ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS AND PROTECTION

In the Matter of

Investigation by LETITIA JAMES,
Attorney General of the State of New York,
of

IAG NISSAN OF WESTBURY LLC

Assurance No. 23-049

ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation into unlawful and deceptive charges for the purchase of leased vehicles by IAG Nissan of Westbury ("NOW") pursuant to General Business Law § 349, General Business Law § 350, Personal Property Law §§ 330-53, and Executive Law § 63(12). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and NOW, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties"). NOW neither admits nor denies the OAG's Findings below but have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation.

OAG's FINDINGS

Background

1. IAG Nissan of Westbury LLC, doing business as Nissan of Westbury (hereafter "NOW"), is a licensed dealer for Nissan vehicles, located at 939 Old Country Road, Westbury NY 11590.

2. NOW operates pursuant to longstanding contractual agreements with Nissan of North America Inc. ("NNA") and its various subsidiaries, one of which is the Nissan Motor Assurance Company ("NMAC"), which has subsidiaries that provide car lease financing.

3. NOW offers consumers the option of leasing a Nissan vehicle or purchasing it outright. To lease, the consumer executes a lease agreement with the dealer; the dealer then assigns the lease (and, by extension, the ultimate title to the car) to a third-party financing company; the consumer then makes its lease payments to that third party financing company until the lease term concludes.

4. For NOW during the period in question, the third-party financing company it used for car leases was almost always Nissan Infiniti LT LLC ("NILT"), a subsidiary of NMAC.[1] This investigation solely concerned vehicles leased through NMAC.

5. When the lease term was up, and assuming they had made all the lease payments as promised, consumers are obliged to exercise one of three options. First, they can simply return the car to the dealership and pay a final "disposition fee" to NMAC. In this situation, NMAC

[1] Although NILT is the legal assignee of the lease, NMAC administers the leases on NILT's behalf; for the sake of simplicity, both entities will be collectively called "NMAC." The Nissan Motor Acceptance Company is a successor to Nissan Motor Acceptance Corporation; although the transition from one legal form to another occurred during the period in question, it changed nothing relevant to the facts at issue here; any reference to "NMAC" should therefore be taken to refer to both enterprises.

would own the car, and usually would sell the car to the dealership from which the car was leased, or the dealership where the car was returned, to sell as an ordinary used car. Second, consumers can extend the lease, or lease a different vehicle, with further written agreement from the dealer and NMAC. Third, if the lease so provides, consumers have the option to purchase the car outright. The OAG's investigation focused on this third option.

6. Because any vehicle leased through NMAC is owned by NMAC, it is not necessary for consumers who leased their vehicles from one Nissan dealer to purchase them through that same Nissan dealer (although many consumers understandably do so). Instead, NMAC obligated all of its franchised Nissan dealers to process exercises of the purchase option, regardless of whether that particular dealer originated the lease.

The SignatureLease Makes Specific Promises About the Price of a Purchased Leased Vehicle

7. NOW used a standard lease form for its auto leases, the "SignatureLease." This same form was used by other Nissan dealers. All leases at issue in this investigation used the same form SignatureLease. The SignatureLease is the governing document setting out the terms of the lease, and is provided to every consumer after it is executed.

8. The SignatureLease sets out the process by which the lessee could purchase the leased vehicle. At the time the vehicle was leased, the consumer signed a SignatureLease with the leasing dealership; the consumer and original leasing dealership were the counterparties to the SignatureLease contract. The dealership would then immediately assign (on the same lease document) the lease and underlying title to the vehicle to NMAC.[2] When the time came to

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[2] The SignatureLease reads "Lessor accepts the terms of this Lease and Lessor assigns and transfers to Nissan-Infiniti LT ("NILT") all of Lessors' rights, title, and interest in and to this Vehicle and this lease including all amounts payable thereunder, pursuant to the terms of the applicable written Retailer Agreement between Lessor and Nissan Motor Acceptance

purchase the vehicle by exercising the purchase option set out in the lease, this process would occur in reverse: pursuant to clause 28(2) of the SignatureLease, "[i]f the Lessee [i.e. the consumer] is purchasing the Vehicle, the Lease and the Vehicle are sold to a dealer, who will then sell the Vehicle to the Lessee." At the moment of the exercise of the purchase option (that is, the moment that title to the vehicle passed to the consumer), the parties to the Lease would be the consumer on the one hand and the *selling* Nissan dealership[3] on the other.

9. As relevant here, the SignatureLease contains two passages giving customers the right to purchase their leased vehicle.

10. The first passage, in section 6 of the SignatureLease, reads in relevant part "Purchase Option at End of Lease Term. You have an option to purchase the Vehicle at the end of the lease term for $[the residual value of the vehicle, discussed below], and a Purchase Option Fee of $300. See Section 15."

11. The second passage, in section 15 of the SignatureLease, reads as follows (emphasis and size differences in original):

> You have the option to purchase this Vehicle "AS IS" from the originating dealer, or other location we specify, in cash for the Purchase Option Price, *plus* any official fees and taxes, vehicle inspection costs required in connection with the purchase, and a Purchase Option Fee of **$300**, which fees, taxes and costs are not included in the Purchase Option Price agreed to in Section 6. If you purchase the Vehicle at the end of the lease term, the Purchase Option Price will be the Residual Value shown in Section 5.d). If you purchase the Vehicle before the end of the lease term, the Purchase Option Price will be the Adjusted Lease Balance disclosed

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Corporation ("NMAC"), the benefits of which have been assigned by NMAC to NILT for purposes of leases assigned to NILT. Any guaranty by Retailer is made notwithstanding the terms of the Retailer Agreement. By signing below, the Lessor accepts the terms and conditions of this Lease."

[3] This Nissan dealership could be the same one where the car was leased or a different one depending where the consumer chose to exercise the purchase option.

> in Section 14). In either case, you must also pay other amounts due under this Lease at the time of purchase.

12. Section 15 explains that if the vehicle is purchased at the end of the lease term, the consumer need only pay the residual value of the vehicle as the Purchase Option Price plus the $300 purchase option fee and certain additional sums described below. A vehicle's "residual value" is the value of the vehicle at the end of the lease term after taking into account depreciation and lease payments (*see* Personal Property Law § 337[5][k] [requiring disclosure of residual value in any motor vehicle lease]).

13. The adjusted lease balance—which serves as the Purchase Option Price if the car is purchased before the lease term is up—is defined in section 14 of the SignatureLease as "a charge in today's dollars for Base Monthly Payments not yet due and the Residual Value of the Vehicle." Purchasing the vehicle before the end of the lease term requires making the remaining lease payments in addition to paying the residual value.

14. The elements of the Purchase Option Price are reported to the consumer on the face of the lease agreement and to NMAC, electronically. If the purchase option is exercised and it was necessary for the dealer to purchase the vehicle from NMAC to sell it to the consumer exercising the option, the dealer would only pay NMAC the Purchase Option Price plus $75 in a "buyer fee." That $75 reflected NMAC's portion of the $300 Purchase Option Fee; the dealer retains $225 as its share of the fee.

15. In other words, NMAC kept a record of the Purchase Option Price, and this price could be easily determined electronically by NOW using the electronic computer systems linking NMAC and the dealership.

16. The remainder of section 15 of the SignatureLease sets out all charges associated with the consumer purchasing the vehicle:

a. The Purchase Option Price (being either the residual value if purchased at the lease term, or the residual value incorporating remaining lease payments if purchased beforehand); and,
b. any official fees and taxes; and,
c. vehicle inspection costs required in connection with the purchase; and,
d. the Purchase Option Fee of $300; and,
e. other amounts due under the lease at the time of purchase.

17. Each of the additional fees described in the SignatureLease has a well-understood and well-defined meaning in New York State.

18. New York law limits the "official fees and taxes" payable on any sale of a used car in the Vehicle and Traffic Law and General Business Law to the following: sales tax, vehicle inspection costs (if the vehicle requires inspection), title transfer fees, registration fees (if the car's registration must be renewed), and, if the dealer assists the consumer with obtaining title transfer or registration, a limited fee for providing this service.

19. Cars are subject to sales tax; NOW is located in Nassau County where the sales tax rate is 8.625%.

20. Dealers often handle car registration, certificates of title, and associated paperwork for the consumer; if they do, 15 NYCRR § 78.19 permits the dealer to cover the expense of providing this service by charging a fee not to exceed $75 if the car was sold before August 18, 2021, or $175 after August 18, 2021.[4] If the consumer wanted special or distinctive

[4] The amendment made August 18, 2021 that increased this amount to $175 from $75 has been accounted for in determining the permissible charges before and after this date.

plates, the dealer may charge not more than $5 for assisting the consumer in obtaining these plates pursuant to that same regulation.

21. The vehicle inspection costs imposed by New York's Department of Motor Vehicles ("DMV") range depending on the type of vehicle, but for passenger Nissan vehicles is no more than $37 in the New York City metropolitan area serviced by NOW ($10 for a safety inspection, $27 for an emissions inspection).

22. As for the cost of certificates of title and registration, the dealer is required by General Business Law § 396-qq(2) to "either calculate the actual registration and/or certificate of title charges due, or make a good faith estimate in each transaction of such charges of the sales contract or lease agreement." According to the DMV, the title transfer fee is a flat $50.

23. If a consumer needs to renew or change their registration, the registration fee is readily calculable from the weight of the vehicle and ranges from $26 for the lightest Nissan vehicles to $122 for the heaviest Nissan passenger vehicle presently on the market. Entirely new registrations have a DMV fee of $25 for standard license plates $60 for specialized plates.

24. In sum, the SignatureLease allows the consumer to buy their vehicle for the total of the residual value, the remaining lease payments, sales tax, and between no more than $438 to $527 in additional fees before August 18, 2021, and no more than $538 to $627 in additional fees after that date (inclusive, in both cases, of the $300 Purchase Option Fee).

25. NOW was made aware that the charges they could impose were limited in this way. To begin with, clause 4.1 of the Retailer Agreement NOW signed with NMAC reads in relevant part (emphasis added):

> If a Customer exercises an option to purchase the Vehicle under a Lease, upon NMAC's request the Retailer [i.e. NOW] shall repurchase the Lease and the Vehicle. **The repurchase price to be paid by the Retailer to NMAC shall be the Purchase Option**

> **Price** disclosed in the Customer's Lease, and shall be paid to NMAC according to procedures that NMAC may from time to time announce through Retailer Bulletins, website applications or other means. Upon such repurchase, the Retailer shall promptly arrange to sell the Vehicle at the Purchase Option Price disclosed in the Customer's Lease, and settle its account with the Customer, including collection and remittance of applicable sales tax, title and registration fees to the appropriate governmental authority. **Retailer acknowledges and agrees that it cannot charge the Customer any fees in connection with the gross payoff other than what is disclosed in the Lease or required by state law.**

26. NMAC's SignatureLease Dealer Reference Guide, issued in May 2019, further clarified the impermissibility of additional fees (at 27):

> You may only charge the Purchase Option Fee stated on the lease contract when the lease contract was signed. **You may not impose any other purchase option fees or charges. You may not charge a documentation fee as part of the lease purchase option**, unless you have entered into a new retail finance agreement with the customer to enable the customer to exercise the option. The documentation fee would thus be permitted under the terms of the new financing contract. **Official fees and taxes may only be imposed on the customer if required by law for the purchase transaction**. A purchase option fee may not be charged on leases that do not disclose a purchase option fee.

27. This language in the Retailer Agreement and Dealer Reference Guide underscored that a consumer who leased a vehicle with the SignatureLease could purchase that vehicle without any additional fees beyond those required by law and the $300 purchase option fee. It also emphasized that it would be clear on the face of NMAC paperwork whether the amount the consumer paid for the car would match what the dealer paid for the car: the true contractual Purchase Option Price retained in NMAC's business records.

The COVID-19 Pandemic Results in Higher Prices for Used Cars

28. As a result of shortages in new vehicle production caused at least in part by the COVID-19 pandemic, demand for used vehicles spiked and supplies of used and new vehicles plummeted.

29. At the same time, the increase in demand for used vehicles meant that local dealerships, including Nissan dealerships, were selling an increased number of used vehicles while their new vehicle inventory was low. This caused the price of used vehicles to increase tremendously. Therefore, many consumers decided to purchase their vehicles at the end of the lease as it would often be cheaper than purchasing the same vehicle used from a dealership. Also, new vehicles were often not available to purchase or lease due to the decrease in supply.

30. As discussed above, whatever the circumstances behind the rise in purchase option usage, NOW had only one lawful course open to them when a consumer turned to them to facilitate exercise of the purchase option: charge only the Purchase Option Price provided for in the lease, even if economic circumstances made NOW's compliance with those obligations more economically disadvantageous than NOW anticipated when the Purchase Option Price was determined.

31. Owing to NMAC's arrangement of its operations in New York, a dealer is an essential part of the lease purchase process. Failure to purchase a vehicle at or before the lease was up would lead the car automatically reverting to NMAC. It was NOW's legal obligation to honor the terms of the lease agreement and not take advantage of their increase in bargaining power.

In Dozens of Lease Purchase Deals, NOW Charged Additional Unauthorized Fees Not Apparent to Consumers

32. Both the price ultimately charged for lease purchases and the documentation of the components of that price are set forth in "deal jackets"— the dealer's copy of all of the collected paperwork for car sale furnished to a consumer. The deal jackets for all lease purchases made by NOW consumers between September 2021 and September 2022 were analyzed during this investigation. Of the 222 deal jackets reviewed, 162 deal jackets reflect consumers being charged additional fees that were not disclosed in the original lease agreement. Nearly a third were for sums in excess of $1,000. The remainder were for sums less than $1,000. The deal jackets reflect both the amount of money consumers were supposed to be charged under the SignatureLease, and how much more they were in fact charged by NOW during the pandemic.

33. "On the sale of every vehicle, the retail dealer must issue to the purchaser, in addition to the certificate of sale (form MV-50 [required by the DMV]), a bill of sale or an invoice" (15 NYCRR § 78.13[a]). It is a deceptive practice for any dealer, at the time of a sale of a motor vehicle, to give a customer an invoice that does not list with specificity each of the fees that the consumer would be charged for the vehicle and any add-on products the consumer chose to purchase at the same time such as an extended service contract.

34. Consumers could not see they were being overcharged, owing to the layout of the lease paperwork. Here, for example, is a copy of the payoff quote generated by NMAC's system for a particular customer (customer redacted for privacy).

Payoff Quotes

This title cannot be released via Accelerated Title. Please process manually. Reason(s) below:
Lease transactions are not currently supported by Accelerated Title for this lienholder, please process directly with the lienholder.

NMAC/IFS

NMAC | Lien Releasable

Details Payoff Instructions

Title Information		Payment Information	View Payoff Document
VIN	[redacted]	Product	Lease
Year	2019	Net Payoff Amount	$14,688.87
Make	Nissan	Good Until Date	09/26/2021
Model	Altima	Months Left	3
Lien Holder	NMAC/IFS	Next Payment Date	08/27/2021
Account Number	[redacted]	Monthly Payment	$469.73
Title Format	–	Gross Payoff	$14,688.87
		Residual Value	$13,281.80
Customer Information		Transaction Fee	–
Borrower		Estimated Tax	–
First Name	[redacted]	Total Due	$14,688.87
Last Name	[redacted]	Original Quote	View Quote
Address	[redacted]		
City	[redacted]	Early Termination	
State	[redacted]	Early Termination Quote	$922.29
Zip Code	[redacted]	Good Until Date	09-26-21
		Loyalty Applied Quote	Not Applicable

https://ww2.dealertrack.com/payoff/view/

NissanWestbury_000112

35. As can be seen, the customer was to be charged a "net payoff" of $14,688.87, which reflected a residual value of $13,281.40 plus three additional months of payments. That "Net Payoff", in this and all other cases, was NMAC's determination of the Purchase Option Price. Sure enough, the bill of sale between NMAC and NOW (conveying the car to NOW so it

could then be conveyed to the consumer) set the price of the car at the Purchase Option Price of $14,688; see below.

Manheim

Invoice # [redacted]

DUE FROM
NISSAN OF WESTBURY
939 OLD COUNTRY RD
WESTBURY, NY 11590 US
5491048

OWNER
NISSAN MOTOR ACCEPTANCE CORP
8900 FREEPORT PKWY
IRVING, TX 75063 US

REMIT TO
Cox Automotive, Inc.
PO Box 105156
Atlanta, GA 30348-5156 US

INVOICE TYPE	Buyer
INVOICE DATE	17-SEP-2021
PAYMENT DUE DATE	22-SEP-2021
BUYER REPRESENTATIVE	[redacted]
TRANSACTION LOCATION	638 myCentral Auction
ORIGINAL BUYER	
LEASE ACCOUNT NO	
YEAR MAKE MODEL	2019 Nissan Altima
VIN	[redacted]
MILEAGE	29295 Miles

BUYER
NISSAN OF WESTBURY
939 OLD COUNTRY RD
WESTBURY, NY 11590 US

INVOICING-SALES LOCATION*
MYCENTRAL AUCTION
7000 CENTRAL PKWY STE 600
ATLANTA, GA 30328 US

EIN:20-5801752

CHARGE DATE	WORK ORDER	UNIVERSAL KEY	DESCRIPTION	CUSTOMER PO#	PRICE	TAX	LINE TOTAL
17-SEP-2021	2332120	2021-38-87-4314	2019 Nissan Altima		$14,688.00	$0.00	$14,688.00
17-SEP-2021	2332120	2021-38-87-4314	BUYER SUCCESS FEE		$75.00	$0.00	$75.00

ADJUSTMENTS

DATE	DESCRIPTION	AMOUNT
	TOTAL ADJUSTMENTS	$0.00

PAYMENTS

DATE	REF NO	DESCRIPTION	AMOUNT
21-SEP-2021	RCT-I45922639	FLOORPLAN - NISSAN MOTOR ACCEPTANCE CORP. - FLOORPLAN - PONI	$14,763.00
		TOTAL PAYMENTS	$14,763.00

SPECIAL INSTRUCTIONS
Please include the invoice number on all remittances and include remittance copy with postal payments.
Visit your Account at Manheim.com to manage preferences, view invoices & statuses, see history and pay invoices.
A late fee will be added, wherever applicable, to all past due invoices, subject to details in the Manheim Terms and Conditions.
If you have questions concerning this invoice, please call or email Manheim Client Care @ 1-866-MANHEIM (626-4346), Mon-Sat 8am-10pm; or email us by clicking on Contact Us on Manheim.com.

Overnight mailing address:
Cox Automotive Inc, Attn: Lockbox 105156, 3585 Atlanta Avenue, Hapeville, GA 30354-1705 US

SUB TOTAL	$14,763.00
TAX	$0.00
ADJUSTMENTS	$0.00
TOTAL BEFORE PAYMENTS	$14,763.00
PAYMENTS	($14,763.00)
OUTSTANDING BALANCE	$0.00

36. But these figures are absent from the invoice shared with the consumer—the invoice NOW was legally obligated to ensure was complete and accurate. Here is that invoice:

NISSAN OF WESTBURY

939 OLD COUNTRY ROAD
WESTBURY, NEW YORK 11590
(516) 338-5600

NYS DEALER FACILITY NO. 7128685

PRE-OWNED VEHICLE PURCHASE AGREEMENT

E-Mail:

Buyer [redacted] Salesperson [redacted]
Street [redacted] Phone No. [redacted]
City [redacted] State NY Zip [redacted]

THE VEHICLE

YEAR 2019	☐ NEW X☒ USED	☐ DEMONSTRATOR	MAKE NISSAN	MODEL ALTIMA	SERIES 2.5 S SEDAN
MILES 29295	TYPE	COLOR GY	TRIM 2.5 S	VIN [redacted]	

"NOTICE TO CONSUMER: IF THE VEHICLE IS NOT DELIVERED IN ACCORDANCE WITH THIS AGREEMENT WITHIN 30 DAYS AFTER THE ESTIMATED DELIVERY DATE AND THE DELAY IS NOT ATTRIBUTABLE TO YOU, YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT AND TO RECEIVE A FULL REFUND OF YOUR DEPOSIT."

"TITLE DISCLAIMER FOR THE TRADE" IF THE TITLE DOES NOT COME IN WITH THE TRADE IT CAN BE EVALUATED FOR A SECOND APPRAISAL.

USED VEHICLE DI... WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT, INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

"IF THIS MOTOR VEHICLE IS CLASSIFIED AS A USED MOTOR VEHICLE. "DEALER NAMED ABOVE" CERTIFIES THAT THE ENTIRE VEHICLE IS IN CONDITION AND REPAIR TO RENDER, UNDER NORMAL USE, SATISFACTORY AND ADEQUATE SERVICE UPON THE PUBLIC HIGHWAY AT THE TIME OF DELIVERY."

ESTIMATED DELIVERY DATE 09/17/2021 DELIVERY LOCATION NISSAN OF WESTBURY STOCK NO. U0090B

PRIOR USE CERTIFICATION
The principal prior use of this vehicle was as: a police vehicle ______, a taxicab ______, a driver education vehicle ______, or a rental vehicle ______. ☐ Not Applicable

TRADE IN MUST COME IN WITH ALL FACTORY EQUIPMENT (EXAMPLE: ALL KEYS, ALL REMOTES, ETC...)

THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE, IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE THE COMMISSIONER OF MOTOR VEHICLES. THE DEALER AUTOMATICALLY, AND WITHIN SIXTY DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUNDS ANY AMOUNT OVERPAID FOR SUCH FEES.

TOTAL DUE IS THE FINAL CONTRACT PRICE, NO ADDITIONAL FEES OTHER THAN STATED HERE MAY BE IMPOSED OR COLLECTED.

ALL PRE-OWNED VEHICLES ARE COSMETICALLY SOLD "AS IS"

Customer Acknowledgement: Customer Initials __________ Date:______

WE HAVE NOT MADE ANY MORE PROMISES THAN WHAT IS ON THE BUYERS ORDER

VEHICLE PRICE	(+)	$ 17847.87
WARRANTY		2999.00
DEALER INSTALLED EQUIPMENT AND SERVICES	(+)	
PORTFOLIO TIRE & WHEE		1450.00
SUB-TOTAL		22296.87
TOTAL		$ 22296.87

THE TRADE-IN

YEAR	MILEAGE	MAKE (DESCRIPTION)	MODEL	COLOR
PLATE NO.	EXP. DATE	VIN.		

TRADE-IN IS CLEAR OF ALL LIENS/ LEASES EXCEPT FOR AS PER

AMOUNT OWED $ N/A

LESS TRADE-IN CREDIT (BUYER SEE 1 AND 5(b) ON BACK)	(-)	N/A
ALL REBATES ARE TAXABLE, TAX PAID BY BUYER		N/A
AMOUNT DUE		$ 22296.87

TAXES AND OTHER FEES

IF YOU AGREE TO ASSIST ME IN OBTAINING FINANCING FOR ANY PART OF THE PURCHASE PRICE, THIS ORDER SHALL NOT BE BINDING UPON YOU OR ME UNTIL ALL OF THE CREDIT TERMS ARE PRESENTED TO ME IN ACCORDANCE WITH REGULATION "Z" (TRUTH-IN-LENDING) AND ARE ACCEPTED BY ME. IF I DO NOT ACCEPT THE TERMS WHEN PRESENTED, I MAY CANCEL THIS ORDER AND MY DEPOSIT WILL BE REFUNDED.

SPECIAL NOTICE TO CONSUMER
IF UNDER THE LAW OF THE STATE OF NEW YORK CONTROLLING THE SALE OF USED MOTOR VEHICLES, YOU SHOULD BE ENTITLED TO A REFUND IN CONNECTION WITH THIS TRANSACTION, THE VALUE OF ANY VEHICLE YOU MAY HAVE TRADED-IN (IF THE SELLER CHOOSES NOT TO RETURN IT TO YOU) SHALL NOT BE THE VALUE LISTED IN THIS DOCUMENT, INSTEAD, THE VALUE WILL BE DETERMINED BASED ON THE NATIONAL AUTO DEALERS ASSOCIATION USED CAR GUIDE WHOLESALE VALUE OR OTHER GUIDE APPROVED BY THE COMMISSIONER OF MOTOR VEHICLES, AND ADJUSTED FOR MILEAGE, IMPROVEMENTS AND ANY MAJOR PHYSICAL OR MECHANICAL DEFECTS.

SALES TAX	8.625 %	(+)	1923.11
DEALER'S OPTIONAL FEE FOR PROCESSING APPLICATION FOR REGISTRATION AND/OR CERTIFICATE OF TITLE.*	175.00	(+)	$ 175.00 XXX.X
REGISTRATION FEE (ESTIMATE)		(+)	C.O.D. N/A
INSPECTION FEE		(+)	N/A
		(+)	
OTHER-ITEMIZE		(+)	65.00
TOTAL AMOUNT DUE			$ 24459.98
PLUS BALANCE OWING ON TRADE-IN AS PER RIDER		(+)	N/A
LESS CASH DEPOSIT SUBMITTED WITH ORDER		(-)	N/A
REBATE		(-)	
TOTAL AMOUNT DUE ON DELIVERY			$ 24459.98

CASH, BANK OR CERTIFIED CHECK ONLY ON DELIVERY • MAKE CHECK PAYABLE TO NISSAN OF WESTBURY

* THE OPTIONAL DEALER REGISTRATION OR TITLE

For ease of reading, an extract of the above image is presented below:

VEHICLE PRICE	(+)	$ 17847.87
WARRANTY		2999.00
DEALER INSTALLED EQUIPMENT AND SERVICES	(+)	
PORTFOLIO TIRE & WHEE		1450.00
SUB-TOTAL		22296.87
TOTAL		$ 22296.87
LESS TRADE-IN CREDIT (BUYER SEE 1 AND 5(b) ON BACK)	(-)	N/A
ALL REBATES ARE TAXABLE. TAX PAID BY BUYER		N/A
AMOUNT DUE		$ 22296.87
SALES TAX 8.625 %	(+)	1923.11
DEALER'S OPTIONAL FEE FOR PROCESSING APPLICATION FOR REGISTRATION AND/OR CERTIFICATE OF TITLE.* 175.00	(+)	$ 175.00
REGISTRATION FEE (ESTIMATE)	(+)	C.O.D. XXXXX
INSPECTION FEE	(+)	N/A
	(+)	N/A
OTHER-ITEMIZE	(+)	65.00
TOTAL AMOUNT DUE		$ 24459.98
PLUS BALANCE OWING ON TRADE-IN AS PER RIDER	(+)	N/A
LESS CASH DEPOSIT SUBMITTED WITH ORDER	(-)	N/A
REBATE	(-)	
TOTAL AMOUNT DUE ON DELIVERY		$ 24459.98

37. Instead of presenting the Vehicle Price to be the true Vehicle Price (that is, the Purchase Option Price of $14,688.87, this invoice inaccurately asserted that the Vehicle Price was $17,847.87, or fully **$3,159 more** than the Purchase Option Price. This discrepancy cannot be explained by the presence of after-sale products because the consumer invoice plainly provided that all after-sale products would be itemized below the vehicle price—and indeed two such products were so itemized, a warranty of $2,999 and a tire and wheel service of $1,450.[5]

[5] OAG makes no findings as to the propriety of these and other disclosed aftersale charges, their disclosure, or the means or methods by which they were procured or sold; these matters are

38. The consumer invoice is legally deficient in at least two other material ways. First, it does not itemize the Purchase Option Fee of $300. Second, it does not estimate registration or title transfer fees (instead describing them as "COD"), as required by General Business Law § 396-qq, unless the entirely unexplained $65 "Other-Itemize" charge is in fact a mislabeled title transfer fee that is itself $15 more than the DMV charge.

39. Although the particulars varied from customer to customer, this example illustrates how NOW operated with respect to certain lease buyouts following the onset of the pandemic.

40. 162 of the 221 lease buy-outs NOW processed during the pandemic period had similar discrepancies. In each, the total allowable charge as set by the lease agreement was exceeded by the charges NOW actually imposed.

41. Even had NOW's unauthorized fees been disclosed, the invoices would still have been deceptive by representing in the lease that consumers would pay one price for the vehicle only to charge consumers a higher one.

NOW's Conduct Violated Applicable Statutes and Regulations

42. Regulation M, issued by the Consumer Financial Protection Bureau, made applicable to motor vehicle leases by New York State law, requires that a lease include "statement of whether or not the lessee has the option to purchase the leased property, and . . . the purchase price . . . or the method for determining the price and when the lessee may exercise this option," (12 CFR § 213.4[i][1]-[2]; *see also* 15 U.S.C. § 1667a[5] [portion of the Consumer Leasing Act of 1976 underlying this regulation, requiring disclosure of "whether or not the lessee

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outside the scope of this investigation.

has the option to purcahse the leased property and at what price and time"]; Personal Property Law § 337[5][a] [New York State Motor Vehicle Retail Leasing Act ("MVRLA") obliging retail lease agreements contain "[a]ll items required to be disclosed by the act of Congress entitled 'Consumer Leasing Act of 1976' and the regulations thereunder"]).

43. By repeatedly charging lease purchase consumers more than the price stated on the SignatureLease, NOW rendered the SignatureLease's disclosures defective and misleading, in violation of Regulation M and the MVRLA.

44. By misrepresenting the price at which consumers can purchase their leased vehicle at the end of the lease term, failing to honor the purchase price stated in the lease, and concealing fees and the accurate price information for each vehicle, NOW engaged in false advertising in violation of Section 350 of the General Business Law, deceptive practices in violation of Section 349 of the General Business Law, and conduct in violation of Executive Law § 63(12).

45. By engaging in the aforementioned acts and practices, NOW has also engaged in conduct in violation of Executive Law § 63(12).

AGREEMENT

46. WHEREAS, NOW neither admits nor denies the OAG's Findings, paragraphs 1-45 above, but has agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation;

47. WHEREAS, the OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest, such that the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of General Business Law § 349, General Business Law § 350, Personal Property Law § 337,

Executive Law § 63(12), 12 CFR § 213.4, and 15 U.S.C. § 1667 *et seq*. based on the conduct described above;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between OAG and NOW, its principals, directors, officers, successors, and assigns:

RELIEF

Definitions

48. For purposes of the paragraphs that follow, these terms shall have the following meanings:

a. "After-sale" product or service is any product or service for which the consumer is paying over and above the amount the consumer must pay to purchase a leased vehicle without any such products (i.e. the Total Allowed Charge). After-sale products include, but are not limited to, accessories, credit repair services, identity theft protection services, glass coatings, security services, warranties, maintenance coverage, tire and wheel protection, and insurance coverage;

b. "Amount overcharged" mean any amount of money paid to NOW or any persons under the control of NOW by consumers in the course of their exercise of the purchase option in a SignatureLease in excess of $100 more than the Total Allowed Charge. A consumer who paid an amount overcharged is an "overcharged consumer."

c. "Clearly and conspicuously" shall mean that the statement, representation, or term is so presented as to be readily apparent and understood by the person to whom it is being addressed. Factors to be considered for this purpose include, but are not limited to, language, font type and size, length, and color contrast.

d. The “dealer’s buyout price” is the amount the dealer paid or will be obliged to pay NMAC to acquire the vehicle in the course of executing a lease purchase on behalf of a consumer;

e. The “Determined Purchase Option Price” with respect to the purchase of any leased vehicle is the gross payoff price as defined by NMAC on the day of the lease purchase or the repurchase price paid by NOW to NMAC during the process of completing a lease buyout, whichever is lower;

f. A “Potential Refund Consumer” is a consumer who purchased their leased vehicle from or via NOW between September 30, 2022 and the date of this Assurance.

g. A “Refund Consumer” is a consumer who is entitled to a restitution payment pursuant to this Assurance. Such consumers shall constitute two categories: those named in the spreadsheet agreed to by OAG and NOW, or those determined to be Refund Consumers pursuant to the process described in paragraph 59.

h. “Total Allowed Charge” means, with respect to the purchase of any leased vehicle, the sum of the Determined Purchase Option Price, the $300 Purchase Option Fee, those taxes and fees that the law of New York State, the United States, or another state or locality to the extent such laws expressly ***require*** to be paid in connection with the purchase and transfer of ownership of the vehicle to the consumer, and the fee permitted to be charged by 15 NYCRR § 78.19 if the dealership provides the services described in that regulation.

Changes to NOW's Business Practices

49. *General Injunction.* NOW shall follow all applicable laws, including but not limited to General Business Law § 349, General Business Law § 350, Personal Property Law § 337, Executive Law § 63(12), 12 CFR § 213.4, and 15 U.S.C. § 1667 et seq.

50. *Specific Commitment to Refrain from Unlawful Lease Buyout Practices.* NOW shall not charge any amount for the purchase of a leased vehicle more than the Total Allowed Charge, regardless of whether or not it was the original leasing dealership.

51. *Reform to NOW's Invoicing Procedures*. For all purchases of leased vehicles processed following the effective date of this Assurance, NOW's bill of sale or invoice, as required by 15 NYCRR § 78.13(a), must state, in addition to the information required by that regulation, the following information clearly and conspicuously:

a. The vehicle price, which must be the Determined Purchase Option Price;
b. The amount of the lease purchase fee stated in the original lease that must be paid by the consumer (i.e. under the SignatureLease discussed above, $300);
c. The amount of the dealer's optional DMV fee the dealer proposes to charge, inclusive of the disclaimer required by 15 NYCRR § 78.19;
d. The price of each after-sale product being sold alongside the vehicle, separately itemized for each such after-sale product and clearly and conspicuously identifying the after-sale product in question;
e. The appropriate amount of sales taxes;
f. The appropriate amount of any other taxes;
g. If the vehicle is being purchased pursuant to a retail installment or financing contract, the amount of the relevant financing charges;

h. As applicable, the estimated title and registration fee amounts as required by General Business Law § 396-qq;

i. As applicable, the fee required to be charged by the New York Department of Motor Vehicles for safety and emissions inspections pursuant to Part 79 of the Regulations of the New York Commissioner of Motor Vehicles;

j. All other disclosures and other items required by local, state, or federal law to be included on the invoice;

k. A total sum that accurately states the entire amount to be charged, before the application of rebates or down payments.

52. The invoice issued to the consumer complying with the provisions of paragraph 51 must be identical to NOW's business records without any alterations.

53. In addition to any other documentation, NOW must issue each consumer with a statement drawn from NMAC's systems, or the lease holder if not NMAC, stating clearly and conspicuously how NOW determined the Purchase Option Price. This statement must include the residual value of the vehicle as stated on the lease and the remaining lease payments due.

54. NOW must not issue any other invoice to a consumer purchasing a leased vehicle other than the invoice required by paragraph 51, above, except for invoices associated with after-sale products further itemizing the price associated with elements of such products.

55. NOW will implement the relief described in paragraphs 50 through 54 within 30 business days following the date of execution of this Assurance and continue to implement the relief permanently.

56. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance their respective successors and assigns, provided that no party, other than the OAG,

may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

57. *Revisions to Lease Arrangements Imposed by NMAC*. If NMAC, or any franchisor of whom NOW is a franchisee, proposes to impose obligations on NOW inconsistent with the terms of this Assurance, NOW must give notice to the OAG, within ten business days, of the proposed obligations. Such notice must include copies of the pertinent communications from NMAC or the franchisor, as well as contact information for NMAC or the franchisor's counsel or other representative.

Restitution

58. Within 45 days of execution of this Assurance, NOW shall pay the amount of $102,636.07, by wire transfer or check, specifically referencing this Assurance, to an account at Flagstar Bank, N.A. (the "First Deposit"). Within 60 days of execution of this Assurance, NOW shall distribute the First Deposit, together with interest earned thereon and available at the time of such distribution (collectively, the "Restitution Fund") to Refund Consumers in the amounts specified in the restitution spreadsheet agreed to by NOW and OAG, by regular mail accompanied by the letter provided by NOW, the text of which must be approved by the OAG.

59. *Determination of Additional Restitution to Potential Refund Consumers*. Within 60 days of the execution of this Assurance, NOW shall complete a review of each of the deal files of each Potential Refund Consumer and determine any amounts overcharged to any Potential Refund Consumer and transmit to the OAG a spreadsheet summarizing the amount charged each Potential Refund Consumer, the Potential Refund Consumers were overcharged, the amounts overcharged, and how that sum was determined, alongside deal jackets comprising 10% of the population of Potential Refund Consumers NOW determined were *not* overcharged

and 10% of the population of Potential Refund Consumers NOW determined *were* overcharged, chosen at random by the OAG ("Initial Additional Refund Consumer Report" or "IARCR").[6]

60. The OAG shall review the IARCR, comparing them to the random sampling of deal jackets. Upon approval of the IARCR by the OAG, those Potential Refund Consumers who the IARCR identifies as being overcharged shall be deemed Refund Consumers for all other purposes under this Assurance.

61. Following the OAG's approval of the IARCR, NOW shall deposit in the Restitution Fund an additional amount by check or wire transfer equal to the sum of the amounts overcharged all Potential Refund Consumers who were deemed Refund Consumers pursuant to paragraph 60 ("the Second Deposit"). Within 30 days following the making of the Second Deposit, NOW shall distribute the Second Deposit, together with interest earned thereon and available at the time of such distribution (collectively, the "Restitution Fund") to Refund Consumers identified in the approved IARCR, by regular mail, accompanied by the letter provided by NOW with the approval of the OAG.

62. Irrespective of the category of Refund Consumer to which a refund is sent, the envelope enclosing the letter and refund must contain the words "Attorney General of the State of New York" and "Nissan of Westbury Settlement." Prior to each said mailing, NOW shall process the mailing address of each Refund Consumer through the National Change of Address database ("NCOA") and shall mail the checks to the most recent address. For mailings that are returned as addressee unknown, NOW shall process the address through another trace process,

[6] The random sampling method is as follows: NOW will communicate the VINs corresponding to the vehicle purchases for each category of Potential Refund Consumers (those who were and were not overcharged). OAG shall select from those VINs the deal jackets to be produced in the relevant proportions.

such as LexisNexis, and mail the check to another address, if one is identified. If another address is not identified, NOW shall call the consumer on their provided phone number and request a different address. If an address is not forthcoming via such a phone call (or voicemail message and callback), Refund Consumer's home address shall be processed through the NCOA and the check mailed to the most recent home address.

63. The check to each Refund Consumer shall be made payable to the Refund Consumer (the "Restitution Check"). In the event a Refund Consumer Letter is returned to NOW, or the NOW cannot locate the Refund Consumer at the last known address, NOW shall make reasonable efforts, as described in paragraph 62 above, to obtain another address and re-send the Refund Consumer Letter to any new address identified by the NOW. Restitution Checks for any Refund Consumer who cannot be located after pursuing all reasonable efforts or who fails to cash or deposit a Restitution Check from the NOW shall be treated as abandoned property in accordance with the New York Abandoned Property Law (or other applicable state law if the Refund Consumer is a resident of another state).

64. Any Refund Consumer who has not received and/or cashed a Restitution Check from the NOW (because the Refund Consumer's address could not be located or for other good cause) and who contacts OAG or NOW prior to the later of one year from the date on which payments are first mailed by the NOW, shall be mailed a Restitution Check, together with the Refund Consumer Letter, within 30 days of notice from the Refund Consumer or OAG to the NOW of the Refund Consumer's entitlement to a refund.

65. For any Refund Consumer who should have been but was not sent a Restitution Check and who, within three years of execution of this Assurance, makes a request for a refund to NOW or OAG, NOW shall make a full payment to that Refund Consumer of the amount

specified in the spreadsheet agreed to by NOW and OAG or the approved IARCR, as applicable, provided they are eligible for such refund.

Penalty

66. Pursuant to General Business Law §§ 350-c and 350-d, NOW shall pay to the State of New York a penalty of $19,440. Such amount shall be due within 30 business days after the date of this Assurance. NOW shall pay this amount by wire transfer, certified check, or bank check payable to the State of New York. The payment must reference Assurance No. 23-049.

67. The payment shall be delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Alec Webley, 28 Liberty Street, New York NY 10005.

Reporting and Record-Keeping

68. *Initial Restitution Report:* Within 180 days of the mailing of the Refund Consumer Letters, including the Refund Consumer Letters to overcharged Potential Refund Consumers, NOW shall provide a report (the "Restitution Report") to the OAG. The Restitution Report shall consist of an annotation the spreadsheet and the IARCR, against each row of which the following additional information for each Refund Consumer shall appear: the address used for mailing purposes, the amount of the Restitution Check, the date the first Refund Consumer Letter was sent, whether the Refund Consumer Letter was returned, whether the Refund Consumer's Restitution Check was cashed, and the date of any additional attempt(s) to send the Refund Consumer Letter.

69. *Periodic Compliance Auditing*: One year after the execution of this Assurance, NOW shall provide to the OAG a list of the VINs of leased vehicles where the dealer facilitated

the purchase of those vehicles within that time period (together "the compliance audit report"). The OAG shall select 10% of the VINs so reported and communicate its selection to the NOW. Within 30 business days of this communication from the OAG, NOW shall furnish the entire deal jacket associated with the sale of each vehicle denoted by the VINs selected by the OAG. If NOW is found to be completely compliant at this one-year audit, periodic auditing will cease.

70. NOW agrees to cooperate with OAG in monitoring and auditing compliance with this Assurance. NOW agrees to maintain and preserve the entire deal file associated with a leased vehicle purchase for a minimum of six years after their creation, and to provide or make these documents available to OAG in electronic format upon receiving written request within 30 days of receiving such request.

MISCELLANEOUS

Subsequent Proceedings

71. NOW expressly agrees and acknowledges that a default in the performance of any obligation under paragraphs 49-70 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated above, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 47, pursuant to Executive Law § 63(15).

72. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 82, NOW expressly agrees and acknowledges:

a. that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. that the OAG may use statements, documents or other materials produced or provided by the NOW prior to or after the effective date of this Assurance;

c. that any civil action or proceeding must be adjudicated by the courts of the State of New York, and that NOW irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

73. If a court of competent jurisdiction determines that NOW has violated the Assurance, NOW shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

74. To the extent not already provided under this Assurance, NOW shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance and to effectuate the terms of this Assurance.

75. For the avoidance of doubt, the OAG has not made findings with respect to NOW's compliance or otherwise with any statute not referenced herein, including but not limited to section 415 of the Vehicle and Traffic Law, nor shall any part of this AOD be construed as a waiver on NOW's part of any defense or submission it may make in the course of a proceeding conducted pursuant to section 415 of the Vehicle and Traffic Law or any judicial review of such a proceeding.

Effects of Assurance

76. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of NOW's practices or procedures, and the NOW shall make no representation to the contrary.

77. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights and obligations under this Assurance without the prior written consent of the OAG.

78. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

79. Any failure by the Attorney General to insist upon the strict performance by NOW of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by NOW.

Communications

80. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 23-049, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, and shall be addressed as follows:

If to NOW, to:
Alyssa A. Friedman
Abrams Fensterman LLP
1 MetroTech Center, Suite 1701
Brooklyn, NY 11201

If to the OAG, to:

New York State Office of the Attorney General
Bureau of Consumer Frauds and Protection
Attn: Alec Webley, Assistant Attorney General

28 Liberty Street
New York, NY 10005
Telephone: 212-416-8133
Email address: alec.webley@ag.ny.gov

or in that person's absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau at the same mailing address.

81. Within 30 days of a change in the address of OAG or Respondent, the party whose address has changed shall provide the other with written notice of the change.

Representations and Warranties

82. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the NOW and their counsel and OAG's own factual investigation as set forth in its Findings, paragraphs 1-45 above. NOW represents and warrants that neither they nor their counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by NOW or their counsel are later found to be inaccurate or misleading, this Assurance may be voidable by the OAG in its sole discretion upon a showing of proof by the OAG of the material misrepresentation.

83. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by NOW in agreeing to this Assurance.

84. NOW represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. NOW shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. However, NOW may expressly state NOW neither admits nor denies the OAG's

Findings but has agreed to this Assurance in settlement of the violations described to avoid the time, expense, and distraction of litigation.

85. Nothing in this paragraph affects NOW's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

General Principles

86. Nothing in this Agreement shall relieve NOW of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

87. Nothing contained herein shall be construed to limit the remedies available to the OAG if NOW violates the Assurance after its effective date.

88. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

89. If any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

90. NOW acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

91. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

92. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

93. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

94. The effective date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the dates set forth below:

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Jane M. Azia ____________________
Jane Azia
Chief, Bureau of Consumer Frauds and Protection

IAG NISSAN OF WESTBURY LLC
939 Old Country Rd
Westbury NY 11590

____
Fred Ippolito
Owner / Managing Member
IAG Nissan of Westbury LLC d/b/a
Nissan of Westbury