

## 3<sup>rd</sup> Party Lead Program Terms

These 3<sup>rd</sup> Party Lead Program Terms (the "Terms") set forth the agreement between you, an authorized Mazda Motor of America Inc. doing business as Mazda North American Operations ("MNAO") dealer ("Dealer"), and Sanctus, LLC d/b/a Shift Digital ("Shift Digital") pursuant to which Shift Digital will provide Leads (defined below) that Shift has procured on Dealer's behalf (the "3<sup>rd</sup> Party Lead Program"). By submitting an online enrollment form that references these terms, accepting Leads, or otherwise participating in the 3<sup>rd</sup> Party Lead Program, Dealer agrees to be bound by these Terms.

### 1. 3<sup>rd</sup> Party Lead Program.

- 1.1 Purchase of Leads.** Shift Digital will acquire information provided by potential customers that may be interested in purchasing a vehicle from Dealer, including consumers that have submitted an online price request for a Mazda vehicle ("Leads"). While Dealer may select a monthly limit of Leads it desires to purchase, there is no guarantee that the number of Leads requested will be delivered. Shift Digital makes no representations about the quantity, sufficiency, or quality of Leads that it provides to Dealer. Dealer will be charged for all Leads purchased as set forth in the 3<sup>rd</sup> Party Lead Program materials.
- 1.2 Overview.** The 3<sup>rd</sup> Party Lead Program promotes the efficient collection and use of Leads, and it assists Dealers by: (1) collecting Leads; (2) purchasing third party Leads; (3) distributing Leads to Dealers; (4) and analyzing and reporting Dealer performance information. Registration for the 3<sup>rd</sup> Party Lead Program is completed by Dealer as set forth in the Program materials (as updated from time to time).
- 1.3. Lead Management Program Tool.** The 3<sup>rd</sup> Party Lead Program is designed to be used in conjunction with third party software tools that can accept Lead information provided by MNAO and provide Lead traffic disposition reporting as required by MNAO (each a "Tool"). Dealer hereby consents to Shift Digital and MNAO disclosing Dealer's enrollment in the 3<sup>rd</sup> Party Lead Program to the Tool provider selected by Dealer and Dealer acknowledges and agrees that the Tool provider will provide, among other things, Lead disposition data to Shift Digital and MNAO (or MNAO's designee) for all Mazda leads in the Dealer Certified Tool.
- 1.4 Dealer Websites and Leads from Dealer Websites.** Dealer may also maintain a Dealer website in the Mazda Dealer Digital Program (the "Dealer Website"). When notified by Shift Digital at the direction of MNAO, Dealer shall transmit all Dealer Leads from the Dealer Website to Shift Digital for use in connection with the 3<sup>rd</sup> Party Lead Program and Dealer hereby grants a license to Shift Digital and MNAO to use the Leads in every manner now or hereinafter contemplated under this Agreement. Dealer acknowledges that Dealer Website provider may be required to provide MNAO with Dealer Website information and metrics as a condition of being a MNAO Certified Dealer Website provider. Dealer grants a license to Shift Digital, MNAO and MNAO's designees to use the data provided for the purposes of analyzing shopping behavior, providing reporting, and in the case of MNAO only, administering marketing programs. Without limiting the foregoing, Dealer shall ensure that its privacy policy displayed on its Dealer Website enables the provision of such Dealer Website information and metrics to Shift Digital and MNAO and the use thereof by Shift Digital, MNAO and the DSMP.

**1.5 Fees and Taxes.** Dealer agrees to pay the fees for the Leads in the amounts set forth in the online registration process or, if an order form was used, on the order form. The fees for the Leads shall be billed to and Dealer agrees to pay the fees for the Leads through, and in accordance with the terms of, Dealer's Mazda parts statement; provided, that in the event billing through the Mazda parts statement is not feasible, Shift Digital may invoice Dealer directly for the Leads and Dealer agrees to pay such invoice within 10 days of receipt. Except as set forth otherwise herein, all charges under this Agreement will be due and payable as specified on and consistent with the payment terms of Dealer's Mazda parts statement. Shift Digital may increase fees by giving Dealer not less than fifteen (15) days' written notice prior to the effective date of the price increase. If Dealer fails to pay for the Leads timely through its Mazda parts account, Dealer agrees to pay to Shift Digital, in addition to the fees for the Services: (i) a finance charge equal to the lower of 1.5% per month or the maximum amount permitted by law, and (ii) all costs incurred in connection with collection of past due amounts (including collection agency fees and reasonable attorney fees). In addition to the other rights reserved hereunder, Shift Digital expressly reserves the right to terminate the Agreement and disable Dealer's access to the Leads for non-payment. All fees hereunder are subject to applicable sales, use, excise or similar taxes, whether or not included at the time the fees are billed. Dealer assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on, with respect to, or measured by the services and Leads except for taxes based on the net income of Shift Digital. The Dealer's Mazda parts statement may include any such taxes that MNAO determines it is obligated to collect from Dealer with respect to the Leads, and Dealer agrees to timely remit the same to MNAO.

**2. Authorized Use.** Dealer is authorized to use Leads for marketing Mazda vehicles and related services offered by Dealer. Leads may not be resold to any third party. DEALER AGREES NOT TO SHARE WITH OTHERS, LICENSE, RESELL, DISTRIBUTE OR OTHERWISE DISCLOSE ANY OR ALL OF THE LEADS OR THE INFORMATION CONTAINED IN THEM, ALONE OR AS PART OF A LIST OR ANY OTHER DATA OR LEAD AGGREGATION, TO ANY THIRD PARTY FOR ANY PURPOSE, EXCEPT ONLY TO AN ENTITY ENGAGED BY DEALER AS A CONTRACTOR FOR THE SOLE PURPOSE OF ASSISTING DEALER IN CONNECTION WITH THE AUTHORIZED USE OF THE LEADS. . Dealer acknowledges that it has received, may receive, or may have access to consumer, customer or individual information ("Private Information") in connection with this Agreement, which information may be subject to the protections of federal, state and/or local privacy safeguards or information security laws, and Dealer further agrees, warrants and represents that it will comply with all requirements imposed by these laws, including without limitation, financial privacy laws. Dealer hereby agrees to maintain and implement procedures, processes, systems and security safeguards reasonably sufficient to ensure the confidentiality of such Private Information including obtaining customer's consent where applicable.

**3. Termination.** Without limiting its rights, Shift Digital may terminate Dealer's participation in the 3<sup>rd</sup> Party Lead Program at any time, with or without cause. Dealer shall comply with any written instruction from Shift Digital to cease all outbound communications to Leads.

**4. Warranty Disclaimer.** THE 3<sup>rd</sup> PARTY LEAD PROGRAM IS PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. ALL LEADS AND SERVICES PROVIDED BY SHIFT DIGITAL, INCLUDING THE DELIVERY OF LEADS AND SERVICES RELATED TO THE 3<sup>rd</sup> PARTY LEAD PROGRAM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY

LAW, AND SHIFT DIGITAL EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DEALER UNDERSTANDS AND AGREES THAT THE LEADS AND RELATED INFORMATION REPRESENT SELF-REPORTED INFORMATION FROM INDIVIDUAL CONSUMERS, AND THEY ARE PROVIDED ON AN "AS IS" BASIS. SHIFT DIGITAL MAKES NO WARRANTY AS TO WHETHER DEALER WILL REALIZE ANY REVENUE OR RECEIVE ANY PAYMENT FROM THE LEADS PROVIDED OR THE 3<sup>RD</sup> PARTY LEAD PROGRAM. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE. SHIFT DIGITAL DOES NOT WARRANT THAT THE 3<sup>RD</sup> PARTY LEAD PROGRAM WILL MEET ANY OF DEALER'S REQUIREMENTS.

**5. Limitation of Liability.** IN NO EVENT SHALL SHIFT DIGITAL OR MNAO BE LIABLE TO DEALER FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, PUNITIVE OR OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISING FROM OR IN CONNECTION WITH LEADS OR THE 3<sup>RD</sup> PARTY LEAD PROGRAM. IF SHIFT DIGITAL OR MNAO ARE EVER DETERMINED TO HAVE ANY LIABILITY TO DEALER ARISING DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH THE PROVISION OF LEADS, THESE TERMS, OR THE 3<sup>RD</sup> PARTY LEAD PROGRAM, SUCH LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAYABLE TO SHIFT DIGITAL IN CONNECTION WITH THE 3<sup>RD</sup> PARTY LEAD PROGRAM DURING THE CALENDAR QUARTER ENDING IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

**6. Indemnification.** Dealer will defend, indemnify, and hold Shift Digital and its affiliates, subsidiaries, successors, assignees, owners, directors, officers, employees, contractors, representatives, and agents (collectively, "Shift Digital Indemnitees") harmless from and against any and all claims, governmental investigations, demands, actions, and proceedings, real or threatened, and all losses, judgments, awards, settlements, damages, fines, injuries, penalties, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising out of or related to (i) any breach or alleged breach of these Terms by Dealer or person or entity acting on its behalf, (ii) Dealer's negligence or misconduct, (iii) Dealer's use of Leads or participation in the 3<sup>rd</sup> Party Lead Program or (iv) any allegation related to a consumer's lack of consent under the TCPA or applicable laws. If Shift Digital elects for Dealer to provide defense, Dealer will (i) obtain legal counsel reasonably acceptable to Shift Digital; (ii) permit Shift Digital to participate in the defense using separate counsel at its own cost; and (iii) not settle any action without the prior written consent of Shift Digital (which may not be unreasonably withheld). The foregoing indemnification obligations represent the sole indemnification protections intended and the Parties waive all right to any other indemnification protections provided by common law, statute, or otherwise.

**7. Relationship of the Parties.** The parties hereto are independent contractors wherein Shift Digital is procuring Leads on Dealer's behalf. Neither party is an employee, agent, partner or joint venture of the other. Neither party shall have the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**8. Dispute Resolution; Jury and Class Action Waiver.** Any dispute, controversy or claim arising out of, relating to, or in connection with these Terms, the 3<sup>rd</sup> Party Lead Program, or any breach, termination or validity thereof (a "Dispute") shall be solely and exclusively resolved by arbitration. The demand for arbitration shall be made within a reasonable time after the Dispute has arisen, but in no event shall it be made more than one year from when the aggrieved party knew or should have known of the controversy, claim, or facts forming the basis of the Dispute. The arbitration shall be initiated and conducted according to American Arbitration Association rules and procedures for commercial

arbitration, including provisions for the resolution of consumer disputes, if applicable (the "Arbitration Rules"). The arbitration shall be conducted in Oakland County, Michigan before a single neutral arbitrator appointed in accordance with the Arbitration Rules. Either party may bring a Dispute in small claims court in Oakland County, Michigan to the extent permitted by the Arbitration Rules. If the amount in controversy is less than \$10,000, the parties agree that the Dispute will be decided on the basis of written submissions without a hearing. The decision of the arbitrator will be final without option to appeal. To the fullest extent permitted by law, the arbitrator shall not have the power to award punitive, special, consequential, or indirect damages against any party. Arbitration costs and fees shall be divided in accordance with the Arbitration Rules. Each party shall be responsible for paying its own attorneys' fees, costs, and expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines. No disputes may be arbitrated on a class or representative basis and the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. BY AGREEING TO THIS AGREEMENT, EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO JOIN CLAIMS OR DISPUTES WITH THOSE OF OTHERS IN THE FORM OF A CLASS ACTION, CLASS ARBITRATION, OR SIMILAR PROCEDURAL DEVICE; AND WAIVES ANY RIGHT IT MAY HAVE TO PRESENT ITS CLAIM OR DISPUTE IN A COURT OF LAW OR BEFORE A JURY. Judgment on the award rendered by the arbitrator(s), if any, may be entered for enforcement purposes in any court having jurisdiction thereof.

**9. Governing Law.** These Terms and disputes related to the 3<sup>rd</sup> Party Lead Program are governed according to the laws of the State of Michigan, without regard to its conflicts of law principles. Subject to the dispute resolution process described above, all claims, disputes, and suits must be brought exclusively in the state or federal courts located in Oakland County, Michigan, and the parties agree to the jurisdiction thereof.

**10. Severability and Survivability.** If a court of competent jurisdiction holds any provision of this Agreement to be contrary to law or public policy or otherwise unenforceable, the remaining provisions shall remain in full force and effect; and the invalid provision shall remain in force as reformed by the court. Portions of this Agreement which by their nature would survive termination thereof (e.g., disclaimer of warranties, limitation of liability, indemnification) shall be deemed to survive.

**11. 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. When these changes are made, Shift Digital will notify Dealer and make a new copy of this Agreement available on the enrollment portal or along with the 3<sup>rd</sup> Party Lead Program materials. Dealer understands and agrees that its participation in the 3<sup>rd</sup> Party Lead Program and use of the Leads and/or services after the date on which this Agreement or any Additional Terms have changed shall constitute Dealer's agreement to and, acceptance of the updated Agreement or Additional Terms. Except as set forth herein, this Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

**12. Waiver.** No term or provision of this Agreement shall be deemed waived and no breach consented to or excused, unless such waiver, consent or excuse is in writing and signed by the party claiming to have waived, consented or excused. Should either party consent, waive or excuse a breach by the other party, such shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach whether or not of the same kind as the original breach.