

## Terms and Conditions of Use and End User License Agreement Subaru Concierge for Service Program

IMPORTANT - READ CAREFULLY: The Subaru Retailer Concierge for Service Program products and services described in these Terms and Conditions of Use and End User License Agreement (this "**Agreement**"), including, without limitation, the call center and other related services described in Section 2 of this Agreement, and any websites, software, tools, and related content and services provided hereunder (referred to collectively as the "**Concierge Services**"), are made available by Sanctus, LLC, a limited liability company doing business as Shift Digital ("**Shift Digital**"), as part of the Subaru Concierge for Service Program for Subaru automotive retailers that have been authorized by Subaru of America, Inc. ("**Subaru**") to sell and service Subaru brand vehicles. Subaru is not providing or otherwise responsible for the Concierge Services and is not a party to this Agreement. Subaru is a third-party beneficiary of this Agreement as provided in Section 12.4, however, Shift Digital does not have the power or authority to bind Subaru through this Agreement or otherwise. This Agreement is a legal contract between you, the Subaru automotive retailer ("**Subaru Retailer**") subscribing to the Concierge Services, and Shift Digital (Subaru Retailer and Shift Digital are each sometimes referred to as a "**Party**" and collectively as the "**Parties**"). The Concierge Services are subject to the terms set forth in this Agreement. Subaru Retailer represents and warrants that it is a licensed automotive retailer authorized to sell and service Subaru brand vehicles under a franchise agreement with Subaru of America or one its authorized distributors.

Subaru Retailer's enrollment for the Concierge Services authorizes Shift Digital to begin providing the Concierge Services. Subaru Retailer agrees to pay the applicable fees for Concierge Services in accordance with the terms set forth herein and/or in the electronic enrollment portal or order form, incorporated herein by reference.

IN ORDER TO USE THE CONCIERGE SERVICES, SUBARU RETAILER MUST FIRST AGREE TO THE TERMS SET FORTH IN THIS AGREEMENT BY EITHER CLICKING "ENROLL NOW" ON THE ENROLLMENT PORTAL AFTER MAKING THE SERVICE SELECTIONS, OR BY SELECTING SERVICES AND SIGNING A SERVICES ENROLLMENT FORM, AND USING THE CONCIERGE SERVICES. SUBARU

RETAILER MAY NOT USE THE CONCIERGE SERVICES IF SUBARU RETAILER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT. SUBARU RETAILER CAN ACCEPT THE TERMS OF THIS AGREEMENT BY ENROLLING FOR AND/OR BY USING THE CONCIERGE SERVICES, IN WHICH CASE, SUBARU RETAILER UNDERSTANDS AND AGREES THAT SHIFT DIGITAL WILL TREAT SUBARU RETAILER'S USE OF THE CONCIERGE SERVICES AS ACCEPTANCE OF THE TERMS OF THIS AGREEMENT.

Before you continue, you should print or save a local copy of this Agreement for your records.

The definition of Concierge Services hereunder shall also include any online access to the electronic enrollment portal at <http://subaruserviceconcierge.com/>, informational web pages, and/or Shift Digital's online reporting service (collectively, the "**Secure Web Services**") provided by Shift Digital.

By either completing and submitting the enrollment form or clicking on "Enroll Now" on the enrollment portal, you represent and warrant that you are of legal age to form a binding contract with us and are authorized to bind the company and Subaru Retailer to which the Concierge Services are being provided.

1. **DEFINITIONS.** Terms appearing in initial capital letters shall have the meaning set forth below and/or as elsewhere set forth in this Agreement.
  - 1.1. "**Call Centers**" means the Michigan call center facilities of Shift Digital, and/or Dynamic Marketing, or other call center facilities provided by Shift Digital.
  - 1.2. "**Center Management and Administrative Personnel**" means personnel responsible for directing the activities of the Call Centers
  - 1.3. "**Customer**" means a current or potential automotive customer of Subaru Retailer.
  - 1.4. "**Customer Service Specialist**" or "**CSS**" means an employee, agent or independent contractor who has responsibility for providing Concierge Services at the Call Centers in accordance with the provisions of this Agreement.

- 1.5. **“Dynamic Marketing”** means Shift Digital’s affiliated company, Dynamic Acquisition Co., LLC, d/b/a Dynamic Marketing Services.
- 1.6. **“Hot Lead”** means the owner of a Subaru vehicle (a) expresses interest in servicing their a vehicle with a Subaru Dealer, or (b) has a question that the CSS is not permitted to answer and should be directed to Subaru Retailer per the agreed-upon service lead business rules.
- 1.7. **“Appointment”** means that Service Concierge has scheduled a service appointment for a customer in the Subaru Retailer’s Online Service Scheduler.
- 1.8. **“Implementation Date”** means the date for launch of the Concierge Services agreed upon by the Parties.
- 1.9. **“IVR”** means an Internal Voice Routing which is an automated greeting installed in Subaru and/or Subaru Retailer controlled phone systems for the purpose of routing Subaru Service appointment calls to Concierge.
- 1.10. **“Service Term”** means the duration of the subscription for Concierge Services as described in Section 10 of this Agreement.

## 2. CONCIERGE SERVICES.

- 2.1. Concierge Services Description. Shift Digital agrees to provide the Concierge Services to Subaru Retailer in accordance with the terms and conditions of this Agreement. Shift Digital may provide all or part of the Concierge Services through one or more third party service providers (**“Service Providers”**) that Shift Digital selects, including Dynamic Marketing. Shift Digital, in its sole discretion, may change any Service Provider at any time and for any reason. Subaru Retailer hereby authorizes Shift Digital, Subaru and Subaru’s authorized Subaru Retailer Website call tracking provider to install a phone IVR for Subaru Retailer-provided service phone numbers on the Subaru Retailer website and Subaru Retailer mobile website. Subaru Retailer may also opt to install the IVR on other Subaru

Retailer controlled Subaru service phone numbers that Subaru Retailer may designate (collectively, the “**Numbers**”). If a Customer calls a Number and presses the appropriate number designated by the IVR for scheduling a Subaru service appointment, such Customer will be routed to the Subaru Concierge Call Centers. A Customer Service Specialist will assist such Customer with scheduling a service appointment with Subaru Retailer and schedule the appointment directly into Subaru Retailer’s Subaru-approved online service scheduling tool (the “**Scheduling Tool**”). Upon being connected by telephone with prospective automobile service customers , the CSS will engage the prospective service customer in conversation to schedule appointments with a Subaru automobile retailer, which may be Subaru Retailer. For each Appointment or Hot Lead, the CSS will send an email to the Subaru Retailer’s service department to verify that Subaru Retailer received the appointment or hot lead notification. If Subaru Retailer subscribes for the Subaru Recall, FMC, OSR and/or STARLINK campaign services or other outbound services that may be added at a later time, Shift Digital will provide call center services as part of the Concierge Services to schedule vehicle service appointments connecting Customers with the Subaru Retailer, including: (i) the processing of Subaru Retailer’s Open Recall, FMC, or OSR lists or processing online STARLINK Notifications by making two (2) attempts to reach each Customer on such list, and (ii) a Customer Service Specialist assisting such Customer with scheduling a service appointment with Subaru Retailer and scheduling the appointment directly into Subaru Retailer’s Scheduling Tool. If Shift Digital or the Service Provider is unable to reach the Customer, the CSS will leave a voicemail after either the first call (OSR & STARLINK) or second call (Recall & FMC) per Subaru business rules. Shift Digital or the Service Provider will attempt to leave a voicemail (if the Subaru Retailer-provided telephone number connects to a functioning voicemail service) providing the Customer with a callback number. Subaru Retailer may provide Shift Digital with a series of instructions related to business rules for both inbound appointments and outbound appointments generated. These retailer provided instructions may include pricing of common services, Subaru Service Loaner Program (SSLP) scheduling and required time for service. Shift Digital’s obligation to provide

Concierge Services, excluding the Secure Web Services, is contingent upon Subaru Retailer providing input and approval to Shift Digital concerning the number of VINs to be contacted via the Concierge Services.

- 2.2. Eligibility. In order to be eligible for the Concierge Services, Subaru Retailer must: (a) utilize an authorized online Subaru service Scheduling Tool, (b) make adequate recall, First Service, Maintenance, and STARLINK inspection appointments available in the Scheduling Tool. Per Subaru business rules, the CSS will not warm transfer or make other types of attempts to connect the Customer and Subaru Retailer in the event that recall appointments are not available, and (c) meet any other eligibility criteria set by Subaru from time to time.
- 2.3. Use of the Services. In order to access the Concierge Services, Subaru Retailer may be required to provide information about Subaru Retailer's business (such as identification, billing or contact details). Subaru Retailer agrees that any information Subaru Retailer provides will be accurate, complete and up to date. Subaru Retailer agrees to maintain the confidentiality of passwords associated with any account Subaru Retailer uses to access the Concierge Services. Subaru Retailer acknowledges that the Concierge Services may allow Subaru Retailer to designate administrators for the Concierge Services, thereby granting certain rights and authorizations relating to, among other things, selection of, and preferences for, Services and billing. Subaru Retailer agrees that Subaru Retailer is solely responsible for all fees, costs or other expenses charged related to any selections made by Subaru Retailer or Subaru Retailer's designees.
- 2.4. Recorded Calls. Subaru Retailer acknowledges and understands that when a person (the "**Caller**") calls a Number, the Caller will be automatically advised that each call is subject to recording and monitoring prior to the connection of the telephone call to Subaru Retailer through the Number (the "**Recorded Call Message**"). Such Recorded Call Messages may be made available to Subaru, Shift Digital and the Service Providers in connection with providing the Concierge Services hereunder. Subaru Retailer represents, warrants and agrees in connection with Subaru Retailer's use of the Concierge Services,

that Subaru Retailer has reviewed the legality of recording, monitoring, storing, and divulging telephone calls, that Subaru Retailer is permitted to engage in such activities, and that Subaru Retailer shall use the Number(s) in full compliance with all applicable laws and regulations. Subaru Retailer represents and warrants that Subaru Retailer has had the opportunity to review the proposed usage of the Numbers with Subaru Retailer's legal counsel, and that Subaru Retailer has established proper procedures to protect the privacy of, and otherwise comply with all applicable laws and regulations with respect to, Callers and the Call Receivers (defined below). In the event the Recorded Call Message requires a revision in order to comply with applicable laws, then Subaru Retailer shall promptly notify Shift Digital in writing of that fact, advising Shift Digital as to the exact language necessary to comply with the applicable laws. Subaru Retailer agrees and acknowledges that neither Shift Digital, nor Subaru, nor any Service Providers accept any responsibility for (a) the legality of recording, monitoring, storing and/or divulging telephone calls and (b) the legality of the language used in the Recorded Call Message. Subaru Retailer agrees and acknowledges that applicable laws and regulations may require that Subaru Retailer provide notice to and/or receive express consent and permission from, in writing or otherwise, all agents (including employees), independent contractors, and/or other persons who receive telephone calls (the "**Call Receivers**"). Subaru Retailer agrees, acknowledges, represents and warrants that Subaru Retailer will provide and/or obtain all notices, consents, and permissions relating to Call Receivers, as required by applicable laws and regulations. SUBARU RETAILER SHALL, AS REQUIRED BY APPLICABLE LAW OR REGULATION, PROVIDE NOTICE TO SUBARU RETAILER'S CUSTOMERS AND OBTAIN CONSENT, IF REQUIRED FOR USE OF THE CONCIERGE SERVICES, IN SUBARU RETAILER'S PRIVACY POLICY AND/OR AS OTHERWISE REQUIRED BY LAW OR REGULATION.

- 2.5. Call Center Location. The Concierge Services will be provided from Call Centers in the State of Michigan, which may include rerouting of calls and emails to either the home offices of employees or another remote location personnel and/or subcontractors, which may be located outside of Michigan. Shift Digital reserves the right to relocate the Call Center operations to an alternative location in the United States or Canada.

- 2.6. Language. The Concierge Services shall be offered in English.
- 2.7. Call Handling. Shift Digital will develop consumer messaging and processes for the Concierge Services. All workflows, conversation topics, scripts, business rules and rules of engagement (hereinafter referred to as “**Business Rules**”) shall be determined by Shift Digital.
- 2.8. Reporting. During the Service Term, Shift Digital will provide Subaru Retailer with summary reports, the form, content, frequency and method of delivery of which shall mutually agree upon by Shift Digital and Subaru. The summary reports shall include detail for the preceding month of the total appointments set, other customer call outcomes and Subaru Retailer costs. Subaru Retailer authorizes Shift Digital to share Subaru Retailer’s Subaru Concierge for Service reports with Subaru of America representatives for the purposes of program management, oversight, and customer issue resolution.
- 2.9. Staffing; Call Coverage Hours. Shift Digital will provide the Customer service appointment scheduling services described in Section 2 above during Monday-Friday 7am-10pm ET, and Saturday 8am-8pm ET, closed Sunday and national holidays.
- 2.10. Equipment. Shift Digital shall be solely responsible for and shall bear all costs and expenses with regard to: computer hardware and software; equipment, including, but not limited to, telecommunications equipment, hardware and software; and all furniture, fixtures and supplies required in the efficient performance of the Concierge Services.
- 2.11. Implementation Date. Shift Digital agrees to have all necessary preparation measures completed on or before the Implementation Date, including, but not limited to, staffing and training necessary to implement the Concierge Services.

### 3. SUBARU RETAILER’S OBLIGATIONS.

- 3.1. Operational Coordination. Subaru Retailer shall be responsible for, and will authorize the installation of, a phone IVR for Subaru Retailer-provided service phone numbers on the Subaru Retailer website and Subaru Retailer mobile website, as set forth in Section 2.1

above. The IVR shall point service appointment related calls to the Call Center. Subaru Retailer shall provide Shift Digital with information necessary to provide the Concierge Services, including the appropriate contact information (including key contact name, telephone number, and email address), Subaru Retailer's hours of operations, instructions for service loaners, home delivery/pick up options, and any other retailer specific information required for Shift Digital to provide the Concierge Services. Subaru Retailer agrees to provide adequate online service appointment capacity, and allow Shift Digital to contact Subaru Retailer's District Parts and Service Manager and/or Subaru Retailer's Care Connect or X-Time Representative to address service scheduling, call transfer issues, and/or customer satisfaction issues.

**3.2. Communications.** Subaru Retailer shall provide Shift Digital or Dynamic Marketing with relevant service information and Subaru Retailer specific instructions to assist Shift Digital in administering the program. Subaru Retailer shall not provide any direction to Shift Digital or Dynamic Marketing or request or require that Shift Digital or Dynamic Marketing do any act or not do any act under this Agreement in violation of any federal, state or local law, rule or regulation.

**3.3. Subaru Retailer Key Contact.** Subaru Retailer shall assign one (1) individual to act as Subaru Retailer's representative to Shift Digital and Dynamic Marketing with respect to all matters pertaining to this Agreement.

**3.4. Consumer Contact Authorization.** Subaru Retailer shall ensure that each customer identified in a customer list provided by the Subaru Retailer has authorized a representative of Shift Digital (or Dynamic Marketing) to contact the customer. Subaru Retailer shall maintain an accurate and up to date "Do Not Call" list for Subaru Retailer, and Subaru Retailer shall verify that, with respect to each vehicle service lead and each Customer list provided to Shift Digital and/or Dynamic hereunder, the Customers identified in such lists are not on the Subaru Retailer's "Do Not Call" list.

#### **4. PAYMENT PROVISIONS.**

**4.1. Compensation.** Subaru Retailer agrees to pay the fees set forth on the enrollment site (available at <https://www.subaruserviceconcierge.com/>) for the respective Concierge



Services provided to the Subaru Retailer (the “Fees”). Subaru Retailer agrees that the Fees will be billed monthly by Subaru via Subaru Retailer’s Subaru parts statement and Subaru Retailer agrees to pay the Fees to Subaru through, and in accordance with the terms of, Subaru Retailer’s agreement with Subaru. Subaru at its sole discretion may elect for the costs of the Subaru Concierge for Service Program to be eligible for partial reimbursement under the guidelines of the Subaru Advertising Fund (SAF; or the Retailer’s Distributor Co-op program, whichever may apply), which shall be subject to the eligibility and reimbursement terms defined by Subaru or the appropriate Subaru Distributor. In addition to the other rights reserved hereunder, Shift Digital expressly reserves the right to terminate the Concierge Services and disable Subaru Retailer’s access to the Concierge Services for any reason or no reason, including but not limited to, non-payment. Subject to Shift Digital’s agreement with Subaru, Shift Digital may increase the Fees by giving Subaru Retailer not less than thirty (30) days written notice prior to the effective date of the price increase.

- 4.2. Taxes. Subaru Retailer shall be responsible for the payment of sales, use or other taxes now or hereafter imposed on the Concierge Services by Federal, state or local governments where such tax is either expressly specified as a liability of a user or the custom is that the user pays such tax. Subaru Retailer shall not be responsible for payment of any Federal, state or local government tax that is based solely on the income of Shift Digital or Dynamic Marketing. The invoice from Subaru may include any such taxes that Subaru determines it is obligated to collect from Subaru Retailer with respect to the Concierge Services, and Subaru Retailer agrees to timely remit the same to Subaru.
5. **MODIFICATION TO SERVICES**. Shift Digital reserves the right to modify or change the Services provided hereunder by modifying current features, deleting features and/or adding features, upon prior notice to Subaru Retailer. Some modifications or changes may result in a fee increase or decrease for such Services. Subaru Retailer’s continued use of the Services hereunder after notice will constitute Dealer’s acceptance of the change in the Services and Dealer’s agreement to pay the fees associated with such change in Services.
6. **RESTRICTIONS ON USE OF SERVICES**. Subaru Retailer agrees not to access (or attempt to

access) any of the Secure Web Services by any means other than through the interfaces that are made accessible by Shift Digital or the Service Provider. Subaru Retailer agrees not engage in any activity that interferes with or disrupts the Concierge Services (or the servers and networks which are connected to the Concierge Services). Without limiting the foregoing, Subaru Retailer agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of any Secure Web Service or other program associated with the Concierge Services.

- 7. OWNERSHIP OF CONTENT AND SERVICES.** Subaru Retailer acknowledges and agrees that all materials and information (such as data files, written text, computer software, music, audio files or other sounds, photographs, manuals, documents, illustrations, pricing information, videos or other images) which are provided by Shift Digital, its Service Providers, or Subaru in connection with the Concierge Services, or which Subaru Retailer may have access to as part of, or through Subaru Retailer's use of, the Concierge Services (the "**Provided Content**"), together with the Concierge Services, including any copyright and/or other intellectual property rights in the Concierge Services and the Provided Content, are owned by Shift Digital, Subaru, the Service Providers and/or their licensors. Subaru Retailer may not modify, rent, lease, loan, sell, or distribute the Provided Content or the Concierge Services or create derivative works based on the Provided Content or the Concierge Services (either in whole or in part), except as provided in this Agreement. Subaru Retailer agrees that it is solely responsible for all content, materials and information (such as data files, written text, computer software, music, audio files or other sounds, photographs, manuals, documents, illustrations, pricing information, videos or other images) provided by Subaru Retailer in connection with the Concierge Services or that Subaru Retailer (or any third party acting on behalf of Subaru Retailer) creates, transmits or displays while using the Concierge Services ("**Subaru Retailer Content**") and for the consequences of these actions (including any loss, liability, fine or damage). Subaru Retailer retains any copyright and/or other intellectual property rights in Subaru Retailer Content. Shift Digital and the Service Providers may not modify, rent, lease, loan, sell, or distribute the Subaru Retailer Content or create derivative works based on the Subaru Retailer Content (either in whole or in part), except as necessary

to provide the Concierge Services or as otherwise provided in this Agreement. Each Party further acknowledges that in connection with the Concierge Services it may receive information from the other Party which is designated as confidential (“Confidential Information”), and each Party agrees to take commercially reasonable steps to protect the other Party’s Confidential Information from unauthorized use or disclosure.

8. **LICENSES.** Subaru Retailer grants to Shift Digital, the Service Providers and their authorized users a worldwide, royalty-free, non-exclusive license to use the Scheduling Tool in connection with the Concierge Service. Subaru Retailer further grants Shift Digital, and each Service Provider to which Shift Digital provides the Subaru Retailer Content for the purposes of providing the Concierge Services, a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the Subaru Retailer Content in order to provide the Concierge Services as contemplated in this Agreement. Subaru Retailer represents and warrants that it has all the rights, power and authority necessary to grant the above licenses.
  
9. **SUBARU RETAILER DATA.** Subaru Retailer hereby authorizes Shift Digital, Dynamic Marketing and the Service Providers to collect, process and transfer, provide or otherwise make available any data pertaining to the Subaru Retailer’s use of the Concierge Services, including access to the Subaru Retailer’s Open Recall Campaign List from Care Connect and Recorded Call Messages (the “**Subaru Retailer Data**”), to Subaru, Shift Digital and the Service Providers in connection with providing the Concierge Services hereunder. The Subaru Retailer Data shall continue to be owned by the Subaru Retailer. Neither Shift Digital nor the Service Provider will use the Subaru Retailer Data or other customer information for any other purposes than those intended with the Concierge Services or as otherwise provided herein. Nothing in this Agreement shall obligate Shift Digital or any Service Provider to retain any Subaru Retailer Data. In the event the performance of the Concierge Services requires Shift Digital and/or the Service Providers to access Subaru Retailer’s computer systems to collect Subaru Retailer Data or perform the Concierge Services, Subaru Retailer specifically requests and authorizes such access and will provide, and has all rights and authorizations required to provide, such access.

Subaru Retailer hereby grants to Shift Digital and the Service Providers a perpetual, worldwide, royalty-free, non-exclusive, license to use the Subaru Retailer Data solely for the purposes of (i) performing the Concierge Services, (ii) to develop reports for Subaru, which may include directly sharing Subaru Retailer Data with Subaru, for the purposes of program management, oversight, and customer issue resolution, (iii) for consumer, vehicle, and industry data analysis and market research and reference, (iii) to improve and enhance the Concierge Services and for other development, diagnostic and corrective purposes, (iv) combining with other data to create proprietary market price and incentive guides, and for benchmarking purposes and providing market reports and studies to third parties, provided that any such Subaru Retailer Data provided to third parties is provided solely in aggregate or other de-identified form and does not disclose to any third party Subaru Retailer's name or the name of any consumer.

10. **INDEPENDENT CONTRACTOR.** The Parties' relationship to each other in the performance of this Agreement is that of independent contractor. Nothing in this Agreement will place the Parties in the relationship of partners, joint ventures, principal-agent, employer-employee, or joint employer and neither Party will have any right to obligate or bind the other in any manner whatsoever nor represent to third parties that it has any right to enter into any binding obligation on the other's behalf.

11. **TERM AND TERMINATION.** The term of this Agreement shall commence upon receipt and approval by Shift Digital of the order form/service selections that you select and submit to Shift Digital via the enrollment portal/website and continue for one (1) month, and shall automatically renew for successive one (1) month terms unless terminated in accordance with the provisions of this Agreement (the "**Service Term**"). Subaru Retailer may cancel the Concierge Services online through its account, if online cancellation functionality is available, or, if not available, by providing written notice to Shift Digital delivered by email to [info@subaruserviceconcierge.com](mailto:info@subaruserviceconcierge.com). Cancellations that occur on or before the 10th day of the month will be effective as of the end of that month. Cancellations that occur after the 10th day of the month will be effective at the end of the following month. Shift Digital may, at any time and for any reason, terminate this Agreement upon thirty (30) days prior written notice

to Subaru Retailer. This Agreement will automatically terminate without requirement of notice by either Party effective on the date of the expiration or termination of Subaru Retailer's franchise agreement with Subaru for any reason, or if Subaru in its sole discretion cancels or otherwise ceases to authorize the Subaru Concierge for Service Program, in which case this Agreement will automatically terminate as of the effective date thereof. Shift Digital reserves the right to terminate this Agreement should the level of participating retailers fall below minimum operating standards.

## **12. WARRANTIES AND REPRESENTATIONS.**

12.1. Shift Digital Representations and Warranties. Shift Digital represents and warrants that the Concierge Services shall be performed in a workmanlike manner and generally in accordance with the specifications and descriptions of such Concierge Services as set forth in this Agreement.

12.2. Subaru Retailer Representations and Warranties.

12.2.1. Subaru Retailer represents and warrants that the materials provided by Subaru Retailer to Shift Digital and/or Dynamic Marketing to utilize in performing the Concierge Services do not and will not infringe upon the proprietary rights of any third party. Subaru Retailer further represents and warrants that the consumers identified in the customer lists delivered to Shift Digital and/or Dynamic Marketing by or on behalf of Subaru Retailer have granted all necessary authorizations, in accordance with federal, local, and state laws, rules and regulations, for Shift Digital and/or Dynamic Marketing to contact the consumers by telephone and/or email in rendering the Concierge Services under this Agreement. Subaru Retailer further represents and warrants that it will comply with all applicable laws and regulations in conducting its business and in performing its obligations under this Agreement.

12.2.2. Subaru Retailer warrants and represents that it and its employees and representatives will not use the Concierge Services in a manner that would violate any obligation with respect to the Telephone Consumer Protection Act of 1991, any

obligation with respect to the Gramm-Leach-Bliley Act of 1999, Electronic Signatures in Global and National Commerce Act, the Children's Online Privacy Protection Act, the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act and any other applicable federal, state, or international law and amendments thereto.

12.2.3. Subaru Retailer further represents and warrants that (i) it, and not Shift Digital, Dynamic Marketing, or any Service Provider, is the "sender" of all messages transmitted using the Concierge Services; (ii) Subaru Retailer has consent to send automated messages to Customers for purposes that include marketing, and Subaru Retailer acknowledges and agrees that it is solely responsible for ensuring such consent has been obtained; (iii) Subaru Retailer has procured all rights and licenses and has all power and authority necessary to use and contact those phone numbers it registers or associates with Subaru Retailer's account; (iv) Subaru Retailer will not use the Concierge Services on a phone number that has been exchanged, rented, or purchased from a third party without the permission of the phone number owner; and (v) if the phone number is a mobile phone number, Subaru Retailer has obtained prior express consent to place automatically dialed phone calls to the phone number.

12.2.4. Subaru Retailer acknowledges and agrees that Shift Digital, Dynamic Marketing, and the Service Providers have no obligation to screen content for compliance with the TCPA, telemarketing, do-not-call or privacy laws, and Client acknowledges and agrees that it is solely responsible for such compliance.

12.3. DISCLAIMER. SUBARU RETAILER EXPRESSLY UNDERSTANDS AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, SUBARU RETAILER'S USE OF THE CONCIERGE SERVICES AND THE PROVIDED CONTENT IS AT SUBARU RETAILER'S SOLE RISK AND ARE PROVIDED "AS IS" AND "AS AVAILABLE." IN PARTICULAR, SHIFT DIGITAL, DYNAMIC MARKETING, SUBARU, THE SERVICE PROVIDERS AND THEIR AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO SUBARU RETAILER THAT: (A) SUBARU RETAILER'S USE OF THE CONCIERGE SERVICES OR THE PROVIDED CONTENT WILL MEET

SUBARU RETAILER'S REQUIREMENTS, OR (B) SUBARU RETAILER'S USE OF THE CONCIERGE SERVICES OR PROVIDED CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE CONCIERGE SERVICES, INCLUDING ANY PROVIDED CONTENT, IS DONE AT SUBARU RETAILER'S OWN DISCRETION AND RISK AND THAT SUBARU RETAILER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBARU RETAILER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF SUBARU RETAILER DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY SUBARU RETAILER FROM SHIFT DIGITAL, ANY SERVICE PROVIDER OR SUBARU, OR THROUGH OR FROM THE USE OF THE CONCIERGE SERVICES SHALL CREATE ANY WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES MADE BY SHIFT DIGITAL HEREIN, SHIFT DIGITAL, SUBARU AND EACH SERVICE PROVIDER EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CONCIERGE SERVICES AND THE PROVIDED CONTENT INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

### **13. INDEMNIFICATION; LIMITATION OF LIABILITY; THIRD PARTY BENEFICIARIES.**

13.1. Subaru Retailer Indemnity. Subaru Retailer agrees to indemnify, defend and hold harmless Shift Digital, Dynamic Marketing, the Service Providers, Subaru and each of their respective parent company, subsidiaries, affiliates, officers, directors, employees, agents and assigns from and against all claims, complaints, causes of action, liabilities, judgments, losses, penalties, costs and expenses (including reasonable attorneys' fees of outside counsel) brought by third parties that arise out of or in connection with (i) the breach of or default of any covenant or provision, representation or warranty, of this Agreement by Subaru Retailer, (ii) the acts, errors, omissions, willful misconduct, representations, misrepresentations or negligence of Subaru Retailer or its officers, employees, affiliates or agents, or (iii) Shift Digital's and/or Dynamic Marketing's compliance with any directions specifically provided by Subaru Retailer, (iv) Subaru Retailer's failure to provide products

or services to any consumer or any defect or deficiency in any products or services provided by Subaru Retailer, or (v) violation by Subaru Retailer of a third party's trade secrets, proprietary information, trademarks, copyright or patent rights in connection with the performance of Subaru Retailer's obligations under this Agreement.

13.2. LIMITATIONS ON LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY OR ITS AFFILIATES UNDER THIS AGREEMENT FOR ANY CLAIM EXCEED THE AMOUNT PAID OR PAYABLE (WHICHEVER IS GREATER) BY SUBARU RETAILER TO SHIFT DIGITAL FOR THE CONCIERGE SERVICES UNDER THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM OF LIABILITY. The above provisions of this Section 12.2 shall apply to all claims, losses, and damages no matter how they arise.

13.3. THIRD PARTY BENEFICIARIES. SUBARU AND SERVICE PROVIDERS SHALL BE DEEMED THIRD PARTY BENEFICIARIES OF THE INDEMNIFICATION AND LIMITATION OF LIABILITY PROVISIONS OF THIS AGREEMENT.

14. **FORCE MAJEURE.** Neither Party shall be liable for a failure or delay in performance of its obligations hereunder by reason of any circumstance which is caused by an act of God, or other factors beyond its reasonable control, including labor disputes, where such delay or failure could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the Party through the use of alternate sources, work-around plans, or other means.

15. **WAIVER.** Any failure or delay in exercising or enforcing any rights or remedies that are available under this Agreement (or that we have the benefit of under any applicable law or otherwise)



shall not be deemed to be a waiver of any other rights or remedies and that all of such rights and remedies will remain available.

16. **NOTICES.** Any notice to be provided under this Agreement shall be in writing and shall be delivered to the last known address of the Party to receive the notice, which shall be considered delivered three days after mailing if sent certified mail, return receipt requested, or the day it is sent, if sent by e-mail, facsimile, prepaid courier, express mail or personal delivery.
17. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the Parties in respect of the subject matter contained herein and supersedes all prior agreements, consents and understandings relating to such subject matter. The Parties agree that there is no oral or other agreement relating to such subject matter between the Parties which has not been incorporated into this agreement.
18. **SURVIVAL.** The provisions of Sections 4, 5, 6, 8, 11 and 12 of this Agreement, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination, will survive the termination of this Agreement and the Concierge Services.
19. **CHANGES TO THIS AGREEMENT.** Shift Digital may make changes to this Agreement or put into place additional terms from time to time at its discretion, and shall provide Subaru Retailer with thirty (30) days' prior written notice of such changes. When such changes are made, Shift Digital will make a new copy of this Agreement available to Subaru Retailer, via notice sent to the Subaru Retailer's email address (or other contact information provided by the Subaru Retailer) or via the Secure Web Services. Subaru Retailer understands and agrees that its use of the Services after such thirty (30)-day period shall constitute Subaru Retailer's agreement to and, acceptance of the updated Agreement or additional terms.
20. **SEVERABILITY.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. Headings used in this

Agreement are for reference purposes only and are not a part of this Agreement.

21. **ASSIGNMENT.** Subaru Retailer may not assign this Agreement without the prior written approval of Shift Digital, except that no approval shall be required to assign this Agreement to any person or entity which is, directly or indirectly, controlled by, controlling, or under common control with Subaru Retailer and is a licensed dealer authorized to sell and service Subaru products under a franchise or distribution agreement with Subaru. This Agreement and all rights of Shift Digital hereunder may be assigned by Shift Digital, including, without limitation, to Subaru, without consent, payment or other condition (excepting reasonable notice to Subaru Retailer). This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.
  
22. **CHOICE OF LAW; VENUE.** This Agreement shall be construed in accordance with the substantive laws of the State of Michigan without reference to its conflicts of law principles. The parties expressly disclaim any application to this Agreement of the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. All disputes and controversies pertaining to this Agreement, the performance of the Parties hereunder and the enforcement hereof shall be heard exclusively in the federal or state courts located in the County of Oakland, Michigan, U.S.A. and the Parties hereby submit to the jurisdiction thereof and venue therein. Notwithstanding the foregoing, a Party may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any appropriate jurisdiction.