

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**  
1200 New Jersey Avenue SE  
Washington, DC 20590

**In re:** \_\_\_\_\_ )  
 )  
**Automotive Services Corporation,** )  
**Registered Importer No. 14-383** )  
\_\_\_\_\_ )

**CONSENT ORDER**

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation (“DOT”). This Consent Order sets forth the requirements and performance obligations agreed to by R.C. Mast, Inc., doing business as Automotive Services Corporation, (collectively, “ASC”) under the following terms and conditions.

**I. NATURE OF THE ACTION**

1. The National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. Chapter 301, provides for regulation of motor vehicles and motor vehicle equipment and the promulgation of safety standards applicable to motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator. *See* 49 C.F.R. § 1.95(a). All authorities lawfully vested in and reserved to the Administrator may be exercised by the Deputy Administrator. 49 C.F.R. § 501.5(a).

2. Under the Safety Act, motor vehicles that do not comply and that the fabricating manufacturers have not certified as complying with all applicable Federal Motor Vehicle Safety Standards (“FMVSS”) may not be imported into the United States. 49 U.S.C. § 30112(a). There are limited exceptions to this general prohibition.

3. One of the exceptions is that a nonconforming vehicle may be imported under the registered importer program. Under this program, a nonconforming vehicle may be imported by a registered importer (“RI”) if NHTSA has determined that the particular make, model, and model year of the vehicle is capable of being modified to comply with all applicable FMVSS. *See* 49 U.S.C. § 30141(a); 49 C.F.R. Part 593. The result of this determination is referred to as import eligibility. *See* 49 C.F.R. §§ 591.5(f), 593.8(a).

4. If an import eligible, nonconforming vehicle enters the United States, the importing RI must furnish a conformance bond for the vehicle. *See* 49 U.S.C. § 30141(d); 49 C.F.R. §§ 591.5(f)(1), 591.6(c), 591.8, 592.6(a).

5. After a vehicle enters the United States under the RI program, the RI must modify the nonconforming vehicle to comply with all applicable FMVSS. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c). Conformance modifications may only be performed by a RI, and a RI is not permitted to delegate, contract with others, or have non-employee agents perform conformance modifications. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c), (d). The RI must also “remedy . . . all noncompliances and defects that are the subject of any pending safety recalls.” 49 C.F.R. § 592.6(c).

6. Following completion of all necessary conformance modifications and recall repairs, the RI must permanently affix to the vehicle a certification label that identifies the RI, certifies that the vehicle complies with all applicable FMVSS, and otherwise complies with 49 C.F.R. § 567.4. *See* 49 U.S.C. § 30146(a)(3); 49 C.F.R. § 592.6(c).

7. The RI must also submit, within 120 days after importing the vehicle, a certification that includes affirmative statements (and other supporting information) certifying that the vehicle has been modified to comply with all applicable FMVSS, and that the vehicle is

not subject to any safety recalls or that all noncompliances or defects that are the subject of safety recalls have been remedied. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(d). The RI's certification of conformance is included on a Statement of Conformity, which includes additional information regarding the importation, modification, and certification of the vehicle and the completion of any open safety recalls on the vehicle. 49 C.F.R. § 592.6(d). The RI's submission of the Statement of Conformity (including the certification of conformance) to NHTSA is subject to the terms of 18 U.S.C. § 1001, which provides for criminal penalties against any person who knowingly and willfully makes false statements or submits false entries to the United States.

8. After submitting the Statement of Conformity, the RI must maintain possession of the vehicle until either NHTSA releases the conformance bond for the vehicle or 30 days have elapsed from the time NHTSA receives the Statement of Conformity. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. §§ 592.6(e), 592.8(a).

9. During the 30-day waiting period, the RI may not, among other things, operate the vehicle on public roads (except for limited purposes), store the vehicle on the premises of a motor vehicle dealer, sell or offer the vehicle for sale, title the vehicle in any other person's name, or release custody of the vehicle for any of these purposes. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(e)(1)-(5). If the RI receives "no written notice from [NHTSA] by the end of the 30th calendar day" after NHTSA receives the conformity package, the RI "may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed, or registered for use on the public roads." 49 C.F.R. § 592.8(e).

10. To ensure that a RI understands its legal duties and the importance of compliance with those duties, each applicant to be a RI must certify as follows:

I certify that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will comply with each such duty.

49 C.F.R. § 592.5(a)(11).

11. To maintain its registration, a RI must file an annual statement that includes the following certification of continued compliance:

I certify that I have read and understand the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of Registered Importer] continues to comply with the requirements for being a Registered Importer.

49 C.F.R. § 592.5(f)(2)(i).

12. The Safety Act and regulations thereunder also specify the basis and process for suspensions or revocations of the registration of a RI. *See* 49 U.S.C. § 30141(c)(4); 49 C.F.R. § 592.7.

13. NHTSA is authorized to “revoke or suspend a registration” if a RI fails to comply with the requirements of specific statutory and regulatory obligations, including 49 U.S.C. §§ 30141-30147 and 49 C.F.R. Part 591 and Part 592. *See* 49 C.F.R. § 592.7(b)(1). If NHTSA has reason to believe a RI has violated one or more of these requirements and that suspension or revocation would be an appropriate sanction under the circumstances, NHTSA is required to notify the RI in writing of the facts giving rise to the allegation of the violation and the proposed length of a suspension, if applicable, or revocation.” 49 C.F.R. § 592.7(b)(2). The notice must also provide the RI an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. *Id.* If NHTSA decides, based on available information, that the RI has violated a statute or regulation, it may suspend or revoke the RI’s registration, and must notify the RI in writing of the decision, including the reasons for it. *Id.*

14. Following a suspension imposed under Section 592.7(b)(2), the registration of the RI will be reinstated after the expiration of the period of suspension specified by NHTSA, or such earlier date as NHTSA may subsequently decide is appropriate. 49 C.F.R. § 592.7(c)(5).

15. ASC was a RI between 2014 and December 15, 2021.

16. In its July 14, 2020 Notice to Show Cause Why the Registration of ASC Should Not be Suspended for 180 Days (“Notice to Show Cause”), NHTSA alleged that ASC had violated the regulations applicable to the RI program by submitting improperly executed certifications of conformance in violation of 49 C.F.R. § 592(d)(3), by titling imported vehicles in a name other than its own prior to expiration of the mandatory waiting period, in violation of 49 C.F.R. § 592.6(e)(2), (4)-(5), and by changing the location of its RI operations without providing timely notification to NHTSA in violation of 49 C.F.R. § 592.6(l).

17. ASC submitted a written response to the Notice to Show Cause on August 30, 2020, and a written addendum in response to the Notice to Show Cause on September 10, 2020. A meeting between NHTSA and ASC was held on September 11, 2020. ASC submitted a supplemental written response to the Notice to Show Cause on September 25, 2020.

18. In its December 15, 2021 Notice of Suspension, NHTSA found that ASC committed each of the violations alleged in the Notice to Show Cause and suspended the RI registration of ASC for 180 days, effective as of the date of the notice.

19. NHTSA has authority to modify the prior imposed suspension. 49 C.F.R. § 592.7(c)(5). Based upon information ASC has provided to NHTSA following the Notice of Suspension, to enhance safety and NHTSA’s oversight of ASC, and to modify the prior imposed suspension as described below, NHTSA and ASC have mutually agreed to this Consent Order.

20. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, and in accordance with the delegations at 49 C.F.R. §§ 1.95, 501.5(a), to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); to inspect and investigate, 49 U.S.C. § 30166(b)(1); to ensure that nonconforming motor vehicles are lawfully imported, modified to conform, and properly certified as conforming, 49 U.S.C. §§ 30141, 30146; and to require reports or answers to specific questions, 49 U.S.C. § 30166(e).

It is **AGREED** by ASC and **ORDERED** by NHTSA that the following provisions shall apply.

## **II. TERMS AND CONDITIONS OF CONSENT ORDER**

### **Admission of Violations**

21. ASC admits that it violated the Safety Act and regulatory requirements applicable to RIs, as described in the Notice of Suspension.

### **Suspension of ASC's Registered Importer Registration**

22. Subject to the terms of Paragraph 22-27, the previously imposed suspension of ASC's RI registration is modified from one hundred and eighty (180) days to a total suspension of three hundred and sixty (360) days ("Total Suspension"), beginning on December 15, 2021.

23. Of the Total Suspension, a suspension of December 15, 2021 through the Effective Date of this Consent Order shall be imposed on ASC ("Imposed Suspension").

24. ASC shall receive a credit against the Total Suspension for the period from December 15, 2021, through the Effective Date of this Consent Order, during which its RI registration has been suspended pursuant to the Notice of Suspension.

25. The remainder of the Total Suspension shall be held in abeyance ("Abeyance Suspension") during the term of this Consent Order pending ASC's satisfactory completion, as

reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and regulations thereunder, during the term of this Consent Order.

26. In the event ASC commits material violations of this Consent Order, the Safety Act, or regulations thereunder, during the term of this Consent Order, NHTSA may impose the Abeyance Suspension or any part thereof, pursuant to the terms of Paragraph 33. ASC may also separately be subject to revocation or suspension under 49 C.F.R. § 592.7 for those violations of the Safety Act and regulations thereunder.

27. During any suspension imposed under the terms of this Consent Order or otherwise imposed by NHTSA, ASC shall be subject to the terms set forth in 49 C.F.R. § 592.7(d) and the continuing obligations set forth in 49 C.F.R. § 592.7(e).

#### **Civil Penalty**

28. Subject to the terms of Paragraphs 28-32, ASC shall pay a civil penalty in the sum of seventy-five thousand dollars (\$75,000) (the “Total Civil Penalty”).

29. Of the Total Civil Penalty, the sum of twenty thousand dollars (\$20,000) (the “Imposed Amount”) shall be paid in two equal installments pursuant to instructions provided by NHTSA. The first payment shall be made by ASC within 10 calendar days after the Effective Date of this Consent Order and the second payment shall be made by ASC no later than October 1, 2022.

30. Of the Total Civil Penalty, the sum of fifty-five thousand dollars (\$55,000) (the “Abeyance Amount”) shall be deferred and held in abeyance by NHTSA pending the satisfactory completion by ASC, as reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and the regulations thereunder, during the term of this Consent Order. In the event that ASC commits material violations of this Consent Order, the

Safety Act, or regulations thereunder, during the term of this Consent Order, ASC may be obligated to pay the Abeyance Amount, or any part of it, in accordance with Paragraph 33, and may be liable for additional civil penalties beyond the Abeyance Amount for those violations of the Safety Act and regulations thereunder.

31. Pursuant to the terms of this Consent Order, ASC admits that it owes a debt in the amount of seventy-five thousand dollars (\$75,000), as provided for in Paragraph 28, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Claims Collection Act”).

32. If ASC fails to timely make either payment of the Imposed Amount as set forth in Paragraph 28 or fails to make payment of the Abeyance Amount or any portion thereof as set forth in Paragraph 30 that becomes due under the terms of this Consent Order, ASC shall be in default of this Consent Order and the remaining balance of the Total Civil Penalty shall become due immediately. In that event: (i) ASC agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 89, either administratively or in any court, and (ii) ASC affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, ASC shall pay the United States all reasonable costs of collection and enforcement, including attorneys’ fees and expenses. This provision does not preclude ASC from contesting the imposition of the Abeyance Amount or any portion of it pursuant to Paragraph 33.

### **Imposition of Abeyance Suspension and Abeyance Amount**

33. Should NHTSA reasonably believe that ASC has materially violated the Safety Act, the regulations thereunder, or the terms of this Consent Order, NHTSA shall provide written notice to ASC regarding the alleged violation, including a statement regarding the Abeyance Suspension or portion thereof that will be imposed and/or the Abeyance Amount or portion thereof that will be due if NHTSA makes a determination in accordance with this Paragraph. ASC will have thirty (30) calendar days or such other time as mutually agreed by NHTSA and ASC, from the date on which written notice was communicated to ASC by NHTSA (“Evaluation Period”) to respond to the notice in writing. ASC’s response will provide its views regarding the allegations in NHTSA’s written notice, along with any supporting information and documentation. Should there be a dispute, the parties agree to discuss the alleged violation. If no mutually agreeable resolution is reached after discussion and NHTSA determines that ASC has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then ASC shall be subject to the Abeyance Suspension or any portion thereof determined by NHTSA, effective immediately, and/or liable for the Abeyance Amount or any portion thereof as determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

### **Reinstatement of RI Registration**

34. The RI registration of ASC, which was suspended as set forth above, shall be reinstated as of the Effective Date of this Consent Order.

### **Release**

35. Upon expiration of the Consent Order (including any extension), ASC, including its current and former directors, officers, employees, agents, successors, and assigns will be

deemed released from liability for civil penalties pursuant to 49 U.S.C. § 30165 and from any suspension or revocation pursuant to 49 C.F.R. § 592.7, other than may be imposed pursuant to the terms of this Consent Order, in connection with any and all violations of the Safety Act and regulations thereunder addressed in the Notice of Suspension for all vehicles imported by ASC prior to December 15, 2021.

36. Nothing in this Consent Order discharges ASC from any obligation to comply with the Safety Act or regulations thereunder.

37. This Consent Order does not release ASC from liabilities, if any, that may be asserted by the United States, the U.S. Department of Transportation, NHTSA, or any governmental entity, other than the civil penalty liability under 49 U.S.C. § 30165 and the suspension or revocation under 49 C.F.R. § 592.7 described in Paragraph 35.

### **Performance Obligations**

#### **Independent Monitor**

38. ASC will retain, at its sole costs and expense, an independent monitor (the “Monitor”) during the term of this Consent Order who shall report to NHTSA directly. The Monitor will be selected pursuant to the process set forth in Paragraphs 38-39. The Monitor must be a professional, familiar with corporate controls and compliance programs. The Monitor must, as part of the Monitor’s responsibilities under this Consent Order, be or expeditiously become familiar with provisions of the Safety Act and regulations thereunder applicable to RIs, including 49 U.S.C. §§ 30141, 30146-47 and 49 C.F.R. Parts 591 and 592. The Monitor must be independent of ASC and must not have had any prior financial or other contractual relationship with ASC (including as an attorney or consultant to ASC). ASC agrees to fully cooperate with the Monitor to ensure the Monitor has access to the information (including from records and

from ASC personnel) that is reasonably necessary to carry out its duties under the Consent Order.

39. Within twenty-one (21) calendar days after the Effective Date of this Consent Order, ASC shall provide NHTSA with the names, qualifications, and contact information of three individuals who are qualified to serve as the Monitor and confirmation that each of the three individuals is willing to perform the obligations of the Monitor under the terms of this Consent Order. Provided that NHTSA determines that the individuals proposed by ASC are qualified under Paragraph 38 and suitable to serve as the Monitor, NHTSA will select one of these three individuals to serve as the Monitor after receiving the names and qualifications of the three individuals proposed by ASC and having the opportunity to interview each of the three individuals. NHTSA will inform ASC of that selection in writing. If NHTSA determines that none of the three individuals is a suitable and appropriate selection to serve as the Monitor, NHTSA will notify ASC in writing and ASC shall have fourteen (14) calendar days to provide three additional names for NHTSA's consideration, subject to the terms of this Paragraph. ASC shall retain the individual selected by NHTSA to serve as the Monitor and provide written confirmation of such retention within fourteen (14) calendar days after NHTSA informs ASC in writing of its selection of the Monitor. Notwithstanding the foregoing, if NHTSA determines that none of the individuals proposed by ASC is a suitable and appropriate selection to serve as the Monitor, it may appoint a Monitor and inform ASC of its selection in writing.

#### **Written Procedures and Employee Training**

40. ASC, with assistance from the Monitor, shall develop written procedures and employee training materials to improve its compliance with the Safety Act and regulations thereunder. The written procedures and employee training materials shall separately incorporate

and address each of the duties of a RI specified in 49 C.F.R. § 592.6 and the performance requirements specified in Paragraphs 43-55.

41. ASC shall submit the written procedures and training materials required under Paragraph 40 to the Monitor and obtain written confirmation of the Monitor's approval of the written procedures and training materials.

42. ASC shall submit the written procedures and training materials required under Paragraph 40 and the written confirmation of the Monitor's approval required under Paragraph 41 to NHTSA within ninety (90) calendar days after it retains the Monitor under Paragraphs 38-39, together with a proposed training schedule that includes both intervals and required attendees (identified by employee position and/or responsibilities) at training sessions. The training schedule shall include mandatory annual training for all employees with responsibility for NHTSA compliance and mandatory on-boarding training within a reasonable time-period for new employees with responsibility for NHTSA compliance. ASC shall incorporate any feedback provided by NHTSA to the written procedures and training materials and adopt the written policies and training schedule as mandatory company policies (applicable to all ASC locations) within thirty (30) calendar days after it submits the written procedures, training materials, and training schedule to NHTSA under this Paragraph 42. These policies shall not be changed by ASC during the term of this Consent Order without prior notice and opportunity for feedback from NHTSA through the quarterly meetings described in Paragraph 43.

#### **Biannual Meetings**

43. ASC and the Monitor shall meet with NHTSA, either virtually or in person, on at least a biannual basis during the term of this Consent Order, and will include in those meetings a discussion of its progress on the Performance Obligations specified in this Consent Order, the

results of the compliance audits performed under Paragraph 46 and the Monitor's reports under Paragraph 47, and any issues identified by NHTSA relating to the compliance of ASC with the terms of this Consent Order, the Safety Act, or the regulations thereunder. These biannual meetings shall be scheduled by ASC. The first of these biannual meetings shall take place within ninety (90) calendar days after the Effective Date of this Consent Order. ASC attendees for each of these biannual meetings shall include the owner or president of ASC and each principal that has signed certifications of conformance submitted to NHTSA during the previous 180 calendar days (or in the case of the first meeting, the 180 calendar days prior to the suspension plus the period between the Effective Date of this Consent Order and the first meeting).

#### **Individual Vehicle Records**

44. ASC shall create and retain individual vehicle records ("IVR") for each nonconforming vehicle it imports during the term of this Consent Order. The IVR shall be maintained in an electronic format that allows information and records relating to each vehicle to be identified and retrieved by reference to the vehicle's Vehicle Identification Number ("VIN"). The IVR shall include, at a minimum, the following information for each vehicle:

a. the dates on which ASC i) purchased the vehicle or entered into a contract to conform and certify the vehicle; ii) imported the vehicle (including the day that the vehicle entered the United States); iii) took physical possession or legal custody of the vehicle; iv) modified the vehicle into conformance; v) affixed a certification label to the vehicle; vi) submitted a certification of conformance to NHTSA under 49 C.F.R. § 592.6(d) for the vehicle; vii) applied for, obtained, assigned, or was assigned title for the vehicle (in its own name or the name of another); and viii) sold or otherwise released physical possession or legal custody of the vehicle;

b. information and photographs including metadata establishing the date on which and location where each of the photographs was taken demonstrating the conformance and/or nonconformance of the vehicle both prior to and after any modifications are performed with respect to FMVSS 101 (regarding speedometer and odometer displays and the brake malfunction telltale), FMVSS 109 (regarding the required DOT mark on tires), FMVSS 138 (regarding the tire pressure monitoring system (“TPMS”)), and FMVSS 208 (regarding the passenger air bag telltale);

c. information describing how (the manner), stating when (the calendar date) and where (physical location), and identifying by whom (the individual) each necessary conformance modification was completed;

d. information and documents reflecting the manner in which ASC determined whether the vehicle was subject to any open safety recalls and the manner and person who completed repairs on any open safety recall;

e. the date on which NHTSA received ASC’s certification under 49 C.F.R. § 592.6(d) for the vehicle; the calculated date 30 days thereafter; and the date on which NHTSA issued a bond release for the vehicle;

f. photographs including metadata establishing the date on which and location where each of the photographs was taken clearly depicting the vehicle both on the day ASC first takes physical possession of the vehicle and on the earlier of 30 days after NHTSA receives ASC’s certification under 49 C.F.R. § 592.6(d) or issues a bond release for the vehicle; and

g. all documents relating to the purchase, importation, transportation, conformance, repair, certification, titling, and sale of the vehicle by or to ASC (for

clarification, this subpart does not require ASC to generate any documents but instead requires ASC to maintain all such documents as part of the IVR).

The information, photographs, and documents required to be created or maintained by ASC as IVR under this Paragraph 44 do not supplant or relieve ASC of its burden of compliance with all other record and information keeping or submission requirements applicable to RIs, including its duty to provide timely, complete, and accurate responses to requests for information from NHTSA under 49 U.S.C. § 30166, 49 C.F.R. Part 510, 49 C.F.R. § 592.6(o), or any other applicable authority.

45. In response to any written request from NHTSA referencing this Paragraph 45, ASC shall provide NHTSA with the IVR for any vehicle(s) identified in the request by Vehicle Identification Number (“VIN”). ASC shall provide NHTSA with the requested IVR for each such vehicle within three (3) business days in an electronic format. ASC agrees and acknowledges that the response by ASC to any such request specifically referencing this Paragraph 45 constitutes a required report under 49 U.S.C. § 30166(e) and a response to a NHTSA request under 49 C.F.R. § 592.6(o).

#### **Compliance Audits**

46. The Monitor shall perform, and ASC shall submit to and fully cooperate with, an audit of twelve (12) vehicles (the “Audit Vehicles”) during each sixty (60) day period during the term of this Consent Order (the “Compliance Audits”). If the term of this Consent Order is extended by NHTSA, the Compliance Audits required under this Paragraph shall continue uninterrupted through the expiration of the Consent Order. The Audit Vehicles shall be chosen by the Monitor, in consultation with NHTSA, from a list that ASC shall provide to the Monitor and to NHTSA, on the first day of each sixty day period, of all vehicles for which ASC has

submitted a Statement of Conformity to NHTSA under 49 C.F.R. § 592.6(d) within the prior sixty day period. At a minimum, the Monitor shall audit ASC's compliance, with respect to each of the Audit Vehicles, with the requirements and duties set forth in 49 C.F.R. § 592.6 and the requirements relating to IVR set forth in Paragraph 44 of this Consent Order. The Monitor, in consultation with NHTSA, shall determine the extent to which each Compliance Audit will include physical inspections of vehicles and on-site inspections of facilities.

47. Following the completion of each Compliance Audit under the terms of Paragraph 46, the Monitor shall confer with NHTSA to determine whether to prepare a written report. If NHTSA requests such a report, the Monitor shall provide a written report to NHTSA and ASC, within thirty (30) calendar days following completion of the Compliance Audit, that identifies the Audit Vehicles by make, model, and VIN, confirms that each of the Audit Vehicles was subject to audit in a manner consistent with the requirements of Paragraph 46, and separately describes each noncompliance or potential noncompliance (if any) with each of the requirements and duties set forth in 49 C.F.R. § 592.6 or the requirements relating to IVR set forth in Paragraph 44 of this Consent Order with respect to each of the Audit Vehicles. If the Monitor identifies any such noncompliance or potential noncompliance, the report for that Audit Period shall include the Monitor's conclusion regarding the underlying cause of each such noncompliance or potential noncompliance and the Monitor's recommendations regarding process changes and controls to mitigate the risk of any similar future noncompliance or potential noncompliance.

48. ASC shall adopt and integrate any recommendations made by the Monitor in an audit report under Paragraph 47 as mandatory corporate policy or take other appropriate action to implement the recommendations within thirty (30) calendar days after receiving the audit report.

49. Nothing in the reporting or meeting structure established in this Consent Order is intended to restrict the ability for the Monitor to otherwise raise issues to NHTSA, at any time during the Consent Order, as the Monitor reasonably deems warranted.

#### **Certifications of Conformance**

50. ASC acknowledges that the Statements of Conformity (including certifications of conformance) it submits to NHTSA are subject to the requirements of 49 C.F.R. § 592.6 and the criminal penalties provided for in 18 U.S.C. § 1001. ASC further agrees and represents that it will not submit any certification of conformance to NHTSA during the term of this Consent Order unless the principal who signs the certification, prior to signing any such certification and in support of the certification, first reviews the IVR information and photographs described in Paragraph 44(b)-(d) and any other information, documents, or photographs necessary to determine that ASC has performed all necessary conformance modifications, completed any open safety recalls, and affixed a certification label in compliance with 49 C.F.R. § 592.6(c).

#### **Enforcement Assistance**

51. ASC shall, throughout the term of this Consent Order (including any extension), provide reasonable, good-faith assistance and information to NHTSA in furtherance of its enforcement efforts and initiatives.

### **III. TERM OF THE CONSENT ORDER**

52. Unless otherwise specified, the term of this Consent Order is one year from the Effective Date; provided, however, that NHTSA may extend the term of this Consent Order for up to an additional six (6) months if NHTSA reasonably finds that an extension is warranted.

53. If NHTSA finds that an extension of the original term of one year of the Consent Order is warranted, it shall provide ASC with written notice of the extension, the factual basis for

its determination that an extension is warranted, and the duration of the extension, no later than 90 days before the expiration of the original one year term of the Consent Order.

#### **IV. AMENDMENT**

54. This Consent Order cannot be modified, amended, or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended, or waived other than by a writing setting forth such modification, amendment or waiver.

55. The parties may agree, without need for an amendment as specified in Paragraph 54, to reasonable changes to specified report or meeting dates, schedules, or meeting cadences.

#### **V. MISCELLANEOUS**

56. ASC shall use its best efforts to take all actions and to do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order.

57. Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any Federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

58. None of the specific reporting or record keeping obligations described in this Consent Order relieves ASC of its obligation to submit any other reports or maintain any other records required by the Safety Act or regulations thereunder, or otherwise comply with existing laws and regulations.

59. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 32.

60. This Consent Order shall be effective upon its full execution by all individuals and parties listed as signatories below ("Effective Date"). Any breach of the obligations under

this Consent Order, may, at NHTSA's option, be immediately enforceable in any United States District Court. ASC agrees that it will not raise any objection as to venue or request a transfer of venue.

61. In the event of a breach of, or failure to perform, any term of this Consent Order by ASC, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely civil penalty payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

62. This Consent Order was negotiated and prepared by both NHTSA and ASC. If any of the provisions in this Consent Order require a court's interpretation, no ambiguity shall be construed against the drafter.

63. The parties who are the signatories to this Consent Order each warrant that they have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

64. In any legal action between the parties concerning the enforceability of this Consent Order, ASC expressly waives any and all defenses and agrees not to plead, argue, or otherwise raise any defenses other than that ASC has substantially complied with the terms of this Consent Order.

65. This Consent Order shall be binding upon, and inure to the benefit of, ASC and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. ASC agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including

as a result of any changes to the corporate structure or relationships among or between ASC and any of its parents, subsidiaries, or affiliates.

66. Should any condition or other provision contained herein be held invalid, void, or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair, or invalidate any other provision of this Consent Order.

67. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

68. This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

69. This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced, and governed under the Federal law of the United States. This Consent Order, which is fully incorporated hereto by reference, sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order.

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

NATIONAL HIGHWAY TRAFFIC SAFETY  
ADMINISTRATION,  
U.S. DEPARTMENT OF TRANSPORTATION

Dated: February 25, 2022

By: **STEVEN SCOTT  
CLIFF** Digitally signed by STEVEN  
SCOTT CLIFF  
Date: 2022.02.25 09:28:15 -05'00'

Steven S. Cliff, Ph.D.  
Deputy Administrator

Dated: February 24, 2022

By: **ANN ELIZABETH  
CARLSON** Digitally signed by ANN ELIZABETH  
CARLSON  
Date: 2022.02.24 15:23:14 -05'00'

Ann Carlson  
Chief Counsel

Dated: February 24, 2022

By: **KERRY E  
KOLODZIEJ** Digitally signed by KERRY E  
KOLODZIEJ  
Date: 2022.02.24 14:42:11 -05'00'

Kerry E. Kolodziej  
Assistant Chief Counsel  
for Litigation and Enforcement

Dated: February 24, 2022

By: **JEFFREY  
ARTHUR EYRES** Digitally signed by JEFFREY  
ARTHUR EYRES  
Date: 2022.02.24 14:09:36  
-05'00'

Jeffrey A. Eyres  
Senior Trial Attorney

AGREED:

R.C. MAST, INC., d/b/a  
AUTOMOTIVE SERVICES CORPORATION

Dated: February 18, 2022

By:

  
Richard C. Mast  
R.C. Mast, Inc., d/b/a  
Automotive Services Corporation

Dated: February 18, 2022

By:

  
James W. Porter III  
Bradley Arant Boult Cummings LLP  
Counsel for R.C. Mast, Inc., d/b/a  
Automotive Services Corporation