



## Kia Motors Finance Dealer Direct<sup>SM</sup> Access Agreement and Terms of Use

Effective: May 4, 2013

This Access Agreement and Terms of Use ("**Agreement**") governs your Dealer and your individual use of the Kia Motors Finance Dealer Direct<sup>SM</sup> website (the "**Website**") and mobile application (the "**Application**") operated by Adesa, Inc., including the grounding, bidding on and purchase of vehicles through the Website or Application.

BY ACCESSING OR USING THE WEBSITE OR BY DOWNLOADING, INSTALLING, ACCESSING AND/OR USING THE APPLICATION, YOU AGREE TO BE BOUND BY AND COMPLY WITH THIS AGREEMENT. YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF THE DEALER FOR WHICH YOU WORK AND ON BEHALF OF YOURSELF. IF YOU DO NOT AGREE TO THIS AGREEMENT, DO NOT ACCESS OR USE THE WEBSITE AND DO NOT ACCESS, USE, DOWNLOAD OR INSTALL THE APPLICATION.

You further agree to be bound by ADESA's [Privacy Policy](#) for the Website and the Mobile Application (the "**Privacy Policy**"), which is incorporated herein by reference.

We may change this Agreement at any time in our sole discretion. Your use of the Website or Application after we make any changes constitutes your acknowledgment and acceptance of the changes. Please review this entire Agreement regularly. If you do not agree to follow and be bound by the Agreement, you may not access or use the Website or the Application in any way. Please direct any questions to Dealer Services at the phone number on the Website or Application.

### A. TERMS AND CONDITIONS OF USE

- Other Defined Terms.** As used herein: (1) the terms "you" and "your" refer to the Dealer for whom you work, and any person (including individual Users) accessing or using the Website or the Application; (2) "**ADESA**," "we," "our," or "us" refer to Adesa, Inc., a Delaware corporation; (3) "Kia Motors Finance" is a trade name of Hyundai Capital America, a California corporation.
- Website and Application Operation.** The Website and Application are designed and operated by ADESA by separate agreement with Kia Motors Finance, an unaffiliated entity. Nothing herein is intended to create any agency, partnership, joint venture or franchise relationship between ADESA and Kia Motors Finance.
- Eligibility for Access.** The Website and Application shall be accessed only by currently licensed Hyundai Motor America-franchised motor vehicle dealerships who are authorized to do business with Kia Motors Finance and who have registered with ADESA (referred to as "**Dealer**"). The Website and Application may be accessed only by authorized principals, agents and employees of Dealers who have been issued individual user accounts by ADESA (together "**User**"). Kia Motors Finance reserves the right to limit access to certain pages or features of the Website and Application site to Users who meet certain criteria.
- License.**
  - Website.** Subject to strict compliance with this Agreement, ADESA grants Dealer and its Users (only in their capacity working for Dealers) a limited, non-exclusive, revocable, non-assignable and non-transferable license to access and use the Website and the Materials associated with

the Website (excluding source and object code in raw form or otherwise, other than as made available to access and use via standard web browsers to enable display on your device) on any Dealer-provided computer or device used to access the Website.

- (b) **Application.** Subject to strict compliance with this Agreement, ADESA grants Dealer and its Users (in their capacity working for Dealer) a limited, non-exclusive, revocable, non-assignable and non-transferable license to install and use the Application on a mobile device that Dealer owns or controls (and provides to Users), and that uses an appropriate operating system, and to access and use the Application and its Materials. This license does not allow Dealer or its Users to use the Application on any device that Dealer does not own or control. The terms of this license will govern any upgrades provided by us that replace or supplement the original Application unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.
- (c) **Materials.** The "Materials" shall refer to the Website and Application (including past, present and future versions) and all materials that are included in or are otherwise a part of the Website and Application, including, without limitation: graphics; layout; text; content; instructions; images; audio; videos; designs; advertising copy; trademarks; logos; domain names; trade names; service marks and trade identities; any and all copyrightable material (including source and object code); the "look and feel" of the Website and Application; the compilation, assembly and arrangement of the materials of the Website and Application; and all other materials related to the Website and Application.
- (d) **Restrictions.** The license rights granted in sections 4(a) and (b) above are subject to compliance with all other provisions in this Agreement and the following restrictions: (i) you must keep intact all trademark, copyright and other proprietary notices contained in the original Materials; (ii) you make no modifications to the Materials; (iii) you do not allow or aid or abet any third party (whether or not for your benefit) to: (A) copy or adapt the source or object code of the Website's or Application's software, HTML, JavaScript or other programming code; or (B) reverse engineer, decompile, reverse assemble, modify or attempt to discover any source code that the Websites or Application create to generate their pages or Materials or any software or other products or processes accessible through the Website or Application; and (e) you do not insert any code or product to manipulate the Materials in any way that affects any user's experience of the Website or Application.

4. **Changes or Updates to Website or Application; Termination.** We may change or discontinue the Website or Application and/or your access to any part of the Website or Application at any time, without notice to you, including the discontinuance of any functionality or feature of the Website or Application. We may also impose limits on certain features and services or restrict your access to parts or all of the Website or Application with or without notice or liability.

From time to time, we may make available updates or upgrades to the Application via software download or other means. Such download may require you to manually download an update or upgrade through the same source from which the Application was originally downloaded. Certain functions of the Application may be modified or discontinued as a result of any such update or upgrade, or may not be available if you have not downloaded all updates and upgrades made available by us or otherwise. You should periodically check whether an updated or upgraded version of the Application is available for download.

You agree that ADESA may terminate your use of the Website or Application, and/or exercise any other remedy available to it, if ADESA reasonably believes that you have violated or acted inconsistently with the letter or spirit of this Agreement, or violated the rights of ADESA, Kia Motors Finance, or any third party, or for any reason with or without notice to you. You agree that ADESA and Kia Motors Finance will not be held liable to you or any third party as a result thereof.

**5. Passwords and Security.** (a) Each User shall be assigned a unique User ID and Password, as well as security levels, which shall be required to access secure pages of the Website and Application and certain features of the Website and Application, including vehicle grounding and vehicle auction pages. All passwords used for the Website and Application are for Dealer business only and may be used only by the individual User to whom the password is assigned. Each User will be responsible for the security of the User's password. We may monitor passwords and, at our discretion, require a User to change it. (b) Each Dealer is responsible for maintaining the confidentiality of all passwords assigned to Dealer and its Users and for requesting any changes to the Dealer passwords necessary to protect confidentiality or otherwise prevent unauthorized use. The Dealer is responsible for any and all activities that occur, whether authorized or unauthorized, using any password assigned to any Dealer User. Dealer shall notify ADESA immediately if any User is no longer employed by Dealer, and of any unauthorized disclosure or use of the Dealer passwords or any other breach of security.

**6. Dealer Responsibility for Users.**

Dealer assumes responsibility for all acts and omissions of its Users who access the Website or Application. This in no way relieves any individual User from personal liability for his/her own acts, omissions or violations of this Agreement or other terms of use of the Website or Application.

**7. Disclaimers.**

THE WEBSITE AND APPLICATION, AND ALL OF THEIR MATERIALS, FEATURES AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE SPECIFICALLY DISCLAIM ALL WARRANTIES (EXPRESS OR IMPLIED) OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, FREEDOM FROM VIRUSES, AND OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW. ADESA, ITS CONTRACTORS, AGENTS AND AFFILIATES MAKE NO REPRESENTATIONS WHATSOEVER THAT ANY AUTOMATED SYSTEM WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL BE ERROR FREE. ADESA, ITS CONTRACTORS, AGENTS AND AFFILIATES FURTHER MAKE NO REPRESENTATIONS WHATSOEVER AS TO: (A) ANY AUTOMATED SYSTEM WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL BE ERROR FREE. (A) THE WEBSITE OR APPLICATION; (B) THE MATERIALS ON OR PROVIDED THROUGH THE WEBSITE OR APPLICATION; (C) ANY DOWNLOADABLE ITEMS; (D) THE FUNCTIONS MADE ACCESSIBLE ON OR THROUGH THE WEBSITE OR APPLICATION; (E) ANY PRODUCTS, SERVICES OR INSTRUCTIONS OFFERED OR REFERENCED AT THE WEBSITE OR APPLICATION; AND (G) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TRANSMITTED TO OR FROM ADESA OR VIA THE WEBSITE OR APPLICATION.

ADESA DOES NOT REPRESENT OR WARRANT THAT ANY DEFECTS IN THE WEBSITE OR APPLICATION WILL BE CORRECTED; OR THAT THE WEBSITE OR APPLICATION OR THE SERVER THAT MAKES THE WEBSITE OR APPLICATION AVAILABLE ARE FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES OR OTHER MALWARE. ADESA DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) ON THE WEBSITE OR APPLICATION IS ACCURATE, COMPLETE, CORRECT, ADEQUATE, USEFUL, TIMELY, RELIABLE OR OTHERWISE. ADESA DOES NOT WARRANT THAT YOUR USE OF THE WEBSITE OR APPLICATION IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND ADESA SPECIFICALLY DISCLAIMS SUCH WARRANTIES.

SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THIS AGREEMENT. BY ACCESSING, USING OR

DOWNLOADING THE WEBSITE OR APPLICATION, YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE WEBSITE OR APPLICATION.

#### **8. Limitation of Liability.**

YOU UNDERSTAND THAT THE USE OF THE INTERNET, WIRELESS COMMUNICATION NETWORKS, AND OTHER AUTOMATED SYSTEMS TO ACCESS INFORMATION AND SERVICES THROUGH THE WEBSITE AND APPLICATION INVOLVES RISKS. WE ARE NOT RESPONSIBLE FOR ERRORS OR NEGLIGENT USE OF THE WEBSITE OR APPLICATION, INCLUDING ERRORS IN INFORMATION SUBMITTED THROUGH THE WEBSITE OR APPLICATION, NEGLIGENT HANDLING OR SHARING OF PASSWORDS, SYSTEM OR COMMUNICATION FAILURES, LEAVING A COMPUTER UNATTENDED WHILE ACCESSING THE WEBSITE OR LEAVING A DEVICE UNATTENDED WHILE USING THE APPLICATION.

IN NO EVENT IS ADESA OR KIA MOTORS FINANCE, OR THEIR RESPECTIVE PARENT COMPANIES, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, LIABLE TO THE DEALER FOR LOST PROFITS OR ANY REGULAR, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE WEBSITE; (B) THE APPLICATION; (C) THE MATERIALS; (D) ANY DOWNLOADABLE ITEMS; (E) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF, THE WEBSITE OR APPLICATION; (F) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY ADESA, KIA MOTORS FINANCE, OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR USE OF THE WEBSITE OR APPLICATION; (G) ANY ACTION TAKEN IN CONNECTION WITH THIRD-PARTY INTELLECTUAL PROPERTY OWNERS; (H) ANY ERRORS OR OMISSIONS IN THE WEBSITE'S OR APPLICATION'S TECHNICAL OPERATION; OR (I) ANY DAMAGE TO ANY COMPUTER, HARDWARE, COMPUTER SOFTWARE, WIRELESS OR MOBILE DEVICES, MODEM OR OTHER EQUIPMENT OR TECHNOLOGY, INCLUDING WITHOUT LIMITATION DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF ADESA OR KIA MOTORS FINANCE HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED, IN WHOLE OR IN PART, BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SITES).

IN NO EVENT WILL ADESA OR KIA MOTORS FINANCE, OR THEIR RESPECTIVE PARENT COMPANIES, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HAVE TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION THAT EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100 USD).

YOUR ACCESS TO AND USE OF THE WEBSITE AND APPLICATION IS AT YOUR RISK. IF YOU ARE DISSATISFIED WITH THE WEBSITE OR APPLICATION OR ANY OF THE MATERIALS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE ACCESSING AND USING THE WEBSITE, APPLICATION AND THE MATERIALS.

**WAIVER OF UNKNOWN CLAIMS.** BY ACCESSING THE WEBSITE AND APPLICATION, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE

AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**9. Indemnification.**

You agree to indemnify, defend and hold ADESA, Kia Motors Finance, and their respective affiliates, agents, successors and assigns, from any and all costs, expenses, damages, liabilities, losses, judgments and claims, including attorneys' fees and expenses (collectively, "Losses") arising from or related to your use of the Website or Application, your breach of this Agreement or violation of any other terms and conditions of use posted on the Website or Application, whether by you or your officers, directors, employees, agents, successors and assigns, including, but not limited to, acts or omissions related to the grounding or purchase of any vehicle, odometer mileage and odometer mileage statements.

**10. Agreement and Modification.**

This is the entire agreement between the parties relating to the use of the Website or Application. If any of the terms and conditions is held void or unenforceable, that part will be deemed severable and the remaining provisions shall remain in effect. Nothing in this Agreement or on the Website or Application shall be deemed to modify the terms of any other agreements between you and ADESA, or between Dealer and Kia Motors Finance. In addition, supplemental terms and conditions may appear on specific pages of the Website or on specific sections of the Application. In the event of a conflict between this Agreement and those supplemental terms and conditions, the latter will govern. This Agreement may not be modified or deleted except in a writing executed by ADESA and Kia Motors Finance, except that ADESA may modify this Agreement at any time, in its sole discretion, by posting a revised Agreement on the Website or on the Application, as appropriate. During each visit to the Website and each use of the Application, you will be deemed to be apprised of and bound by the terms and conditions then in effect and posted on the Website or Application. IF AT ANY TIME YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU MUST STOP USING THE WEBSITE AND APPLICATION.

**11. Notice.**

We may transmit any notice to you required by this Agreement by e-mail, fax transmission, or posted on the Website or Application. Unless provided otherwise, all notices are deemed given 24 hours after transmission, unless we are notified that the transmission failed or was incomplete.

**12. Governing Law.**

This Agreement and your access to and use of the Website and Application, and all terms and conditions therein, are governed by the laws of the State of California and applicable federal law.

**13. Compliance with Law.**

While accessing the Website and Application, you shall obey all applicable laws, ordinances, rules and regulations of any federal, state or local governmental agency of competent jurisdiction. You agree that all of the information you provide is correct, current and complete.

**14. System Integrity.**

You shall not use any device, software, unauthorized human intervention or routine to interfere or attempt to interfere with the proper working of the Website or Application, or any auction conducted by thereon.

#### **15. Intellectual Property Rights.**

Except for data relating to Kia Motors Finance Customers and vehicles, and service/trademarks of Kia Motors Finance and its affiliates, the Materials associated with the Website and Application, including the selection, arrangement, and look and feel, are subject to the copyrights and other intellectual property rights of ADESA, its agents, affiliates and/or licensors. All rights are reserved.

None of the content of the Website or Application may be used, copied, modified or transmitted for commercial or public use or distribution, nor modified or reposted to other websites or mobile applications, without our express prior written consent. You agree to obtain our prior written consent before linking the Website to any other website, or linking any section of the Application to any other location. You acknowledge and agree that any breach of the provisions of this Section will cause us or the property owner immediate and irreparable harm for which there are no adequate remedies at law and will entitle us or the property owner to immediate injunctive relief, in addition to any other remedies which may be available.

#### **16. Privacy**

All data and information collected, used and/or disclosed by ADESA, its affiliates or agents in connection with your use of the Website and Application, which shall include, without limitation, all technical information about your device, system, application software, peripherals and the use thereof, shall be governed and subject to the following provisions and also ADESA's Privacy Policy for the Website and the Application.

Any and all information that we obtain from you, or from transactions processed through the Application, including names, addresses, telephone numbers, e-mail addresses and any other information concerning use, transactions, and traffic through the Application may be collected and used by us as provided in our Privacy Policy. We make no and disclaim all representations or warranties with regard to the sufficiency of the security measures used for data handling and storage. We will not be responsible for any actual, consequential special or incidental damages that result from a lapse in compliance with our Privacy Policy because of a security breach or technical malfunction.

#### **17. Location and Territorial Restrictions.**

a) Location. The Materials and information provided on the Website and Application are intended for use in the United States, and are not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject ADESA to any registration requirement within such jurisdiction or country. ADESA controls and operates the Website and Application from offices located in the United States and makes no representations or warranties that the information, products or services contained on the Website or Application are appropriate for use or access in other locations. Anyone using or accessing the Website or Application from other locations does so on his or her own initiative and is responsible for compliance with United States and local laws regarding online conduct and acceptable content, if and to the extent such local laws are applicable. We reserve the right to limit the availability of the Website and Application, and/or the provision of any content, program, product, service or other feature described or available thereon to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any such content, program, product, service or other feature that we provide.

b) Export Control.

Software related to or made available by the Website or Application may be subject to United States export controls. You represent and warrant that you are not located in a country that is subject to US Government embargo, or that has been designated by the US Government as a "terrorist supporting" country and you are not listed on any US Government list of prohibited or restricted parties. The Website and Application and their underlying technology may not be downloaded or exported or re-exported: (a) into (or to a resident or national of) Cuba, Iraq, Iran, Libya, North Korea, Syria or any country subject to United States embargo; (b) to anyone on the US Treasury Department's list of Specially Designated Nationals or on the US Commerce Department's Denied Party or Entity List; and (c) you will not export or re-export any software from the Website or the Application to any prohibited country, person, end-user or entity specified by US export control laws.

## 18. Survival.

The following sections shall survive termination of this Agreement, together with all other terms and conditions that by their nature or context are intended to survive termination: 6 (Dealer Responsibility for Users); 7 (Disclaimers); 8 (Limitation of Liability); 9 (Indemnification); 12 (Governing Law); 14 (System Integrity); 15 (Intellectual Property Rights); 16 (Privacy).

## 19. Application-Specific Provisions

a) **Wireless Access Charges.** Certain Application functions may require data access, and the provider of data access for your device may charge you data access fees in connection with your use of the Application. You are solely responsible for any data access or other charges you incur.

b) **Uninstalling the Application.** Uninstallation methods may vary depending on your device. To uninstall the Application, please use the application manager provided with your device or consult your device manual for reference.

c) **Provisions Related to Apple.** This Agreement is between you and ADESA, and not with Apple, Inc. ("Apple"). Apple is not responsible for the Application or the content thereof.

i) Your use of the Application on an Apple-branded device (that runs the iOS operating system software such as iPad, iPhone or iPod Touch) is subject to Usage Rules set forth in Apple's App Store Terms of Service, which you agree are binding on you.

ii) You are not entitled to any hard-copy documentation, support, telephone assistance, or enhancements or updates to the Application from Apple.

iii) Apple has no obligation to furnish any maintenance and support services regarding the Application.

iv) Apple will not be responsible for any claims by you or any third party relating to your possession and/or use of the Application, including but not limited to (a) product-liability claims, (b) any claims that the Application fails to conform to any applicable legal or regulatory requirement, (c) claims arising under consumer-protection laws or similar legislation, and (d) claims by any third party that the Application or your possession and use of the Application infringes the intellectual property rights of the third party. You agree that Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement, and that upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

v) You must comply with applicable terms of your agreements with third parties when using the Application.

## **B. VEHICLE GROUNDING**

### **1. Vehicle Grounding.**

a) Dealers accepting the return of an off-lease or off-balloon vehicle from a Kia Motors Finance customer shall use the vehicle grounding functionality on the Website or Application, as available, to effect the vehicle's return ("grounding") the same day the Dealer receives possession of the vehicle. Dealer shall enter all required grounding information accurately and shall follow all other instructions provided on the Website or Application and/or by Kia Motors Finance – including to ensure compliance with all applicable laws, rules and regulations, and to ensure that a customer's electronic signature in the Application complies with the federal E-SIGN Act and all applicable state or other laws governing electronic signatures. In addition, Dealer shall provide any customer who requests a physical printout of the odometer statement or turn-in receipt associated with the customer's return of a vehicle, Dealer shall promptly comply and deliver such requested physical printout(s) to the customer at the time of the vehicle's return.

### **2. Responsibility for Grounded Vehicles.**

Dealer agrees to store each vehicle grounded by it for at least fifteen (15) days in order to allow Kia Motors Finance sufficient time to market the vehicle for sale on the Website or for Kia Motors Finance or the purchasing Dealer to obtain possession of the Vehicle. Such storage shall be without cost to Kia Motors Finance or the purchasing Dealer. While the vehicle is in the grounding Dealer's possession, grounding Dealer shall exercise the same degree of care with respect to the grounded vehicle as it would with its own motor vehicle inventory. Grounding Dealer shall not operate or permit others to operate the grounded vehicle, or advertise or offer the grounded vehicle for retail sale, unless the grounding Dealer has first purchased the vehicle.

### **3. Fees and Charges.**

Under no circumstances shall Dealer solicit or receive from any Kia Motors Finance customer returning a vehicle any cost, fee or other charge in connection with the vehicle grounding, including, but not limited to, disposition fees, lease payments or early termination charges.

### **4. Customer Information Privacy and Safeguards.**

Certain "nonpublic personal information" about Kia Motors Finance's customers, as defined by the Gramm-Leach-Bliley Privacy Act (Public Law 106-102) and related FTC regulations (16 CFR. Part 313) (together "**GLB**"), including customers, names, account numbers, VIN's, account balances and statuses, may be available on the Website and Application. You may access and use such nonpublic personal information solely for the purpose of performing grounding services for Kia Motors Finance. You agree to protect the confidentiality of all nonpublic personal information, and you shall not use or disclose the same to any third parties, other than ADESA, without Kia Motors Finance's prior written consent, or in accordance with the GLB or other applicable law. Dealer shall restrict access to nonpublic personal information to those Users and other Dealer personnel who have agreed in writing to protect the confidentiality of the information and who need the information to perform the grounding services. Dealer warrants and represents that it has and shall continue to maintain commercially reasonable procedures to protect the nonpublic personal information from misuse, including, but not limited to physical, electronic and procedural safeguards to ensure the confidentiality of nonpublic personal information, in compliance with the GLB and FTC's "Safeguards Rule" (16 C.F.R. Part 314), and will otherwise comply with applicable laws governing the protection of personal information. You acknowledge and agree that any breach of the provisions of this Section will cause Kia Motors Finance immediate and irreparable harm for which there are no adequate remedies at law and will entitle Kia Motors Finance to immediate injunctive relief, in addition to any other remedies which may be available.



## C. TERMS AND CONDITIONS OF SALES

All vehicle auctions and sales processed via the Website are administered by ADESA for Kia Motors Finance. The following terms and conditions apply to all auctions and sales conducted on the Website:

### 1. **Purchases by Grounding Dealer**

Most off-lease and off-balloon vehicles grounded by a Dealer will be listed on the Website for exclusive purchase by the grounding Dealer for a limited time after grounding ("Exclusive Period") for a stated purchase price. During the Exclusive Period, Dealer may purchase the vehicle at the stated purchase price. Most grounded vehicles not purchased by the grounding Dealer will be listed on the Website for sale at auction for a limited time.

### 2. **Auction Sales**

Certain off-lease and off-balloon vehicles may be listed for sale by auction on the Website, subject to a reserve. Each auction begins at the time posted on the Website. Dealers may submit online bids to purchase any vehicle listed for sale at auction until the close of the auction. All bids are binding on the Dealer and the vehicle will be deemed sold to the highest bidder at the close of the auction, provided the reserve has been met.

### 3. **"Buy Now" Option.**

Vehicles listed for sale at auction may be purchased at a "Buy Now" price during the auction period. When a Dealer submits a "Buy Now" offer before the close of auction, the vehicle will be removed from the auction and deemed sold to Dealer for the "Buy Now" price.

### 4. **Auction Timing.**

All auctions are live during the time posted on the Website's home page. Dealers may preview or AutoBid on vehicles for an upcoming auction any time before the posted auction start time. Clicking the BID, AutoBid or BuyNow button obligates the Dealer to pay the purchase price and take delivery of the vehicle if the Dealer is the highest bidder at the close of the auction, when the BID and AutoBid functions are used, and every time the BuyNow function is used. All bids are valid and effective only after ADESA's computer system has processed them. All bids and "Buy Nows" are binding on Dealer and are unrevocable, except in exceptional circumstances at Kia Motors Finance's option.

### 5. **Right to Refuse Bid or Offer.**

ADESA or Kia Motors Finance have the right to reject or void any bid or other offer to purchase a vehicle if, in its sole discretion, it deems it was not made in good faith or are otherwise prohibited by this Agreement or applicable law. Kia Motors Finance may withdraw any vehicle listing at any time before a sale is consummated.

6. **Fees.** A transaction fee disclosed on the Website is payable by the purchasing Dealer to ADESA.

7. **Payment Methods.** Purchasing Dealer shall pay the purchase price and all fees in good funds within 24 hours after consummation of the sale. Payment may be by floorplan, check or authorized form of electronic funds transfer (EFT). Checks shall be made payable to ADESA and sent by overnight mail to the address on the Website. We are not responsible for checks lost in the mails.

## **8. Waiver of Implied Warranties.**

All vehicles are used, off-lease or off-balloon vehicles and are sold AS IS, without express warranties regarding the quality, condition, accuracy of mileage, or any other physical aspect of the vehicles. Except as prohibited by law, ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. All sales are final. Notwithstanding the foregoing, purchasing Dealer (other than the grounding Dealer) may initiate an arbitration, pursuant to the terms on the Website.

## **9. Additional Terms of Sale.**

Risk of damage to or loss of the vehicle shall pass to the purchasing Dealer upon consummation of the sale. Upon receipt of the purchase price and related transaction fees, in good funds, ADESA shall provide Dealer with the title certificate and/or other documents reasonably necessary to transfer title free of any liens or encumbrances. The purchasing Dealer shall be responsible for payment of all license, property or other vehicle taxes, registration and other government fees arising from its purchase, transfer, or ownership of the vehicle.

## **10. Vehicle Delivery and Shipping.**

Purchasing Dealer shall take delivery of each vehicle purchased within three (3) business days after payment of the purchase price. Purchasing Dealer is responsible for all transportation arrangements and expenses necessary to take delivery from the vehicle's location. A gate release email will be delivered to the purchasing Dealer and the Dealer in possession of the vehicle after payment is received. The gate release email will be used as proof of purchase when releasing vehicle into the possession of the purchasing Dealer. Gate release emails will contain a randomly generated number that should be used to match the gate release email between the purchasing Dealer and the grounding Dealer in possession of the vehicle.

## **11. Arbitration Agreement.**

- a. A purchasing Dealer (other than the grounding Dealer) who has a dispute about any vehicle purchased through the Website, on the ground that the vehicle has any undisclosed damage or defect, may submit the dispute to arbitration through ADESA. Any arbitration must be commenced within 24 hours after Dealer takes delivery of the vehicle or within five (5) calendar days after consummation of the sale, whichever occurs first. Vehicles purchased by the grounding Dealer are not eligible for arbitration.
- b. To commence arbitration, Dealer shall submit a written request to arbitrate to the ADESA Arbitration Manager on a form available on the Website. Pending resolution of the arbitration, Dealer shall: (i) use reasonable care in transporting and storing the vehicle, (ii) make the vehicle available to ADESA at reasonable times for inspection, and (iii) provide all documents and information reasonably requested by ADESA. Dealer is solely responsible for all expenses it incurs without the prior written approval of the ADESA Arbitration Manager or Kia Motors Finance. The ADESA Arbitration Manager shall notify Dealer of any decisions regarding the arbitrated vehicle within a reasonable time after all requested information has been submitted by Dealer.

Kia Motors Finance is a registered trade/service mark of, and is used with the permission of, Kia Motors America, Inc., a California corporation. Kia Motors Finance Dealer Direct is a trade/service mark, of and is used with the permission of, Hyundai Capital America. All rights are reserved.