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

**FILED**

JUL 18 2012

Division of Consumer Affairs

By: Nicholas Kant  
Deputy Attorney General  
(973) 648-2893

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

In the Matter of  FLEET CONSTRUCTION AND REMODELING CO., INC.; and CLYDE T. SMITH, individually,	Administrative Action
Respondents.	<u>CONSENT ORDER</u>

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), have been or are being committed by Fleet Construction and Remodeling Co., Inc. and Clyde T. Smith, individually, as well as their managers, agents, representatives, employees, successors, assigns, subsidiaries and/or

independent contractors (collectively, "Respondents") (hereinafter referred to as the "Investigation");

WHEREAS Respondents, with a main business address of 271 Burwood Avenue, Camden, New Jersey 08105, are engaged in the Sale of Home Improvements to Consumers in the State of New Jersey;

WHEREAS as a result of the Investigation, the Division alleges that Respondents engaged in violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations;

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

IT IS ORDERED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

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

2.1 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

2.2 "Advertise," "Advertisement" or "Advertising" shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. For purposes of the Contractor Registration Regulations, "Advertise" shall be defined in accordance with N.J.A.C. 13:45A-17.2.

2.3 "Affected Consumer" shall refer to Consumer

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

2.5 "Contractor" or "Home Improvement Contractor" shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-17.2.

2.6 "Home Improvement" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.7 "Home Improvement Contract" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

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

2.9 "Represent" shall mean to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "Represent" including, without limitation, "Misrepresent."

2.10 "State" shall refer to the State of New Jersey.

### 3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

3.2 Respondents shall include with every Home Improvement Contract a copy of their certificate of commercial general liability insurance and the telephone number of the insurance company issuing the certificate, in accordance with N.J.S.A. 56:8-151(a)(2).

3.3 Respondents shall include in any Home Improvement Contract for a purchase price in excess of \$500.00 the dates or time period on or within which the Home Improvement is to begin and/or be completed, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iv).

3.4 Respondents shall include in any Home Improvement Contract the conspicuous notice printed in at least 10-point bold - faced type set forth in N.J.S.A. 56:8-151(b).

3.5 Respondents shall use invoices, Home Improvement Contracts and/or correspondence that include the informational statement and toll-free telephone set forth in N.J.A.C. 13:45A-17.11(f).

3.6 Respondents shall include in any Home Improvement Contract for a purchase price in excess of \$500.00 a description of the work to be done and the principal products and materials to be used or installed in performance of the Home Improvement Contract, pursuant to N.J.A.C. 13:45A-16.2(a)(12)(ii).

3.7 Respondents shall have all Home Improvement Contracts for a purchase price in excess of \$500.00 signed by all parties, pursuant to N.J.S.A. 56:8-151(a) and N.J.A.C. 13:45A-16.2(a)(12).

3.8 Respondents shall prominently display their registration number within their place of business, in all Advertisements distributed within this State, on business documents, Home Improvement Contracts and correspondence with consumers of Home Improvements in this State, and on all commercial vehicles registered in this State and leased or owned by Respondents and used by Respondents for the purpose of providing Home Improvements, pursuant to N.J.S.A. 56:8-144 and N.J.A.C. 13:45A-17.11.

3.9 Respondents shall provide to Consumers with whom they contract a written Home Improvement Contract for Home Improvement work in excess of \$500, and all changes thereto shall be in writing, in accordance with requirements of N.J.S.A. 56:8-151(a) and N.J.A.C. 13:45A-16.2(a)(12).

#### 4. AFFECTED CONSUMER COMPLAINT RESOLUTION

4.1 The Affected Consumer's complaint shall be forwarded to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondents agree herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondents further agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing

the Affected Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached hereto as Exhibit A). There will be no fees, costs and/or penalties associated with or assessed in connection with the arbitration.

4.2 If Respondents fail or refuse to participate in the ADR program, the arbitrator may enter a default against Respondents. Unless otherwise specified in the arbitration award, Respondents shall pay the arbitration award within forty-five (45) days of the arbitrator's decision. Respondents' failure to pay an arbitration award timely shall constitute a violation of this Consent Order.

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

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

## 5. SETTLEMENT PAYMENT

5.1 On or before the Effective Date, Respondents shall pay the amount of Four Thousand Nine Hundred Seven and 75/100 Dollars (\$4,907.75) in settlement of the Investigation ("Settlement Payment").

5.2 The Settlement Payment consists of a civil penalty of Four Thousand and 00/100 Dollars (\$4,000.00), pursuant to N.J.S.A. 56:8-13; reimbursement of attorneys' fees of Two Hundred Ninety Five and 00/100 Dollars (\$295.00), pursuant to N.J.S.A. 56:8-19; and reimbursement of investigative costs of Six Hundred Twelve and 75/100 Dollars (\$612.75), pursuant to N.J.S.A. 56:8-11.

5.3 The Settlement Payment shall be made by bank check or other form of guaranteed

funds made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Nicholas Kant, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street- 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

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

#### 6. GENERAL PROVISIONS

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

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

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

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

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

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

6.7 This Consent Order shall be binding upon Respondents as well as their managers, agents, employees, successors and assigns, and any Person through which they may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs their business.

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

6.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute or be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair, or deceptive or violate the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations. This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in

Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

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

## 7. REPRESENTATIONS AND WARRANTIES

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

7.2 Respondents Represent and warrant that he has fully read and understand this Consent Order, that he understands the legal consequences involved in signing the Consent Order and that there are no other representations or agreements not stated in writing herein.

## 8. RELEASE

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Settlement Payment in the manner specified in Section 5, the Division hereby agrees to release Respondents from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondents for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations, prior to the Effective Date arising out of the Investigation as well as the matters addressed in this Consent Order (the "Released Claims").

8.2 Notwithstanding any term of this Consent Order, the following do not comprise Released claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of Sections 3 and/or 4 of this Consent Order or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

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

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

11. NOTICES UNDER THIS CONSENT ORDER

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

For the Division:

Assistant Deputy of Enforcement, Office of Consumer Protection  
Division of Consumer Affairs, State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
124 Halsey Street - 7<sup>th</sup> Floor  
P.O. Box 45028  
Newark, New Jersey 07101

For Respondents:

Jack F. Karpf, Esq.  
Attorney at Law  
1931 E. Route 70  
Cherry Hill, New Jersey 08003

IT IS ON THE 18<sup>th</sup> DAY OF July, 2012 SO ORDERED.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By: 

ERIC T. KANEFSKY, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By: Nicholas Kant Dated: July 17, 2012  
Nicholas Kant  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-2893

FOR RESPONDENTS:

JACK F. KARPf, ATTORNEY AT LAW

By: Jack F. Karpf Dated: July 11, 2012  
Jack F. Karpf, Esq.  
Attorney at Law  
1931 E. Route 70  
Cherry Hill, New Jersey 08003

FLEET CONSTRUCTION AND REMODELING CO., INC.

By: Clyde T. Smith Dated: July 9<sup>th</sup>, 2012  
Clyde T. Smith, President  
Fleet Construction and Remodeling Co., Inc.  
271 Burwood Avenue  
Camden, New Jersey 08105

CLYDE T. SMITH, individually

By: Clyde T. Smith  
Clyde T. Smith  
271 Burwood Avenue  
Camden, New Jersey 08105

Dated: July - 9<sup>th</sup>, 2012

# EXHIBIT A

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

ADR UNIT GUIDELINES

**INTRODUCTION**

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

**I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

## II. WHAT IS MEDIATION?

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

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

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

## III. WHAT IS ARBITRATION?

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

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

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

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

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

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

##### **Complaint Review**

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

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

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

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

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

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

#### **Representation**

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

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

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

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

##### **A) Mediation**

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

##### **B) Arbitration**

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

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

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

#### **C) Written Requirements**

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

#### **D) Disclosure**

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

#### **V Privacy**

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

#### **VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS**

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

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

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

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

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

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

## **VII TERMINATION**

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

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

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

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

## **VIII EXCLUSION OF LIABILITY**

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

**IX INTERPRETATION AND APPLICATION OF RULES**

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

*Revised June 2008*