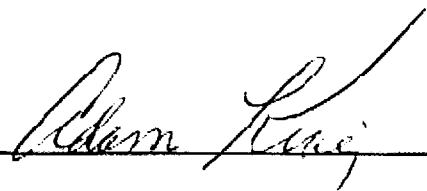


**REQUEST FOR AGENDA PLACEMENT FORM**

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Sheriff Adam King TODAY'S DATE: 3/29/21

DEPARTMENT: Sheriff's Office

SIGNATURE OF DEPARTMENT HEAD: 

REQUESTED AGENDA DATE: 4-12-21

**SPECIFIC AGENDA WORDING:**

Approval of addendum to the contractual agreement between Johnson County Texas and Mitchell 1 for fees for goods and services related to vehicle software.

COMMISSIONERS COURT

APR 12 2021

**Approved**

**PERSON(S) TO PRESENT ITEM:**

**SUPPORT MATERIAL:** (Must enclose supporting documentation)

TIME: **3 minutes**  
(Anticipated number of minutes needed to discuss item)

ACTION ITEM:   
WORKSHOP:  
CONSENT:  
EXECUTIVE:

**STAFF NOTICE:**

COUNTY ATTORNEY:   
AUDITOR:   
PERSONNEL:  
BUDGET COORDINATOR:

IT DEPARTMENT:  
PURCHASING DEPARTMENT:  
PUBLIC WORKS:  
OTHER:

This Section to be completed by County Judge's Office

ASSIGNED AGENDA DATE: \_\_\_\_\_

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE: \_\_\_\_\_

COURT MEMBER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

**JOHNSON COUNTY CONTRACT TERMS  
ADDENDUM – MITCHELL REPAIR INFORMATION COMPANY, LLC  
("Mitchell 1")**

---

**The Johnson County Commissioners Court finds, and the Parties agree, as follows:**

**1.1**

This Addendum is part of an Agreement between Johnson County, Texas, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY" ), and MITCHELL REPAIR INFORMATION COMPANY, LLC, doing business as, and known as "MITCHELL 1" (hereinafter sometimes also known as "MITCHELL" or "COMPANY") hereunder (collectively, the "Parties" or each individually a "Party"). This Addendum is part of the Agreement with MITCHELL REPAIR INFORMATION COMPANY, LLC and is intended to modify the Mitchell1 Order Terms and Conditions and any other document proffered to Johnson County by Mitchell 1 or their agents and any other documents defining the Agreement between Johnson County, Texas and Mitchell 1.

**2.1**

This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

**2.2**

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

**2.3**

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

**3.1**

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any

other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

**3.2**

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

**... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...**

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

**4.1**

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

**4.2**

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

**4.3**

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

**4.4**

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

**5.1**

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31<sup>st</sup> day after the later of:

- a. the date the governmental entity receives the goods under the contract;

- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

#### 6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

#### 6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that COMPANY might lawfully seek to claim as confidential, then County will forward the request to COMPANY. It shall be the obligation of COMPANY to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with COMPANY in making such submission to the Texas Attorney General's Office. **COMPANY acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

#### 6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

#### 6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced

sales and liens may not attach thereto.

**6.5**

**It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.**

**6.6**

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

**7.1**

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by COMPANY pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. **Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.**

**7.2**

COMPANY certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

**7.3**

**COMPANY verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by**

the United States Secretary of State as authorized by § U.S.C. Section 1189.

7.4

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

7.5

Notwithstanding any other provision in this Addendum or the associated documents, to the extent COMPANY is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

7.6

At any time following the expiration of the initial term of the contract, COUNTY may terminate the contract at its discretion by giving COMPANY 30 days written notice of such termination.

8.1

**In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. **THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY COMPANY IS HEREBY DELETED.****

**APPROVED AS TO FORM AND CONTENT:**

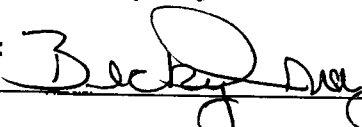
JOHNSON COUNTY:



Roger Harmon  
As Johnson County Judge

4-12-21  
Date

Attest:





4-12-21

ADDENDUM - MITCHELL REPAIR INFORMATION COMPANY, LLC  
JOHNSON COUNTY, TEXAS v1

County Clerk, Johnson County

Date

**MITCHELL REPAIR INFORMATION COMPANY, LLC (COMPANY):**

*Wayne Haire*

03/18/2021

\_\_\_\_\_  
Authorized Representative of  
MITCHELL REPAIR INFORMATION COMPANY, LLC

\_\_\_\_\_  
Date

Printed Name: Wayne Haire

Title: Manager Order Processing

Make Checks Payable to MITCHELL 1

From the U.S.: MITCHELL 1 25029 Newmark Place,  
Chicago IL 60673-1250  
Federal ID No.: 33-0734307

From Canada: MITCHELL 1 P.O. Box 15368 Station A  
Toronto, ON M5W 1C1 Canada  
GST No: B88262094RT0001



Correspondence to: MITCHELL 1 16067 Babcock Street, San Diego, CA 92127-3690 Ph# (888) 724-6742

**US/CN ORDER FORM with Order Terms**

ORDER # \_\_\_\_\_

NEW ACCOUNT?  Yes  No  Has Info Changed?

SHIP TO  Rep  Customer  Other

SHIP TO #:	3085255	CRP ID:		ASSOC MEMBER #:		POG or Lead #:		DATE:	Mar 29, 2021
CO NAME:	Johnson County Sheriff Office					OUT OF TERRITORY? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (If yes, needs RSM approval)			
ATTENTION:	Ben Arriola					FIELD REP # (6 digit account): 631189			
ST ADDRESS:	1102 E Kilpatrick St					FIELD REP NAME: Brandi Ussery			
CITY, ST, ZIP:	Cleburne, TX 76031					TM #		TM Rep Name	
PH#:	(817) 556-6050	FAX#:		EMAIL:	hena@johnsoncountytexas.org				

Bill to address is the same? If not, complete the following section.

BILL TO #:		CO NAME:	
ATTENTION:			
ST ADDRESS:			
CITY, ST ZIP:			

PRODUCT	Subscription	Code	Term	Price**
Select Product: ProDemand Rep/Est	1	<input checked="" type="checkbox"/> NEW <input type="checkbox"/> REN	GCVT	12M \$1,720.00
Not Applicable		<input type="checkbox"/> NEW <input type="checkbox"/> REN		
Not Applicable		<input type="checkbox"/> NEW <input type="checkbox"/> REN		
Not Applicable		<input type="checkbox"/> NEW <input type="checkbox"/> REN		
Not Applicable		<input type="checkbox"/> NEW <input type="checkbox"/> REN		
Type Other: Not Applicable		<input type="checkbox"/> NEW <input type="checkbox"/> REN		

**PAYMENT OPTIONS: Terms & Conditions (see End User License Agreement)**  
Customer is responsible for all applicable state or local taxes.

Subtotal	\$1,728.00
+ TAX* (if applicable)	\$0.00
<b>TOTAL</b>	<b>\$1,728.00</b>

**DIRECT DEBIT** I authorize Mitchell 1 to enroll me in the Direct Debit or credit card payment plan to enable the automatic payment of my Mitchell 1 monthly bill OR I agree to charge my existing monthly automatic payment by the amount of this order. I authorize the financial institution name below to charge my account for payment of my Mitchell 1 bill.

Check one of the payment methods below.

Direct Debit (attach voided check)  Credit Card Card # Not Applicable Exp: \_\_\_\_\_

Name on Card: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*If tax exempt, you must attach exempt certificate.  
\*\*Pricing good for 30 days excluding promotional pricing which expires at the end of the stated promotional period.  
Promotional pricing returns to list pricing on renewal term.

Remit Payment to Mitchell 1.

FIRST MONTH OR FULL PAYMENT	<input type="checkbox"/> Check (Chk # _____) Amt _____ ) <input type="checkbox"/> P.O. # _____
	<input type="checkbox"/> Credit Card Card # _____ Name on Card: _____ Exp: _____

SPECIAL INSTRUCTIONS:

THE UNDERSIGNED AGREE TO THE TERMS AND CONDITIONS SET FORTH ABOVE AND HAVE RECEIVED AND ACCEPTED THE MITCHELL 1 ORDER TERMS AND CONDITIONS, IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE RESPECTIVE DATE INDICATED ABOVE. CUSTOMER AGREES TO RECEIVE PROMOTIONAL E-MAILS FROM MITCHELL 1. IF CUSTOMER WOULD PREFER NOT TO RECEIVE PROMOTIONAL E-MAILS FROM MITCHELL 1, PLEASE VISIT OUR WEBSITE [www.mitchell1.com/unsubscribe](http://www.mitchell1.com/unsubscribe) TO UNSUBSCRIBE.

End User/Owner Signature	Print Name	Title
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This agreement may be canceled within 30 days without penalty by calling 888-724-4742.

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate the writing and to have the same force and effect as manual signatures. Electronic signature means any voice recording or electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile, telephone recording or e-mail electronic signatures.



Mitchell 1 Order Terms and Conditions

1. Agreement: Order Form. The agreement between you ("Customer") and Mitchell Repair Information Company LLC ("Mitchell 1") includes: (i) these Mitchell 1 Order Terms and Conditions; (ii) the Order Form; and (iii) the End User License Agreement which may be updated from time to time ("EULA") (collectively, the "Agreement"). Customer acknowledges and agrees that the Order Form and the registration, payment and other information submitted by Customer on the Order Form is complete and accurate. Any additional terms and conditions set forth in any customer quote, purchase order, or other written documentation from Customer shall be considered void and of no force and effect and are hereby expressly rejected.

2. Services. The Services(s), unless terminated earlier in accordance with the Agreement, will renew automatically on a month to month basis. 30-day notice is required to cancel during any 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.

2.1 MI Business Performance Services

2.1.1. Overview. The Services include Customer Retention Marketing Service Reminders ("CRM"), Target Market Promotions ("TMP"), Website or other services offered by Mitchell 1 from time to time as further specified on the Order Form (hereinafter individually or collectively referred to as "Services(s)") Section 2.1.1 through Section 2.1.4 apply respectively to the Services(s) selected.

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

- (a) 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 always be sent when an e-mail address is captured by Mitchell 1 via the extraction process or may be obtained by Mitchell 1 through third party e-mail providers.
- (c) Manage a database of customer and vehicle information for the Customer.

Approved

(e) Use data hygiene cleaning processes for data integrity and provide a secure environment for customer data storage.

(f) Provide Customer technical and customer support for CRM services.

(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 Manager program.

(h) If Customer has opted for the Target Market Promotions ("TMP") the 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. If Customer elects to rent a mailing list as provided in this Section 2.1.2 (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 professional 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.

(i) Customer opting for eCRM e-mail service can choose from an extensive list of pre-existing text coupon templates with the ability to include their own limited text. These pre-existing 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.

(j) 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 Mitchell 1 library and receive one (1) custom design per year, and a maximum of two (2) revisions to that custom design. Additional cover art change requests can be completed at \$150 per request.

(k) The Customer acknowledges that any content pushed to the Customer's Facebook page by Mitchell 1 is at Facebook's sole discretion to present

Approved

(l) A Website and/or any CRM service provided by Mitchell 1 does not

include a guarantee of premium or "first page" search engine results positioning.

(m) If Customer has opted for Marketing services, the Customer hereby agrees to pay and be fully responsible for the

Approved

content posted to such site, including, without limitation, the completeness and accuracy of any service history or other information included in the customer's service records.

2.1.3. OwnerAutoSite.com. The Customer acknowledges that

Approved

2.1.4. Manager SE Connection Service (MSECC). Installation of Mitchell 1 shop management software also includes the installation of the MSECC application which is required for all product features and add-on products and services to function. As part of this service, Mitchell 1 provides the following:

- (a) Real-time database replication and electronic storage of Customer database files on Mitchell 1 servers.
- (b) Data updates and additions from Mitchell 1 licensed products and features into the Customer MSECC database, which will be synchronized with the Customer locally-hosted database.
- (c) Mitchell 1 customer service personnel to provide web based restoration of the electronically stored Mitchell 1 shop management product database files to the extent such files are backed up on Mitchell 1 servers.

2.1.5. Mitchell 1 Manager Shop Management Texting Service. Customer acknowledges the following regarding texting service usage:

- (a) Mitchell 1 provides the Customer with the ability to send and receive short message service (SMS) text messages. Mitchell 1 texting service includes an unsubscribe mechanism for message recipients.
- (b) The Customer located in the United States is responsible for appropriate usage and adherence to all local, state and federal laws as they pertain to sending and receiving text messages.
- (c) The Customer located in Canada is responsible for adherence to all local, provincial and federal legislation including but not limited to Canada's Anti-Spam Legislation ("ASL").

2.2 Subscriptions. The terms below will apply to the Subscription selected by Customer. The subscription period for any subscription, as set forth in the Order Form ("Subscription"), is effective for an initial term of either twelve (12) or twenty-four (24) months (as selected on the Order Form) following the commencement date ("Initial Subscription Period"). In addition to the applicable Subscription fees, Customer may be required to pay Mitchell 1 a one-time activation fee to commence the Subscription. The activation fee is non-refundable once the Order Form is accepted by Mitchell 1. Mitchell 1 will bill Customer monthly, with payments due within thirty (30) calendar days following the date of the Mitchell 1 invoice. After the Initial Subscription Period the Subscription Period for this Subscription will renew automatically on a month to month basis (each, a "Renewal Period", together with the Initial Subscription Period, the "Subscription Period"). 30 day notice is required to cancel during any Renewal Period. A Subscription may not be cancelled by Customer during the Initial Subscription Period. Mitchell 1 reserves the right to change pricing upon notice to Customer prior to each Renewal Period. At the end of the Initial Subscription Period or any Renewal Period, Customer must discontinue use of the Product, any Updates and all documentation.

3. Payments. As applicable, Customer hereby authorizes Mitchell 1 to charge the Customer the fees set forth in the Order Form to the payment card or checking account number provided by Customer. By submitting a payment card or checking account number as the form of payment, Customer represents and warrants that Customer's use of the particular card or checking account is authorized and that all information submitted is true, complete and accurate (including, without limitation, payment card number and expiration date). In doing so, Customer also authorizes Mitchell 1 to charge to the payment card or checking account tendered all amounts payable by Customer to Mitchell 1 based on the Subscription plan selected (including all renewals (renewal), including, but not limited to, all fees and any applicable taxes. Customer agrees to update and keep correct its account registration and payment card or checking account information. If Mitchell 1 is unable to process the payment card or checking account at any time, Customer's account may be immediately suspended or terminated and Customer will remain responsible for all amounts payable by Customer to Mitchell 1. Mitchell 1 reserves the right to not renew Customer's account at any time for any reason.

Approved

4. License. Subject to the terms and conditions of this Agreement, Mitchell 1 grants to Customer a personal, non-exclusive, nontransferable, limited license to access and use the executable version of the applicable Service or Product during the applicable Subscription Period solely for the purpose of: (i) providing vehicle maintenance 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. As it pertains to the shop management software, an additional license is required for each additional computer the application is installed on beyond the host machine. The Mitchell 1 Services and Products are not sold or transferred and Mitchell 1 retains ownership of all right, title, and interest in and to the Services and Products and all copies thereof, including any software applications. Except for the rights expressly granted in the Agreement, Mitchell 1 grants no right, title, or interest to Customer in any of the Products or Services or any part thereof.

5. **Export Control.** Mitchell 1's products may be subject to U.S. export and re-export control laws and regulations or similar laws applicable in other jurisdictions, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Customer hereby represents and warrants that: (i) Customer is not located in any country to which the United States has embargoed goods or has otherwise applied any economic sanctions, and (ii) neither Customer nor any end-user is a denied party as specified in any applicable export or re-export laws or regulations or similar laws applicable in other jurisdictions. Customer agrees to comply with all applicable export and re-export control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, and the ITAR. Specifically, Customer shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Mitchell 1 to any destination, entity, or person prohibited by any applicable laws or regulations of the United States or any other jurisdiction without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

6. **Third Party Rights.** Customer hereby acknowledges and agrees that certain portions of the content or materials contained in the Products or Services may be licensed by Mitchell 1 from certain third parties (the "Third Party Beneficiaries"). The Third Party Beneficiaries are intended beneficiaries of the Agreement and may have the right to enforce the Agreement directly. Other than as expressly set forth above, the Agreement is not intended to, and affirmatively does not, grant rights to any other party or create any other third party beneficiary rights.

7. **Indemnification by Customer.** Customer shall indemnify Mitchell 1, its affiliates, agents, representatives, licensors, suppliers, and service providers from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, incurred by Mitchell 1, its affiliates, agents, representatives, licensors, suppliers, and service providers as a result of or arising out of the use of the Products or Services by Customer or any end-user, including but not limited to the use of the Products or Services in violation of the Agreement or applicable laws or regulations, or the use of the Products or Services to infringe the intellectual property rights of any third party.

Approved

8. **Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. This Agreement supersedes all prior agreements and understanding between the parties regarding its subject matter. A waiver of any right hereunder does not imply a waiver of any other rights and no waiver, alteration, modification or amendment shall be effective unless made in writing and signed by authorized representatives of the parties.

9. **Counterparts; Electronic 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. Each party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic signature, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile, e-mail, or electronic click-to-accept signatures. Order Forms for Services and Products provided electronically are accepted when Mitchell 1 sends Customer an electronic message confirming the Order Form. All other Order Forms for 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 Mitchell 1 representative signs the Order Form.

10. **Disclaimer of Warranties.** OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, NEITHER MITCHELL 1 NOR ANY OF ITS AFFILIATES, SUPPLIERS, LICENSORS, OR THIRD PARTY BENEFICIARIES MAKE ANY SPECIFIC PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE PRODUCTS OR SERVICES. THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" EXCEPT AS MAY BE PROHIBITED BY LAW. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE HEREBY DISCLAIMED AND EXCLUDED.

11. **Privacy.** Mitchell 1's privacy policy explains how Mitchell 1 treats your personal data and protect your privacy when you use the Products or Services. By using the Products or Services, you agree that Mitchell 1 may use such data in accordance with the Mitchell 1 privacy policy.

End User Order Signature

