

End-User License Agreement for Ford Diagnostic and Repair System

IMPORTANT-READ CAREFULLY:

This End-User License Agreement (hereinafter called "EULA") is a legal agreement between YOU (either an individual or an entity) and Ford Motor Company and its subsidiaries (hereinafter called "FORD") for the Ford Motor Company Ford Diagnostic and Repair System product, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively hereinafter called "Product"). An amendment or addendum to this EULA may accompany the Product.

YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT.

IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT.

1. GRANT OF LICENSE.

FORD grants YOU the following rights provided that YOU comply with all terms and conditions of this EULA:

a. Installation and Use.

YOU may install and use this Product only for Your internal use on Your premises for the direct repair of a vehicle and for no other purpose. The Product and related documentation may be copied by YOU in written or machine readable form in whole or in part solely for Your internal business use and for legitimate backup or archive purposes. All copies of the Product made by YOU will include any trademarks and copyright, confidential and proprietary notices that were on the downloaded copies of Product and associated documentation. To ensure access to current functionality YOU may be required to upgrade to new software versions as they are released. YOU may not install or use the Product on a virtual machine or any software system for emulating a hardware system.

b. Storage/Network Use.

YOU may also store or install a copy of the Product on a storage device, such as a network server, used only to install or run the Product on Your other computers over an internal network.

c. Performance or Benchmark Testing.

YOU may not disclose the results of any benchmark test using the Product to any third party without FORD's prior written approval.

d. Reservation of Rights.

FORD reserves all rights not expressly granted to YOU in this EULA.

2. ADDITIONAL SOFTWARE.

This EULA applies to updates or supplements to the original Product provided by FORD, unless we provide other terms along with the update or supplement.

3. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.

YOU may not reverse engineer, decompile, attempt to derive the source code of, modify, disassemble, or create derivative works using the Product or any update or part thereof, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation. Disassembly includes, but is not limited to data mining and use of robots or other automated data gathering and extraction techniques and methods.

4. TERMINATION AND TERM.

This agreement shall remain valid for the term identified at the time of purchase "Term".

YOU shall Reconfirm this License on a periodic basis as directed by FORD. Failure to Reconfirm shall result in immediate termination of this License without notice from FORD. Reconfirmation after such termination shall revive the License for the remaining period of the Term. However, in no event shall Reconfirmation extend the term of this License beyond that identified at the time of purchase.

The Ford Diagnostic and Repair System is intended for use with genuine Ford Vehicle Communication Module hardware and compatible J2534 hardware. Use of the Ford Diagnostic and Repair System with counterfeit Vehicle Communication Module hardware constitutes a breach of this EULA and may result in termination of this License.

YOU may terminate the License granted above at any time by providing written notice to FORD, at the address given above or as later directed by FORD, and complying with all other requirements of this Agreement.

FORD may terminate the License for Your breach of the terms and conditions of this Agreement upon giving notice to YOU at Your last noticed address, at least thirty (30) days prior to an effective date of termination and in a writing that specifies the nature of such breach. If YOU cure such breach prior to the effective date of termination, the License shall not terminate and will continue in full force and effect.

Immediately upon termination or expiration of the License, YOU shall remove all copies of the Product from Your computer equipment and, within thirty (30) days of such termination or expiration, return to FORD all copies of Confidential Information, including such software program(s) and associated documentation and data. The Licensee agrees to pay the Lessor a License Fee, as determined by the Lessor from time to time. For a period of two years after termination or expiration of the License, FORD or its designee may perform an audit of Your computer equipment to verify that YOU have removed the Product as required.

5. CONSENT TO USE OF DATA.

YOU agree that FORD may collect and use technical information provided as a part of support services related to the Product. FORD may combine this information with repair data collected elsewhere.

6. WARRANTY DISCLAIMER AND OTHER DISCLAIMERS.

- (a) FORD provides the Product AS IS AND WITH ALL FAULTS. FORD MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE BUT NOT OF LIMITATION, FORD MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. FORD SHALL IN NO EVENT BE LIABLE TO YOU, YOUR SUCCESSORS, OR A THIRD PARTY FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR GENERAL, CONSEQUENTIAL OR INCIDENTAL, ARISING FROM ANY LOSS CLAIMED AS A RESULT OF THE USE OF THE PRODUCT AND RELATED DOCUMENTATION.
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- (c) NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS CONFERRING BY IMPLICATION, ESTOPPEL OR OTHERWISE THE INDEMNIFICATION OF YOU BY FORD AGAINST ANY CLAIM OF PATENT INFRINGEMENT, OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, WHETHER OR NOT THE EXERCISE OF ANY RIGHT GRANTED HEREIN NECESSARILY EMPLOYS OR REQUIRES THE PRACTICE OF ANY EXISTING OR SUBSEQUENTLY ISSUED PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT. THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE PRODUCT.

7. LIMITATION OF LIABILITY AND REMEDIES.

Notwithstanding any damages that YOU might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of FORD and any of its agents under any provision of this EULA and Your exclusive remedy for all of the foregoing shall be limited to the greater of the amount actually paid by YOU for the Product or U.S.\$5.00. The foregoing limitations, exclusions and disclaimers (including Section 6 above) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

8. COPYRIGHT.

The Product is protected by copyright and other intellectual property laws and treaties. FORD or its suppliers own the title, copyright, and other intellectual property rights in the Product. The Product is licensed, not sold.

9. ASSIGNMENT.

Neither this Agreement nor any rights granted hereunder, in whole or in part shall be assignable or otherwise transferable by YOU. Nothing in this Agreement grants to YOU the right to assign, sell, lease, loan or otherwise transfer Product in whole or in part to a third party.

10. EXPORT.

YOU shall act, during the term of this Agreement and thereafter, in full compliance with all Export Control Laws in regard to any Technical or Direct Product related to this Agreement, and that it shall comply with any and all restrictions or conditions imposed by the terms of any US general or validated export license, authorization to re-export, or any other similar grant of authority then in effect, upon Your use or disposition of a Technical or Direct Product, and further warrants and represent to FORD that any and all representations, undertakings, statements, or certifications made to FORD in this regard are and will remain true and correct, and that YOU will immediately provide written notice to FORD upon its discovery to the contrary.

11. ENTIRE AGREEMENT.

This EULA, including any addendum or amendment to this EULA which is included with the Product, are the entire agreement between YOU and FORD relating to the Product and the support services (if any), and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this EULA. To the extent the terms of any FORD policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. This EULA supersedes any prior EULA between YOU and FORD. New terms in this EULA may be made retroactive at the discretion of FORD.

12. THIRD PARTY SOFTWARE

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13. GOVERNING LAW

This EULA is governed by the laws of the state of Michigan, without regard to choice of law rules. This EULA will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.