

## **DEALER PARTICIPATION AGREEMENT – DIGITAL RETAILING PILOT PROGRAM**

This Dealer Participation Agreement – Digital Retailing Pilot Program (this “**Agreement**”) is made and entered into by and between Kia America, Inc. (“**KUS**”) and [Dealer Entity Name] d/b/a [d/b/a Name] (“**Dealer**”).

### **RECITALS**

**WHEREAS**, KUS and Dealer are parties to a Kia Dealer Sales and Service Agreement (the “**Dealer Agreement**”); and

**WHEREAS**, KUS provides information to consumers about authorized Kia dealers at a Kia website at the URL [www.kia.com](http://www.kia.com) (the “**KUS Website**”) which includes, among other things, information about each dealer’s new Kia vehicle inventory; and

**WHEREAS**, KUS intends to launch a new pilot program (the “**Pilot Program**”) that will use part of the KUS Website to facilitate consumer access to the same new Kia vehicle inventory listings that appear on the websites of participating dealers and that include a retail sales price set by each dealer (“**Kia Inventory Listings**”); and

**WHEREAS**, in the first phase of the Pilot Program, KUS has invited to participate in the Pilot Program certain dealers who use CarNow, Inc. (“**CarNow**”) as their digital retailing provider and who meet certain other criteria as described further below (the “**Pilot Dealers**”); and

**WHEREAS**, KUS intends to expand the Pilot Program to include authorized Kia dealers who use vendors other than CarNow as their digital retail provider and may convert the Pilot Program into a longer-term feature of the KUS Website (a “**Program**”); and

**WHEREAS**, Dealer acknowledges that it has received from KUS, and reviewed, detailed information concerning, and wishes to participate in, the Pilot Program and, if implemented, a future Program.

**NOW, THEREFORE**, in accordance with the terms and conditions hereof, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KUS and Dealer hereby agree as follows:

1. Dealer shall participate in the Pilot Program, subject to the terms and conditions of this Agreement.
2. On a date to be determined by KUS, but which is currently expected to be in or about December 2023 or January 2024, KUS shall launch and operate the Pilot Program in conjunction with CarNow.
3. Dealer acknowledges and agrees that CarNow shall provide to KUS (a) the retail sale and lease prices for Dealer’s Inventory Listings and (b) such other information relating to Dealer’s Inventory Listings as may be necessary to display such listings on the KUS Website. Dealer hereby authorizes KUS and CarNow to, at any time and from time to time, take such steps as may be necessary to show Dealer’s Kia Inventory Listings on the KUS Website.
4. Dealer acknowledges that the first phase of the Pilot Program is available only to authorized Kia dealers who meet both the Pilot Participation Conditions and the General Conditions (collectively, the “**Conditions**”), which are defined as follows:

a. **“Pilot Participation Conditions”** means each of the following conditions: (i) the dealer uses CarNow as their digital retail provider, (ii) the dealer uses Kelly Blue Book on the dealer’s website for valuation of trade-ins, (iii) the dealer’s sales personnel use iPads that will be available to enable Dealer to use any application that is created by KUS or an authorized KUS vendor for the Pilot Program; and (iv) for each Kia Inventory Listing, the dealer has a clear dealer retail sale price that reflects the price at which a customer can purchase the vehicle (**“Dealer’s Listed Retail Price”**).

b. **“General Conditions”** means each of the following conditions: (i) the dealer is an authorized Kia dealer in good standing and (ii) the dealer complies with the Dealer Agreement, this Agreement and any and all Program Rules (as defined in Section 11 of this Agreement).

5. Dealer acknowledges that KUS has the right, at any time and from time to time, to determine, among other things, (a) the manner in which the Kia Inventory Listings of its authorized Kia dealers are displayed on the KUS Website, and (b) the name, branding and description of the Pilot Program (and, if implemented, the Program) that will be used on the KUS Website and displayed to consumers. Without limiting the foregoing, Dealer acknowledges that KUS has advised Dealer that (i) consumers who search for Kia vehicle inventory on the KUS Website will be shown Kia Inventory Listings of Kia dealers that fit within the criteria selected by the customer and that are for authorized Kia dealers who are within the mileage radius of the zip code input by the customer, (ii) consumers who view Dealer’s Kia Inventory Listings will have the ability on the KUS Website to use the same trade-in valuation tool, finance calculator and other tools that Dealer makes available on Dealer’s website for such listings, and (iii) consumers will have the opportunity to be transferred to Dealer’s website and to receive an email from Dealer with a QR code that includes certain details that Dealer will provide, such as Dealer’s Listed Retail Price and, where applicable, estimates for the trade-in valuation and estimate financing terms (such details are collectively referred to as the **“Quote”** and such email is referred to as the **“Quote Email”**).

6. Dealer shall include in the Quote Email, without limitation, each of the following: (i) the date on which the Quote expires, (ii) a clear and conspicuous statement explaining to the recipient that Dealer may offer for sale or sell the relevant vehicle to a third party prior to the expiration of the Quote and (iii) any additional terms and disclosures as may be required of Dealer under any applicable federal and state laws and regulations (**“Applicable Laws”**). In addition, Dealer shall not include any statement in the Quote Email that represents or suggests that by requesting or receiving the Quote, the customer has purchased or leased the vehicle that is the subject of the Quote.

7. Dealer shall continuously satisfy the Conditions. Without limiting the foregoing, Dealer shall ensure that its Kia Inventory Listings are kept updated at all times and that each such listing accurately reflects (a) Dealer’s actual retail sales price, and (b) any other terms and conditions relating to the prospective vehicle sale or lease, that apply at the time of the listing. Notwithstanding the foregoing, if Dealer intends to change its digital retail provider, trade-in valuation tool, or take any other action that will result in Dealer not satisfying one or more of the Conditions, Dealer shall notify KUS in writing at least thirty (30) days before such change.

8. Dealer shall, upon request from KUS, promptly provide to KUS any documents or information that KUS requests to verify Dealer’s compliance with this Agreement, the Conditions and/or the Program Rules (as defined in Section 11 of this Agreement), including, without limitation, documents sufficient to establish that for any sale made to a customer who received a Quote, Dealer’s actual retail sale price did not exceed Dealer’s Listed Retail Price contained in the Quote.

9. Dealer may withdraw from the Pilot Program, or from the Program, if implemented, by providing fourteen (14) days’ written notice of such withdrawal to the Regional Director for the

KUS Region in which Dealer is located (a "**Withdrawal Notice**"); provided, however, that KUS in the event that KUS establishes a different procedure for dealers to withdraw from the Program in connection with the issuance of Program Rules (as defined in Section 11 of this Agreement), Dealer shall comply with such procedure in the event Dealer elects to withdraw.

10. In the event that KUS advises Dealer in writing that KUS has decided to proceed with the Program, the terms and conditions of this Agreement shall continue to apply and shall govern Dealer's participation in the Program, subject to Dealer's obligation to comply with the Program Rules (as defined in Section 11 of this Agreement) and subject to Dealer's right to withdraw from the Program by sending a Withdrawal Notice.

11. Dealer acknowledges and agrees that KUS may supplement the terms and conditions of this Agreement by issuing guidelines or other additional terms and conditions for the Pilot Program and/or for the Program, if implemented (such guidelines or additional terms and conditions, "**Program Rules**"). KUS shall provide Dealer at least five (5) days' written notice before any Program Rules become effective. If, after receiving such notice from KUS, Dealer does not send a Withdrawal Notice within such five (5)-day period, then Dealer shall be deemed to have consented to, and Dealer shall at all times comply with, such Program Rules.

12. Dealer acknowledges and agrees that, as of the date of this Agreement, Dealer is not charged a fee by KUS for Dealer's participation in the Pilot Program. However, KUS reserves the right in its sole discretion to impose participation fees for the Pilot Program and, if implemented, the Program, by providing advance notice of such fee in accordance with Section 11 of this Agreement. Dealer further acknowledges that KUS had advised Dealer that KUS plans in the future to charge a monthly fee for participating in the Program (a "**Program Fee**"). In the event that KUS gives Dealer advance notice of a Program Fee in accordance with this Agreement, and Dealer does not send a Withdrawal Notice within five (5) days of receipt of KUS's notice, KUS shall be authorized to debit Dealer's Kia dealer account in the amount of the Program Fee and to post a monthly debit to Dealer's Kia dealer account in the amount of the Program Fee going forward so long as Dealer remains in the Program.

13. KUS shall at all times retain all right, title, and interest in and to the KUS name, logo and trademarks, and all content developed by (or on behalf of) KUS and made available to Dealer.

14. Dealer affirms that it can and will comply with all terms and conditions of this Agreement while also abiding by all Applicable Laws. Dealer is solely responsible for complying with Applicable Laws, including but not limited to, any laws and regulations pertaining to dealer advertising, licensing, adequate inventory/supply of vehicle(s) depicted in advertisements, incentive offer details, vehicle pricing and legal disclosures. In furtherance of the foregoing, Dealer is solely responsible for any and all advertising and marketing relating to Dealer's Kia operations, whether shown on the KUS Website or otherwise. Dealer shall indemnify, defend and hold KUS harmless from and against any and all claims, demands, damages, losses, investigations, liabilities, judgments, settlements, costs (including, without limitation, attorneys' fees and other expenses) arising out of, or relating to, Dealer's failure to comply with any Applicable Laws or any other failure by Dealer to comply with the terms of this Agreement or the Program Rules.

15. KUS may (a) terminate or modify the Pilot Program, at any time upon written notice to Dealer, for any reason or for no reason as determined by KUS, (b) terminate or modify the Program, if implemented, at any time upon written notice to Dealer, for any reason or for no reason as determined by KUS, and (c) may terminate this Agreement on written notice to Dealer upon, without limitation (i) the termination of the Pilot Program, (ii) the termination of the Program, if implemented, (iii) Dealer's failure to comply with any provision of this Agreement, and (iv) KUS's determination that Dealer does not satisfy one or more of the Conditions.

16. Nothing contained in this Agreement removes, modifies, discharges or releases any of Dealer's obligations under the Dealer Agreement, any addendum or amendment to the Dealer Agreement or any other agreement between Dealer and KUS. This Agreement is not part of the Dealer Agreement.

17. This Agreement may be executed in as many separate counterparts as may be deemed necessary or convenient by KUS and Dealer and each separate counterpart, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same agreement.

18. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and fully supersedes any and all prior agreements or understandings between the parties relating to such subject matter. Any representations or negotiations which are not specifically set forth in this Agreement are of no force or effect. Any modifications or amendments to this Agreement shall only be valid if they are in writing, signed by the parties. The parties agree to execute and deliver such other documents and take such further actions as may be necessary to carry out this Agreement.

**IN WITNESS WHEREOF**, the parties have signed, or have caused their respective authorized officers or designated persons to execute and deliver, this Agreement as of the day and year set forth below.

**Kia America, Inc.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[Dealer Entity Name] d/b/a [d/b/a Name]**

Dated: \_\_\_\_\_

**[INSERT LEGAL NAME OF DEALER ENTITY]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_