THE M1 BUSINESS PERFORMANCE SERVICES, OR THE TERMS OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND REGARDLESS OF THE CAUSE OR THE FORM OF ACTION (WHETHER BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHERWISE), A PARTY'S LIABILITY TO THE OTHER FOR DAMAGES SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE AFFECTED M1 BUSINESS PERFORMANCE SERVICES DURING THE MONTH IN WHICH THE CLAIM FIRST ACCRUES. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS **SECTION 9** SHALL NOT APPLY TO EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT OR TO CUSTOMER'S BREACH OF THE LICENSES AND RESTRICTIONS SET FORTH IN THIS AGREEMENT AND THE APPLICABLE ORDER FORM(S).
- (c) CUSTOMER'S SOLE REMEDY UPON BREACH OF THIS AGREEMENT BY MITCHELL 1 THAT MITCHELL 1 IS UNABLE TO CURE AFTER A REASONABLE NOTICE PERIOD, SHALL BE TERMINATION OF THE AGREEMENT AND REFUND OF UNEARNED PORTIONS OF THE FEES AS DEFINED IN THE APPLICABLE ORDER FORM(S).

10. Equitable Relief. Notwithstanding any other provision of this Agreement, Customer acknowledges that any breach of its obligations under this Agreement with respect to the M1 Business Performance Services and any other proprietary rights and confidential information of Mitchell 1 or its Third Party Providers will cause irreparable injury to Mitchell 1 or its third party providers, as applicable, for which there are inadequate remedies at law and, therefore, Mitchell 1 or its Third Party Providers shall be entitled to equitable relief in addition to all other remedies provided by this Agreement and the applicable Order Form(s) or available at law.

11. Indemnification. Customer agrees to defend, indemnify, and hold Mitchell 1 harmless against all claims and damages, including without limitation, reasonable attorney's fees arising out of Customer's use of the M1 Business Performance Services, including but not limited to, any update, unless such claims or damages result from, or unless Customer's authorized use of the M1 Business Performance Services has given rise to, claims or damages based on the infringement of any copyright or other proprietary right of any third party. Mitchell 1 shall not be liable to you for interception of CWS data through the Internet by third parties. Mitchell 1 has no control over, is not responsible for and will not be liable to you for the actions of Internet systems and service providers or natural disasters that create delays or interruptions of services. Customer acknowledges and agrees that if Customer utilizes any non-Mitchell 1-supplied interface program to interface with the system, Customer shall look solely to the vendor of such interface program with respect to any losses or damages caused by such interface program. Mitchell 1 is not responsible for obsolescence of the system and data updates and shall have no responsibility for suspended, outdated or uncorrected versions of the system and data updates.

- 12. Termination.** Mitchell 1 shall have the right to terminate this Agreement in the event of the following: (a) if Customer defaults in the performance of any of Customer's obligation under this Agreement involving the payment of money and the same shall not be cured within ten (10) business days after written notice to Customer; (b) if Customer defaults in the performance of any of Customer's obligations under this Agreement or breaches any restriction imposed on it by this Agreement, and if such default or breach involves performance or restrictions other than the payment of money and Customer shall not commence curing the same within ten (10) business days after written notice to Customer, and if such default is not thereafter cured within ninety (90) days; and (c) if a receiver is appointed or one or more creditors do take possession of all or substantially all of the assets of Customer, or if Customer shall make a general assignment for the benefit of creditors, or if Customer resolves to go into voluntary liquidation.
- 13. Effect of Termination.** In the event of the expiration or termination of this Agreement for any reason: (a) Customer shall refrain from any and all use of the M1 Business Performance Services in any manner whatsoever; (b) any CWS Web Site and Mitchell 1 Network Number shall immediately be shut down; (c) Customer shall not be relieved of any of its obligations which have accrued on and prior to the date of expiration or termination of this Agreement; (d) Customer shall return the system, data updates, and all Mitchell 1 documents and information pertaining thereto; (e) except as set forth in Section 9(c), Customer shall not be entitled to any refund of any payments or fees paid to Mitchell 1 by Customer; (f) Customer immediately shall return to Mitchell 1 any and all Proprietary Materials and Information and (f) Customer's obligations under this Agreement shall survive.
- 14. Assignment.** Mitchell 1 may freely assign its rights hereunder without securing Customer's permission to do so. Customer may not assign its rights or delegate its duties hereunder without first securing the permission to do so from Mitchell 1, which permission may be withheld at the sole discretion of Mitchell 1. For purposes of this section, Customer shall be deemed to have assigned this Agreement if there is, in the aggregate, a change of ownership of twenty-five percent (25%) or more of Customer or a merger or combination of Customer with another entity of business, whether Customer is the surviving entity or not. Any such attempted conveyance shall be void and shall constitute a default entitling Mitchell 1 to terminate this Agreement. Notwithstanding the foregoing, upon payment by Customer of a reasonable transfer fee, this Agreement may be assigned by Customer to a purchaser of all or substantially all of its business upon the prior written consent of Mitchell 1, such consent not to be unreasonably withheld.
- 15. Choice of Law and Forum.** This Agreement has been entered into in San Diego, California under the laws of the State of California and Customer and Mitchell 1 agree that it shall be interpreted, and all disputes arising hereunder shall be resolved, in accordance with California law. To the extent recourse to a court is allowed hereunder, both Customer and Mitchell 1 agree that jurisdiction of any claim or suit hereunder shall be limited to the courts located within the County of San Diego, California. Both parties hereby submit to the exclusive personal jurisdiction of such courts. Both parties hereby disclaim the applicability of the Uniform Commercial Code, the Uniform Computer Information Transactions Act and the United Nations Convention of Contracts for the International Sale of Goods.
- 16. Arbitration.**
- (a) Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in San Diego, California, before a sole arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction.
- (b) The arbitrator shall have no authority to amend or modify the terms of this Agreement or to award punitive or consequential, indirect, special or exemplary damages, and the award may be enforced by judgment.
- (c) Before, during, or after arbitration each party shall have the right, without awaiting the outcome of the arbitration, to seek provisional remedies from an appropriate court including but not limited to temporary restraining orders or preliminary injunctions. Seeking any such remedies shall not be deemed a waiver of either party's right to compel arbitration.
- 17. Limitation on Right to Pursue Claims.** ANY CLAIM SHALL BE MADE BY FILING A DEMAND FOR ARBITRATION WITHIN ONE (1) YEAR FOLLOWING THE OCCURRENCE FIRST GIVING RISE TO THE CLAIM.
- 18. Attorney's Fees.** If any action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to its attorney's fees and other costs and expenses incurred in such action or proceeding, including any appeals or petitions therefore.
- 19. Irreparable Harm.** Customer acknowledges and expressly agrees that any breach by of the provisions of the licenses in **Section 3** of this Agreement or any of the provisions **Section 3.7** or **Section 7** would cause Mitchell 1 irreparable harm for which damages would not be an adequate remedy. Therefore, Customer agrees that in the event of any breach of the licenses in **Section 3** of this Agreement or any of the provisions **Section 3.7** or **Section 7**, Mitchell 1 will have the right to seek injunctive relief against continuing or further breach by Customer, without the necessity of proof of actual damages. This right to seek injunctive relief without necessity of proof of damage will be in addition to any other right that Mitchell 1 may have under this Agreement, or otherwise in law or in equity.
- 20. Notice.** Any notice or other communication required or permitted to be given to either party shall be in writing and shall be deemed to have been properly given and to be effective on the date of delivery, if delivered in person, or by facsimile (with electronic confirmation of receipt and mailing a copy) or five (5) days after mailing by registered or certified mail, postage paid, to the other party at the following addresses:

In the case of Mitchell 1:

P.O. Box 509044
 San Diego, CA 92150-9044
 Attention: CRM Department
 Tel: 888-724-6742 (toll free)
 Fax: 858-391-5262

In the case of Customer, the address specified in the Order Form.

- 21. Waiver.** No delay or omission by either party hereto to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.
- 22. Severability.** If any provision of this Agreement or applicable Order Form(s) is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Agreement or applicable Order Form(s), but the Agreement or applicable Order Form(s) shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.
- 23. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Section 23 shall not be construed to alter or modify the prohibitions upon assignments or transfers by Customer expressed elsewhere in this Agreement.
- 24. Force Majeure.** Mitchell 1 will not be liable for, or be considered to be in breach of or default under this Agreement, on account of any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control. Mitchell 1 may suspend or terminate provision of any Service as a result of any such cause or condition.
- 25. Counterparts; Facsimile Signatures.** This Agreement and the applicable Order Form(s) may be executed in one or more duplicate originals, all of which together shall be deemed one and the same instrument. This Agreement and the applicable Order Form(s) shall be binding on the parties through facsimile signatures, with originals to follow by regular mail or overnight courier.
- 26. Entire Agreement.** This Agreement and the applicable Order Form(s) sets forth the entire, final and exclusive agreement between Customer and Mitchell 1 as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. This Agreement may be modified only pursuant to a writing executed by authorized representatives of Customer and Mitchell 1.

MITCHELL 1 BUSINESS PERFORMANCE MASTER AGREEMENT

Account No: _____ Phone # (____) _____ - _____
 Company Name: _____
 Street Address: _____
 City: _____ State _____ ZIP _____

THE UNDERSIGNED AGREE TO THE TERMS AND CONDITIONS SET FORTH ABOVE THIS PAGE AND HAVE RECEIVED AND ACCEPTED THE TERMS OF THE MITCHELL 1 BUSINESS PERFORMANCE MASTER AGREEMENT, IN WITNESS THEREOF, the parties hereto have executed this agreement on the respective date indicated above.

CUSTOMER: _____
 Signature: _____
 Title: _____
 Print Name: _____

MITCHELL REPAIR INFORMATION COMPANY, LLC:
 Signature: _____
 Title: _____
 Print Name: _____