

FordDirect provides a variety of services to the franchised dealers of Ford Motor Company (“Ford”), which may include digital marketing services, websites, digital advertising, and other related technology services (“Services”). This Dealer Participation Agreement (“Agreement”), governs the Services FordDirect provides to your dealership (“You,” or “Your”) and describes FordDirect’s obligations as the provider of the Services and Your obligations as the user of the Services. Some Services require additional terms, which will be provided in separate Service Specific Terms. In the event of a conflict between Service Specific Terms and these Dealer Participation Agreement Terms, the Service Specific Terms shall govern.

1. YOUR PROMISES AND OBLIGATIONS

As a user of the Services, You agree and promise that:

- You are a licensed Ford or Lincoln franchise and You will only use the Services for Your dealership.
- You will comply with all laws, rules and regulations that apply to Your use of the Services or to Your marketing and sales to Your customers. Such laws may include the California Consumer Privacy Act (“CCPA”), the California Privacy Rights Act (“CPRA”), the Virginia Consumer Data Protection Act (“CDPA”), the Gramm-Leach-Bliley Act (“GLBA”), CAN-SPAM, the Telephone Consumer Protection Act (“TCPA”), and other federal, state, and local laws and regulations.
- FordDirect may provide additional requirements to You regarding Your use of the Services. You agree to comply with these additional requirements, which include ensuring that Your marketing communications comply with all applicable Ford and Lincoln brand guidelines.
- You will not use the Services to contact customers or prospective customers (i) by using artificial or prerecorded voices to residential or mobile phone numbers, or (ii) by using an autodialer or similar equipment that has the capability to automatically make phone calls, or (iii) by sending text messages to mobile phones, unless you have obtained the customer’s or prospective customer’s prior express written consent to receive these calls or texts in compliance with the TCPA. You agree to retain a record of these express written consents and agree to make that record available to FordDirect upon request.
- If You provide data to FordDirect in connection with the Services, You agree to update that data within 48 hours of any changes to the applicable data. Examples are inventory data (such as sales of vehicles previously reported as available for sale) and data involving consumer preferences (email or text opt-outs, out-opts of sale and sharing and processing of sensitive personal information under applicable laws, and do-not-call requests). As used herein, the term “personal information” has the meaning assigned to it under applicable law and includes “personal data,” “personally identifiable information,” “non-public personal information,” and any such similar terms as defined under applicable law.
- If FordDirect sends new or pre-owned leads to You and You are not a subscriber to FordDirect’s CRM service, You may direct FordDirect to send leads to lead management tool(s) that You specify. In such event, You agree that FordDirect is not responsible for the use of those tool(s).
- You will not sell or share, as defined by any applicable law or regulation including but not limited to CCPA, CPRA, and CDPA, any consumer information provided to You by FordDirect.

2. FORDDIRECT’S PROMISES AND OBLIGATIONS

As the provider of the Services, FordDirect agrees and promises that:

- It has the rights to provide the Services to You and to grant the licenses provided to You under this Agreement, and that Your use of the Services and Materials in accordance with this Agreement will not violate any third-party intellectual property rights.
- FordDirect may modify the Services, the terms of the Agreement, or service fees from time to time. However, if FordDirect makes a material modification to the Services or terms of the Agreement, or an adjustment to service fees, FordDirect will provide You with written notice.

3. FORDDIRECT’S MATERIALS

- a. As part of the Services, FordDirect may make available to You certain photographs, illustrations, images, video and audio clips, copy and other content (“Materials”). FordDirect grants You a non-transferable, revocable license to access, download (if applicable) and distribute (if applicable) the Materials during the term of this Agreement solely for the purpose of advertising Ford or Lincoln-branded products or services or use in furthering Your business relationship with FordDirect or Ford.

- b. You promise that: (i) You will not modify the Materials or use the Materials for any purpose except as provided in this Agreement; (ii) You will be responsible to FordDirect for the actions of any third party to whom You give or provide access to the Materials; (iii) You will not reverse engineer or decompile any software contained in the Materials; (iv) You will not remove any copyright, trademark or other proprietary notations from the Materials; and (v) You will not use the Materials in any manner that violates any applicable laws, rules or regulations or the rights of any third party. If this Agreement is terminated, You promise to destroy any Materials in Your possession, unless instructed otherwise by FordDirect.

4. DEALER DATA

- a. FordDirect's Promises To You Regarding Your Dealer Data. FordDirect promises that:

- FordDirect will protect and secure Your Dealer Data as required under all applicable privacy and data security laws. For example, FordDirect will implement and maintain reasonable physical, electronic, and procedural safeguards that comply with applicable federal, state, and local laws and regulations.
- FordDirect will not share the passwords or other access to Your Dealer Systems with any party not engaged in the performance of the Services, and upon termination of this Agreement, agrees that it will no longer access Your Dealer Systems, and will cease use of any passwords that You provided relating to Your Dealer Systems.
- FordDirect will not provide data regarding Your financial performance to Ford Motor Company ("FMC") or any other party.

In order to enhance and provide the Services, FordDirect may obtain certain data from You regarding Your customers, inventory, operations, or other similar data. Such data may include Your customer lead information and the activity data of Your website. You may provide this data directly to FordDirect or allow FordDirect to obtain this data by accessing Your dealer management systems ("DMS"), lead management tools, or other computer systems ("Dealer Systems"). You grant permission and authorization for FordDirect or its agent to (i) access your Dealer Systems and to place digital cookies and tags (for example, on Your websites) to obtain the data, which may include customer contact information, most recent sales or service history and relevant dealership employee name, and (ii) share data with FMC. For purposes of this Agreement, "Dealer Data" is defined as all information received by FordDirect from Your Dealer Systems and information that FordDirect acquires from You while providing the Services to You. In order to provide the Services or improve Your experience with the Services, FordDirect may provide Dealer Data to third parties under contract to FordDirect or FMC (for example, to build better audiences, more accurately measure performance, provide consumer behavior insights, and personalize consumer experiences). FordDirect may provide Dealer Data to third parties under contract with You or that provide services to You in order to improve Your experience with the services provided to You by those third parties.

- b. Your Promises To FordDirect regarding Your Dealer Data and Your Dealer Systems. You promise that:

- You have all the rights needed to provide FordDirect with access to Your Dealer Data and Dealer Systems and for FordDirect to use Your Dealer Data without violating applicable law, including but not limited to GLBA, or Your commitments to third parties.
- You have provided Your customers and potential customers with legally sufficient privacy notices and choices where You are required to do so to allow the use and sharing of their data in connection with Your use of Services or Your disclosure or sharing of Dealer Data under the terms of this Agreement, and have honored any such choices, including but not limited to any notices and choices required under GLBA.
- You have obtained all necessary consents from the applicable individuals for the disclosure of their Personal Identifiable Information in the Dealer Data and its use by FordDirect as contemplated herein or in connection with the Services. For purposes of this Agreement, "Personal Information" is defined as all information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.
- You agree that FordDirect can access, use, copy, and distribute Your Dealer Data and other data and information that You or Your agent provide to FordDirect in connection with the Services or this Agreement, including any content, text, images or other information that You may provide. You agree that FordDirect will have a non-transferable, revocable, limited license to use, copy, and distribute it (i) for purposes of FordDirect's performance of, and to enhance and improve, the Services; and (ii) to comply with applicable legal requirements or FordDirect policies. You promise that these rights granted by You do not infringe upon any third party's rights.

- c. Authorized Third-Party Subcontractors. FordDirect may use subcontractors in the provision of Services ("Subcontractors"). FordDirect may provide these Subcontractors with access to Your Dealer Data as necessary for those Subcontractors to provide the Services. FordDirect will exercise due diligence in selecting any Subcontractor, and FordDirect will be responsible for any breach by its Subcontractor to the same extent under this Agreement as if FordDirect were performing the Services itself.

- d. Reporting of Security Breach. If FordDirect becomes aware that it has suffered a security breach that has resulted in unauthorized access by a third party to any Personal Information in Your Dealer Data, and if, in FordDirect's discretion, applicable law requires FordDirect or You to provide notice to the affected individuals, FordDirect will provide reasonable cooperation to You in connection with the investigation and response to such breach as, in the discretion of FordDirect, is required by applicable law.

- e. **State and Federal Privacy Laws.** Each party will (i) be individually responsible for its own compliance state and federal privacy laws, including but not limited to the CCPA, the CPRA, and the CDPA; and (ii) provide reasonable assistance to the other party as necessary for the other party to fulfill its obligations under any and all such applicable laws. In all instances where required by applicable law, You will solicit “Do Not Sell,” “Do Not Sell or Share,” and other opt-out requests from consumers that must be honored under applicable laws, including but not limited to requests to opt out of the processing of sensitive personal information, requests to opt out of the processing of the personal data for purposes of targeted advertising, requests to opt out of sharing of personal information with non-affiliated third parties, and requests to opt out of profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer, and You will promptly inform FordDirect of any requests received from a consumer. You will promptly cease any sale, sharing, or other processing of personal information or sensitive personal information, as required by applicable law, as those terms are defined under applicable law. You will place a “Do Not Sell My Personal Information” link on each page of Your Dealer Properties and will place “Do Not Sell or Share My Personal Information” and “Limit the Use of My Sensitive Personal Information” links (covering precise geolocation information and any other personal information deemed to be sensitive personal information under applicable laws) on each page of Your Dealer Properties and will immediately upon receipt transmit opt-outs to FordDirect. For the avoidance of doubt, there are some circumstances in which FordDirect processes personal information as a service provider, contractor, or processor, as those terms are defined under applicable law, on Your behalf. It is Your sole obligation to determine whether FordDirect is operating as a service provider, contractor, or processor, or whether the transfer of personal information to, or processing of personal information by, FordDirect constitutes a sale, sharing, or other processing that requires the honoring of opt outs under applicable law. In those limited circumstances in which FordDirect is a service provider, contractor, or processor, FordDirect shall not: (a) sell (or, effective January 1, 2023, share) personal information; (b) retain, use, or disclose personal information for any purpose other than for the specific business purpose of performing the processing directed by You; (c) retain, use, or disclose personal information for a commercial purpose other than providing the processing directed by You; (d) retain, use, or disclose personal information outside of the direct business relationship between FordDirect and You; or (e) effective January 1, 2023, combine the personal information that it receives with personal information that FordDirect receives from or on behalf of another person or persons, or collects from its own interaction with the consumer. When FordDirect acts as a service provider, contractor, or processor, it will (a) permit You to monitor FordDirect’s compliance with this Agreement through measures, including, but not limited to, ongoing manual reviews and automated scans and regular assessments, audits, or other technical and operational testing, at least once every 12 months; and (b) if FordDirect engages any other person to assist it in processing personal information for a business purpose on Your behalf, or if any other person engaged by FordDirect engages another person to assist in processing personal information for that business purpose, FordDirect shall notify You of that engagement, and the engagement shall be pursuant to a written contract binding the other person to observe all the requirements set forth in this paragraph. When FordDirect acts as a service provider, contractor, or processor, it hereby certifies that it understands the restrictions associating with acting in that capacity as set forth herein and will comply with them.
- f. **GLBA.** FordDirect agrees, with respect to any non-public personal information of customers as defined under GLBA (“GLBA Covered Information”) that FordDirect receives as a service provider from You, that FordDirect: (a) will not use the GLBA Covered Information for any purpose other than providing Services to You; (b) will maintain reasonable administrative, technical, and physical safeguards (including a written information security program and encryption) to (i) protect the security, confidentiality, and integrity of GLBA Covered Information in accordance with applicable law; (ii) protect against anticipated threats or hazards to the security or integrity of such information, and (iii) protect against unauthorized access to such information which could result in substantial harm or inconvenience to the customer; (c) will maintain GLBA Covered Information only for as long necessary to provide the Services and will return or destroy GLBA Covered Information upon completion or termination of the Services; (d) that to the extent FordDirect intends to utilize a service provider to perform the Services, FordDirect will ensure that any contract with such service provider contains the similar terms as in this paragraph; and (e) FordDirect will provide certain relevant security documentation related to subsection (b) above upon Your request.
- g. **Aggregated or De-identified Data.** Notwithstanding anything to the contrary in this Agreement, FordDirect’s use or disclosure (for any purpose) of aggregated or de-identified data shall not be subject to any restrictions in this Agreement, provided such aggregated or deidentified data cannot reasonably be identified with a specific consumer, device, household, customer, vehicle, or dealer.

5. DISCLAIMERS

THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. FORDDIRECT DOES NOT GUARANTEE THE EFFECTIVENESS OF THE SERVICES OR THE ACCURACY OF ANY INFORMATION OR MATERIALS INCLUDED IN THE SERVICES. FORDDIRECT DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. INDEMNIFICATION

- a. FordDirect agrees to indemnify You for any Loss incurred by You from a third-party claim arising from any of the following:
- FordDirect’s or its Subcontractors’ use of Personal Information in violation of this Agreement;
 - FordDirect or its Subcontractors providing You with any Materials that violate third-party intellectual property rights;
 - FordDirect or its Subcontractors creating or distributing any offers to Your customers or potential customers that contain errors or omissions; or

- FordDirect or its Subcontractors sending or issuing any text messages or robocalls to Your customers without proper consent where required by law, unless such text messages or robocalls directly or indirectly occur at Your direction or result from FordDirect's reliance upon consent obtained by You.

FordDirect will not indemnify You to the extent that the Loss arises from Your negligence or intentional misconduct, or Your failure to comply with the terms of this Agreement. For purposes of this subsection, "Loss" means an amount that You are legally responsible for or pay in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, and expenses for defending a claim (including legal fees). You must notify FordDirect within 20 business days after You know or should reasonably have known of a third-party claim for Loss that FordDirect might be obligated to pay. Your failure to give timely notice does not terminate FordDirect's indemnification obligation under this section, except to the extent that the failure inhibits FordDirect's ability to defend the claim or mitigate the Loss. You agree to cooperate with FordDirect in good faith on any claim, and You agree that FordDirect will control the defense and resolution of the claim.

b. You agree to indemnify FordDirect for any Loss incurred by FordDirect arising from any of the following:

- Your use of the Services or Materials in violation of this Agreement;
- FordDirect obtaining any data or other information from You or on Your behalf that violates any right of a third party or any legal requirements;
- Your intentional misconduct, gross negligence, or Your failure to comply with a provision of this Agreement,
- Your failure to provide consumers with the ability to opt-out of the sale or sharing of their personal information and limitation of the use of their sensitive personal information, as those terms are defined under applicable law, as well as your failure to provide any consumer opt-outs or other requests to FordDirect; and
- Your failure to comply with applicable laws, statutes, regulations, or other agreement.

You will not indemnify FordDirect to the extent that the Loss arises from FordDirect's negligence or intentional misconduct, or FordDirect's failure to comply with the terms of this Agreement. For purposes of this subsection, "Loss" means an amount that FordDirect is legally responsible for or pays in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, and expenses for defending a claim (including legal fees). FordDirect must notify You within 20 business days after FordDirect knows or should reasonably have known of a claim for Loss that You might be obligated to pay. FordDirect's failure to give timely notice does not terminate Your indemnification obligation under this section, except to the extent that the failure inhibits Your ability to defend the claim or mitigate the Loss. FordDirect agrees to cooperate with You in good faith on any claim, and FordDirect agrees that You will control the defense and resolution of the claim. For purposes of this section, references to FordDirect include FordDirect's affiliates, employees, contractors, officers, directors, agents, and successors.

c. If a conflict of interest exists between You and FordDirect, each party will be responsible for its own legal fees and costs.

7. LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO FORDDIRECT'S OBLIGATIONS IN SECTION 6 (INDEMNIFICATION), FORDDIRECT'S AGGREGATE LIABILITY FOR DIRECT DAMAGES FOR ALL CLAIMS RELATED TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO FORDDIRECT DURING THE 12 MONTHS IMMEDIATELY PRECEDING SUCH CLAIM. FORDDIRECT SHALL NOT, IN ANY EVENT, BE LIABLE FOR DAMAGES THAT CONSTITUTE (A) LOSS OF INTEREST, DATA, PROFIT OR REVENUE OF THE CLAIMING PARTY, OR (B) INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, MULTIPLE OR INDIRECT DAMAGES SUFFERED BY THE CLAIMING PARTY, EVEN IF FORDDIRECT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

8. TERMINATION

- a. You may cancel this Agreement for any reason and at any time upon 30 days prior written notice to FordDirect.
- b. FordDirect may cancel this Agreement for any reason and at any time upon 30 days prior written notice to You. However, FordDirect may cancel this Agreement immediately and without notice if: (i) You are the subject of bankruptcy proceedings or become insolvent, or (ii) You violate any of the restrictions contained in this Agreement. In addition, FordDirect may terminate the rights to the Materials that are granted under this Agreement at any time.
- c. Upon any termination of this Agreement, You will be responsible for any fees due and owing prior to the termination effective date.

9. CLASS-ACTION WAIVER

ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE RELATING TO THIS AGREEMENT MAY BE BROUGHT ONLY IN AN INDIVIDUAL CAPACITY. NEITHER YOU NOR FORDDIRECT MAY SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, A PRIVATE-ATTORNEY-GENERAL ACTION, OR AS ANY OTHER PROCEEDING IN WHICH ANY PARTY TO THE PROCEEDING ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. YOU AND FORDDIRECT AGREE THAT THE CLAIMS OF TWO OR MORE ENTITIES MAY NOT BE JOINED OR CONSOLIDATED IN THE SAME CASE UNLESS THE CLAIMS ARISE FROM THE SAME TRANSACTION.

10. MISCELLANEOUS

- a. This Agreement is governed by the laws of the State of Michigan without reference to conflict of law principles. Each party: (i) irrevocably submits to the exclusive jurisdiction of (1) the United States District Court for the Eastern District of Michigan, Southern Division in Detroit, as to any claim or proceeding over which it may have subject-matter jurisdiction, or (2) the Circuit Court for the County of Oakland, Michigan as to all other claims or proceedings; and (ii) expressly consents and waives any objection to venue or personal jurisdiction in either forum, including any objection based on the inconvenience of the forum.
- b. You may not assign this Agreement, directly or indirectly, by operation of law or otherwise, without the prior written consent of FordDirect.
- c. The documents included as part of this Agreement constitute the entire agreement between the parties relating to the subject matter of this Agreement. No waiver of any terms or conditions of this Agreement will be valid unless in writing signed by each party.
- d. In no event shall FordDirect be in any way responsible or liable for any delay or failure to provide the Services or perform its other obligations under this Agreement to the extent such delays or failures are attributable to any individuals, entities, or occurrences outside of FordDirect's control.
- e. Notwithstanding any termination of this Agreement, the requirements of this Agreement relating to ownership, indemnification, limitations of liability and any other subject that would, by its nature, be deemed to survive termination of this Agreement (whether or not so expressly stated) will survive the termination.