

May 2, 2023

Administrative Review – 23-03-006  
Served Personally

### **Administrative Penalty**

LONDONDERRY DODGE CHRYSLER JEEP LTD.  
o/a XS CREDIT  
13333 FORT ROAD NW  
EDMONTON, AB  
T5A 1C3

### **Attention: Robert Harms**

Dear Robert Harms:

**Re: Londonderry Dodge Chrysler Jeep Ltd. operating as XS Credit  
– Provincial Automotive Business Licence No. B173103**

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

### **Facts**

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter. The Supplier provided written representations via email dated April 5, 2023 (attached as Schedule “B”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

Londonderry Dodge Chrysler Jeep Ltd. operating as XS Credit (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, leasing, wholesale sales, and garage in the Province of Alberta.

### ***Direct communications with the Supplier and its representatives***

1. On Aug. 12, 2015, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. An undated Findings Letter outlining the inspection findings was

completed and sent to the Supplier. The Findings Letter outlined a number of concerns including but not limited to:

- a) Online advertisements (Kijiji) that quoted payments but did not contain the cost of credit disclosure as required under the Cost of Credit Disclosure Regulation ("COC").
  - b) During the inspection, one deal reviewed by the ISO did not reflect all-in pricing and was sold over the advertised price contrary to Section 11(2)(l) of the ABR.
  - c) Four salespeople designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the requirements of the Automotive Business Regulation ("ABR").
  - d) Various issues with the completion of and/or disclosure of Mechanical Fitness Assessments ("MFAs") contrary to Sections 15(1) and 16 of the Vehicle Inspection Regulation ("VIR").
2. On March 20, 2017, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on March 28, 2017. The Findings Letter outlined a number of concerns including but not limited to:
- a) Advertisements did not include the vehicle's stock number contrary to Section 11(2)(m) of the ABR.
  - b) During the inspection, 10 deals were reviewed by the ISO and of those 10 deals, five did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
  - d) Discrepancies were identified in some consumer credit applications in which the consumer's salary being relayed to the financial institution was not accurate contrary to Section 6 of the CPA.
3. On May 8, 2019, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on June 12, 2019. The Findings Letter outlined a number of concerns including but not limited to:
- a) During the inspection, 15 deals were reviewed by the ISO and of those 15 deals, four did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - b) Advertising issues contrary to requirements found in Section 11 of the ABR.
  - c) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the requirements of the ABR.
  - d) Various issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16 of the VIR.
  - e) A number of the bills of sale ("BOS") that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.

4. On Sept. 28, 2020, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Oct. 7, 2020. The Findings Letter outlined a number of concerns including but not limited to:
  - a) During the inspection, one deal jacket reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - b) Advertising issues contrary to requirements found in Sections 11 and 12 of the ABR.
  - c) Various issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
  - d) Two salespeople designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration and four salespeople were selling vehicles for the Supplier but were not designated to act on their behalf contrary to the requirements of the ABR.
  - e) A number of the BOS' that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.
  
5. On May 24, 2022 a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on June 6, 2022. The Findings Letter outlined a number of concerns including but not limited to:
  - a) Advertising issues contrary to requirements found in Sections 11 and 31.1 of the ABR.
  - b) During the inspection, 27 deals were reviewed by the ISO and of those 27 deals, five did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Various issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
  - d) A number of the BOS' that were reviewed in the deal jackets had multiple issues contrary to Section 31.2 of the ABR.
  
6. On Feb. 3, 2023, a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused specifically on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Feb. 3, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the five previous comprehensive inspections conducted in 2015, 2017, 2019, 2020 and 2022. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 3, 2023. The Findings Letter outlined the following concerns:
  - a) During the inspection, 23 deals were reviewed by the ISO and of those 23 deals, five did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.

7. Selling vehicles over the advertised price was found in all six AMVIC inspections, based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection. The Supplier has continued to sell vehicles over the advertised price despite the education provided during the previous inspections.
8. The Supplier provided written representations, dated April 5, 2023, in response to the Proposed Administrative Penalty (see Schedule "B").

### **Applicable Legislation**

#### **Automotive Business Regulation**

##### **Advertising**

##### **Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and

##### **Bill of sale**

##### **Section 31.2**

- (1) A business operator engaged in automotive sales must use a bill of sale that includes the following:
- (a) the name and address of the consumer;
  - (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
  - (c) the name, business address and licence number of the business operator;
  - (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
  - (e) the make, model and model year of the vehicle;
  - (f) the colour and body type of the vehicle;
  - (g) the vehicle identification number of the vehicle;
  - (h) the date that the bill of sale is entered into;
  - (i) the date that the vehicle is to be delivered to the consumer;
  - (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
    - (i) charges for transportation of the vehicle;
    - (ii) fees for inspections;
    - (iii) fees for licensing;
    - (iv) charges for warranties;

- (v) taxes or levies, including GST;
  - (k) the timing for payment by the consumer of the fees and charges under clause (j);
  - (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;**
  - (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
  - (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
  - (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
    - (i) information about the vehicle being traded in, and
    - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
  - (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
  - (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
  - (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;**
  - (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
  - (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
    - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
    - (ii) the vehicle is a new, specifically identified vehicle;
  - (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
  - (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
  - (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.
- (2) the business operator must ensure that all restrictions, limitations, and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.**

## **Consumer Protection Act**

### **Interpretation of documents**

#### **Section 4**

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

## **Administrative Penalties**

### **Notice of administrative penalty**

#### **Section 158.1**

(1) If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

## **Right to make representations**

### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and

(b) provide the person with an opportunity to make representations to the Director.

**Vicarious liability**  
**Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

**Analysis – Did the Supplier fail to comply with the provisions of the ABR?**

A routine AMVIC industry standards inspection was completed on Aug. 12, 2015. The inspection findings were discussed with the Supplier and an undated Findings Letter was emailed to the Supplier. The 2015 inspection findings identified a number of breaches including the Supplier selling a vehicle over the advertised price.

Four subsequent AMVIC industry standards inspections were completed in 2017, 2019, 2020, and 2022. As a result of each inspection, a Findings Letter was completed and provided to the Supplier after each inspection providing education to the Supplier. In all four of these inspections, the Findings Letters addressed a number of legislative breaches including the Supplier selling vehicles above the advertised price.

On Feb. 3, 2023 a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused solely on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Feb. 3, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the five previous comprehensive inspections conducted in 2015, 2017, 2019, 2020 and 2022. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 3, 2023. The ISO identified that the Supplier has continued to sell vehicles over the advertised price contrary to Section 11(2)(l) of the ABR. Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the 2023 AMVIC industry standards inspection.

**A. Selling Above Advertised Price (11(2)(l) ABR)**

During the Feb. 3, 2023 inspection, the ISO found five vehicles sold above the advertised price. Prices advertised need to include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price. In these five consumer transactions the Supplier derived an economic benefit of **\$6,291.49** at the cost of the consumers.

- Stock No. NJC8150 was sold over the advertised price by \$90.76;
- Stock No. NR18119 was sold over the advertised price by \$4,180.25;
- Stock No. NDR2655 was sold over the advertised price by \$737.98;
- Stock No. 19P38901 was sold over the advertised price by \$1,192.25; and
- Stock No. NR12846 was sold over the advertised price by \$90.25.

The Findings Letter dated Feb. 3, 2023 states 19 used vehicle and four new vehicle sale files were reviewed. Of the 23 deal jackets reviewed by the ISO, five of the vehicles were sold over the advertised price contrary to Section 11(2)(l) of the ABR.

The Supplier provided written representations on April 5, 2023 in response to the Proposed Administrative Penalty (see Schedule “B”). In the written representations, the Supplier addressed each vehicle that was alleged to be sold over the advertised price during the 2023 AMVIC industry standards inspection. In order to fulsomely address the written representations, the Director will also address each vehicle in detail.

Stock No. NJC8150

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. NJC8150 was sold over the advertised price by \$90.76. In their written representations, the Supplier indicated they disagree, stating the sale included a “*roof rack, winter rims/tires at the cost of \$2307.49*” and was therefore sold under the advertised price, “*if properly documented*” by \$2,216.73.

In review of the documentation before me, the \$2,307.49 charged to the consumer for the “*roof rack, winter rims/tires*” was factored into the amount determined in the Proposed Administrative Penalty regarding Stock No. NJC8150. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$51,295.00
Gas Fee	+	65.00
AMVIC Levy	+	6.25
Tire Levy	+	20.00
Add-On Accessories	-	<u>2,307.49</u>
Sale Price		\$49,078.76
Advertised Price	-	<u>48,988.00</u>
Over Advertised Price		<b>\$90.76</b>

Based on the documentation before me, I find that Stock No. NJC8150 was sold over the advertised price by \$90.76.

Stock No. NR18119



In the Application Report and Proposed Administrative Penalty it was alleged Stock No. NR18119 was sold over the advertised price by \$4,180.25. In the Supplier's written representations they indicated the sale of Stock No. NR18119 included a "\$1500 overallowance on customer trade [sic]" as well as a "Hitch, trailer brake control, spray-in bedliner, mud flaps and leather seats at the cost of \$4,462.05". The Supplier stated "if properly documented" Stock No. NR18119 was sold \$1,780.80 under the advertised price.

The Supplier did not provide any evidence to support their claims regarding the \$1,500 over allowance given on the consumer's trade-in and the additional accessories sold to the consumer. The Director must make a determination based on the documentation currently available. The BOS before the Director does not indicate an over allowance on the consumers trade in nor does it indicate any additional accessories were sold to the consumer. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$57,410.00
Gas Fee	+	65.00
Admin Fee	+	395.00
AMVIC Levy	+	6.25
Tire Levy	+	20.00
Rebate	-	<u>1,000.00</u>
Sale Price		\$56,896.25
Advertised Price	-	<u>52,716.00</u>
Over Advertised Price		<b>\$4,180.25</b>

Based on the evidence in relation to this deal jacket, I find that Stock No. NR18119 was sold over the advertised price by \$4,180.25.

#### Stock No. NDR2655

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. NDR2655 was sold over the advertised price by \$737.98. In their written representations, the Supplier indicated the sale of Stock No. NDR2655 included a "\$2000 overallowance on customer's trade [sic] as well as a cash-back of \$3500.00". The Supplier stated "if properly documented" Stock No. NR18119 was sold \$4,762.08 under the advertised price and further stated "Ironically we lost \$1,022.93 on this vehicle transaction".

In review of the documentation before me, the \$3,500 cash back provided to the consumer was factored into the amount determined in the Proposed Administrative Penalty regarding Stock No. NDR2655. Further, the Supplier did not provide any evidence to support their claim regarding the \$2,000 over allowance given on the consumer's trade-in, nor is this indicated on any documentation currently before the Director. The Director must make a determination based on the documentation

currently available. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$53,179.73
Gas Fee	+	65.00
Admin Fee	+	395.00
AMVIC Levy	+	6.25
Tire Levy	+	20.00
Rebate	-	1,000.00
Cash Back	-	<u>3,500.00</u>
Sale Price		\$49,165.98
Advertised Price	-	<u>48,428.00</u>
Over Advertised Price		<b>\$737.98</b>

Based on the documentation before me, I find that Stock No. NDR2655 was sold over the advertised price by \$737.98.

Stock No. 19P38901

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 19P38901 was sold over the advertised price by \$1,192.25. The Supplier did not have any additional comments in regards to Stock No. 19P38901 in their written representations. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$33,790.00
Admin Fee	+	395.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$34,191.25
Advertised Price	-	<u>32,999.00</u>
Over Advertised Price		<b>\$1,192.25</b>

Based on the evidence before me, I find that Stock No. 19P38901 was sold over the advertised price by \$1,192.25.

Stock No. NR12846

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. NR12846 was sold over the advertised price by \$90.25. In their written representations, the Supplier indicated they disagree, stating the sale included a "leather seating at the cost of \$2000" and was therefore sold under the advertised price, "if properly documented" by \$1,909.75.

In review of the documentation before me, the \$2,000 charged to the consumer for the “leather seating” was factored into the amount determined in the Proposed Administrative Penalty regarding Stock No. NR12846. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$59,188.00
Gas Fee	+	65.00
Admin Fee	+	395.00
AMVIC Levy	+	6.25
Tire Levy	+	20.00
Add-On Accessories	-	2,000.00
Rebate	-	<u>1,000.00</u>
Sale Price		\$56,674.25
Advertised Price	-	<u>56,584.00</u>
Over Advertised Price		<b>\$90.25</b>

Based on the documentation before me, I find that Stock No. NR12846 was sold over the advertised price by \$90.25.

In 2022, the Supplier submitted sales levies to AMVIC that indicated they sold 2,017 vehicles over the course of the year. Based on the sample size of 23 retail sales deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived an economic benefit by charging consumers over the advertised price. This is concerning as the Supplier has been provided the opportunity and education to rectify this business practice, however continues to engage in this practice and derive an economic benefit at the cost of consumers.

In their written representations the Supplier stated “On these 5 deals we are looking at, in fact consumers derived an economic benefit of \$9,478.05 at the expense of Londonderry.” Based on the Supplier’s documents that are currently available, the Director has no evidence from the Supplier to support this claim and therefore disagrees with this statement.

The Director finds that on a balance of probabilities, the Supplier has breached Section 11(2)(l) of the ABR.

#### B. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the legislative amendments, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email

signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

Two of the inspections completed on the Supplier were completed prior to this legislative change. The Supplier was educated regarding the BOS requirements during the 2019 industry standards inspection. The Findings Letter provided to the Supplier as a result of the 2019 industry standards inspection provides the Supplier with the legislation they must comply with in the completion of their BOS. In each of the two subsequent inspections conducted in 2020 and 2022 the BOS' reviewed by the ISO were found to be non-compliant and the Supplier was provided education on the legislative requirements the Supplier must comply with pursuant to Section 31.2 of the ABR.

While the issues found during the 2019, 2020 and 2022 industry standards inspections are not all the exact same BOS issues, the Supplier was provided with the legislative requirements they must comply with in the completion of their BOS in all three Findings Letters. Yet in reviewing the documentation before me, relating to the most recent inspection conducted on Feb. 3, 2023, it is noted that the Supplier continues to not comply with the rather straightforward legislation when completing their BOS.

In the sale of Stock No. NJC8150 (see Schedule "A"; Exhibit 8) the selling price included accessories which is shown on the "Additional Products Summary" but were not itemized on the BOS which is contrary to Section 31.2(l) of the ABR. The BOS relating to the sale of Stock No. NDR2655 (see Schedule "A"; Exhibit 10) the selling price included cash back of \$3,500 which is shown on the "Additional Products Summary" but not on the BOS which is contrary to Section 31.2(r) of the ABR. The documentation relating to the sale of Stock No. NR12846 (see Schedule "A"; Exhibit 12) the selling price included leather seats worth \$2,000 which is shown on the "Additional Products Summary" but was not itemized on the BOS which is contrary to Section 31.2(l) of the ABR. In addition, this BOS does itemize something called "AFTERSALES" however, it not clear what this charge is for.

The BOS must be an accurate representation of the transaction that occurred. This ensures full, accurate disclosure and transparency to the consumer to understand the details of the transaction, and the costs of all goods and services they are paying for. The legislation is very clear, if a provision of a document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

In their April 5, 2023 written representations in response to the Proposed Administrative Penalty, the Supplier stated *"this last inspection, along with the current media environment surrounding vehicle purchasing and car dealerships has drastically accelerated out new process adoption. Any extra addon [sic] of accessory is being separately itemized on the bill of sale."* While the Director appreciates that the Supplier is now itemizing all accessories and additional products on their BOS, the Supplier was provided education regarding Section 31.2 of the ABR in 2019, 2020, and 2022 and based on the evidence from the 2023 inspection, has not brought their business practices into compliance.

Based on the evidence before me only in relation to the Feb. 3, 2023 inspection, on a balance of probabilities, I find the Supplier has breached Section 31.2 of the ABR.

### C. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued industry bulletins and newsletters over the past two years explaining advertising regulations to educate the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. The Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within a regulated industry. The court at paragraph 59 stated:

*“In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.”*

The Supplier’s business practices discussed above leverages the Supplier’s knowledge and position, and does not foster a level playing field between the consumer and the Supplier, leading to financial harm to consumers. It further concerns the Director that the Supplier has continued to breach rather straightforward legislation, to the financial detriment of consumers, despite the education provided by AMVIC.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers due to paying over the advertised price, in five transactions the Supplier derived an economic benefit of **\$6,291.49** and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the sixth inspection; and the aggravating factors listed above.

In the Supplier’s written representations (see Schedule “B”), they stated *“I would also invite the opportunity of another inspection...and table a potential penalty until that date.”* In the Director’s opinion, this is not an appropriate outcome based on the circumstances. This is the sixth AMVIC industry standards inspection conducted on the Supplier and based on the Findings Letters, the Supplier has not been in compliance with Section 11(2)(l) in any of the inspections. Further, in the 2019, 2020

and 2022 AMVIC industry standards inspections, the Supplier was not in compliance with the BOS legislation, Section 31.2 of the ABR. After every inspection, the Supplier was provided education, the applicable sections of the legislation for review and ample opportunity to address these concerns, as they did with other concerns brought forward during the inspections. However, based on the evidence the Supplier has not brought all their business practices into compliance. While the Supplier has been subject to previous inspections, the amount of this Administrative Penalty is based solely on the breaches from the 2023 AMVIC industry standards inspection.

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Londonderry Dodge Chrysler Jeep Ltd. operating as XS Credit pay an Administrative Penalty. This is based on my opinion Londonderry Dodge Chrysler Jeep Ltd. operating as XS Credit contravened Sections 11(2)(l) and 31.2(1) of the ABR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's industry standards department, the amount of the Administrative Penalty is **\$10,000**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The financial harm on the person adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
4. Administrative Penalties issued in similar circumstances;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
6. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$10,000.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **"Government of Alberta"** and sent to AMVIC at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)  
Gerald Gervais, Registrar  
Director of Fair Trading (as Delegated)

GG/kl  
Encl.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC