

MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

May 19 2022

Division of Consumer Affairs

By: Jesse J. Sierant  
Deputy Attorney General  
Assistant Section Chief  
Consumer Fraud Prosecution Section  
(973) 648-4802

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

OPEN ROAD AUTO GROUP; EAST  
BRUNSWICK VEHICLE SALES,  
INC.; RYAN MOTORS OF PASSAIC,  
INC.; RYAN MOTORS OF  
MORRISTOWN, INC.; OPEN ROAD  
OF EDISON, INC.; MORRIS  
COUNTY AUTO SALES, INC.; OPEN  
ROAD OF NEWTON, L.L.C.; RYAN  
MOTORS OF DENVILLE, L.L.C.;  
OPEN ROAD OF MORRIS COUNTY,  
L.L.C.; OPEN ROAD OF UNION,  
L.L.C.; NEW BRUNSWICK-EDISON  
RECREATIONAL VEHICLES, INC.;  
RYAN MOTOR CORP.; ORM  
MOTOR CO., L.L.C.; OPEN ROAD  
OF BRIDGEWATER, L.L.C.; OPEN  
ROAD OF SPRINGFIELD, L.L.C.;  
OPEN ROAD OF SOMERVILLE,  
L.L.C.,

Respondents.

Administrative Action

**ASSURANCE OF  
VOLUNTARY COMPLIANCE**

**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 -227 (“CFA”), the Regulations

Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 to -.10 (“Motor Vehicle Advertising Regulations”), the Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B.1 to -.4 (“Automotive Sales Practices Regulations”), the Regulations Governing Automotive Repairs, N.J.A.C. 13:45A-26C.1 to -.2 (“Automotive Repair Regulations”), the Used Car Lemon Law, N.J.S.A. 56:8-67 to -80.1 (“UCLL”), and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.1 to -.18 (“UCLL Regulations”), have been or are being committed by Open Road Auto Group, with a main business address of 1140 Highway 22 Suite 304, Bridgewater, New Jersey 08807; East Brunswick Vehicle Sales, Inc., with a main business address of 1041 Route 18, East Brunswick, New Jersey 08816; Ryan Motors of Passaic, Inc., with a main business address of 1425 Route 23 South, Wayne, New Jersey 07470; Ryan Motors of Morristown, Inc., with a main business address of 170 Madison Avenue, Morristown, New Jersey 07960; Open Road of Edison, Inc., with a main business address of 1140 Highway 22, Suite 304, Bridgewater, New Jersey 08807; Morris County Auto Sales, Inc., with a main business address of 111 Ridgedale Avenue, Morristown, New Jersey 07960; Open Road of Newton, L.L.C., with a main business address of 119 Hampton House Road, Newton, New Jersey 07860; Ryan Motors of Denville, L.L.C., with a main business address of 840 US Highway 46, Kenvil, New Jersey 07847; Open Road of Morris County, L.L.C., with a main business address of 400 Route 22, Bridgewater, New Jersey 08807; Open Road of Union, L.L.C., with a main business address of 2675 Route 22, Union, New Jersey 07083; New Brunswick-Edison Recreational Vehicles, Inc., with a main business address of 50 US Route 1 North, Edison, New Jersey 08817; Ryan Motor Corp., with a main business address of 352 Route 18, East Brunswick, New Jersey 08816; ORM Motor Co., L.L.C., with a main business address of 1140 Route 22, Bridgewater, New Jersey 08807; Open Road of Bridgewater, L.L.C., with a main business address of 1250 Route 22 East, Bridgewater, New Jersey 08807; Open Road of Springfield, L.L.C., with a main business address of 2685 Route 22

West, Union, New Jersey 07083; and Open Road of Somerville, L.L.C., with a main business address of 1140 Route 22, Bridgewater, New Jersey 08807, as well as by their owners, officers, directors, managers, members, employees, representatives and agents (collectively, “Respondents” or “Open Road”), in connection with Respondents’ Advertisement, Offer for Sale and Sale of Used 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 Automotive Repair Regulations, the UCLL, and the UCLL Regulations by, among other things: (1) failing to disclose prior accident history, (2) failing to honor vehicle Warranties, (3) failing to provide the Vehicle Identification Numbers in Used Motor Vehicle Advertisements; (4) failing to use proper Advertising language; and (5) deceptive advertising;

**WHEREAS** the Division and Respondents, represented by counsel, (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 this Assurance of Voluntary Compliance (hereinafter “Assurance”) without having admitted any fact or violation of law, and for good cause shown:

**IT IS AGREED** as follows:

**1. EFFECTIVE DATE**

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

**2. DEFINITIONS**

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

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 Alternative Dispute Resolution Unit of the Division.

2.3 “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” and “Advertised.”

2.4 “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.

2.5 “Aftermarket Contract” shall refer to the contract pursuant to which Respondents sold Aftermarket Merchandise.

2.6 “Aftermarket Merchandise” shall refer to products or services acquired by a Consumer for an additional charge in connection with a Consumer’s purchase or Lease of a Motor Vehicle and which are listed on an RBO, as well as an Aftermarket Contract, and includes such things as vehicle service contracts, GAP insurance, vehicle maintenance plans, anti-theft window etching protection and tire/wheel protection.

2.7 “Attorney General” shall refer to the Attorney General, or the Acting Attorney General, of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.8 “Consumer” shall refer to any Person, who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.9 “Customer” shall be defined in accordance with N.J.A.C. 13:45A-26C.1, for purposes of the Automotive Repair Regulations.

2.10 “Dealer-Installed Option[s]” shall be defined in accordance with N.J.A.C. 13:45A-26A.3, and shall include running boards, roof racks, nerf bars, aftermarket tires and rims, pickup bed covers, pinstriping, LoJack anti-theft devices and products of similar import.

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

2.12 “M.S.R.P.” shall mean the manufacturer’s suggested retail price.

2.13 “Misrepresent” shall mean to give a deceptive or misleading representation of fact.

2.14 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.15 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.16 “Represent” shall mean to present, describe, state or set forth through statements, conduct, graphics, language and/or documents.

2.17 “RBO” shall refer to the Retail Buyer’s Order.

2.18 “Restitution” shall refer to all methods undertaken by Respondents to resolve Affected Consumer Complaints and Additional Consumer Complaints including, but not limited to, the issuance of credits or refunds and the reversal of credit card or debit card charges.

2.19 “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.”

2.20 “Sales Document” shall be defined in accordance with N.J.A.C. 13:45A-26B.1, and includes RBOs and Retail Installment Contracts. Notwithstanding the foregoing, there can be only one (1) Sales Document in any Sale or Lease transaction.

2.21 “State” and “New Jersey” shall refer to the State of New Jersey.

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

2.23 “Warranty” or “Warranties” shall be defined: (a) in accordance with N.J.S.A. 56:8-67 for purposes of the UCLL; and (b) in accordance with N.J.A.C. 13:45A-26F.2 for purposes of the UCLL Regulations.

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

3.1 Respondents agrees that it shall not engage in any unfair or deceptive acts or practices in the conduct of their 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, Automotive Sales Practices Regulations, the Automotive Repair Regulations, the UCLL, and the UCLL Regulations.

3.2 Respondents shall not Misrepresent to Consumers that Aftermarket Merchandise (e.g. window etch, service contracts) are mandatory, when in fact, they are not.

3.3 Respondents shall itemize all Aftermarket Merchandise on Leases, Sales Documents, and Aftermarket Contracts. Notwithstanding the foregoing, in the event a lease does not have sufficient space to itemize all Aftermarket Merchandise, or the financial institution to which Respondent intends to assign the Lease does not allow specific Aftermarket Merchandise to be itemized on a Lease, Respondent shall be deemed to have satisfied the requirements of this Section 3.3 so long as all Aftermarket Merchandise is itemized on the RBO and the Aftermarket Contract.

3.4 For any Aftermarket Merchandise purchased by a Consumer, Respondents shall provide an Aftermarket Contract containing a clear statement of the full total price for such

Aftermarket Merchandise, Including an itemization of the Aftermarket Merchandise in accordance with N.J.A.C. 13:45A-26B.2.

3.5 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 N.J.S.A. 56:8-2.22.

3.6 Respondents shall not charge Consumers separately for a “destination charge” on any Advertised Motor Vehicle when the cost resulting from the “destination charge” is included in the Advertised Price in accordance with N.J.A.C. 13:45A-26A.4.

3.7 Respondents shall not charge Consumers separately for a “wash and detail” fee unless Respondents include the total amount of the “wash and detail” fee in the Advertised price of all Motor Vehicles in accordance with N.J.A.C. 13:45A-26.4. If Respondents seek to charge Consumers for a “wash and detail” fee separate and apart from the Advertised price of a Motor Vehicle, Respondent shall not add and/or charge for the “wash and detail” fee without clearly and conspicuously disclosing the addition, change, or charge of the “wash and detail” fee to the Consumer in accordance with N.J.A.C. 13:45A-26B.2.

3.8 In the Advertisement of a new Motor Vehicle or a Used Motor Vehicle at an advertised price, Respondents shall include a statement that, “price(s) include(s) all costs to be paid by Consumer, except for licensing costs, registration fees, and taxes,” as required by N.J.A.C. 13:45A-26A.5(a)(2).

3.9 Respondents shall not Represent to Consumers that failure to purchase Aftermarket Merchandise or Dealer-Installed Options will adversely affect the terms of financing, including but not limited to, the Annual Percentage Rate.

3.10 Respondents shall provide Consumers with an opportunity to review all Lease documents prior to signing.

3.11 Respondents shall comply with the provisions of N.J.S.A. 39:10-9 in connection with their Sale of Used Motor Vehicles in the State of New Jersey.

3.12 In any Lease agreement for a Motor Vehicle where the odometer reads in excess of 1,000 miles, Respondents shall provide an explanation of the prior use of the Motor Vehicle using the following terms, as applicable: personal, family, or household, demonstrator, livery, daily rental, police, prior wreckage, unknown; provided that the lessor inserts “unknown” only if the lessor does not know the prior use of the Motor Vehicle, as required by N.J.S.A. 56:12-62(h)(1).

3.13 In their Advertisement of Motor Vehicles, Respondents shall disclose that a Motor Vehicle had been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by Respondents, as required by N.J.A.C. 13:45A-26A.7(a)(7). For purposes of this Section, “substantial repair or body work” shall mean repair or body work having a retail value of \$1,000 or more.

3.14 Respondents shall not misrepresent in Advertisements that a Used Motor Vehicle is “certified pre-owned” in violation of N.J.S.A. 56:8-2. Respondents shall not ask Consumers to pay for a certification inspection and/or certification warranty when the Used Motor Vehicle in question was Advertised as being a “certified pre-owned” Motor Vehicle.

3.15 Respondents shall not charge a Customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the Customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, Respondents shall make a notation on the repair order and on the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the



additional parts and labor and the total additional cost, as required by N.J.A.C. 13:45A-26C.2(a)(6).

3.16 Respondents shall use best efforts to facilitate any Consumer requests for refunds for Aftermarket Merchandise to the extent such Aftermarket Merchandise is subject to cancellation in a reasonably timely manner after the requests for cancellation has been submitted to Respondents.

3.17 Respondents shall accurately disclose the M.S.R.P. on Leases for all new Motor Vehicles.

3.18 Respondents shall abide by all Warranties offered in the Sale of Used Motor Vehicles, in accordance with N.J.S.A. 56:8-70, N.J.S.A. 56:8-71, and N.J.A.C. 13:45A-26F.3(c).

3.19 Respondents shall accurately disclose the purchase price of any Dealer-Installed Options on the RBO. Respondent shall not charge a Consumer for Dealer-Installed Options without the Consumer's written consent.

3.20 In any promotional raffles provided to Consumers by Respondents, Respondents shall prominently and plainly disclose any conditions required of the Consumers in order to enter and win prizes offered through the raffle.

3.21 In their Advertisement of a Lease for a Motor Vehicle at an advertised price, Respondents shall include the information as required by N.J.A.C. 13:45A-26A.6.

3.22 In their Advertisement of a new or Used Motor Vehicle at an advertised price, Respondents shall disclose the number of engine cylinders of the Advertised Motor Vehicle, as required by N.J.A.C. 13:45A-26A.5(a)(4).

3.23 In their Advertisement of a new or Used Motor Vehicle at an advertised price, Respondents shall disclose the last eight (8) digits of the Motor Vehicle's VIN number, as required by N.J.A.C. 13:45A-26A.5(a)(6).

3.24 In their Advertisement of a Used Motor Vehicle at an advertised price, Respondents shall disclose the actual odometer reading as of the date the Advertisement is placed for publication, as required by N.J.A.C. 13:45A-26A.5(b)(1).

3.25 In their Advertisement of installment sales of Motor Vehicles, Respondents shall disclose the total cost, the down payment, trade-in or rebate, if any, plus the total scheduled periodic payments. Respondents shall disclose such information adjacent to the claim and not in a footnote or headline unless the information is the same for all Motor Vehicles Advertised, as required by N.J.A.C. 13:45A-26A.8(a).

3.26 Respondents shall not offer promotional Advertisements in which Respondents require Consumers to provide their Social Security numbers in exchange for gift cards at other retail locations.

#### **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 the execution of this Assurance, 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, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12-3. 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 refuses 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 Assurance.

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 Assurance.

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 three (3) 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) 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, Respondent 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;
- d. Copies of all documents evidencing any Restitution provided to the Additional Consumer;
- e. Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section; and

- f. In the event Respondent's written response and/or Restitution to the Additional Consumer were returned as undeliverable, the efforts Respondent has 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 Assurance.

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. Respondents further 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. 59:1-1 to 12-3. 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.

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 Sections 3.1 through 3.26, Sections 5.3 through 5.6, Sections 7.1 through 7.3, to participate in the arbitration process, and/or pay an arbitration award timely, shall constitute a violation of this Assurance.

Under these circumstances, the Division shall provide written notice to Respondents of any such alleged non-compliance. If Respondents do not cure such non-compliance within ten (10) days of receipt of the written notice, 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 Assurance.

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

## **6. SETTLEMENT PAYMENT**

6.1 The Parties have agreed to a settlement of the Investigation in the amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) ("Settlement Payment"), which consists of a civil penalty pursuant to N.J.S.A. 56:8-13.

6.2 Respondents shall make the Settlement Payment contemporaneously with the signing of this AVC by certified check, cashier's check, money order, credit card, company check 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  
P.O. Box 45025  
Newark, New Jersey 07101  
Attention: Van Mallet, Lead Investigator

6.3 Upon making the Settlement Payment, Respondents shall immediately be fully divested of any interest in, or ownership of, the monies paid, and 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.

## **7. CONSUMER REIMBURSEMENT**

7.1 Within 60 days of the Effective Date, Respondents shall provide a \$100.00 Service Credit Coupon to all Consumers who purchased Motor Vehicles from Respondents during calendar year 2017 subject to the following:

- a. Respondents shall provide Service Credit Coupons only to those Consumers who purchased or leased a vehicle from Respondents during the calendar year 2017 and were charged a wash and detail fee. For purposes hereof, the date of sale or lease shall be the date set forth on the final RBO (in a sale transaction) and the date on the final lease (in a lease transaction).
- b. The Service Credit Coupon shall be redeemable by the Consumer for a \$100.00 credit towards service, maintenance, or repair only at Respondents' dealership where the Consumer purchased or leased the vehicle in 2017.
- c. Respondents shall only be obligated to issue one (1) Service Credit Coupon per qualifying sale or lease regardless of the number of purchasers or lessees listed on the Sales Document or Lease.
- d. The Service Credit Coupon is not transferrable and can only be used by the original purchaser or lessee and must be used for service, maintenance, or repairs.
- e. The Service Coupon may only be used in a single transaction, after which it shall be void. Thus, even if the transaction uses less than the full amount of the \$100.00 credit, the coupon cannot be used again and will become void.
- f. The Service option is redeemable for one year from the date it is mailed to each Consumer.
- g. Service Credit Coupons cannot be combined with other service credit coupons, but may be combined with other coupons or promotions offered by Respondents not related to this Assurance.

7.2 Notwithstanding the provisions of Section 7.1 above, it is understood that Respondents' Dealer Management Computer System ("DMCS") only contains the names and addresses of Consumers who purchased or leased motor vehicles from Respondents from approximately April 1, 2017 to December 31, 2017. Therefore, Respondents will not be able to send Service Credit Coupons to all Consumers who purchased or leased motor vehicles from Respondents during calendar year 2017. Respondents shall, however, send Service Credit

Coupons to all qualified Consumer (as defined in Section 7.1) whose contact information is readily available in Respondents' DMCS. Accordingly, it is understood and agreed that if any Consumer did not receive a Service Credit Coupon pursuant to Section 7.1 and said Consumer contacts the Division or Respondents to obtain a Service Credit Coupon, Respondents agree to investigate the Consumer's claim and provide a Service Credit Coupon to the Consumer so long as said Consumer qualifies pursuant to Section 7.1.

7.3 Within ninety (90) days of the Effective Date, Respondents shall provide the Division with: (1) a sample of the Service Credit Coupon provided to all qualified Consumers; and (2) a list of qualified Consumers, including last known addresses to whom Respondents have sent Service Credit Coupons.

## **8. GENERAL PROVISIONS**

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

8.2 This Assurance shall be governed by, and construed and enforced in accordance with, the laws of the State.

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

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

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



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

8.7 This Assurance shall be binding upon the Respondents, as well as their owners, officers, directors, shareholders, managers, 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.

8.8 In no event shall assignment of any right, power or authority under this Assurance be used to avoid compliance with this Assurance.

8.9 This Assurance is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Assurance 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; and (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Assurance are unfair, or deceptive or violate the CFA, the Motor Vehicle Advertising Regulations, the Automotive Sales Practices Regulations, the Automotive Repair Regulations, the UCLL, and/or the UCLL Regulations.

8.10 This Assurance 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 Assurance; or (b) any action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

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

## **9. REPRESENTATIONS AND WARRANTIES**

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

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

## **10. RELEASE**

10.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Assurance 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 Automotive Repair Regulations, the UCLL, and/or the UCLL Regulations arising out of the Investigation, as well as the matters specifically addressed in this Assurance (“Released Claims”).

10.2 Notwithstanding any term of this Assurance, 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 Assurance; and (c) any claims against Respondents by any other agency or subdivision of the State.

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

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

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

### **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Assurance, 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.

### **13. NOTICES UNDER THIS ASSURANCE**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondents pursuant to this Assurance 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 - 7<sup>th</sup> Floor  
P.O. Box 45025  
Newark, New Jersey 07101

For Respondents (to both):

Perry A. Pittenger, Esq.  
Schiller & Pittenger, P.C.  
1771 Front Street, Suite D  
Scotch Plain, New Jersey 07076

W. Rodman Ryan  
President & CEO  
Open Road Auto Group  
1140 Route 22 East  
Bridgewater, New Jersey 08807

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

MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Cari Faiss  
CARI FAISS  
ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

Dated: 5/19, 2022

FOR THE DIVISION:

MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

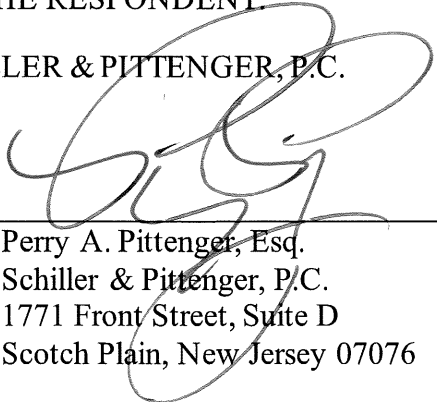
By: Jesse Sierant  
Jesse J. Sierant  
Deputy Attorney General  
Assistant Section Chief  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

Dated: 5/17, 2022

FOR THE RESPONDENT:

SCHILLER & PITTENGER, P.C.

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

  
Perry A. Pittenger, Esq.  
Schiller & Pittenger, P.C.  
1771 Front Street, Suite D  
Scotch Plain, New Jersey 07076

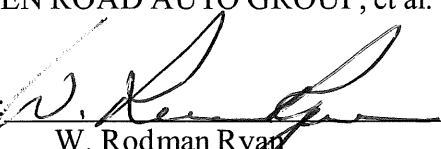
Dated: \_\_\_\_\_

5/12

, 2022

OPEN ROAD AUTO GROUP, et al.

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

  
W. Rodman Ryan  
President & CEO  
Open Road Auto Group  
1140 Route 22 East  
Bridgewater, New Jersey 08807

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

5-11

, 2022

# **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.

\* 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

\_\_\_\_\_  
Signature

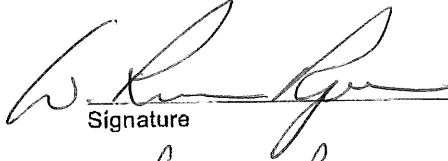
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Date

RESPONDENT

  
\_\_\_\_\_  
Signature

W. Rodman Ryan  
\_\_\_\_\_  
Print Name

400 US Highway 22  
\_\_\_\_\_  
Address

Bridgewater NJ 08807  
\_\_\_\_\_  
City, State, and Zip Code

5.12.2022  
\_\_\_\_\_  
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*