

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

FILED

AUG -7 2012

Division of Consumer Affairs

By: Patricia Schiripo
Deputy Attorney General
(973) 648-7819

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

In the Matter of

Administrative Action

GUTTERS BY MERRYFIELD, L.L.C.
PREVIOUSLY KNOWN AS RAINBIRD
GUTTER CO., L.L.C.,

CONSENT ORDER

Respondent.

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., 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 Gutters by Merryfield, L.L.C., formerly known as Rainbird Gutter Co., L.L.C., as well as by its owners, officers, directors, managers, members, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, “Respondent”), (hereinafter referred to as the “Investigation”);

WHEREAS Respondent, with a main business address of 1444 Chestnut Avenue, Gloucester City, New Jersey 08030, is engaged in the business of offering for Sale and selling Home Improvements;

WHEREAS the Division alleges that Respondent has committed violations of the CFA, the Contractors' Registration Act, and/or the Home Improvement Regulations;

WHEREAS Respondent denies that it has committed any violations of the CFA, the Contractors' Registration Act, and/or the Home Improvement Regulations;

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent 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 ORDEREDas 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 “Affected Consumer” shall refer to
- 2.3 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.
- 2.4 “Consumer” shall refer to any Person, who is offered Merchandise, for Sale.
- 2.5 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.
- 2.6 “Home Improvement” shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-16.1A.
- 2.7 “Home Improvement Contract” shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-16.1A.
- 2.8 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).
- 2.9 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).
- 2.10 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).
- 2.11 “Sales representative” shall be defined in accordance with N.J.A.C. 13:45A-16.1A.
- 2.12 “Seller” shall be defined in accordance with N.J.A.C. 13:45A-16.1A.
- 2.13 “State” shall refer to the State of New Jersey.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

- 3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its 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, and/or the Home Improvement Regulations.

3.2 Respondent shall provide a "Notice to Consumer" in Home Improvement Contracts, as required by N.J.S.A. 56:8-151b.

3.3 Respondent shall include in Home Improvement Contracts the dates or time period on or within which the Home Improvement is to commence and/or be completed, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iv).

3.4 Respondent shall include in Home Improvement Contracts signatures of all parties to the contract, as required by N.J.A.C. 13:45A-16.2(a)12.

3.5 Respondent shall include in Home Improvement Contracts the legal name, business address and Home Improvement Contractor registration number, in accordance with N.J.S.A. 56:8-151a(1) and N.J.S.A. 56:8-144.

3.6 Respondent shall provide a copy of the certificate of commercial liability insurance to Consumers, as required by N.J.S.A. 56:8-151a(2).

3.7 Respondent shall include in Home Improvement Contracts a description of the principal products and/or materials to be used or installed, as required by N.J.A.C. 13:45A-16.2(a)12(ii).

3.8 Respondent shall include the legal name and business address of the Sales Representative or agent who solicited or negotiated the contract for the Seller, in all Home Improvement Contracts, as required by N.J.A.C. 13:45A-16.2(a)12(i).

4. AFFECTED CONSUMERS

4.1 Within thirty (30) days of the Effective Date, the Division shall notify the Affected Consumer, in writing of the following: (a) that his complaint has been forwarded to the Respondent; (b) that he should expect a response from Respondent within thirty (30) days; and (c) that he has the right to have his complaint referred to the ADR Unit for binding arbitration if Respondent disputes the complaint and/or requested relief.

4.2 Within forty-five (45) days of the Effective Date, Respondent shall send a written response to the Affected Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.3 If Respondent does not dispute the Affected Consumer's complaint and requested relief, Respondent's written response shall so inform the Affected Consumer. Respondent shall contemporaneously forward to such Affected Consumer the requested relief. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by check made payable to the Affected Consumer.

4.4 If Respondent disputes the Affected Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the Affected Consumer's complaint.

4.5 Within sixty (60) days of the Effective Date, Respondent shall notify the Division whether the Affected Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Affected Consumer;
- (b) Whether or not the Affected Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Affected Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event the Restitution was returned as undeliverable, the efforts Respondent has undertaken to locate the Affected Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Affected Consumer as required by this Section.

4.6 Following the Division's receipt and verification that an Affected Consumer's complaint has been resolved, the complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within ninety (90) days of the Effective Date: (a) Respondent has not notified the Division that an Affected Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Affected Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Affected Consumer refuses Respondent's offer of Restitution, the Division shall forward such Affected Consumer complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees 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 the Affected Consumer in writing, 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 as Exhibit A).

4.8 If Respondent fails or refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to timely pay an arbitration award shall constitute a violation of this Consent Order.

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

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

5. SETTLEMENT PAYMENT

5.1 The Parties have agreed to a settlement of the Investigation in the amount of Two Thousand Two Hundred and Fifty and 00/100 Dollars (\$2,250.00) ("Settlement Amount").

5.2 Respondent shall pay the Settlement Amount on or before the Effective Date.

5.3 The Settlement Amount constitutes a civil penalty, pursuant to N.J.S.A. 56:8-13.

5.4 Respondent shall pay the Settlement Amount by money order, bank check or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

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

5.5 Upon paying the Settlement Amount, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, 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 Respondent represents and warrants that it has been advised to seek legal counsel to review this Consent Order and that it has voluntarily chosen not to do so.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, managers, members, agents, servants, employees, representatives, subsidiaries, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.9 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.

6.10 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall 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 Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Contractors' Registration Act, and/or the Home Improvement Regulations. Neither the existence of, nor the terms of this Consent Order shall 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 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.11 The Parties represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

6.12 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.

6.13 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 together be one and the same Consent Order.

7. RELEASE

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent fulfilling the requirements of Sections 3 and 4, and paying the Settlement Amount referenced in Section 5, the Division hereby agrees to release Respondent 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 Respondent for violations of the CFA, the Contractors' Registration Act, and/or the Home Improvement Regulations, prior to the Effective Date for matters arising out of the Investigation as well as the matters specifically addressed in this Consent Order (the "Released Claims").

7.2 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 Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions Section 3 of this Consent Order or to seek sanctions for violations hereof or both.

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

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its 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 Respondent 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 Respondent 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.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent 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:

Patricia Schiripo, Deputy Attorney General
State of New Jersey
Office of the Attorney General

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

For the Respondent:

George W. Merryfield III, Owner
Gutters by Merryfield, L.L.C. previously known as Rainbird Gutter Co.,
L.L.C.
1444 Chestnut Avenue
Gloucester City, New Jersey 08030
(856) 498-3195

IT IS ON THE 7th DAY OF August, 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: Patricia Schiripo
Patricia Schiripo
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-7819

Dated: August 7, 2012

FOR THE RESPONDENT:

GUTTERS BY MERRYFIELD, L.L.C.
previously known as RAINBIRD GUTTER CO., L.L.C.

By: George W. Merryfield III
George W. Merryfield III, Owner
Gutters by Merryfield, L.L.C., previously known as Rainbird GutterCo., L.L.C.
1444 Chestnut Avenue
Gloucester City, New Jersey 08030
(856) 498-3195

Dated: 8/3/2012, 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