1. **Term.** This Agreement will commence upon the date an Order Form (defined below) is accepted by Snap-on Diagnostics as stated in Section 2 below (“Effective Date”) and unless terminated earlier in accordance with the Agreement, will remain in full force and effect for the period of time selected on the Order Form (“Initial Term”) and will be renewed as provided here in (“Renewal Term”) and collectively with the Initial Term the “Term”. The parties acknowledge that the Services and Subscription may have different Terms. The expiration or other termination of a Service(s), notwithstanding any other provision of the Agreement and the Agreement shall remain in full force and effect, as it applies to the Subscription or Service(s) not terminated. The termination of a Subscription, and/or a Service(s), and not other Service(s) shall not terminate the Agreement, and the Agreement shall remain in full force and effect, as it applies to the Service(s) not terminated.

2. **Order Forms.** Each Snap-on Diagnostics Product or Service (defined below) shall be ordered pursuant to or more Snap-on Diagnostics order forms that reference this Agreement and are signed by Customer and Snap-on Diagnostics (“Order Form”), which shall become part of this Agreement. Customer acknowledges and agrees that he Order Form and the registration, payment and other information submitted by Customer on the Order Form is complete and accurate. Order Forms for: (a) Products provided electronically, or (b) Services and Products provided electronically, are accepted when Snap-on Diagnostics sends Customer an electronic message confirming the Order. All other Order Forms for: (c) Products not provided electronically, or (d) Services and Products not provided electronically, are accepted upon shipment of the Products, licensed FCA shipping point. Order Forms for Services only are accepted when an authorized Snap-on Diagnostics representative signs the Order Form. Any terms and conditions 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 provisions of this Agreement to be supplemented or modified.

3. **Services.** The only Services offered by Snap-on Diagnostics are listed on the Order Form and if selected by Customer are subject to the terms and conditions of this Agreement. The Services described herein and ordered earlier in accordance with the Agreement, will renew automatically on a month to month basis. 30-day notice is required to cancel during the renewal period. Notwithstanding anything herein to the contrary, if the Order Form provides for a promotional term, the “Initial Term” and “Renewal Term” shall be the promotional term defined in the Order Form. The 30 day notice of cancellation stated above shall apply to any promotional term.

3.1 **M1 Business Performance Services**

3.1.1 **Overview.** If the Services include Customer Retention Marketing Service Reminders (“CRM”), Target Market Promotions (“TMP”), Snap-on Diagnostics Servicetelligence (“MSI”), Performance Center, Performance Reporting and Data Protection (“PDP”) and other services that may be offered from time to time and further specified on the Order Form (hereinafter individually or collectively referred to as “Service(s)”) Section 3.1.6 through Section 3.1.6 apply respectively to the Service(s) selected.

3.1.2 **Customer Retention Marketing Service Reminders.** If Customer selects CRM as set forth on the Order Form, Snap-on Diagnostics 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 e-mail, e-mail service reminders based on the terms and conditions of this Agreement, reminders via e-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 always be sent when an e-mail address is captured by Snap-on Diagnostics via the extraction process or may be obtained by Snap-on Diagnostics from the vehicle database.

   (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 the Rental Subscription. The activation fee is non-refundable once the Order Form is accepted by Snap-on Diagnostics and any rental fee is non-refundable once the Order Form is accepted by Snap-on Diagnostics.

   (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 Mitchell 1/ShopKey Manager program.

   (h) If Customer has opted for the Target Market Promotions (“TMP”) on the Order Form, Snap-on Diagnostics 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 uploaded for the mailing campaign, or (ii) for an additional fee and as indicated on the Order Form.

   (i) Customer may elect to “rent” a customer mailing list through Snap-on Diagnostics from a Third Party Provider (defined below). If Customer elects to rent a mailing list as provided in this Section 3.1.2 (b), such rented mailing list shall be used only for (1) mailing event and Snap-on Diagnostics 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, Snap-on Diagnostics 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.

   (j) Customer opting for eCRM e-mail service can choose from an extensive list of preexisting text coupon templates with the ability to include their own limited text. These preexisting text coupons can be updated at any time. Custom graphic coupons are available to customers subscribing to eCRM e-mail service at $150 per request.

   (k) Customers opting for Monthly Postcard service can choose coupons from a large list of coupon design templates and make a maximum of 4 revisions in a twelve (12) month period. Additional custom coupon changes can be completed at $150 per request. There is no limit on switching coupons from the existing coupon template library. Customer opting for Postcard service can choose cover artwork from the existing Snap-on Diagnostics library and receive one (1) custom design per year, and a maximum of two (2) revisions to the custom design. Additional custom art change requests can be completed at $150 per request.

3.1.3 **OwnerAutoSite.com** The Customer acknowledges that Snap-on Diagnostics will be posting consumer service history data on behalf of Customer via a unique internet site, and Customer fully accepts for the use of OwnerAutoSite.com.

3.1.4 **Snap-on Diagnostics DataProtection Services.** If Customer selects DataProtection Services (DataProtection), Snap-on Diagnostics agrees to provide the following:

   (a) Periodic web based electronic copying and storage of files, including, and limited to Mitchell 1/ShopKey shop management database files.

   (b) Snap-on Diagnostics customer service personnel to provide web based restoration of electronically stored files, including, and limited to, Mitchell 1/ShopKey shop management product database files.

3.1.6 **Other Rights and Restrictions.**

   (a) Snap-on Diagnostics reserves the right to use third parties to provide any of the Services under this Agreement (“Third Party Provider”).

   (b) Snap-on Diagnostics reserves the right to modify or discontinue, temporarily or permanently, all or a portion of the Service(s) to the extent such Service(s) are modified or discontinued for substantially all of its customers.

   (c) Snap-on Diagnostics reserves the right to suspend or terminate provision of any Services in a particular jurisdiction if Snap-on Diagnostics determines, in its reasonable discretion that the Services cannot be provided in accordance with applicable laws.

   (d) All software deemed outdated by Snap-on Diagnostics must be removed from Customer’s systems and returned to Snap-on Diagnostics upon Snap-on Diagnostics’s request with a certification from Customer that all software has been removed.

   (e) Snap-on Diagnostics reserves the right to enforce its legal rights against anyone who uses the Services without its consent or in violation of this Agreement.

   (f) Snap-on Diagnostics reserves the right to change rules in consequences of the 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 Services and its use, without notice.

   (g) Customer, and not Snap-on Diagnostics, shall bear sole responsibility to provide, maintain and operate, or cause to be obtained, maintained and operated at its own expense, any and all equipment and non-Snap-on Diagnostics software that may be used in conjunction with the Services.

   (h) Snap-on Diagnostics agrees not to disclose or use any personal data shared with Snap-on Diagnostics except to the extent necessary to carry out its obligations under this Agreement, which may include sharing such data with Third Party Providers. Snap-on Diagnostics releases the perpetual right to aggregate and market data collected from a Customer for various purposes, including without limitation, benchmarking, research and data analysis, and Customer is responsible for providing Customer’s customers with any necessary notice of said right.

   (i) To the extent any of the Services involve the use of software by Customer, Customer shall not: (i) sell, transfer, rent, license, sub-license or dispose of the Services, or any part or copies thereof, (ii) modify, change, alter, translate, create derivative works or reverse engineer or decompile the 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 Services by, any third party; or (iv) copy or reproduce all or any part of the Services, or any part or copies thereof, except in third party e-mail marketing campaigns, or (v) infringe any patent, trademark, copyright or other proprietary right of Snap-on Diagnostics.

   (j) In addition to any restrictions set forth in this Agreement, use of the 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 Snap-on Diagnostics.

   (k) Customer shall be responsible for giving Customer’s customers notice that if an e-mail address is not provided, a third party e-mail provider will be used in an attempt to obtain said customer’s e-mail address.

   (l) Snap-on Diagnostics’s Third Party Providers are direct beneficiaries of this Agreement and therefore the Customer agrees in good faith to carry out its obligations under this Agreement, which may include sharing data with Third Party Providers. Snap-on Diagnostics reserves the perpetual right to aggregate and market data collected from a Customer for various purposes, including without limitation, benchmarking, research and data analysis, and Customer is responsible for providing Customer’s customers with any necessary notice of said right.

3.2 **Subscriptions.** The products offered for licensing are listed on the Order Form and the products selected by the Customer shall be referred to in this Agreement as the “Products”. Products are available by Snap-on Diagnostics through the Mitchell 1/ShopKey Manager program.

3.2.1 **The Products.** The Products are licensed, and not sold, on a subscription-basis only. Customer may select on the Order Form the type of subscription to be purchased by Customer (each a “Subscription”). Each Subscription may be subject to different terms and conditions as described below. The Term of a Subscription will commence on the Effective Date of the Subscription and will continue for the term described in the applicable Subscription Period below (each a “Subscription Period”). Each renewal of a Subscription will be considered a new Subscription Period. During the applicable Subscription Period, Customer will receive any updates to the Snap-on Diagnostics product generally to its customers as part of the applicable Subscription (“Updates”).

3.2.2 **The terms below will apply to the Subscription selected by Customer:**

   (i) **Rental.** The Subscription Period for this Service is effective for an initial term of twelve (12) or twenty-four (24) months following the Commencement Date (“Initial Rental Subscription Period”). In addition to the applicable Subscription fees, Customer may be required to pay Snap-on Diagnostics a one-time activation fee to commence the Rental Subscription. The activation fee is non-refundable once the Order Form is submitted to Snap-on Diagnostics unless Snap-on Diagnostics declines to accept the
Order Form. Snap-on Diagnostics will bill Customer monthly, with payments due within thirty (30) calendar days following the date of the Snap-on Diagnostics invoice. After the Initial Rental Subscription Period, the Subscription Period for this Subscription will renew automatically on a month to month basis. 30-day notice is required to cancel during the renewal period. A Subscription may not be cancelled during the Initial Rental Subscription Period. Snap-on Diagnostics reserves the right to change pricing upon notice to Customer prior to each Rental Renewal Period. At the end of the Initial Rental Subscription Period or any Rental Renewal Period, Customer must return to Snap-on Diagnostics the Product, any Updates, documentation and all copies thereof and discontinue use of the Product, any Updates and all documentation.

4. License.
   (a) Subject to the terms and conditions of this Agreement, Snap-on Diagnostics grants to Customer a limited, non-exclusive, non-transferable, limited license to access and use the executable version of the applicable Product during the applicable Subscription Period purchased by Customer solely for the purpose of: (i) providing vehicle mechanical services; (ii) estimating vehicle mechanical parts and labor cost estimates; and (iii) conducting vehicle shop management. Unless the Order Form specifies otherwise, the license shall be for one location with location referring to a distinct building or site. If the Order Form authorizes more than one user, then the number of users shall be limited to the number set forth on the Order Form. When technically and reasonably feasible, Customer may use one copy of the Product solely for back-up purposes.
   (b) Regardless of the Subscription Period, Customer may not (i) copy or reproduce the Product except as permitted in this Agreement; (ii) allow the Product or data from the Product to be made available to any person other than Customer; (iii) assign, sell, transfer, or pass along the data, the Product or access to the Product; (iv) translate, reverse engineer, decompile, disassemble or otherwise access the source code; and (v) provide services for a fee or otherwise use the Product without prior written agreement from Snap-on Diagnostics. Snap-on Diagnostics and its third party licensors shall retain title at all times to the Product, and Customer shall have no rights there in except to use the Product as permitted by this Agreement.
   (c) The Products may be comprised of third party products licensed by a third party to Snap-on Diagnostics and will be subject to all of the terms and conditions of this Agreement. Customer’s license to use such third party products will be limited to Customer’s applicable Subscription for such third party products and may be used only in connection with the Snap-on Diagnostics Products.
   (d) Customer shall not remove, alter or destroy any form of copyright notice, proprietary markings or confidential legends placed upon or contained with the Product.

5. Ownership Rights Reserved.
   No title or ownership in and to the Services or Products or any part thereof are transferred to Customer under this Agreement. Snap-on Diagnostics retains all right, title and all copyright, trade secret rights and other intellectual property in and to the Services, Products, and all Updates, enhancements, modifications and derivative works thereof. Customer shall not alter, distort or remove any proprietary notices or legends from the Services or Products and shall include such notices on any authorized copies of the Services or Products.

6. Publicity.
   Neither party shall use the name or marks of the other party or refer to or identify the other party in any advertising or public relations material, press releases, brochures, marketing materials and financial reports indicating that Customer is or was a customer of Snap-on Diagnostics, unless specifically authorized in writing of any unauthorized knowledge, possession or use of the Proprietary Materials of which it becomes aware. Customer agrees that such software, equipment and data and any portions of the Products not available to the general public may not be disclosed to others, copies, reproduced, transmitted, broadcast, displayed, translated, reverse engineered, disassembled, compiled or used for any purpose other than as specifically permitted under this Agreement. Customer shall use its best efforts to protect the Product and to prevent dissemination or use of the Product to or by an unauthorized person. Customer shall not assign, pledge, sublease or permit any other use of the Products without consent of the Snap-on Diagnostics, which consent may be withheld at the sole discretion of Snap-on Diagnostics. Customer’s obligations under this Section 9 shall survive termination or expiration of this Agreement.

10. WARRANTY AND DISCLAIMER.
   (a) THE SERVICES AND PRODUCTS ARE DELIVERED “AS IS” AND SNAP-ON DIAGNOSTICS MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER 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 OTHER.. SNAP-ON DIAGNOSTICS ALSO DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES, PRODUCTS OR ANY SOFTWARE RELATED THERETO WILL BE UNINTERRUPTED OR ERROR FREE.
   (b) CUSTOMER ACKNOWLEDGES AND AGREES THAT:
      1. SNAP-ON DIAGNOSTICS IS NOT THE MANUFACTURER OR DISTRIBUTOR OF ANY AUTOMOTIVE REPAIR PARTS REFERENCED IN THE PRODUCT;
      2. NEITHER SNAP-ON DIAGNOSTICS NOR ITS THIRD PARTY LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE QUALITY OR AVAILABILITY OF SUCH PARTS OR THE ACCURACY OF THE PRICES OF SUCH PARTS;
      3. DATA MADE AVAILABLE THROUGH THE PRODUCT OR BY THE SERVICES IS PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, AND INFORMATIONAL CONTENT;
      4. CUSTOMER USES SUCH DATA SOLELY AT CUSTOMER’S OWN RISK. CUSTOMER ACCEPTS FULL RESPONSIBILITY FOR ANY AND ALL DECISIONS MADE BY CUSTOMER IN RELIANCE UPON SUCH DATA;
      5. CUSTOMER ACCEPTS FULL RESPONSIBILITY FOR ANY AND ALL DECISIONS MADE BY CUSTOMER IN RELIANCE UPON SUCH DATA.
      6. IN ENTERING INTO THIS AGREEMENT AND/OR PURCHASING A SUBSCRIPTION, CUSTOMER IS NOT RELYING UPON ANY REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) MADE BY SNAP-ON DIAGNOSTICS, ITS THIRD PARTY LICENSORS, QUALITY DEPEND ON THE PRODUCT OR SERVICES, CUSTOMER SHALL LOOK SOLELY TO THE VENDOR OF SUCH INTERFACE PROGRAM WITH RESPECT TO ANY LOSSES OR DAMAGES CAUSED BY SUCH INTERFACE PROGRAM;
      7. IF CUSTOMER UTILIZES ANY NON- SNAP-ON DIAGNOSTICS SUPPLIED INTERFACE PROGRAM TO INTERFACE WITH THE PRODUCT OR SERVICES, CUSTOMER SHALL BE RESPONSIBLE FOR ANY BREACHES OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHER CLAIMS WHICH CUSTOMER MAY HAVE AGAINST ANY PARTY WITH RESPECT TO ANY LOSSES OR DAMAGES CAUSED BY SUCH INTERFACE PROGRAM.

11. 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 ITEMS, COSTS OF PROCUREMENT OF SUBSTITUTE SOFTWARE OR DATA) ARISING OUT OF OR RELATING TO THE SERVICES OR PRODUCTS, THE USE OF OR INABILITY TO USE THE SERVICES OR PRODUCTS, THE TERMS OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
   (b) NOT WITHSTANDING 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 TOTAL LIABILITY WILL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE AFFECTED SERVICES OR PRODUCT DURING THE MONTH IN WHICH...

This Agreement has been entered into in San Diego, California located within the County of San Diego, California. Both parties hereby submit to the personal jurisdiction of any claim or suit hereunder shall be exclusively the courts of California and all Proprietary Materials.

18. 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 conducted 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 consequential, indirect, special or exemplary damages, and the award may be enforced by judgment.

19. 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.

20. 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.

21. Irreparable Harm. Customer acknowledges and expressly agrees that any breach by the provisions of the licenses in Section 4 of this Agreement or any of the provisions Section 3 or Section 9 would cause Snap-on Diagnostics 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 4 of this Agreement or any of the provisions Section 3 or Section 9, Snap-on Diagnostics shall be entitled to have the right to seek injunctive relief without necessity of proof of actual damages. This right to seek injunctive relief shall not be construed to be a waiver of any other right that Snap-on Diagnostics may have under this Agreement, or otherwise in law or in equity.

22. Notice. Any notice or other communication required or permitted to be given to either party shall be in writing and shall be given to the party by personal delivery, by facsimile (with 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, or the address provided to the other party in writing from time to time. Address for Customer: 14145 Daniel St, Poway, CA 92064, Attention: CRM Department Tel: 888-724-6742 (toll free) Fax: 858-381-5262. In the case of Customer, the address specified in the Order Form.

23. 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 result in any impairment of any right or power or be construed to be a waiver thereof. A waiver by either of the parties 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 condition, condition or agreement herein contained.

24. 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.

25. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

26. Force Majeure. Snap-on Diagnostics will not be liable, or be considered to be in breach of or default under this Agreement, on account of any default failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control. Snap-on Diagnostics may suspend or terminate provision of any Services or Product as a result of any such cause or condition.

27. Counterparts; Facsimile Signatures. This Agreement and the applicable Order Form(s) may be executed in counterparts, each of which shall be an original, but all such counterparts shall constitute 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.

28. Entire Agreement. This Agreement and the applicable Order Form(s) sets forth the entire, final and exclusive agreement between Customer and Snap-on Diagnostics as to the subject matter hereof and superseded all prior 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.

29. Export Laws. Customer shall not export, re-export, disclose, or distribute the Services or Product in violation of any applicable law or regulations, including the export laws and regulations of the United States, and shall comply with all such laws and regulations.

30. Complimentary Products. If Customer has received complimentary products, Sections 1, 2, 3, and 11(c) shall not apply to the complimentary products, except the definition of any term in an inapplicable Section shall remain in effect to the extent such term is used in an applicable Section. Customer shall not receive Services with complimentary products. This Agreement will commence upon notice to Customer that complimentary products are available. A Waiver by either of the parties 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 condition, condition or agreement herein contained.

The claim first accrued. The limitations on liability set forth in this Section 12 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 Snap-on Diagnostics that Snap-on Diagnostics is unable to cure within the time period specified in its written notice of non-compliance, shall further have the right to terminate this Agreement, as to the complimentary products, by denying Customer access to the complimentary products at its sole discretion.

12. Equitable Relief. Notwithstanding any other provision of this Agreement, Customer acknowledges that any breach of its obligations under this Agreement with respect to the Services or Products and the other proprietary rights and obligations of Snap-on Diagnostics or its Third Party Providers will cause irreparable injury to Snap-on Diagnostics or its Third party providers, as applicable, for which there are inadequate remedies at law and, therefore, Snap-on Diagnostics or its Third Party Providers shall be entitled to equitable relief in addition to all other remedies provided by this Agreement or any applicable Order Form(s) or applicable Order Form(s).

13. Indemnification. Customer agrees to defend, indemnify, and hold Snap-on Diagnostics harmless against all claims and damages, including without limitation, reasonable attorney’s fees arising out of Customer’s use of the Services or Products, including but not limited to, any Update, and all Proprietary Materials.

14. Effect of Termination. In the event of the expiration or termination of this Agreement for any reason: (a) Customer shall immediately return to Snap-on Diagnostics any and all Proprietary Materials.