

CARFAX Terms of Service

These CARFAX Terms of Service ("Terms of Service") and each application or order for CARFAX Services signed by Dealer (collectively, "Order(s)") form the agreement ("Agreement") between Carfax, Inc. ("CARFAX") and the customer or company identified on the Order, including each current and future location owned, operated or managed by such customer or company ("Location(s)") (collectively, "Dealer"). "CARFAX Services" means the CARFAX Vehicle History Service, CARFAX Report Subscriptions, the Online Monitoring Service, the Window Stickers Service, the Car Care Program, the Car Listings Program, the Retargeting Program, CARFAX for Life, Ratings and Reviews and Data Products, including any mobile applications of any of the foregoing, as well as any other product, service, data or program that CARFAX provides to Dealer.

1. CARFAX Reports.

- a. License. CARFAX grants to Dealer a limited, revocable, nonexclusive, nontransferable license to access the CARFAX database(s) and service that provides information regarding motor vehicle transactions ("Vehicle History Service" or "VHS") to obtain and use CARFAX Vehicle History Reports, in whole or in part, ("CARFAX Reports") in the U.S., its territories and Canada solely in connection with Dealer's business of (i) acquiring used vehicles primarily for retail sale and (ii) the retail sale of used vehicles by Dealer, which includes providing CARFAX Reports to Dealer's customers that inquire about or purchase such used vehicles from Dealer ("VHR Permitted Use").
- b. Restrictions on Access and Use. To obtain CARFAX Reports, Dealer will submit only vehicle identification numbers ("VINs") or license plate and state for the subject vehicle. Dealer will not: (i) modify, copy or sell CARFAX Reports; (ii) display a CARFAX Report online unless such display is the Instant CARFAX Report enabled by CARFAX for such purpose; (iii) use CARFAX Reports to identify or assume any information about any individual or household; (iv) make any representation or warranty regarding CARFAX or CARFAX Reports; (v) use or permit use of the VHS or CARFAX Reports in the operation of a service bureau; (vi) use the VHS or CARFAX Reports for anything other than the VHR Permitted Use; (vii) use, or allow the use of, the VHS or CARFAX Reports in violation of any federal, state, local, foreign or other applicable laws, rules or regulations (collectively, "Laws") or (viii) provide CARFAX Reports to consumers in Quebec.
- c. Subscriptions. Upon expiration of the initial term (as set forth in the Order), Dealer's subscription for CARFAX Reports will automatically renew for successive additional one-month terms unless Dealer sends an email to dealercancellations@carfax.com stating its intention to cancel its CARFAX Report subscription at least 30 days prior to the renewal date. Such cancellation will be effective as of the last day of the month in which the 30-day notice expires. If Dealer has subscribed to the CARFAX Advantage Dealer Program ("Advantage"), all Locations must be included in the Dealer's Advantage subscription. Dealer must provide to CARFAX a complete list of all Locations and keep such list of Locations updated at all times. If Dealer fails to notify CARFAX of any changes to the list of Locations, CARFAX may add or remove Locations from the Advantage subscription. If Dealer's CARFAX Report subscription establishes a maximum number of CARFAX Reports available to the Dealer for the monthly fee, Dealer will not receive a refund or credit for any unused CARFAX Reports at the end of the given month. CARFAX may change Dealer's subscription for CARFAX Reports if Dealer does not comply with the terms of the applicable subscription program or Section 1 of this Agreement. After the initial term, Dealer may change its subscription program by providing at least 30 days' prior written notice to CARFAX.

- d. Online Monitoring Service. If Dealer has subscribed to Advantage or has enrolled in the Online Monitoring Service, CARFAX will run CARFAX Reports for the VINs in Dealer's vehicle inventory for which a CARFAX Report has not been run or has expired. Dealers that are not subscribed to Advantage will pay for each such CARFAX Report in accordance with Dealer's subscription. Dealer may cancel the Online Monitoring Service by sending an email to dealercancellations@carfax.com with at least 10 days' notice.
- e. Dealer's Inventory. On at least a daily basis, Dealer will provide to CARFAX all current information regarding its vehicle inventory, including pictures, price, description, legal disclosures and disclaimers and any additional information customarily displayed with Dealer's vehicle listings ("Inventory Information"). CARFAX may use the Inventory Information in CARFAX Services.
- f. Window Stickers Service. If Dealer has enrolled in the Window Stickers Service, CARFAX will provide the applicable data to Dealer's window sticker provider. Dealer may cancel the Window Stickers Service by sending an email to dealercancellations@carfax.com with at least 10 days' notice.
- g. Car Care Program. Dealer will provide to CARFAX all of Dealer's sales and service data, including VIN or license plate with state, date of service or sale, mileage and, as applicable, service codes and repair descriptions, but in no event will Dealer provide any names, email addresses, addresses or any other information that may identify any individual or household ("Service Data"). CARFAX may use the Service Data in CARFAX Services. Dealer will be identified on CARFAX Reports as the service provider for the applicable service as long as Dealer continues to provide Service Data to CARFAX.

- 2. **Car Listings Program**. Dealer grants to CARFAX a perpetual, royalty-free, sublicensable, worldwide license to access, use, reproduce, publish, distribute, store and display Inventory Information in connection with the Car Listings Program ("Listings Program").
 - a. Upon expiration of the initial term (as set forth in the Order), Dealer's subscription to the Listings Program will automatically renew for successive additional one-month terms unless Dealer sends an email to dealercancellations@carfax.com stating its intention to cancel its Listings Program subscription at least 30 days prior to the renewal date. Such cancellation will be effective as of the last day of the month in which the 30-day notice expires.
 - b. CARFAX will determine the display, placement and positioning of the Inventory Information in the Listings Program and may choose not to use any Inventory Information that does not comply with this Agreement or any CARFAX policies or guidelines made available to Dealer ("CARFAX Policies").
 - c. Dealer authorizes CARFAX to record phone calls made using the phone numbers provided as part of the Listings Program; provided, however, Dealer may opt out of having such phone calls recorded by sending an email to dealersupport@carfax.com.
 - d. Dealer will only use the contact information submitted by a user of CARFAX Listings to communicate with such user regarding the vehicle for which information was requested, unless Dealer obtains such user's express consent in compliance with Laws to communicate for other purposes.
 - e. Dealer acknowledges that any sample disclosure statements or disclaimers that may be made available to Dealer by CARFAX are for Dealer's convenience only, and Dealer is solely responsible for ensuring that publication of Inventory Information complies with Laws.
- 3. **Retargeting Program**. If Dealer has subscribed to the Retargeting Program, CARFAX will use Inventory Information to create banner advertisements for Dealer. CARFAX will determine the

display, placement and positioning of banner advertisements and may choose not to use any Dealer Materials that does not comply with this Agreement or any CARFAX Policies. “Dealer Materials” means Dealer Marks (defined in Section 12(c)), Inventory Information and any website links (including any content viewable via such website links). If CARFAX does not publish a banner advertisement or issue a cookie for retargeting purposes (or any other action or inaction causing such banner advertisements not to appear), CARFAX’s sole liability will be limited to placement of the banner advertisement in a comparable position at a later time. Upon expiration of the initial term (as set forth in the Order), Dealer’s subscription to the Retargeting Program will automatically renew for successive additional one-month terms unless Dealer sends an email to dealercancellations@carfax.com stating its intention to cancel its Retargeting Program subscription at least 30 days prior to the renewal date. Such cancellation will be effective as of the last day of the month in which the 30-day notice expires.

4. **CARFAX for Life.** Dealer will provide to CARFAX the name, email address(es) and/or mobile number(s) of the owners of the vehicles sold or serviced by Dealer (each owner, a “Dealer Customer” and collectively, “Dealer Customer List”), and the VIN(s) associated with each Dealer Customer. For each Location participating in CARFAX for Life that uses a vendor that charges CARFAX a monthly fee to provide the Dealer Customer List to CARFAX, Dealer will reimburse CARFAX for such monthly fee.
- a. Upon expiration of the initial term (as set forth in the Order), Dealer’s subscription to CARFAX for Life will automatically renew for successive additional one-month terms unless Dealer sends an email to dealercancellations@carfax.com stating its intention to cancel its CARFAX for Life subscription at least 30 days prior to the renewal date. Such cancellation will be effective as of the last day of the month in which the 30-day notice expires.
 - b. By submitting a Dealer Customer List, Dealer represents and warrants that:
 - i. the Dealer Customer List complies with (1) all Laws, including but not limited to Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, as amended (“CANSPAM”), Canada’s Anti-Spam Legislation, as amended (“CASL”) and the Telephone Consumer Protection Act (“TCPA”) and (2) any privacy statement Dealer provides Dealer Customers;
 - ii. Dealer has the authority to provide CARFAX with the Dealer Customer List;
 - iii. by providing a Dealer Customer’s mobile number to CARFAX, Dealer is acting on behalf of each such Dealer Customer to provide such person’s “prior express invitation or permission,” “prior express consent” or “prior express written consent” to receive text messages from CARFAX and
 - iv. Dealer has obtained appropriate express authority from each Dealer Customer to act as the agent for such Dealer Customer.
- The terms “prior express invitation or permission,” “prior express consent” and “prior express written consent” shall have the meanings prescribed by the TCPA, the FCC’s TCPA rules, 47 C.F.R. § 64.1200 et seq. and the FCC’s TCPA decisions.
- c. Dealer authorizes CARFAX to (i) use the Dealer Customer List to send emails and text messages to Dealer Customers promoting Dealer as part of the CARFAX for Life program (such emails and text messages are collectively “Communications”) and (ii) store each Dealer Customer List for future Communications. CARFAX will only use the Dealer Customer List to send Communications; provided, however, this Section 4 will not apply with respect to any Dealer Customer who engages with CARFAX (through such Communications or otherwise) because that Dealer Customer will then be deemed to be a CARFAX Car Care subscriber with a direct agreement with CARFAX.
 - d. Dealer will honor opt-out requests received from Dealer Customers and manage its opt-out lists to (i) ensure that Dealer does not send to CARFAX any Dealer Customers that have opted-out of receiving email and/or text messages, as applicable, promoting

Dealer and (ii) notify CARFAX of any Dealer Customer who had previously opted in to receiving Communications and has subsequently opted out.

- e. Dealer acknowledges that its provision to CARFAX of the Dealer Customer List is not a sale (as defined by applicable privacy laws) but is provided for CARFAX to perform services under CARFAX for Life. In providing CARFAX for Life, CARFAX is the “Service Provider” and Dealer is the “Controller,” as those terms are used under applicable privacy laws.
 - i. As required by the FTC Safeguards Rule applicable to automobile dealers, CARFAX maintains an information security program with administrative, technical and physical safeguards designed to protect the Dealer Customer List. CARFAX will only use the Dealer Customer List as permitted in this Section 4. Individuals who process the Dealer Customer List are subject to a duty of confidentiality. If CARFAX engages a subcontractor to fulfill any of its obligations under CARFAX for Life, CARFAX will require a written agreement binding the subcontractor to comply with applicable privacy laws and this Section 4.
 - ii. CARFAX will not sell or share (as those terms are defined by applicable privacy laws) the Dealer Customer List. Except to the extent required to comply with Laws, CARFAX will not combine the Dealer Customer List with personal information that it receives from, or on behalf of, any other person or entity or that CARFAX collects from its own interactions with such persons or entities.
 - iii. CARFAX will cooperate with Dealer to fulfill Dealer’s obligations to respond to individual requests to exercise a Dealer Customer’s rights allowed under applicable privacy laws. When Dealer receives a request to delete a Dealer Customer’s personal information, Dealer will send those requests to PrivacyOfficer@carfax.com, and CARFAX will process the request according to applicable privacy laws.
 - iv. Upon Dealer’s request (but not more than once each calendar year), CARFAX will make available to Dealer information in CARFAX’s possession sufficient to show CARFAX’s compliance with this Section 4.
- f. Dealer authorizes CARFAX to record phone calls made using the phone numbers provided as part of CARFAX for Life. Dealer will ensure users who call Dealer in connection with CARFAX for Life are notified that the user’s call may be recorded.
- g. Dealer will only use the contact information submitted by a user of CARFAX for Life to communicate with such user regarding the trade-in opportunity, unless Dealer obtains such user’s express consent in compliance with Laws to communicate for other purposes.

5. **Ratings and Reviews.** CARFAX may request that a user of services provided by Dealer rate and review such services (“Reviews”). Dealer understands that CARFAX has no control or influence over, and will have no liability for, the information, statements, comments or opinions submitted by users in such Reviews. CARFAX may use the Reviews and any information Dealer provides in response to such Reviews (“Responses”) in CARFAX Services. Dealer is responsible for, and assumes all risks associated with (including anyone’s reliance on), Responses. Once published, Dealer may not withdraw Responses. Dealer may not imply that the Responses are in any way sponsored or endorsed by CARFAX.

6. **CARFAX Data Products.**

- a. License. CARFAX grants to Dealer a limited, revocable, nonexclusive, nontransferable license to access the VHS to obtain and use Licensed Data (as defined in the applicable Data Product Order (“DPO”)) solely for the permitted use defined in the DPO (“DP Permitted Use”). Dealer will submit only VINs or license plate and state for the subject vehicle. Dealer will not: (i) modify, copy or sell Licensed Data; (ii) use Licensed Data to

identify or assume any information about any individual or household; (iii) make any representation or warranty regarding CARFAX or Licensed Data; (iv) use or permit use of the VHS or Licensed Data in the operation of a service bureau; (v) use the VHS or Licensed Data for anything other than the DP Permitted Use or (vi) use, or allow the use of, the VHS or Licensed Data in violation of any Laws.

- b. Approval. Dealer will obtain CARFAX's prior written approval of the content, look and feel and the entire viewing process and experience of the DP Permitted Use. Dealer will provide CARFAX with a free test account that allows CARFAX to access Dealer's applications and systems for testing purposes only to audit Dealer's use of Licensed Data.
- c. Term. The initial term of the Data Product license is one month commencing on the date the DPO is signed by CARFAX, after which the DPO will automatically renew for successive additional one-month terms unless either party gives the other written notice stating its intention to cancel the DPO at least 30 days prior to the renewal date; provided, however, CARFAX may terminate the DPO immediately if CARFAX determines that Dealer's use of Licensed Data is not a DP Permitted Use or Dealer is in breach of any part of this Section 6. Upon expiration, cancellation or termination of the DPO, Dealer will (i) cease using Licensed Data as of the date when the expiration, cancellation or termination of the DPO is effective and (ii) delete all Licensed Data in its possession, custody or control. The obligations of the immediately preceding sentence will be satisfied when Dealer provides to CARFAX a written assurance that Licensed Data is no longer in use and has been irretrievably deleted.

7. Dealer Requirements.

- a. Dealer agrees that (i) CARFAX Services may only be used for the benefit of the Location(s) designated in the applicable Order(s) and not shared between Locations; (ii) Dealer will not share or disclose its user names and passwords for CARFAX Services; (iii) Dealer will keep all information Dealer provides to CARFAX, including but not limited to Dealer Materials, current, complete and accurate at all times; (iv) Dealer will comply with CARFAX Policies; (v) CARFAX does not provide any conclusions regarding the condition of any vehicle and Dealer (1) will exercise its own independent judgment in determining the applicability, accuracy, reliability and suitability of CARFAX Services and (2) assumes responsibility with respect to Dealer's decisions and transactions using CARFAX Services; (vi) Dealer Materials and Responses will not be misleading, contain any defamatory, obscene, indecent or other material that does not comply with the Law or conform to CARFAX Policies; (vii) Dealer Materials and Responses will not infringe the rights of any third party, including but not limited to intellectual property rights, contractual rights or any right of privacy; (viii) Dealer will not identify or make any individual identifiable in its Responses and (ix) Dealer will immediately notify CARFAX of any unauthorized use of Dealer's account, username or password.
- b. Dealer will not (i) circumvent, remove, deactivate or interfere with any content protections of any CARFAX Services; (ii) cause, permit or authorize the decompilation, modification, disassembly or reverse engineering of any CARFAX Service, or create derivative works of any CARFAX Service; (iii) upload or otherwise introduce into any CARFAX Service any virus, spyware or other software, code or routine that may jeopardize the security or integrity of CARFAX Services or may disrupt, delete, damage, alter or otherwise interfere with CARFAX Services; (iv) take any action that may interfere with any CARFAX Service or any of CARFAX's computer systems, servers or networks or (v) engage in any systematic access to CARFAX Services or retrieval of CARFAX Reports or Licensed Data, including but not limited to use of any bot, spider, scraper or other automated means.

- c. Dealer will comply with all Laws, including but not limited to all Laws relating to privacy, false or deceptive advertising, motor vehicle advertising, automotive finance and sweepstakes or other promotions.

8. CARFAX Warranty; Disclaimers; Limited Liability.

- a. CARFAX represents and warrants that (i) the information contained in the VHS has been legally obtained; (ii) it has the authority to provide Dealer with the licenses granted in this Agreement; (iii) provision of CARFAX Services to Dealer does not violate any Laws and (iv) it will comply with all Laws.
- b. Dealer acknowledges that CARFAX (i) collects data from public records and other sources for use in the VHS and that CARFAX Reports and Licensed Data may contain errors and omissions and (ii) does not guarantee the accuracy or completeness of CARFAX Reports or Licensed Data.
- c. Dealer acknowledges that any estimates of impressions, usage or traffic that are made available to Dealer by CARFAX are provided as a courtesy only, and CARFAX makes no guarantees that use of CARFAX Services will result in a certain number of impressions, usage or traffic.
- d. Dealer acknowledges that (i) CARFAX Reports and Licensed Data contain information about vehicles and are not intended to provide information about any individual or household, (ii) CARFAX is not a consumer reporting agency and (iii) CARFAX Reports and Licensed Data only include data regarding vehicles and has no bearing on any consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living.
- e. **CARFAX PROVIDES THE CARFAX SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS SET FORTH IN SECTION 8(A), CARFAX MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE ACCURACY, CURRENTNESS, COMPLETENESS, RELIABILITY OR RESULTS OF ANY CARFAX SERVICE OR THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CARFAX SERVICE.**
- f. In no event will CARFAX be liable for lost profits or special, indirect, incidental, consequential, punitive or exemplary damages arising under or in connection with this Agreement, or the performance of, or failure to perform, any obligations under this Agreement, even if CARFAX has been advised of the possibility of such damages. Except with respect to CARFAX's indemnification obligations in Section 9(a), CARFAX's liability in connection with (i) erroneous data is limited to correction of the data in question and (ii) any CARFAX Service will not exceed one hundred dollars (\$100).

9. Indemnification.

- a. CARFAX will indemnify, defend and hold harmless Dealer and its directors, officers, and employees ("Dealer Indemnitees") against any and all claims, actions, damages, judgments, losses, settlements, penalties, fines, costs and expenses (including reasonable attorneys' fees and court costs) ("Damages"), that Dealer Indemnitees may incur or become liable for, solely to the extent and proportion such Damages arise from: (i) a third party claiming the CARFAX Services or CARFAX Marks infringe or misappropriate such third party's intellectual property rights or (ii) CARFAX's breach of its representations or warranties in Section 8(a).
- b. Dealer will indemnify, defend and hold harmless CARFAX and its affiliates and its and their directors, officers, employees and agents ("CARFAX Indemnitees") against any and all Damages that CARFAX Indemnitees may incur or become liable for, solely to the extent and proportion such Damages arise from: (i) Dealer's use of CARFAX

Services; (ii) Dealer's breach of this Agreement; (iii) Dealer's products or services; (iv) any allegation that CARFAX or Dealer does not have the authority to send a Communication or (v) a third party claiming the Dealer Materials infringe or misappropriate such third party's intellectual property rights.

10. Fees.

- a. Dealer will pay CARFAX the fees set forth in the Order, and if not stated in the Order, CARFAX's then-current rate for the applicable CARFAX Service. After the initial term of a CARFAX Service, CARFAX may modify the fee(s) for such CARFAX Service. Dealer will pay CARFAX all amounts due immediately upon receipt of each invoice. Dealer will pay all applicable sales, use and other taxes as a result of CARFAX Services provided to Dealer, other than taxes on CARFAX's income. Dealer will pay an interest rate of eighteen percent (18%) per annum, or the maximum allowed by law if less than eighteen percent (18%), on amounts 30 days past due, in addition to any collection fees and legal fees where not prohibited by law.
- b. **Dealer acknowledges and agrees that Dealer is responsible for all fees that arise out of the use of Dealer's account(s), username(s) or password(s), including but not limited to any penalties or fees that arise from any unauthorized use.**
- c. If Dealer cancels a CARFAX Service prior to the expiration of the then-current term or CARFAX suspends or cancels Dealer's subscription to a CARFAX Service due to Dealer's breach of this Agreement, all fees for the cancelled or suspended service become immediately due and payable for the remaining months in the then-current term.
- d. For each CARFAX Report or Licensed Data that was accessed or used in violation of this Agreement, Dealer will pay CARFAX the greater of (i) \$21.99 and (ii) the then-current price for a single CARFAX Report.
- e. Dealer authorizes CARFAX to check Dealer's credit history at any time. CARFAX may require Dealer to pay CARFAX by ACH and permit CARFAX to deduct the full monthly invoice amount from Dealer's bank account on a recurring basis. For each check returned by Dealer's financial institution or failed ACH payment, Dealer will pay CARFAX's then-current return fee, and for any reinstatement of Dealer's access to any CARFAX Service after suspension, Dealer will pay CARFAX's then-current reactivation fee.

11. **Audit Rights.** If CARFAX has a reasonable belief that Dealer is not complying with this Agreement, during the term and for a period of two (2) years thereafter, CARFAX may, upon 15 days prior written notice to Dealer, inspect and audit the records and systems of Dealer to verify Dealer's compliance with this Agreement. If such inspection or audit reveals noncompliance, Dealer will reimburse CARFAX for all costs and expenses associated with such audit or inspection, including but not limited to any attorneys' fees incurred in connection therewith, notwithstanding any other rights and remedies available to CARFAX.

12. Intellectual Property; Dealer Information.

- a. CARFAX Marks. CARFAX grants to Dealer a limited, revocable, nonexclusive, nontransferable license to use CARFAX trademarks ("CARFAX Marks") in connection with the VHR Permitted Use or DP Permitted Use, as applicable, and with materials that CARFAX makes available to Dealer as a result of this Agreement. Dealer will obtain CARFAX's prior written approval of the content and look and feel of each use of CARFAX Marks. Dealer will not commit, or cause any third party to commit, any act challenging, contesting or impairing CARFAX's rights in the CARFAX Marks, including but not limited to (i) seeking registration of the CARFAX marks, any aspect of the CARFAX Marks or any confusingly similar trademark anywhere in the world or (ii)

incorporating Dealer's business under the CARFAX Marks, any aspect of the CARFAX Marks or any name confusingly similar to the CARFAX Marks. Immediately upon termination of this Agreement, Dealer will stop using CARFAX Marks. Dealer acknowledges that Dealer's use of CARFAX Marks will inure to CARFAX's benefit.

- b. Ownership. Dealer acknowledges that CARFAX Marks, CARFAX Services and all intellectual property relating to CARFAX Services, including but not limited to the look and feel, patents, design rights, copyrights, trademarks, service marks, database rights, trade secrets, know-how and all derivative works thereof, including but not limited to future enhancements and modifications (collectively, "Intellectual Property") are and will remain the property of CARFAX. Dealer will not in any manner attempt to obtain any right, title or interest, by registration, patent, copyright or otherwise, in or to such Intellectual Property. Dealer will not take any action that jeopardizes, limits or interferes with CARFAX's ownership of, or right to use, such Intellectual Property.
- c. Dealer Marks. Dealer grants to CARFAX a limited, nonexclusive, perpetual, sublicensable, royalty-free license to use Dealer's trademarks ("Dealer Marks") in connection with CARFAX Services. CARFAX must comply with any trademark guidelines made available to CARFAX by Dealer. CARFAX acknowledges that (i) Dealer Marks are and will remain the property of Dealer, (ii) CARFAX will not in any manner attempt to obtain any right, title or interest in Dealer Marks, (iii) CARFAX will not take any action that jeopardizes, limits or interferes with Dealer's ownership of, or right to use, Dealer Marks and (iv) CARFAX's use of Dealer Marks will inure to Dealer's benefit.

13. **Consent to Receive Future Offers.** Dealer expressly consents to receive marketing and advertising offers and other information via facsimile transmissions, telephone calls and/or text messages, email and postal mail from CARFAX or its affiliates; provided, however, Dealer may opt out of receiving such offers and other information by sending an email to dealersupport@carfax.com. CARFAX may direct such offers and information to the postal and email addresses, telephone number(s) and facsimile number(s) listed on any Order or to any other contact information used by Dealer. Dealer will promptly notify CARFAX of any changes to Dealer's contact information. Dealer affirms that (i) Dealer is the only subscriber for all of the telephone numbers provided to CARFAX and (ii) any business landline telephone number provided is not associated with a residence and is not assigned to any wireless telephone service.

14. **No Assignment.** Dealer will not assign any part of this Agreement without CARFAX's prior written consent.

15. **Force Majeure.** If either party is delayed, interrupted in or prevented from the performance of its obligations under this Agreement (except for a party's payment obligations) by reason of an act of God, fire, flood, earthquake, hurricane, war, public disaster, governmental enactment, regulation or order, and if such party has given the other party prompt written notice thereof, the time for the performance of the party's obligations will be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, but not exceeding 60 days. If the force majeure condition continues for more than 60 days, either party may terminate this Agreement upon written notice to the other party.

16. **Cancellation; Survival.** Cancellation of Dealer's subscription to any one CARFAX Service does not cancel any other CARFAX Service to which Dealer has subscribed. Sections 6(c), 8(b) through (f), 9, 10(b), 10(c), 10(d), 11, 12(b), 12(c), 16 and 17, and the right of CARFAX

and its affiliates to use Inventory Information and Service Data will survive the expiration, cancellation or termination of this Agreement.

17. Dispute Resolution; Class Action Waiver; Governing Law; Jurisdiction and Venue.

- a. **MANDATORY BINDING INDIVIDUAL ARBITRATION INSTEAD OF COURT; CLASS ACTION WAIVER.** For any claim, controversy, dispute, action, cause of action, issue or request for relief arising out of or relating in any way to CARFAX Services, the advertising of CARFAX Services or this Agreement (including but not limited to any questions regarding the existence, validity or termination of this Agreement), as well as any issue regarding the interpretation of this Section 17 ("Dispute"), Dealer and CARFAX agree as follows:
- i. Disputes will be resolved by binding arbitration, rather than in court, except that Dealer may assert claims in small claims court if the claims qualify and CARFAX may pursue a collection action against Dealer in court. Dealer and CARFAX agree to give up any right to litigate a Dispute in a court or before a jury or to participate in a class action or representative action with respect to a Dispute. This also includes any claims that arose before Dealer accepted any agreement or these Terms of Service, regardless of whether prior versions of the Terms of Service required arbitration. The Federal Arbitration Act (9 U.S.C. § 1 et seq.) and federal arbitration law apply to this Section 17(a).
 - ii. **Dealer and CARFAX agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, representative, consolidated or mass action.** Dealer shall not join or consolidate claims or arbitrate or otherwise participate in any claim as a class representative, class member or in a private attorney general capacity. If this provision is found to be unenforceable, then the entirety of this Section 17(a) shall be null and void.
 - iii. If Dealer has a Dispute and elects to seek arbitration or file in small claims court, Dealer must first send to CARFAX, by certified mail, a written notice of the Dispute that (1) describes the nature and basis of the Dispute; (2) sets forth the specific relief sought and (3) includes a physical address and email address where Dealer may be reached ("Notice"). The Notice must be addressed to: CARFAX, Inc., Attn: General Counsel, 5860 Trinity Parkway, Suite 600, Centreville, VA 20120. If CARFAX and Dealer do not reach an agreement to resolve the Dispute within 60 days after the Notice is received, Dealer or CARFAX may commence an arbitration proceeding or file in small claims court.
 - iv. The arbitration will be governed by the American Arbitration Association's ("AAA") then-current Commercial Arbitration Rules ("Rules"), as modified by these Terms of Service, and will be administered by the AAA. In the event of any conflict between these Terms of Service and the Rules, these Terms of Service will apply. If the value of the claims is less than or equal to \$50,000, the Dispute will be heard by a sole arbitrator, appointed in accordance with the Rules. If the value of the claims is greater than \$50,000, the Dispute will be heard by a panel of three arbitrators, with each party appointing an arbitrator and the party-appointed arbitrators selecting a third arbitrator to serve as the chairperson. Any hearing shall take place in Washington, D.C.
 - v. The arbitrator(s) shall apply the law specified in Section 17(b) of these Terms of Service. The arbitrator(s) can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief) and must follow these Terms of Service as a court would. Except for any relief required by statute, the arbitrator(s) may not award relief in excess of, or contrary to, what this Agreement provides or order consolidation or arbitration on a class wide or representative basis.

- vi. Any arbitration will be confidential. Neither Dealer, CARFAX, the AAA nor the arbitrator(s) may disclose the existence, content (including any oral or written submissions) or results of any arbitration, except as may be required by law or for purposes of enforcing or challenging the arbitration award.
- vii. Judgment on any arbitration award may be entered in any court having proper jurisdiction. Dealer and CARFAX agree that arbitration is final and binding and subject to only very limited review by a court. Dealer and CARFAX waive the right to any form of appeal, review or recourse to any court or other judicial authority.
- viii. No action, regardless of form, arising out of or pertaining to this Agreement may be brought by Dealer more than one (1) year after the cause of action accrued.
- b. Governing Law. Dealer agrees that the Federal Arbitration Act, applicable federal law and laws of the Commonwealth of Virginia, without regard to its conflict of laws rules, govern this Agreement and any Dispute between Dealer and CARFAX.
- c. Jurisdiction and Venue. If for any reason a Dispute proceeds in court rather than in arbitration or small claims court, each party waives any right to a jury trial and agrees that any such proceeding shall be conducted only on an individual basis and not in a class, representative, consolidated or mass action. Under such circumstances, except for a collection action by CARFAX, Dealer and CARFAX agree that the jurisdiction and venue shall be vested exclusively in the state courts in Fairfax County, Virginia, or the U.S. District Court for the Eastern District of Virginia, Alexandria Division. If any part of this Section 17(c) is found to be unenforceable, the remainder of this Section 17 and this Section 17(c) shall still be given full force and effect.

18. English Language Only. The parties confirm that it is their wish that this Agreement and any other documents delivered or given pursuant to this Agreement, including notices, have been and shall be in the English language only. Les parties aux presents conferent leur volonte que cette convention de mime tous les documents, y compris tout avis, s'y rattachant, soient remises en anglais seulement.

19. Entire Agreement; Order of Precedence; Severability. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, negotiations, proposals, representations, conditions and agreements, whether written or oral, relating to the same subject matter. If there is a conflict between the Order and these Terms of Service, the Order will govern. If any provision of this Agreement is held to be invalid, illegal or unenforceable, that decision will not invalidate or void the rest of this Agreement which will still be given full force and effect.

20. Changes to Terms of Service. CARFAX may change these Terms of Service at any time. Such changes will be effective upon publication and automatically incorporated into this Agreement. It is Dealer's responsibility to check these Terms of Service periodically for changes. Dealer's continued use of CARFAX Services following publication of Terms of Service will constitute Dealer's acceptance.

ADDITIONAL TERMS REQUIRED BY TOYOTA.

Portions of the CARFAX Reports and Licensed Data have been included under license from Toyota Motor North America, Inc. ("TOYOTA"), License Agreement TMS1013. This data applies only to vehicles marketed or originally sold in Mexico and the United States of America, including Guam, Saipan, American Samoa, Puerto Rico, the U.S. Virgin Islands and the other United States territories and protectorates with currently open safety or emissions recalls, or service campaigns. While TOYOTA provides data to CARFAX, Inc. on a regular basis, this report may not include very recent

activity. For the manufacturer's most current information on recall/campaign activity for any Toyota, Lexus or Scion brand vehicle, you must go to <http://toyota.com/recall> or <http://lexus.com/recall>.