

COX AUTOMOTIVE™

TERMS AND CONDITIONS

These terms and conditions, along with the Order Form (collectively, the “**Agreement**”), set forth the terms and conditions under which AIS Rebates, a brand of Cox Automotive Inc. (“**Licensor**”) shall license certain rebate and incentive information to Licensee. Each Order Form for licensing rebate and incentive information shall be governed by and subject to these terms and conditions.

1. **Definitions.** For the purposes of this Agreement, the terms set forth below shall have the following meanings:
 - 1.1. “**Affiliate**” shall mean an entity that directly or indirectly (through one or more intermediaries) Controls, is Controlled by, or is under common Control with Licensor or Licensee.
 - 1.2. “**Consumer**” shall mean a customer or prospective customer for the purchase or lease of a vehicle from a Dealer.
 - 1.3. “**Consumer-Facing Application**” shall mean an application enabling Consumers to receive and process Data via a world wide web interface (i.e., browser or mobile application) as an aid to the Consumer’s purchase of a vehicle.
 - 1.4. “**Contract Year**” shall mean the twelve (12) month period commencing on the Effective Date and each anniversary of the Effective Date thereafter.
 - 1.5. “**Control**” shall mean ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity or the legal power to direct or cause the direction of the general management of such entity, whether by contract or otherwise.
 - 1.6. “**Data**” shall mean the data regarding Incentives set forth in the Order Form and updated from time to time by Licensor that will be integrated into the Licensee Product.
 - 1.7. “**Dealer**” shall mean a retail seller of motor vehicles from a Rooftop.
 - 1.8. “**Dealer-Facing Application**” shall mean an application enabling Dealer Personnel to receive and process Data as an aid to completing sales or leases of vehicles to Consumers.
 - 1.9. “**Dealer List**” shall mean a list provided or maintained by Licensee of the names of the Dealers subscribed to Licensee’s Program, if Licensee is a deskings tool provider that provides the Data to its Dealer customers via such tool. For clarity, the term Dealer List is not applicable if Licensee is a Dealer.
 - 1.10. “**Incentives**” shall mean one or more of the following programs established by Manufacturers as incentives for purchases or leases of new vehicles:
 - 1.10.1. “**Consumer-Facing Incentive**” shall mean an Incentive offered to a Consumer in conjunction with the purchase or lease of a new vehicle such as: Rebates, Consumer Cash, Bonus Cash, Factory Supported Interest Rates (APR), Advertised Specials and other ancillary special programs (e.g. College Grad, Loyalty, Military). Note: some offers require the Consumer to meet certain eligibility criteria.
 - 1.10.2. “**Dealer-Facing Incentive**” shall mean Incentives offered to a Dealer which may or may not be passed on to the Consumer in conjunction with the purchase or lease of a new vehicle. Some offers require the Dealer to meet certain eligibility requirements such as Dealer Cash based on new factory orders from the Dealer.
 - 1.10.3. “**Lease Programs**” shall mean an Incentive offered to a Consumer for a lease of a new vehicle such as: Residual Value, Money Factor or Cash.
 - 1.11. “**Intellectual Property Rights**” shall mean any and all patents, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights and all other intellectual property rights existing now or in the future, internationally.
 - 1.12. “**Licensor Product**” shall mean the Data as provided in accordance with an applicable Order Form.
 - 1.13. “**Manufacturer**” shall mean a company that manufactures and sells motor vehicles to Dealers for resale.
 - 1.14. “**Modifications**” shall mean changes, upgrades, updates, modifications, or enhancements to, or derivative works of, a Licensor Product.

- 1.15. **“Order Form”** shall mean one or more separate documents governed by these Terms and Conditions specifying the Data and the Fees for using and obtaining or delivering such Data in accordance herewith.
- 1.16. **“Personnel”** shall mean agents, employees, officers, directors, or contractors employed, engaged, or appointed by a Party hereunder.
- 1.17. **“Purpose”** shall mean the reason for displaying the Data as set forth on the Order Form.
- 1.18. **“Program”** shall mean the Licensee application that uses the Data to populate, display, and supply Incentives and other data to Dealers and/or Consumer customers of Dealers, as provided for on the Order Form. Any version of the Program that utilizes the Data will be provided to Consumers free of charge.
- 1.19. **“Rooftop”** shall mean any unique physical street address or unique building rooftop of Licensee or, if Licensee is a desking tool provider, a Dealer that is a subscriber of Licensee’s Program. A single dealership retail location is identifiable by a separate street address. Dealerships with multiple street addresses are considered to have multiple Rooftops. For avoidance of doubt, multiple franchises within the same manufacturer at one street address are considered one rooftop, while multiple manufacturers under one rooftop at one street address are considered multiple rooftops.
- 1.20. **“Third Party”** shall mean an entity or person that is neither a Party, nor an Affiliate of a Party.
- 1.21. **“Third Party Licensor”** shall mean any Third Party that makes available Third Party Materials.
- 1.22. **“Third Party Materials”** shall mean data, content, software, or other materials from a Third Party Licensor that are made available by, through or in connection with the Licensor Product. Licensor may license but does not own Third Party Materials.
2. **Grant of License.** Licensor hereby grants to Licensee, subject to and conditioned upon Licensee’s continued compliance with the terms and conditions of this Agreement, including, without limitation, the payment of all Fees and other amounts payable to Licensor pursuant hereto or thereto, a non-exclusive, non-transferable, fee-bearing license in the Territory during the Term to integrate, access and use the Data (the data capability of which Data Licensee shall be permitted to use shall be set forth in the Order Form) in the Program solely for the Purpose. If Licensee is a desking tool provider, the foregoing license grant shall also include the right for Licensee to permit its Dealers to view and use the Data only in connection with the Program, subject to the terms and conditions contained in this Agreement. In such a case, Licensee shall take all reasonable steps to ensure that its Dealers comply with this Agreement, and Licensee shall be liable to Licensor for all acts of Dealers relating to their access to and use of the Data and their compliance with this Agreement. Licensee shall make no other use of the Data except as specifically set forth in this Agreement and no other license or right is hereby granted or shall be deemed granted except as expressly set forth in this Section 2. Licensee shall not modify, edit, or otherwise change any of the Data.
3. **Proprietary Information Rights and Retention of Ownership.**
- 3.1. **Licensor Proprietary Information.** The Data, and all Modifications thereto, and any information pertaining to the foregoing, including but not limited to additional rebate and incentive information that may accompany the Data but not licensed for use by Licensee, are the exclusive property of Licensor and shall be considered and treated by Licensee as the confidential proprietary information of Licensor (**“Licensor Proprietary Information”**). With the exception of authorized Dealers’ use of the Data through the Program in accordance with this Agreement, Licensee agrees not to, directly or indirectly, disclose, sell or otherwise transfer or exploit the Licensor Proprietary Information, or any portion thereof, to any other person or entity or allow any other person or entity to use the Licensor Proprietary Information, or any portion thereof, without the prior written consent of Licensor, which may be withheld in Licensor’s sole discretion.
- 3.2. **Licensee’s Program.** Licensor acknowledges and agrees that Licensee is the owner of the Program and Licensor agrees that it has no right, title, or interest in the Program. Licensor further agrees not to challenge or assist with or participate in any challenge, directly or indirectly, of Licensee’s ownership of the Program or any right, title or interest therein or any portion thereof, with the exception of any Licensor Marks, and/or Licensor Proprietary Information used in the Program which, as between Licensor and Licensee, are owned by Licensor as set forth in Section 3.1.
4. **Data Format and Usage Requirements.**
- 4.1. **Data Format, Delivery and Updates.** Licensor will deliver and update the Data in the format, access/delivery method, and during the delivery period as set forth in the applicable Order Form. Licensee will immediately notify Licensor if it believes that any of the Data is garbled, transposed or erroneous and Licensor will use commercially reasonable efforts to provide corrected data and/or work with Licensee to ensure smooth delivery of the Data.

Licensee understands that Licensor may make changes to the Data from time to time as it deems appropriate or advisable, which may require Licensee to modify the Program. Any modifications required to the Program shall be the sole responsibility of Licensee.

- 4.2. **Development and Support.** Licensee will be responsible for the testing and integration of the Data to the Program, including any upgrades that Licensor develops for the Data. Licensor will provide support to Licensee relating to the use and functionality of the Data in the Program. If Licensee is a desking tool provider, as between Licensor and Licensee, Licensee will be responsible for providing support to Dealers that License the Program.
- 4.3. **Licensor Approval.** Prior to the release of Data in the Program, Licensor shall approve the format of the Data and the use and display of the Data in the Program solely for the Purpose. At any time during the Term, Licensor may request to review Licensee's use and format of the Data in the Program to be sure that it conforms to the rights licensed to Licensee under this Agreement. If Licensor, in its sole discretion, determines that the Data is not properly displayed in the Program, Licensee will be in material breach of this Agreement and Licensor may terminate this Agreement according to the second sentence of Section 8.2 below.
- 4.4. **Disclaimer.** Licensee must provide an appropriate disclaimer to accompany the Data displayed in the Program (e.g. limited time offer, must qualify). If Licensee is a desking tool provider, Licensee agrees that it will require Dealers to use the disclaimers provided by Licensee in accordance herewith, and Licensor shall not be held responsible if Dealer fails to do so.
- 4.5. **Limitation on Use of Data.** Except as otherwise licensed herein, and in connection with Program and solely for the Purpose, no Data shall be posted or otherwise accessible on any Web site or other property, electronic or physical, owned, created, utilized or operated, directly or indirectly, by, on behalf of or for the benefit of Licensee. Licensee acknowledges that any use of the Data, or portion thereof, other than in the Program for the Purpose as provided for herein, shall be a material breach of this Agreement.
- 4.6. **Exclusivity:** Licensee agrees that, during the term of this Agreement it shall not implement data within the Program that serves the same purpose as the Licensor Data.
5. **Dealer List Reporting.** Licensee agrees to keep an accurate and up-to-date Dealer List and will supply Licensor with the then-accurate and current Dealer List no later than three (3) days after the end of each calendar month during the Term. Licensor reserves the right to request the Dealer List or an updated Internal Sign-Up form from Licensee at any time. If Licensee fails to provide a Dealer List promptly upon Licensor's request, Licensor may terminate this Agreement in accordance with the second sentence Section of 8.2 below.
6. **Fees.** The license fees for the Service (the "Fees") are payable in advance and are non-refundable. Fees shall be charged as set forth in the Order Form. The Fees will be prorated from the Activation Date for the Initial Term. Licensor will track the number of Rooftops via the Dealer List provided by Licensee. Any additional Rooftops will be billed in arrears and then reflected on subsequent invoices. Licensee will assume responsibility for and pay all applicable state, local, federal or other taxes (exclusive of taxes based on Licensor's net income), which result from this Agreement or the Services provided hereunder. Payment for the Data does not transfer any right, title, or interest in the Data to Licensee except as specifically set forth herein. Except as otherwise provided in the applicable Order Form, all Fees shall be due and payable thirty (30) days from the date of invoice. Payments to Licensor shall be made by credit card, automated clearing house (ACH transfer), or check made out to Cox Automotive Inc. and mailed to P.O Box 936128 Atlanta, GA 31193-6128, Attn: Accounts Receivable.
7. **Accounts and Records.**
 - 7.1. **Maintenance of Records.** Licensee shall maintain accurate account books and records showing the distribution of Licensed Data for a period of at least three (3) years after the payment of the corresponding Fees.
 - 7.2. **Access to Records.** All books and records shall be available for inspection and examination by Licensor or a duly authorized representative, upon reasonable notice, during normal business hours.
 - 7.3. **Under/Over Payments.** In the event an audit shows a deficiency to be due, Licensee shall promptly pay the amount of the deficiency to Licensor. If the audit shows that an excess was paid, Licensor shall be entitled to deduct the amount of such excess from the payment due for the next calendar quarter or pay the amount to Licensee without undue delay, at Licensor's discretion.
 - 7.4. **Late Payments.** Amounts that are not paid when due will accrue interest from the due date until paid, at a rate equal to 1.5% per month or the maximum allowed by law, if less.
8. **Term and Termination.**

- 8.1. **Term.** This Agreement shall become effective on the Effective Date (as set forth in the applicable Order Form) and will continue for the Initial Term (as set forth in the applicable Order Form). Upon expiration of the Initial Term, this Agreement will automatically renew for additional Renewal Terms (set forth in the applicable Order Form), unless terminated by either Party in accordance with Section 8.2 below. The Initial Term and any Renewal Terms shall be referred to as the “**Term.**”
- 8.2. **Termination.** Licensor may terminate this Agreement without cause by providing Licensee with at least sixty (60) days written notice prior to the effective date of termination. Licensee may terminate this Agreement in the event of a material breach by Licensor that remains uncured for a period of thirty (30) days following Licensor’s receipt of notice of such breach from Licensee. In addition, Licensee may elect not to renew this Agreement for any Renewal Term by notifying Licensor in writing of its intent not to renew the Agreement at least one month prior to the end of the then-current Term.
- 8.3. **Rights Upon Termination.** Upon termination of this Agreement or any applicable Order Form, Licensee shall no longer have any rights or interest in the Licensor Proprietary Information and shall immediately (i) discontinue using the Data (and all Licensor Proprietary Information), (ii) either (a) destroy the Licensor Proprietary Information and any documents or other materials or information pertaining to or containing any Licensor Proprietary Information (and provide a certification of such destruction from an appropriate officer of Licensee) or (b) return the Licensor Proprietary Information and any other document or other materials or information pertaining to or containing any Licensor Proprietary Information to Licensor, and (iii) if Licensee is a deskings tool provider, discontinue all efforts to market the Data to Dealers, including any inference that the Program contains the Data, and provide notice to Dealers that the Data will no longer be offered in the Program.
- 8.4. Nothing in this agreement shall prevent Licensor, acting on its own or with another company, from servicing or licensing Data to a Dealer after a Dealer cancels service with Licensee.
- 8.5. **Survival.** The provisions of Section 3, 4.6, 5, 6, 7, 8.3, 8.5, and 10 through 13 shall survive any termination of this Agreement. Notwithstanding anything contained herein or in any Order Form to the contrary, no termination of this Agreement or any Order Form will relieve any party of its obligation to make any payment of the Fees hereunder and thereunder or for any payments for damages due to a breach hereof or thereof.
9. **Warranties and Representations.**
- 9.1. **Mutual Warranties.** Each Party represents and warrants to the other Party that it: (i) has the legal power to enter into and perform under this Agreement; and (ii) has obtained and will maintain any and all consents, approvals, licenses or other authorizations necessary for the performance of its obligations hereunder.
- 9.2. **Licensor Warranties.** Licensor represents and warrants that its performance of its obligations hereunder will not infringe any Third Party Intellectual Property rights including, without limitation, any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- 9.3. **Licensee Warranties.** Licensee represents and warrants that none of the activities related to the Purpose and/or use of the Data shall violate any federal, state, or local law or regulation, including but not limited to advertising, privacy or CAN-SPAM laws.
10. **Indemnification.**
- 10.1. **By Licensor.** Licensor will indemnify and defend Licensee against any damages, losses, costs and expenses (including reasonable attorneys’ fees, court costs, settlement costs and awarded amounts) incurred in connection with any Third Party claim to the extent such claim arises from (a) an allegation that the use of a Licensor Product in accordance with the applicable Order Form (including these Terms and Conditions) infringes or misappropriates such Third Party’s Intellectual Property rights, (b) any breach by Licensor of any representations or warranties, or (c) any claim with respect to the willful misconduct or gross negligence of Licensor.
- 10.2. **By Licensee.** Licensee will indemnify and defend Licensor and its Affiliates against any damages, losses, costs and expenses (including reasonable attorneys’ fees, court costs, settlement costs and awarded amounts) incurred in connection with any Third Party claim to the extent that such claim arises from (a) any use of or access to any Licensor Product or Third Party Material by or on behalf of Licensee (subject to Licensor’s indemnification obligations in Section 10.1 above), (b) any breach by Licensee or any Licensee Personnel of any representations or warranties, (c) any claim by a retail consumer of Licensee or any other purchaser of any vehicle or any other Licensee product or service, or (d) any claim with respect to the willful misconduct or gross negligence of Licensee.

11. **Disclaimers.** THE LICENSOR PRODUCTS ARE INTENDED ONLY TO FACILITATE THE MANAGEMENT AND OPERATION OF CERTAIN ASPECTS OF LICENSEE'S BUSINESS AT THE AUTHORIZED ROOFTOPS. NEITHER LICENSOR NOR ANY OF ITS AFFILIATES (NOR ANY THIRD PARTY LICENSORS) MAKE ANY REPRESENTATION OR WARRANTY TO LICENSEE OR ANY OTHER PERSON WITH RESPECT TO ANY LICENSOR PRODUCT (OR ANY THIRD PARTY MATERIALS), EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF SUITABILITY, LEGALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY TYPE OR NATURE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR MAKES NO REPRESENTATION OR WARRANTY THAT: (1) THE LICENSOR PRODUCTS WILL OPERATE ERROR-FREE, WITHOUT INTERRUPTION OR IN ACCORDANCE WITH ANY SPECIFICATIONS, OR (2) THE LICENSOR PRODUCTS ARE SUITABLE FOR ANY SPECIFIC PURPOSE. IN NO WAY DOES ANY LICENSOR PRODUCT OR OTHER MATERIALS OR INFORMATION PROVIDED BY LICENSOR OR ITS AFFILIATES CONSTITUTE LEGAL ADVICE. LICENSOR IS NOT ENGAGED IN THE PRACTICE OF LAW OR IN PROVIDING LEGAL OR COMPLIANCE SERVICES. ACCORDINGLY, LICENSEE SHOULD CONSULT WITH ITS OWN LEGAL ADVISOR FOR LEGAL ADVICE RELATING TO ANY LICENSOR PRODUCT.

12. **Limitation of Liability.** NEITHER PARTY (INCLUDING, IN THE CASE OF LICENSOR, ITS AFFILIATES, AND ITS THIRD PARTIES, INCLUDING ALL THIRD PARTY LICENSORS) SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, MULTIPLE, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM ANY LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF OR IN CONNECTION WITH THE APPLICABLE ORDER FORM OR THE USE OF ANY LICENSOR PRODUCT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, THE AGGREGATE LIABILITY UNDER EACH ORDER FORM OF LICENSOR, ITS AFFILIATES AND ITS THIRD PARTIES (INCLUDING ALL THIRD PARTY LICENSORS), ON THE ONE HAND, AND LICENSEE AND LICENSEE PERSONNEL, ON THE OTHER HAND, SHALL BE EXPRESSLY LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID BY LICENSEE TO LICENSOR UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO (A) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, (B) DAMAGES AND LOSSES RESULTING FROM LICENSEE'S BREACH OF THE RESTRICTIONS IN SECTION 4.6, OR (C) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, INCLUDING WITH RESPECT TO A PARTY'S BREACH OF SECTION 13.2.

13. **General Provisions.**

13.1. **Assignment.** Licensee may not sell, mortgage, assign or otherwise transfer any of its rights or obligations under this Agreement to any other person or entity without the express, prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion.

13.2. **Confidentiality.** Neither Licensor nor Licensee shall disclose the terms of this Agreement or any Order Form to any person or entity at any time for any reason, except as may be required by law and to its officers, directors, employees, representatives and advisors who have a need to know the terms hereof or thereof and agree to maintain the confidentiality thereof as to which confidentiality Licensor or Licensee, as applicable, shall be responsible.

13.3. **Notice.** All notices, authorizations and consents with respect to this Agreement shall be deemed given (i) on the day personally delivered, (ii) on the third (3rd) business day after deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, and (iii) on the business day after sent by nationally recognized overnight courier, charges prepaid, return receipt requested. All notices, authorizations and consents to be sent to (a) Licensor shall be to the principal place of business set forth in the first paragraph of this Agreement and to the attention of President, with a copy to Cox Automotive, Inc., Office of the General Counsel, 6205 Peachtree Dunwoody Rd., 6th Floor Atlanta, GA 30328, and (b) Licensee shall be sent to the principal place of business set forth on the applicable Order Form to the attention of the person set forth thereon.

13.4. **Miscellaneous.** In the event of any conflict between the terms of this Agreement and an Order Form, the terms of this Agreement shall control. The parties agree that they are independent contractors and do not intend for this Agreement to be interpreted as an employment, agency, joint venture, partnership or similar relationship. No party has the right, power or ability to create a liability or obligation for or of the other party. Neither party's waiver of the breach of any provision shall constitute a waiver of any other provision or that provision in any other instance. This Agreement may not be modified or amended nor any rights under it waived, in whole or in part, except in

writing signed by both parties. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without regard to or application of any conflict of law rules or principles. The parties agree to the exclusive jurisdiction of federal and state courts located in Fulton County, Georgia and waive all claims that such jurisdiction is inconvenient, lacks jurisdiction or other claims which seek to change the agreed upon venue. This Agreement, including the applicable Order Form and any exhibits and other written agreements, contains the entire understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, both written and oral, regarding such subject matter. Upon the execution of this Agreement, the parties agree to issue one mutually agreed upon press release; neither party shall issue any press releases or other announcement or disclosure regarding this Agreement without the other party's prior written approval. If any term of this Agreement is held invalid, illegal or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and it is the intent of the parties that a valid, legal and enforceable provision with the same intent and economic effect be substituted. Each of the parties shall perform its respective obligations under this Agreement in a manner that complies with applicable laws and regulations. This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either party. This Agreement is made for the benefit of Licensor and Licensee and not for the benefit of any third party. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

END OF TERMS AND CONDITIONS