

FILED

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Division of Consumer Affairs

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Division of Law
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Newark, New Jersey 07101
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By: Jeffrey Koziar
Deputy Attorney General
(973) 648-7819

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

In the Matter of

VERIZON NEW JERSEY INC

Respondent.

Administrative Action

SETTLEMENT AGREEMENT

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -228 (“CFA”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 to -9.8 (“Advertising Regulations”), have been or are being committed by Verizon New Jersey Inc., as well as by its owners, officers, directors, managers, employees, representatives, and agents (“Verizon” or “Respondent”) in connection with the marketing, offer for Sale and/or Sale of Fios Services within the State of New Jersey (hereinafter referred to as the “Investigation”);

WHEREAS the Division investigated whether Respondent: (a) charged consumers more for services than the Advertised price; (b) failed to honor all cancellation requests that comply with

Verizon's cancellation policy in a timely manner; (c) failed to provide refunds to New Jersey Consumers who were entitled to such refunds; (d) automatically renewed consumers' contracts without the consumers' consent; (e) failed to provide Consumers with Advertised Verizon Promotional Gifts; and (f) failed to Clearly and Conspicuously disclose the limited supply of Advertised Verizon Promotional Gifts (the "Covered Claims");

WHEREAS THE PARTIES AGREE to amicably resolve the Investigation without the need for further action and to execute the within Settlement Agreement, without having admitted any violation of law and without any judgment or finding of fact and for good cause show:

1. EFFECTIVE DATE

1.1 This Settlement Agreement shall be effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

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

2.1 "Additional Consumer[s]" shall refer to any Consumer who submits to the Division directly or through one of its CALA locations, after the Effective Date, a complaint concerning Respondent's business practices for alleged violations of the CFA and the Advertising Regulations with respect to the Advertisement, offer for Sale and/or Sale or Verizon Fios Services in the State of New Jersey.

2.2 "ADR Unit" refers to the Alternate Dispute Resolution Unit of the Division.

2.3 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(a) for purposes of the CFA and in accordance with N.J.A.C. 13:45A-9.1 for purposes of the Advertising

Regulations. This definition applies to other forms of the word “Advertisement” including without limitation, “Advertise” and “Advertised.”

2.4 “Affected Consumers” shall refer to any Consumer identified in Exhibit A who submitted a Complaint directly to the Division prior to the Effective Date that remains unresolved concerning Respondent’s business practices with respect to the Advertisement and/or Sale of Verizon Fios Services in the State of New Jersey.

2.5 “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.

2.6 “CALA” shall refer to Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

2.7 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily visible and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.8 “Consumer” shall refer to any Person who is offered Merchandise for Sale by Verizon with respect to the Advertisement, offer for Sale and/or Sale of Verizon Fios Services in the State of New Jersey.

2.9 “Division” refers to the New Jersey Division of Consumer Affairs.

2.10 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.11 “New Jersey” and “State” shall refer to the State of New Jersey.

2.12 “New Jersey Consumer” shall refer to any natural person who resides in New Jersey.

2.13 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.14 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including the issuance of credits or refunds or the reversal of credit card or debit card charges. This definition shall not include a reversal of trade line reports absent a finding of mistake by Verizon.

2.15 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.16 “Verizon” means Verizon New Jersey Inc., including its subsidiaries, successors, assigns or any Person acting on its behalf in connection with the marketing or sale of Fios Services in the State of New Jersey.

2.17 “Verizon Promotional Gift” shall refer to any item offered by Verizon to New Jersey Consumers in connection with a Verizon Fios Promotion.

2.18 “Verizon Fios Services” means any service offered by Verizon concerning fiber optic enabled television, Internet and/or digital voice service marketed and sold as Verizon Fios.

3. COMPLIANCE

3.1 Respondent shall continue to comply with all applicable New Jersey State laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA and the Advertising Regulations.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement in the amount of One Hundred Seventy-Five Thousand and 00/100 Dollars (\$175,000.00) (“Settlement Payment”). The Settlement Payment shall be made within seven (7) days of the Effective Date.

4.2 The Settlement Payment is comprised of One Hundred Thirty-Nine Thousand and 00/100 Dollars (\$139,000.00) pursuant to N.J.S.A. 56:8-13, Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) pursuant to N.J.S.A. 56:8-19, and Eleven Thousand and 00/100 Dollars (\$11,000.00) pursuant to N.J.S.A. 56:8-11.

4.3 The Settlement Payment shall be made by certified or cashier’s check, money order, wire transfer or credit card payable to the “New Jersey Division of Consumer Affairs” and shall be forwarded to:

Jeffrey Koziar, 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

4.4 Upon making the Settlement Payment, Respondent 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.

5. AFFECTED CONSUMERS

5.1 Attached as Exhibit A is a list of the Affected Consumers. No later than ninety (90) days following the Effective Date, Verizon shall provide the Division with a list of the complaints

filed by Affected Consumers in Exhibit A that Verizon has resolved to the Affected Consumers' reasonable satisfaction ("Resolved Affected Consumer Complaints"). Verizon shall provide a spreadsheet of the Resolved Affected Consumer Complaints including the details of the resolution and all Restitution paid to the Affected Consumer. Prior to the Effective Date, the Division shall provide Respondent with copies of the remaining Affected Consumers' complaints.

5.2 Verizon shall review the remaining Affected Consumer complaints following its standard customer service processes to resolve these complaints to the consumers' reasonable satisfaction. Verizon may provide: (i) bill credits on active accounts, (ii) a reduction of outstanding balances owed on inactive accounts in an amount equal to the bill credit that would have been provided if the Affected Consumer was a current customer, (iii) provision of promotions claimed, and/or (iv) process requested account changes. Respondent shall provide a report to the Division, no later than 180 days following the Effective Date, detailing the resolution of each Affected Consumer complaint.

5.3 If Respondent is unable to resolve any Affected Consumer Complaints, then the Division shall notify the Affected Consumer of its right to have its complaint resolved through AAA arbitration as set forth in Verizon's Terms of Service or, at the Affected Consumer's discretion, initiate a complaint with the ADR Unit consistent with the ADR Guidelines (a copy of which is attached as Exhibit B). Verizon agrees to participate in binding arbitration of the Affected Consumer's complaint as set forth in the preceding sentence. If an Affected Consumer initiates binding arbitration with the ADR Unit, the Division shall notify Respondent. Thereafter, the arbitration shall proceed in accordance with the ADR Unit policies and procedures set forth in the ADR Guidelines.

5.4 If an Affected Consumer fails to file a notice of dispute with the AAA or to file a

complaint with the ADR Unit or fails to follow the AAA's Consumer Rules or the ADR Unit's established policies and procedures of the ADR program, that Affected Consumer's complaint shall be deemed closed for purposes of the Settlement Agreement.

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

6. ADDITIONAL CONSUMER COMPLAINTS

6.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints filed directly with the Division after the Effective Date. For the avoidance of doubt, the terms of this Settlement Agreement govern only complaints lodged with the Division and not complaints filed with any third-party or independent agency such as the FCC, BBB or aggregator of third party claims such as www.fairshake.com or law firms marketing to collect claims against Verizon for purposes of bringing mass arbitration against Verizon. The Division shall forward to Respondent such complaints within thirty (30) days of the Division's receipt thereof.

6.2 After forwarding to Respondent the complaints of an Additional Consumer, the Division shall notify each Additional Consumer, in writing, of the following: (a) that his/her complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within sixty (60) days from the date of this notice; and (c) the right to pursue AAA arbitration as set forth in Verizon Terms of Service or refer his/her complaint to the ADR Unit for binding arbitration if Respondent fails to resolve the complaint to the Additional Consumer's reasonable satisfaction.

6.3 Within sixty (60) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written confirmation of the resolution reached with the

Additional Consumer, with a copy sent by first class mail, fax or email to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management and Tracking Unit, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, fax number: 973-648-3139, cmt@dca.njoag.gov

6.4 Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed final and closed for purposes of this Settlement Agreement.

6.5 If Respondent is unable to resolve any Additional Consumer Complaints, then the Division shall notify the Additional Consumer of its right to have its complaint resolved through AAA arbitration as set forth in Verizon's Terms of Service or, at the Additional Consumer's discretion, initiate a complaint with the ADR Unit consistent with the ADR Guidelines (a copy of which is attached as Exhibit B). Verizon agrees to participate in binding arbitration of the Affected Consumer's complaint as set forth in the preceding sentence. If an Additional Consumer initiates binding arbitration with the ADR Unit, the Division shall notify Respondent. Thereafter, the arbitration shall proceed in accordance with the ADR Unit policies and procedures set forth in the ADR Guidelines.

6.6 If an Additional Consumer fails to file a notice of dispute with the AAA or to file a complaint with the ADR Unit or fails to follow the AAA's Consumer Rules or the ADR Unit's established policies and procedures of the ADR program, that Additional Consumer's complaint shall be deemed closed for purposes of this Settlement Agreement.

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

7. GENERAL PROVISIONS

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

7.2 This Settlement Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

7.3 The Parties have fully reviewed the terms of this Settlement Agreement and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Settlement Agreement.

7.4 This Settlement Agreement contains the entire agreement between the Parties. Except as otherwise provided herein, this Settlement Agreement shall be modified only by a written instrument signed by or on behalf of the Parties.

7.5 Except as otherwise explicitly provided in this Settlement Agreement, nothing in this Settlement Agreement shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this Settlement Agreement is held invalid or unenforceable by operation of law, the remaining terms of this Settlement Agreement shall not be affected.

7.7 This Settlement Agreement shall be binding upon the Respondent as well as its owners, officers, directors, shareholders, managers, agents, employees, representatives, successors and assigns, and any entity 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.

7.8 This Settlement Agreement shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Settlement Agreement be used to avoid compliance with this Settlement Agreement.

7.9 This Settlement Agreement is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an admission by Respondent of any liability or wrongdoing and the parties acknowledge that this Settlement Agreement reflects a compromise of disputed claims and Respondent disputes that any of its acts or practices violate any laws. Neither the existence of, nor the terms of this Settlement Agreement shall be deemed to constitute evidence or precedent of any kind or for any purpose except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any 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.

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

7.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Settlement Agreement,

7.12 This Settlement Agreement is a public document subject to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

8. RELEASE

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Settlement Agreement and conditioned on Respondent making the Settlement Payment as specified in Section 4, the Division hereby agrees to release Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, 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 from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA and/or the Advertising Regulations arising out of the Covered Claims, as well as the matters specifically addressed in this Settlement Agreement (“Released Claims”).

8.2 Notwithstanding any term of this Settlement Agreement, the following do not comprise Released Claims: (a) private rights of action, provided, however, that nothing herein shall prevent Respondent from raising the defense of set-off, estoppel, res judicata or collateral estoppel against a Consumer who has received restitution; (b) actions to enforce this Settlement Agreement and (c) any claims against Respondent by any other agency or subdivision of the State.

9. REMEDIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Settlement Agreement or to seek sanctions for violations hereof.

10. COMPLIANCE WITH LAWS

10.1 Except as provided in this Settlement Agreement, no provision herein shall be construed as:

- (a) Relieving Respondent of its obligation to comply with all State 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 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 regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

11. NOTICES UNDER THIS SETTLEMENT AGREEMENT

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Settlement Agreement shall be sent by electronic mail to the address specified below and via 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:

Jeffrey Koziar, 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
Newark, New Jersey 07101
Jeff.Koziar@law.njoag.gov

For Respondent:

Patricia Roche Sunar
Associate General Counsel
Public Policy & Law
One Verizon Way
54VSouth
Basking Ridge, NJ 07920
Patricia.sunar@verizonwireless.com

IT IS ON THE 5th DAY OF June, 2024 SO ORDERED.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: Cari Faiss
CARI FAIS, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM AND CONTENT OF THIS SETTLEMENT AGREEMENT ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES

FOR THE DIVISION:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: Jeffrey Koziar Dated: 6/5, 2024
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819

FOR RESPONDENT:

VERIZON NEW JERSEY INC.

By: Robert Ernst Dated: 5-28-24, 2024
Robert Ernst
Vice President
One Verizon Way
54V South
Basking Ridge, NJ 07920
(908) 559-7437
robert.l.ernst@verizon.com

EXHIBIT A – VERIZON COMMUNICATIONS, INC

1. Ackerman, Laura
2. Alencar, Jonathon
3. Amin, Sheili
4. Anderson, Charmaine
5. Bloom, Joel
6. Brigando, Marianne
7. Brooks, Calvin
8. Capawan, Joseph
9. Carbone, Charles
10. Clarke, Cynthia
11. Cochran, Robert
12. Cosby, Michael L.
13. Davis, Jacqueline
14. De Pinto, Guy
15. DeNight, Michael
16. Durgam, Chithra
17. Ennis, Linda
18. Fass, Bathsheva
19. Fenley, Carolyn
20. Ganesan, Narayan
21. Geist, John
22. Gorka, Renata
23. Hauf, Volker
24. Hegel, Terrance
25. Hillermeier, Edwin
26. Horowitz, Adam
27. Husey, Erkin
28. Jones, Brian
29. Joule, Dorothy
30. Laguna, Romulo
31. Librizzi, Linda
32. Lightcao, Robert
33. Lomnicki, Anthony
34. Lorenz, Alicia
35. Lynch, Sean
36. Matthey, Jenny
37. McNally, David
38. Moore, Nichole
39. Muller, Warren

40. Naomi, Lori
41. Ollendorf, Glenn
42. Ozcan, Koray
43. Parris, Terry
44. Parris, Andrea
45. Parris, Tonya
46. Perez, Liliana
47. Peyrouton, Alan
48. Rae, Kathleen
49. Reese, Joseph
50. Rivera, Rosita
51. Rosenthal, Jay
52. Sadoski, Jennifer
53. Saifuddin, Saifuddin
54. Seiler, Jennifer
55. Serans, Jose
56. Shipper, Randy
57. Shipton, Mary
58. Silva, John
59. Staikos, Aristides
60. Teleky, Tibor
61. Testini, Frances
62. Ullmer, Steven
63. Vescera, Pasqua
64. Vielehr, Logan
65. Vintschger, Derek
66. Weber, John
67. Werner, Carl
68. West, Aaron, West, Michael
69. Williams, Walter
70. Williams, Shakia
71. Wishard, Lisa
72. Wolfe, Catherine

EXHIBIT B

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