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**FILED**

AUG 15 2019

**Division of Consumer Affairs**

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Deputy Attorney General  
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

AUTO MALL 46, INC. d/b/a NISSAN 46;  
EDISON MOTOR SALES, LLC d/b/a  
NISSAN OF EDISON d/b/a EDISON  
NISSAN; HAMILTON AUTOMOTIVE  
ENTERPRISES, L.L.C. d/b/a ROUTE 33  
NISSAN; ROUTE 46 CHRYSLER, LLC  
d/b/a ROUTE 46 CHRYSLER JEEP  
DODGE d/b/a CHRYSLER JEEP DODGE  
d/b/a ROUTE 46 DODGE; 46 AUTO  
IMPORTS, L.L.C. d/b/a 46 MITSUBISHI;  
ROUTE 46 SUBARU, LLC d/b/a ROUTE  
46 SUBARU; and MEADOWLANDS  
AUTO SALES, LLC d/b/a ROUTE 17  
NISSAN,

Respondents.

Administrative Action

**CONSENT ORDER**

**WHEREAS** this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -210 (“CFA”), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 to -26A.10 (“Motor Vehicle Advertising Regulations”), the Regulations Governing Automotive Sales Practices,

N.J.A.C. 13:45A-26B.1 to -26B.4 (“Automotive Sales Practices Regulations”), the Used Car Lemon Law, N.J.S.A. 56:8-67 to -80 (“UCLL”), and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.1 to -26F.18 (“UCLL Regulations”), have been or are being committed by Auto Mall 46, Inc. d/b/a Nissan 46, with a main business address of 440 Route 46, Totowa, New Jersey 07512, Edison Motor Sales, LLC d/b/a Nissan of Edison d/b/a Edison Nissan, with a main business address of 2 Andrews Drive, Woodland Park, New Jersey 07424, Hamilton Automotive Enterprises, L.L.C. d/b/a Route 33 Nissan, with a main business address of 2 Andrews Drive, Woodland Park, New Jersey 07424, Route 46 Chrysler, LLC d/b/a Route 46 Chrysler Jeep Dodge d/b/a Chrysler Jeep Dodge d/b/a Route 46 Dodge, with a main business address of 1655 Route 46, Little Falls, New Jersey 07424, 46 Auto Imports, L.L.C. d/b/a 46 Mitsubishi, with a main business address of 440 Route 46, Totowa, New Jersey 07512, Route 46 Subaru, LLC d/b/a Route 46 Subaru, with a main business address of 1655 Route 46 East, Little Falls, New Jersey 07424, and Meadowlands Auto Sales, LLC d/b/a Route 17 Nissan, with a main business address of 45 Route 17 South, Hasbrouck Heights, New Jersey 07604, as well as by their owners, officers, directors, shareholders, founders, managers, members, agents, servants, employees, representatives, attorneys, corporations, subsidiaries, affiliates, successors, and/or assigns (collectively, “Respondents”), in connection with Respondents’ Advertisement, offer for Sale, and Sale of Motor Vehicles (hereinafter referred to as the “Investigation”);

**WHEREAS** the Division alleges that Respondents violated the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the UCLL, and/or the UCLL Regulations by, among other things: (1) Misrepresenting to Consumers that certain Aftermarket Merchandise and Dealer-Installed Options are mandatory, when in fact, they are not; (2) Misrepresenting to Consumers that Service Contracts are “free,” but then charging Consumers for Service Contracts without disclosing the charge; (3) Misrepresenting to at least one Consumer that

her security deposit would not be cashed and that the Sale transaction was refundable, but then depositing her security and refusing to refund the transaction; (4) Misrepresenting the price of Motor Vehicles, Aftermarket Merchandise, and Dealer-Installed Options on Aftermarket Contracts, Sales Documents, and Lease documents by altering the price on the contract to reflect an amount other than that paid by the Consumer, by omitting the price paid by the Consumer on the contract, or by listing the price as “N/A” when the Consumer in fact did pay for the Motor Vehicle, Aftermarket Merchandise, or Dealer-Installed Option; (5) Advertising the price of Motor Vehicles by Including Dealer discounts that did not apply to all Consumers, and failing to disclose the discounts and associated disclaimers (e.g., Consumer must have purchased a Motor Vehicle from Respondents within the last three years, Consumer must offer a Motor Vehicle to trade in, Consumer must be a “royal” customer of Respondents) until the Consumer visited one of Respondents’ dealerships to purchase the Motor Vehicle at the Advertised Price; (6) Advertising Motor Vehicles for Sale or Lease at an Advertised Price, but then refusing to Sell or Lease the same Motor Vehicles to Consumers unless they agreed to pay \$2,000 more than the Advertised Price; (7) failing to pay administrative fees and to submit the Certification of Administrative Fees form; and (8) failing to transfer title at the time of Sale and/or to record the Consumer’s name on the title documents;

**WHEREAS** on June 6, 2018, Respondents attended an Executive Conference with the Division;

**WHEREAS** the Division and Respondents (collectively, “Parties”) have reached an amicable agreement resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondents have voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) without having admitted any fact or violation of law, and for good cause shown;

**IT IS ORDERED AND AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

**2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint concerning Respondents’ business practices.

2.2 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 “Advertised Price” shall be defined in accordance with N.J.A.C. 13:45A-26A.3 for purposes of the Motor Vehicle Advertising Regulations.

2.4 “Advertisement” shall be defined: (a) for purposes of the CFA, in accordance with N.J.S.A. 56:8-1(a); and (b) for purposes of the Motor Vehicle Advertising Regulations, in accordance with N.J.A.C. 13:45A-26A.3. These definitions shall apply to other forms of the word “Advertisement,” including “Advertise,” “Advertised,” and “Advertising.”

2.5 “Advertising Required Language” shall mean the language that the Motor Vehicle Advertising Regulations require to be Included in all Motor Vehicle Advertisements, specifically “price(s) Include(s) all costs to be paid by a Consumer, except for Licensing Costs, Registration Fees, and Taxes.”

2.6 “Affected Consumer” shall refer to any Consumer who has submitted to the Division directly or through another agency a complaint concerning Respondents’ business

practices prior to the Effective Date, whether identified in Schedule A or identified by the Division after the Effective Date.

2.7 “Aftermarket Contract” shall refer to the contract pursuant to which Respondents Sold Aftermarket Merchandise.

2.8 “Aftermarket Merchandise” shall refer to products or services added to a RBO, retail installment contract, or Lease, such as window etching or a tire protection package.

2.9 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.10 “Certification of Administrative Fees” shall be defined in accordance with N.J.A.C. 13:45A-26F.6(b)(2) for purposes of the UCLL Regulations.

2.11 “Consumer” shall be defined: (a) for purposes of the CFA, as any Person, who is offered Merchandise for Sale; and (b) for purposes of the UCLL Regulations, in accordance with N.J.A.C. 13:45A-26F.2.

2.12 “Dealer” shall be defined in accordance with: (a) N.J.S.A. 56:8-67 for purposes of the UCLL; (b) N.J.A.C. 13:45A-26F.2 for purposes of the UCLL Regulations; and (c) N.J.A.C. 13:45A-26A.3 for purposes of the Motor Vehicle Advertising Regulations.

2.13 “Dealer-Installed Option[s]” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.14 “Division” shall mean the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety.

2.15 “Documentary Service” shall be defined in accordance with N.J.A.C. 13:45A-26B.1.

2.16 “Include[s]” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.17 "Lease" shall be defined in accordance with N.J.A.C. 13:45A-26A.3 for purposes of the Motor Vehicle Advertising Regulations.

2.18 "MSRP" shall mean the manufacturer's suggested retail price.

2.19 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c).

2.20 "Misrepresent" shall mean to give a deceptive or misleading representation of fact.

2.21 "Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.22 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.23 "RBO" shall refer to the Retail Buyer's Order.

2.24 "Restitution" shall refer to all methods undertaken by Respondents to resolve Affected Consumer complaints and Additional Consumer complaints Including, the issuance of credits or refunds and the reversal of credit card or debit card charges.

2.25 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to all forms of the word "Sale," Including, but not limited to, "Sell" and "Sold."

2.26 "Sales Document" shall be defined in accordance with N.J.A.C. 13:45A-26B.1 and shall Include a RBO, retail installment contract, and Aftermarket Contract.

2.27 "State" and "New Jersey" shall refer to the State of New Jersey.

2.28 "Taxes, Licensing Costs and Registration Fees" shall be defined in accordance with N.J.A.C. 13:45A-26A.3 for purposes of the Motor Vehicle Advertising Regulations. This definition shall apply to other forms of the phrase "Taxes, Licensing Costs and Registration Fees," Including "Licensing Costs, Registration Fees, and Taxes."

2.29 "Used Motor Vehicle" shall be defined: (a) in accordance with N.J.S.A. 56:8-67 for purposes of the UCLL; (b) N.J.A.C. 13:45A-26F.2 for purposes of the UCLL Regulations; and (c) N.J.A.C. 13:45A-26A.3 for purposes of the Motor Vehicle Advertising Regulations.

### **3. REQUIRED AND PROHIBITED BUSINESS PRACTICES**

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, Including, but not limited to, the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the UCLL, the UCLL Regulations, the January 4, 2005 Final Consent Judgment between the Parties (“2005 Consent Judgment”), and the May 5, 2006 Consent Order between the Parties (“2006 Consent Order”).

3.2 Respondents shall not Misrepresent to Consumers that certain Dealer-Installed Options and/or Aftermarket Merchandise (e.g. window etch, service contracts) are mandatory, when in fact, they are not, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.3 Respondents shall not Misrepresent to Consumers that certain Aftermarket Merchandise (e.g., Service Contracts) are “free,” when in fact, they are not, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.7(a)(6).

3.4 Respondents shall itemize all Aftermarket Merchandise and Dealer-Installed Options in a Lease, as required by the Consumer Leasing Act, specifically N.J.S.A. 56:12-62, and Regulation M, specifically 12 C.F.R. 213.4.

3.5 Respondents shall not charge Consumers for Aftermarket Merchandise or Dealer-Installed Options that are not reflected in the Sales Documents, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.6 At the time of Sale or Lease, Respondents shall provide Consumers with a full and accurate copy of all Sales Documents, Including Aftermarket Contracts, signed by the Consumer, as required by the CFA, specifically N.J.S.A. 56:8-2.22.

3.7 At the request of a Consumer who has paid for a Motor Vehicle but declined to take possession of that Motor Vehicle, Respondents shall refund the Consumers for any transaction not embodied in written Sales Documents, signed by the Consumer, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.8 In any Advertisement in which Respondents offer a new or Used Motor Vehicle for Lease at an Advertised Price, Respondents shall Include the Advertising Required Language, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.6(c), (f)(9), and (g).

3.9 In any Advertisement in which Respondents offer a new Motor Vehicle for Sale at an Advertised Price, Respondents shall Include the Advertising Required Language, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.5(a)(2) and (d).

3.10 Respondents shall provide any and all refunds to Consumers for Aftermarket Merchandise in a reasonably timely manner after the requests for refunds have been submitted by Consumers and acknowledgment of the refunds have been made by Respondents, as required by the CFA, specifically N.J.S.A. 56:8-2.11.

3.11 Respondents shall accurately disclose the price of Motor Vehicles, Aftermarket Merchandise, and/or Dealer-Installed Options on Aftermarket Contracts, Sales Documents, and Lease documents. Respondents shall not alter the price on a contract, leave the space designated to reflect the price on the contract incomplete, or list the price as "N/A" when a Consumer paid for the Motor Vehicle, Aftermarket Merchandise, and/or Dealer-Installed Option, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.12 In any Advertisement in which Respondents offer a Used Motor Vehicle for Sale at an Advertised Price, Respondents shall Include the Advertising Required Language, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.5(b) and (d).



3.13 Respondents shall accurately Advertise the price of a Motor Vehicle in all Advertisements, and where applicable, Respondents shall disclose, adjacent to the Advertised Price, that it has been calculated by deducting a Dealer's discount, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.7(a)(3).

3.14 Where a Lease provides a Consumer with the option to purchase a Motor Vehicle at a price specified in the Lease, Respondents shall honor the Consumer's option to purchase the Motor Vehicle at the price specified in the Lease, but may charge the dealership's usual and customary transaction fee, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.15 Respondents shall not engage in a "bait and switch" by refusing to show, display, Sell, or Lease a Motor Vehicle at the Advertised Price, as required by the CFA, specifically N.J.S.A. 56:8-2.2, and the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.4(a)(1) and (a)(2)(i).

3.16 Respondents shall not Sell any Motor Vehicle unaccompanied by, or in the absence of, a valid title at the time of the transaction, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.17 Respondents shall disclose the Motor Vehicle's vehicle identification number at the time of Sale, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.18 In any Advertisement offering a new or Used Motor Vehicle for Lease, at an Advertised Price, Respondents shall Include the MSRP as it appears on the Monroney label, as required by the Motor Vehicle Advertising Regulations, specifically N.J.A.C. 13:45A-26A.6(c), (f)(8), and (g).

3.19 Respondents shall accurately disclose the MSRP on all Lease and/or Sale Documents, pursuant to the CFA, specifically N.J.S.A. 56:8-2.

3.20 Respondents shall pay UCLL administrative fees and shall submit the Certification of Administrative Fees form for each year that Respondents qualify as a Dealer, as required by the

UCLL regulations, specifically N.J.A.C. 13:45A-26F.6.

#### **4. AFFECTED CONSUMER COMPLAINT RESOLUTION**

4.1 The Affected Consumers' complaints shall be forwarded to the ADR Unit to reach a resolution through binding arbitration. Respondents agree herein to consent to this arbitration process and to be bound by the arbitrator's decision. Contemporaneously with its execution of this Consent Order, Respondents shall sign and return to the Division the Agreement to Arbitrate (a copy of which is attached as Exhibit A). Respondents further agree to be bound by the immunity provisions of the New Jersey Arbitration Act, specifically N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -7. Within forty-five (45) days from the Effective Date, the Division shall provide written notification to the Affected Consumers and Respondents of the referral of the Affected Consumers' complaint to the ADR Unit to reach a resolution through binding arbitration. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit B).

4.2 If Respondents fail or refuse to participate in the ADR program, the arbitrator may enter a default against Respondents. Unless otherwise specified in the arbitration award, Respondents shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondents' failure or refusal to participate in the arbitration process or to pay an arbitration award in a timely manner shall constitute a violation of this Consent Order.

4.3 If an Affected Consumer fails or refuses to participate in the ADR program, that Affected Consumer's complaint shall be deemed closed for purposes of this Consent Order.

4.4 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

## **5. ADDITIONAL CONSUMER COMPLAINTS**

5.1 For a period of two (2) years from the Effective Date, the Division shall forward to Respondents copies of any Additional Consumer complaints received by the Division. The Division shall forward to Respondents the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

5.2 After forwarding the complaint to Respondents, the Division shall notify the Additional Consumer, in writing, of the following: (a) that his/her complaint has been forwarded to Respondents; (b) that he/she should expect a response from Respondents within thirty (30) days from the date of this notice; and (c) that he/she has the right to refer his/her complaint to the ADR Unit for binding arbitration if Respondents dispute the complaint and/or requested relief.

5.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondents shall send a written response to the Additional Consumer, with a copy sent by first class mail, fax or email to the following:

New Jersey Division of Consumer Affairs  
Office of Consumer Protection  
Case Initiation and Tracking Unit  
124 Halsey Street, P.O. Box 45025  
Newark, New Jersey 07101  
Fax: (973) 273-8005  
E-mail: [cmt@dca.lps.state.nj.us](mailto:cmt@dca.lps.state.nj.us)

5.4 If Respondents do not dispute the Additional Consumer's complaint and requested relief, Respondents' written response shall so inform the Additional Consumer. Respondents shall contemporaneously provide Restitution to the Additional Consumer. Where Restitution concerns the reversal of credit or debit card charges, Respondents shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made to the Additional Consumer by check or money order made payable to the Additional Consumer.

5.5 If Respondents dispute the Additional Consumer's complaint and/or requested relief, Respondents' written response shall include copies of all documents concerning Respondents' dispute of the Additional Consumer complaint.

5.6 Within forty-five (45) days of receiving from the Division the Additional Consumer's complaint, Respondents shall provide the Division with written notification whether the Additional Consumer's complaint has been resolved. Such notification shall include the following:

- a. The Additional Consumer's name and address;
- b. Whether or not the Additional Consumer's complaint has been resolved;
- c. The Restitution provided to the Additional Consumer along with an acknowledgement signed by the consumer that their complaint has been resolved;
- d. Copies of all documents evidencing any Restitution provided to the Additional Consumer;
- e. Confirmation that Respondents sent all mailings to the Additional Consumer as required by this Section; and
- f. In the event Respondents' written response and/or Restitution to the Additional Consumer were returned as undeliverable, the efforts Respondents have undertaken to locate the Additional Consumer.

5.7 Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

5.8 If within sixty (60) days of Respondents' receipt of the Additional Consumer's complaint: (a) Respondents have not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondents have notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondents have notified the Division that the Additional Consumer refuses Respondents' offer of Restitution, the Division shall forward

such Additional Consumer complaint to the ADR Unit for binding arbitration. Respondents agree herein to consent to this arbitration process and to be bound by the arbitrator's decision. Contemporaneously with their execution of this Consent Order, Respondents shall sign and return to the Division the Agreement to Arbitrate, with each Respondent submitting a separate Agreement to Arbitrate (Exhibit A). Respondents further agree to be bound by the immunity provisions of the New Jersey Arbitration Act, specifically N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -7. The Division shall notify in writing any such Additional Consumer and Respondents of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (Exhibit B).

5.9 If Respondents refuse to participate in the ADR program, the arbitrator may enter a default against Respondents. Unless otherwise specified in the arbitration award, Respondents shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

5.10 Respondents' failure or refusal to comply with the requirements of Section 3 and Section 6, to participate in the arbitration process, and/or to timely pay an arbitration award shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondents.

5.11 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

5.12 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5.13 Following the expiration of the two (2) year period, Respondents may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods upon written notice by Respondents to the Division provided thirty (30) days prior

to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Respondents' request at its sole discretion for any reason.

## **6. SETTLEMENT PAYMENT**

6.1 The Parties have agreed to a settlement of the Investigation in the amount of Two Hundred Nineteen Thousand Nine Hundred Twenty-Seven and 54/100 Dollars (\$219,927.54) ("Settlement Payment").

6.2 The Settlement Payment is comprised of Two Hundred Thousand Dollars (\$200,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Four Thousand Eight Hundred Thirty-Three and 54/100 Dollars (\$4,833.54) in investigative costs, pursuant to N.J.S.A. 56:8-11, and Fifteen Thousand Ninety Four Dollars (\$15,094.00) in delinquent UCLL fees, pursuant to N.J.A.C. 13:45A-26F.6.

6.3 Respondents shall make the Settlement Payment in installments, as follows:

- a. Sixty-Nine Thousand Nine Hundred Twenty-Seven and 54/100 Dollars (\$69,927.54) shall be paid to the Division contemporaneously with the signing of this Consent Order, due on or before September 1, 2019.
- b. Seven Thousand Five Hundred Dollars (\$7,500.00) shall be paid as monthly installments for twenty (20) months, with each installment due on or before the 1st of each month, beginning October 1, 2019, and continuing until June 1, 2021.

6.4 The Settlement Payment shall be made by certified check, cashier's check, money order, credit card, or wire transfer payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Case Initiation and Tracking Unit  
New Jersey Department of Law and Public Safety  
Division of Consumer Affairs

124 Halsey Street, 7th Floor  
P.O. Box 45025  
Newark, New Jersey 07101  
Attention: Van Mallett, Lead Investigator

6.5 Upon making the Settlement Payment, Respondents shall immediately be fully divested of any interest in, or ownership of, the monies paid. All interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6.6 In the event Respondents fail to comply with the requirements of Section 6.3, the Division shall provide Respondents with notice seeking payment of any unpaid portion of the Settlement Payment ("Notice of Noncompliance"). Respondents shall be afforded a fifteen (15) day period from receipt of the Notice of Noncompliance within which to cure any noncompliance ("Cure Period"). In the event that Respondents fail to cure the noncompliance within the Cure Period, the Division will file a Certificate of Debt for any unpaid portion of the Settlement Payment.

6.7 In the event Respondents subsequently fail to comply with the requirements of Section 6.3, in lieu of issuing another Notice of Noncompliance, the Division may file a Certificate of Debt for any unpaid portion of the Settlement Payment and/or commence additional enforcement efforts.

## **7. GENERAL PROVISIONS**

7.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

7.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

7.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

7.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

7.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests or the people of the State.

7.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

7.7 This Consent Order shall be binding upon the Respondents, as well as their owners, officers, directors, shareholders, founders, managers, members, agents, servants, employees, representatives, successors and assigns, and any entity or device through which they may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their businesses.

7.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

7.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division, or any other governmental unit of the State of any act or practice of Respondents; or (b) an admission by Respondents that any of their acts or practices described in or prohibited by



this Consent Order are unfair, deceptive, or in violation of the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the UCLL, or the UCLL Regulations.

7.10 This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

7.12 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective party.

8.2 Respondents represent and warrant that they have fully read and understand this Consent Order, the legal consequences involved in signing this Consent Order, and that there are no other representations or agreements not stated in writing herein.

8.3 Respondents represent and warrant that Respondents have been advised by the Division to seek legal counsel to review this Consent Order and that Respondents have voluntarily chosen not to do so.

## **9. RELEASE**

9.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Settlement Payment in the manner specified in Section 6, the Division hereby agrees to release Respondents from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondents for violations of the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the UCLL, and/or the UCLL Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

9.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action provided, however, that nothing herein shall prevent the Respondents from raising the defense of set-off against an Affected Consumer or an Additional Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

## **10. PENALTIES FOR FAILURE TO COMPLY**

10.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

10.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, Section 5 of the 2005 Consent Judgment, Section 2 of the 2006 Consent Order, the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the UCLL, and/or the UCLL Regulations shall constitute a second, third, or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents may be liable for enhanced civil penalties.

## **11. COMPLIANCE WITH ALL LAWS**

11.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondents of their obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondents pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondents may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

## **12. NOTICES UNDER THIS CONSENT ORDER**

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Gregory Turner, Assistant Deputy of Enforcement  
New Jersey Division of Consumer Affairs  
Office of Consumer Protection  
124 Halsey Street, 7th Floor  
P.O. Box 45025  
Newark, New Jersey 07101

For the Respondents:

Frank Tackett, President  
Hamilton Automotive Enterprises, L.L.C.  
d/b/a Route 33 Nissan  
2 Andrews Drive  
Woodland Park, New Jersey 07424

Frank Esposito, Chief Executive Officer  
Route 46 Chrysler, LLC  
d/b/a Route 46 Chrysler Jeep Dodge  
d/b/a Chrysler Jeep Dodge  
d/b/a Route 46 Dodge  
1655 Route 46  
Little Falls, New Jersey 07424

Frank Tackett, Vice President  
Edison Motor Sales, LLC  
d/b/a Nissan of Edison  
d/b/a Edison Nissan  
2 Andrews Drive  
Woodland Park, New Jersey 07424

Frank Esposito, Owner  
46 Auto Imports, L.L.C.  
d/b/a 46 Mitsubishi  
440 Route 46  
Totowa, New Jersey 07512


Frank Esposito, Chief Executive Officer  
Auto Mall 46, Inc.  
d/b/a Nissan 46  
2 Andrews Drive  
Woodland Park, New Jersey 07424

Frank Tackett, Owner  
Route 46 Subaru, LLC  
d/b/a Route 46 Subaru  
1655 Route 46 East  
Little Falls, New Jersey 07424

Frank Tackett, Owner  
Meadowlands Auto Sales, LLC  
d/b/a Route 17 Nissan  
45 Route 17 South  
Hasbrouck Heights, New Jersey 07604

IT IS ON THE 15 DAY OF August, 2019 SO ORDERED.


GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
PAUL R. RODRIGUEZ, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

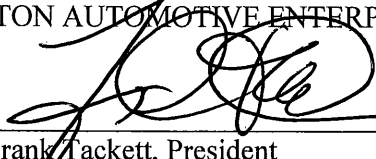
GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Chanel Van Dyke  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029-5029  
Newark, New Jersey 07101

Dated: 8/14, 2019

FOR THE RESPONDENTS:

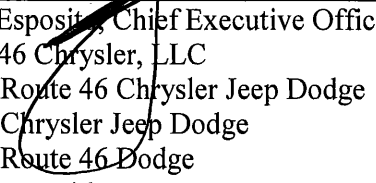
HAMILTON AUTOMOTIVE ENTERPRISES, L.L.C. d/b/a ROUTE 33 NISSAN

By:   
Frank Tackett, President  
Hamilton Automotive Enterprises, L.L.C.  
d/b/a Route 33 Nissan  
2 Andrews Drive  
Woodland Park, New Jersey 07424

Dated: 7/29/19, 2019

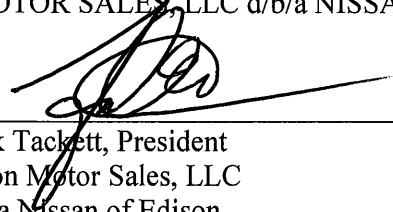
ROUTE 46 CHRYSLER, LLC d/b/a ROUTE 46 CHRYSLER JEEP DODGE d/b/a CHRYSLER JEEP DODGE d/b/a ROUTE 46 DODGE

By: \_\_\_\_\_ Dated: 7/29/19, 2019

  
Frank Esposito, Chief Executive Officer  
Route 46 Chrysler, LLC  
d/b/a Route 46 Chrysler Jeep Dodge  
d/b/a Chrysler Jeep Dodge  
d/b/a Route 46 Dodge  
1655 Route 46  
Little Falls, New Jersey 07424

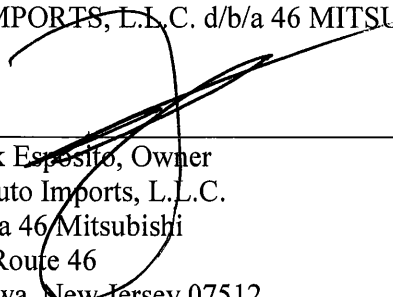
EDISON MOTOR SALES, LLC d/b/a NISSAN OF EDISON d/b/a EDISON NISSAN

By: \_\_\_\_\_ Dated: 7/29/19, 2019

  
Frank Tackett, President  
Edison Motor Sales, LLC  
d/b/a Nissan of Edison  
d/b/a Edison Nissan  
2 Andrews Drive  
Woodland Park, New Jersey 07424

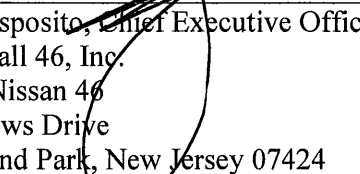
46 AUTO IMPORTS, L.L.C. d/b/a 46 MITSUBISHI

By: \_\_\_\_\_ Dated: 7/29/19, 2019


  
Frank Esposito, Owner  
46 Auto Imports, L.L.C.  
d/b/a 46 Mitsubishi  
440 Route 46  
Totowa, New Jersey 07512

AUTO MALL 46, INC. d/b/a NISSAN 46


By: \_\_\_\_\_ Dated: 7/29/19, 2019

  
Frank Esposito, Chief Executive Officer  
Auto Mall 46, Inc.  
d/b/a Nissan 46  
2 Andrews Drive  
Woodland Park, New Jersey 07424

ROUTE 46 SUBARU, LLC d/b/a ROUTE 46 SUBARU

By:  \_\_\_\_\_ Dated: 7/29/19, 2019  
Frank Tackett, Owner  
Route 46 Subaru, LLC  
d/b/a Route 46 Subaru  
1655 Route 46 East  
Little Falls, New Jersey 07424

MEADOWLANDS AUTO SALES, LLC d/b/a ROUTE 17 NISSAN

By:  \_\_\_\_\_ Dated: 7/29/19, 2019  
Frank Tackett, Owner  
Meadowlands Auto Sales, LLC  
d/b/a Route 17 Nissan  
45 Route 17 South  
Hasbrouck Heights, New Jersey 07604

**Schedule A – Affected Consumers**

Soltero, D.  
Haggis, W.  
Williamson, A.  
Soto, J.  
Savarese, M.  
Pascual, S.  
Vanorden, V.



# **EXHIBIT A**

(Agreement to Arbitrate)

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT  
153 Halsey Street - Seventh Floor  
Newark, New Jersey 07101  
(973) 504 - 6100

**Arbitration Program**

*PLEASE REVIEW THIS DOCUMENT. SIGN IT AND RETURN IT TO THIS OFFICE IN THE SELF STAMPED ENVELOPE NO LATER THAN 10 DAYS AFTER RECEIVING THIS AGREEMENT. KEEP A COPY FOR YOUR OWN RECORDS.*

**INTRODUCTION**

In order to resolve a pending dispute that resulted in the filing of a complaint with or against a State agency, you have agreed to participate in an arbitration conducted by the **Alternative Dispute Resolution Unit ("ADR Unit")** of the New Jersey Department of Law and Public Safety's Division of Consumer Affairs.

Arbitration is a process in which a trained volunteer reviews the facts of the case and the issues in question in order to come up with a final decision which will resolve the controversy. Although the arbitrator is not a judge, the decision issued is final and binding on the parties who have agreed to participate in arbitration as a method of settling a dispute.\*

There are certain of your rights that may be altered by participating in arbitration and there are certain agreements to which you must be willing to commit in order for this process to be successful in resolving your complaint. Completion of the "Agreement to Arbitrate" is designed to ensure that you understand the process involved, as well as the impact of a completed arbitration.

By signing this form, you agree to comply with its terms and with the terms of any agreed upon resolution, as set forth below.

**DISCLOSURE**

Before agreeing to participate in arbitration, all parties must be aware that the arbitrator's decision is final and binding and after a decision has been issued the parties cannot use any process, including the court system, to seek further relief for the dispute at hand. Essentially, once an arbitration has been completed and a decision issued, there is no more dispute. Consequently, decisions are issued as conclusions only. There will be no findings of fact, and no opinion or rationale given by the arbitrator. In short, the arbitrator's award is final, binding and prevents either party from looking for further assistance through any other process.

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\* There are only a very few instances in which an arbitration can be reviewed by a court or reconsidered by the arbitrator. An arbitrator's award is final and usually not subject to review by the courts unless it can be shown that fraud, corruption, or misconduct occurred in the process of arbitration or by the arbitrator. This is not legal advice nor is it a legal interpretation upon which any party can rely. At no time can any member of the ADR Unit, including the arbitrator, offer or provide any form of legal advice to a participant in dispute resolution.

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT

**AGREEMENT TO ARBITRATE**

By signing this form and participating in the arbitration process, I hereby state that I understand and agree with the following:

1. I am willingly and voluntarily participating in arbitration;
2. I will participate fully in the arbitration process and participate in good faith at all times;
3. I will not subpoena or ask the arbitrator or any member of the ADR staff and its legal counsel to testify or divulge any records or information from the arbitration process in any judicial, administrative or other proceeding or action;
4. I agree that neither the arbitrator nor the staff of the ADR Unit will be liable in anyway for damages or injunctive relief for any act or omission in connection with the arbitration conducted in accordance with the rules, procedures and guidelines provided to me before the start of the session;
5. I agree that arbitration sessions are to be private and that persons other than the parties, their attorney or other representative, the director of the ADR Unit or an authorized representative and the arbitrator may attend the proceedings only with the permission and agreement of both parties and the arbitrator;
6. I will not record the arbitration session by or with any electronic or other recording or stenographic device;
7. I will comply with all the rules, procedures and guidelines set out in the document and established by the arbitrator at the start of the session;
8. There will be no finding of fact, and no opinion or rationale provided by the arbitrator.

I HAVE READ THIS DOCUMENT CAREFULLY AND UNDERSTAND THE RULES SET FORTH ABOVE. THE ARBITRATION PROCESS HAS BEEN EXPLAINED TO ME AND ALL OF MY QUESTIONS HAVE BEEN ANSWERED. I UNDERSTAND THAT I DO NOT HAVE TO PARTICIPATE IN THIS ARBITRATION PROGRAM AND THAT PARTICIPATION IS NOT A PRECONDITION TO SEEKING ANY OTHER RELIEF PRIOR TO THE BEGINNING OF THE ADR PROCESS. I AM AWARE AND AGREE THAT ONCE I HAVE SIGNED THIS AGREEMENT TO ARBITRATE I MAY NO LONGER WITHDRAW FROM THIS ARBITRATION PROCESS. ALSO, WHEN A DECISION IS REACHED ALL PARTIES ARE BOUND BY THAT DECISION. MOREOVER, THAT DECISION IS BINDING AND PREVENTS EITHER PARTY FROM PURSUING ADDITIONAL RELIEF RELATED TO THIS MATTER IN ANY OTHER FORUM OR THROUGH ANY OTHER PROCESS.

COMPLAINANT

RESPONDENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# **EXHIBIT B**

(ADR Unit Guidelines)

NEW JERSEY OFFICE OF THE ATTORNEY GENERAL  
DIVISION OF CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT

**ADR UNIT GUIDELINES**

**INTRODUCTION**

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") Unit in May 1992 as an independent, non-advocacy unit within the Division. It was designed to offer a method of resolving problems without using the court system, thereby avoiding the time and expense of court cases. Two programs are available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator who, as an uninvolved third party, helps to create an atmosphere that is conducive to resolving the issues. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and then issues a final decision that all parties must follow. Both approaches use trained volunteers and are generally available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available to various State agencies.

**I. DEFINITIONS**

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

(1) **"Arbitration"** is a voluntary means of settling a disagreement in which an arbitrator assigned by the ADR Unit reviews the facts of the case, meets with the parties, and issues a final non-reasoned award that is binding on everyone involved. (A "non-reasoned award" means the parties receive the decision reached by the arbitrator but not the rationale that went into reaching that decision.) Once such a decision is issued, the parties' right to seek further review through the court system is very limited. If necessary, however, the terms of the award can be enforced by the courts. (See discussion below). For the purposes of these Guidelines, an arbitration begins at the time the parties sign the arbitration agreement. (See section VI below.)

(2) An **"arbitrator"** is a volunteer trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.

(3) A **"complaint"** is a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.

(4) A **"complainant"** is the person who brings the dispute to the attention of the Division or the Unit.

(5) **"Mediation"** is the process by which a mediator works with the parties in an effort to help them craft and agree upon a solution to the dispute. For the purposes of these Guidelines, a mediation begins at the time the parties agree to mediate. That settlement, once reached, is binding on the parties. (See section VI below.)

(6) A **"mediation document"** is any written material prepared before or during the mediation for purposes of the mediation. Such papers may include, but are not limited to, memoranda, notes, files and records.

(7) A **"mediator"** is a volunteer trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a resolution upon the parties.

(8) A **"party"** is a complainant or respondent and may be an individual, corporation, association or other legal entity.

(9) A **"respondent"** is the party against whom the complaint is filed.

## II. **WHAT IS MEDIATION?**

In mediation, through one or more sessions, the mediator encourages the parties to explain their positions about the dispute and helps them develop a solution that is acceptable to them. This is a voluntary procedure that, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. (At the discretion of the mediator, the mediation may be conducted by telephone.) The mediator determines when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate, and when they agree, the parties will jointly pay for such advice. Arrangements for obtaining that input will be made by the mediator or by agreement of all parties.

It is important to note that although mediation is non-binding, once a resolution is reached and agreed upon by the parties, it is binding on all involved, as would any agreed upon contract.

## III. **WHAT IS ARBITRATION?**

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute, hears testimony, accepts evidence and evaluates the positions of the parties. Unlike mediation where the parties have agreed to a resolution, in arbitration the arbitrator issues a binding decision. That decision is in the form of a non-reasoned award; that is, no findings of fact and no opinion or rationale are provided by the arbitrator. Additionally, arbitration is not as formal as a court

proceeding. For example, evidence often unacceptable in a court proceeding may be admissible in an arbitration. The parties are bound by and must follow the decision. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards cannot be challenged in court except under very limited circumstances. For example, in order to overturn a decision, there must be a showing of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration. Once a dispute has been submitted for arbitration and an award is issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to the dispute fails to comply with the arbitrator's decision, the offended party may apply to a court of appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23B-22.

#### **IV. GENERAL GUIDELINES FOR DISPUTE RESOLUTION**

##### **Standard for Participation**

The Director of the ADR Unit accepts referrals from State agencies for mediation or arbitration of complaints that are appropriate for those types of dispute resolution. Such complaints include, among others, requests for restitution, replacements or exchanges of merchandise, warranty claims, and specific performance under a contract.

The Director of the Unit may, in his discretion, decline to accept matters for dispute resolution if the matter is not suitable for arbitration or mediation. In making that determination, the Director shall consider the nature of the relief sought by the complainant (money damages or other relief that can be awarded) and whether the responding party continues to exist or has the resources to address the complaint (for example, the company is bankrupt). If the referral is made pursuant to a Consent Order from a State Agency, any decision to decline to attempt dispute resolution shall be promptly conveyed to that agency along with the reasons for the decision.

##### **Complaint Review**

The ADR Unit reviews the complaints it receives to determine their suitability for the Unit's dispute resolution processes. If the Unit finds that a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved. Though the ADR Unit and/or the parties decide if mediation or arbitration will be used, generally, unless otherwise required by consent order, matters will be mediated.

If the ADR Unit considers a complaint inappropriate for its dispute resolution procedures, it will return the complaint to the agency that initially referred it to the Unit.

##### **Beginning the Process**

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. When



mediation is the proposed process, the letter to the complainant says that the complaint has been received and that the other party, the respondent, is being contacted. The letter to the respondent offers a brief description of the complaint. The letters to both parties name the neutral third party appointed and state how to best contact that person.

In matters to be arbitrated, both parties will be informed of the date of the hearing through ADR Unit staff. In arbitration, ex parte communication, that is contact by one party without the presence of the other, is strictly prohibited. Once the parties agree to participate in dispute resolution, the process is started. Should an arbitrator or mediator become unwilling or unable to serve, the ADR Unit will appoint an alternate.

### **Representation**

Any party may be represented by an attorney during dispute resolution proceedings. In mediation, any individual designated by a party may accompany the party to and participate in a mediation.

### **Date, Time and Place of Mediation or Arbitration**

The mediator shall set the date and time of each conference. In the case of an arbitration, the ADR Unit staff, will fix the date and time of the hearing. Unless the parties are notified otherwise, sessions are held at the offices of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In mediation, the mediator and the parties may decide that the sessions will be conducted over the telephone. In arbitration, telephone hearings will only be conducted under extenuating circumstances. The Unit attempts to arrange convenient dates and times for all sessions. In the case of an arbitration, if necessary, the date and time of the hearing may be imposed by the ADR Unit staff. Parties failing to cooperate in setting a date and time or failing to appear when required, may forfeit the ability to present their case to the arbitrator and a decision may be rendered without their ability to offer testimony or evidence beyond those documents submitted to the Unit in advance of the arbitration.

### **Identification of Matters in Dispute**

#### **A) Mediation**

During an initial telephone conference, the mediator and the parties will discuss what information should be provided, including a brief description of the facts, issues and positions in dispute and the parties' desired outcome. That information and copies of any supporting documents must be produced at least five days before the first session. Documents may be exchanged between the parties if everyone expressly agrees to that process. The mediator may ask that additional information be provided before, during or after the sessions.

#### **B) Arbitration**

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae will be sent to each party to the dispute. (Please

see the **Disclosure** section - **D**, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. At least ten days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, all appropriate documents and background information that are relevant to the dispute and a statement of the relief sought through the arbitration process. Arbitration, through the ADR Unit will not award punitive or consequential damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of subpoena.

Parties will be given the opportunity to present their case in its entirety, including all necessary documentation. However, unless otherwise expressly stated by the arbitrator, no evidence or testimony will be accepted by the arbitrator once the hearing has been concluded.

**C) Written Requirements**

Before starting a face-to-face mediation or an arbitration, parties must agree to certain terms. There are agreement forms that must be read, understood and signed before anyone can participate. Copies of those forms are provided to the parties prior to the initial mediation or arbitration session but are signed only in the presence of the mediator or arbitrator. (Generally parties who participate in telephone mediation are not required to sign the form. They will, however, be required to indicate acceptance of the terms governing the mediation during the telephone conference.)

**D) Disclosure**

A person appointed as an arbitrator shall disclose to the ADR staff and to the parties any circumstance likely to raise any question as to the arbitrator's impartiality or independence, including any bias or financial interest or past or present relationship with parties or their representatives. This shall remain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or independence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

**V Privacy**

All sessions are private and confidential. Only parties and their designated representatives may attend conferences and/or hearings. Other persons may attend only with the permission of the parties and with the consent of the mediator or arbitrator and the Unit Director.

**VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS**

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on a free exchange of information, so it is important that parties feel free to discuss issues openly. Information provided by one party will not be revealed to the opposing party without the explicit authorization of the revealing side. Mediators cannot be forced to release any

information or to testify about the mediation in a lawsuit or court proceeding. All mediation documents are considered confidential. (For a full description of these rights and responsibilities please see N.J.S.A. 2A:23C-4, 5 and 6.)

In arbitrations, information provided to the arbitrator must also be given to the opposing party. Parties must maintain the confidentiality of the arbitration and may not disclose information except to the staff of the ADR Unit. Confidentiality as discussed in this section, takes effect upon the parties' agreement to participate in the ADR process. The following documents related to the arbitration proceeding are ***not*** considered confidential and may be available upon request to persons or entities:

- a) The complaint, with all its attachments, that initiated the arbitration;
- b) The response to the initial complaint, with all its attachments,; and
- c) The arbitrator's award.

All other documents submitted in the course of the arbitration are considered confidential and not available to any person or entity except the parties involved, the staff of the ADR Unit and its counsel.

No taped or stenographic record may be made of any dispute resolution process.

## **VII TERMINATION**

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation will not be productive; or
- 4) a statement by a party or parties withdrawing from the mediation proceedings.

An arbitration will be concluded in one of the following ways:

- 1) upon the issuance of a decision by the arbitrator;
- 2) a written agreement between the parties resolving the dispute; or
- 3) a written statement by all parties that they no longer wish to continue the arbitration.

## **VIII EXCLUSION OF LIABILITY**

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

**IX INTERPRETATION AND APPLICATION OF RULES**

Mediators and arbitrators shall interpret and apply these rules as they relate to their duties and responsibilities. All other rules shall be interpreted and applied by the Director of the ADR Unit.

*Revised December 2010*