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FILED

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Division of Consumer Affairs

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

In the Matter of

NRG RESIDENTIAL SOLAR SOLUTIONS
LLC,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), in order to investigate allegations and ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226 (“CFA”), the New Jersey Plain Language Review Act, N.J.S.A. 56:12-1 to -13 (“Plain Language Act”), the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 to -56 (“TCCWNA”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 to -152, the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 to -16.2 (“Home Improvement Regulations”), 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 NRG Residential Solar

Solutions LLC, as well as by its owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives, attorneys, corporations, subsidiaries, affiliates, successors, and/or assigns (collectively, “Respondent”), (hereinafter referred to as the “Investigation”) in relation to their sales and servicing practices;

WHEREAS Respondent, with a main business address of 804 Carnegie Center, Princeton, New Jersey 08540, was previously engaged in the Advertisement, offering for Sale, and Sale of solar panels, solar panel installation services, solar panel maintenance and support, and electric power generation services to Consumers in the State of New Jersey;

WHEREAS the Division’s Investigation originally concerned twenty-one (21) Consumer complaints arising out of Respondent’s leasing of Solar Systems to the Consumers, wherein Consumers alleged, among other things, that Respondent: promised Consumers they would save money on their energy bills, but then Consumer’s bills were higher after installing Solar Systems; failed to timely respond to Consumer complaints; failed to timely make repairs after damaging roofs of Consumer homes during installation; delayed the installation and/or activation of the Solar System; and failed to honor provisions in Consumer Lease Agreements;

WHEREAS on August 2, 2018, Respondent, represented by counsel, attended an Executive Conference with the Division in order to discuss the allegations being investigated;

WHEREAS in or about February 2017, Respondent ceased operations related to the marketing, sale and installation of solar panels to new customers, but it continues to service existing customers;

WHEREAS Respondent has left open the possibility that it will again start Soliciting new solar customers in the future;

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement hereby 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 ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1. This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, references to the singular include the plural, and references to the plural include the singular. 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. “Additional Consumer” shall refer to any Consumer who submits to the Division or through another agency of the State a written Consumer complaint concerning Respondent’s business practices between the Effective Date and the one-year anniversary of the Effective Date, or prior to the Effective Date that was not brought to the Division’s attention until after the Effective Date.

2.2. “ADR Unit” shall refer to the Alternative 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.

2.4. “Affected Consumers” shall refer to the Affected Consumers Group I and the Affected Consumers Group II.

2.5. “Affected Consumers Group I” shall refer to Consumers listed on Exhibit A.

2.6. “Affected Consumers Group II” shall refer to Consumers listed on Exhibit B.

2.7. “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.

2.8. “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 apparent 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.

2.9. “Consumer” shall mean: (i) with respect to Sales on or after the Effective Date, any Person who is offered Merchandise for Sale by Respondent; and (ii) with respect to Sales prior to the Effective Date, any Person that has a Lease Agreement with Respondent.

2.10. “Division” shall mean the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety.

2.11. “Lease Agreement” shall refer to any of the lease, Sales contract, and lease contract agreements entered into between Respondent and a Consumer for the installation of a Solar System at the Consumer’s home, but shall not include any settlement agreement or agreement to sell a Solar System in “as is” condition that the Respondent enters into with a Consumer.

2.12. “Lease Payment” shall be defined in accordance with the terms of the Consumer’s then applicable Lease Agreement and refer to the monthly payment due each month during the term of the Lease Agreement, including any applicable increases in the Lease Payment amounts.

2.13. "Limited Warranty" shall be defined in accordance with the terms of the Consumer's then applicable Lease Agreement and shall refer to a warranty Respondent provides, or that is provided on behalf of Respondent, with respect to the Solar System.

2.14. "Material" shall mean the following information to be disclosed to a Consumer in a Sale transaction, other than a settlement agreement or agreement to sell a Solar System in "as is" condition, that the Respondent enters into with a Consumer:

- a. If any Representations as to savings on the Consumer's utility bill are made, then such Representations will be accurate;
- b. If applicable to the Lease Agreement at issue, the options available to Consumers choosing to either terminate the Lease Agreement or Sell their home prior to the expiration of the Lease Agreement's term;
- c. If applicable to the Lease Agreement at issue, the price to purchase the Solar System should the Consumer choose to terminate the Lease Agreement by purchasing the Solar System prior to the expiration of its term, or the method by which such price will be calculated;
- d. If applicable to the Lease Agreement at issue, the Consumer's right to cancel the Lease Agreement in the event of any significant change from Respondent's initial estimates;
- e. If applicable to the Lease Agreement at issue, the Consumer's right to review and accept, or request a change to, the Solar System's design during the 5-day pre-installation period, and the impact of the Consumer's failure to respond during that period;
- f. If applicable to the Lease Agreement at issue, (1) the breakdown of how a consumer will be charged and how adjustments will be made, and (2) the Consumer's responsibility for any additional payments not included in the Lease Payments;
- g. If applicable to the Lease Agreement at issue, design specifications for the rooftop solar system to be installed;
- h. If applicable to the Lease Agreement at issue, the terms and conditions of any Limited Warranty and/or Performance Guarantee covering the Consumer's Solar System;

- i. If applicable to the Lease Agreement at issue, the steps that Respondent will take to determine whether any Limited Warranty on roofing penetration during installation requires Respondent to repair any physical damage to the Consumer's roof and property arising from water infiltration, at Respondent's expense, and the steps that Respondent will take to determine whether the Limited Warranty does not apply for any reason under the Lease Agreement, and to determine whether it is necessary to remove the solar panels in order to accurately assess the source of the damage to the Consumer's roof and property (e.g., whether Respondent's installation of the Solar System caused the damage);
- j. If applicable to the Lease Agreement at issue, the formula used by Respondent to calculate any Performance Credit owed to the Consumer and the source of all numerical values inputted into that formula; and
- k. If applicable to the Lease Agreement at issue, the estimated time to complete the installation of the Solar System.

2.15. "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c).

2.16. "Payment Escalator" shall be defined in accordance with the terms of the Consumer's then applicable Lease Agreement, if applicable, and refer to Lease Payments that increase annually by a previously agreed to percentage amount during the term of the Consumer's Lease Agreement.

2.17. "Performance Credit" shall be defined in accordance with the terms of the Consumer's Lease Agreement, if applicable, and refer to a credit owed to a Consumer as a result of solar production that falls short of a production amount guaranteed by the Lease Agreement, if applicable.

2.18. "Performance Guarantee" shall be defined in accordance with the terms of the Consumer's Lease Agreement, if applicable, and refer to the guarantee, if any, that Respondent offers, or that is offered on behalf of Respondent, with respect to production levels of electricity from the Solar System.

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

2.20. "Policies" shall include any procedures, practices and/or established courses of action, whether written or oral.

2.21. "Represent" means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, doormats, 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 "Representation" and "Misrepresent."

2.22. "Restitution" shall refer to all methods undertaken by Respondent and/or an independent third-party purchaser to resolve the Affected Consumer complaints and the Additional Consumer complaints including, but not limited to, the issuance of credits or refunds and the reversal of credit card or debit card charges.

2.23. "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to other forms of the word "Sale," including "Sell."

2.24. "Solar System" shall be defined in accordance with the terms of the Consumer's Lease Agreement.

2.25. "Solicitation" shall refer to door-to-door, telephone, in-store, directed mailing, and/or electronic Solicitation of Consumers by or on behalf of Respondent to Sell Merchandise. This definition applies to other forms of the word "Solicitation," including "Soliciting."

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

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1. To the extent that Respondent engages in the Advertisement, offering for Sale, Sale and installation of Solar Systems to Consumers pursuant to Lease Agreements (other than a Sale pursuant to a settlement agreement or agreement to Sell a Solar System in "as is" condition) or any continued servicing of existing Consumers, Respondent shall:

3.1.1. not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, without limitation, the CFA, the Plain Language Act, the TCCWNA, the Contractors' Registration Act, the Home Improvement Regulations, and the Advertising Regulations;

3.1.2. implement Policies, training and/or instruction for its employees or third-party vendors who perform door-to-door Solicitation of Consumers, including scripts incorporating all required Material disclosures concerning the nature of an offering, as required by the CFA, specifically N.J.S.A. 56:8-2, and the Advertising Regulations, specifically N.J.A.C. 13:45A- 9.2(a)(9);

3.1.3. not Misrepresent to the Consumer the savings to be realized upon installation of a Solar System, or the specific number of solar panels that will produce sufficient electricity for the Consumer's home;

3.1.4. disclose, at the time of Sale to the Consumer, all information Material to the Sale transaction;

3.1.5. at the time of Solicitation, provide Consumers with an adequate opportunity to read the Lease Agreement prior to execution of the Lease Agreement;

3.1.6. obtain, at the time of Sale, an executed copy of the Lease Agreement and/or agreement to Sell a Solar System in "as is" condition, in accordance with the CFA, specifically N.J.S.A. 56:8-2.22; provide the Consumer with a copy of the executed Lease Agreement and/or agreement to Sell a Solar System in "as is" condition, in accordance with the

CFA, specifically N.J.S.A. 56:8-2.22; and advise the Consumer of the three-day cancellation period, in accordance with the Contractors' Registration Act, specifically N.J.S.A. 56:8-151(a) and (b);

3.1.7. install and activate Solar Systems by the agreed-upon date or timeframe indicated in the Lease Agreement, unless the delay in installation is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the Respondent's control, as provided in the Home Improvement Regulations, specifically N.J.A.C. 13:45A-16.2(a)(7)(ii);

3.1.8. not cause damage to a Consumer's home while installing the Solar Systems and then fail to fix or compensate the Consumer for the damage;

3.1.9 if applicable, provide timely maintenance and support for the operation of Solar Systems, including, but not limited to, addressing any malfunctions causing an insufficient production of electricity, in accordance with the terms of the Consumer's Lease Agreement;

3.1.10. give timely written notice to the Consumer for any delay for reasons beyond Respondent's control in the installation and/or activation of a Solar System, in accordance with the Home Improvement Regulations, specifically N.J.A.C. 13:45A-16.2(a)(7)(iii);

3.1.11. conduct an inspection regarding the suitability of the roof for a Solar System installation, and disclose to Consumers the result of that inspection prior to installing a Solar System. If the inspection results in a finding that a roof is not suitable for the installation of a Solar System, either the Consumer or the Respondent shall have the opportunity to cancel the

Lease Agreement without penalty, even if such cancellation occurs after the three-day cancellation period afforded to the Consumer under N.J.S.A. 56:8-151. The Consumer shall not have to pay for any roof inspection if the roof is deemed unsuitable, and the Consumer cancels the Lease Agreement;

3.1.12. not install the Solar System without first confirming that any financing to be obtained from Respondent has been secured;

3.1.13. not call Consumers in violation of the federal Telephone Consumer Protection Act or in violation of the New Jersey Telemarketer Do Not Call Law;

3.1.14. not make unauthorized withdrawals from Consumer bank accounts, in accordance with the CFA, specifically N.J.S.A. 56:8-2;

3.1.15. Clearly and Conspicuously disclose in the Lease Agreements, to the extent such terms apply: the term; the Lease Payments for each year of the term including any increases in the Lease Payment amounts (e.g., any applicable Payment Escalator), and any other fees in addition to the Lease Payments (collectively, "the Price"); if the Price is disclosed to Consumers via formula, the source of all inputs used in the formula; whether the Lease Agreements provide for an escalating or fixed price term for each year of the Lease Agreement term; the formula to determine costs to the Consumer in the event that the Consumer cancels the Lease Agreement; that Consumers are waiving their right to a jury trial; that Consumers are waiving their right to participate in a class action; and that Consumers will be required to go to arbitration;

3.1.16. utilize Lease Agreements and agreements to Sell a Solar System in “as is” condition that are written in a simple, clear, understandable, and easily readable language, in accordance with the Plain Language Act, specifically N.J.S.A. 56:12-2;

3.1.17. ensure the “Limitation of Liability” section of a Lease Agreement entered into after the Effective Date of this Agreement does not include any statement which waives any rights Consumers have under New Jersey or Federal Consumer protection laws, in accordance with TCCWNA, specifically N.J.S.A. 56:12-15;

3.1.18. for a Lease Agreement entered into after the Effective Date, ensure that any “Arbitration Claims; Waiver of Jury Trial” section of the Lease Agreement requires that Consumers affirmatively acknowledge (by initialing) that they agree to arbitrate disputes, waive the right to a jury trial, or waive the right to participate in a class action, in accordance with the CFA, specifically N.J.S.A. 56:8-2;

3.1.19. honor Consumer cancellation rights and/or Performance Guarantee rights as set forth in the Lease Agreement as applicable, in the event of the Solar System’s delayed installation, delayed activation, or underperformance;

3.1.20. honor any Performance Credit obligation under the Lease Agreement in the event of non-compliance with the Performance Guarantee;

3.1.21. permit Consumers to request refunds by telephone and by email, and shall process those requests and advise the Consumers of any determination through the Consumer’s chosen medium (e.g., telephonically or by email); and

3.1.22. develop an adequate complaint resolution process to ensure that its call center representatives, whether first-line customer service representatives or case managers, contact the Consumer within five (5) days of receipt of any complaint, to advise the Consumer as to next steps and that its call center representatives will continue to provide periodic updates of any developments with regard to resolution of the Consumer's complaint, until the complaint has been resolved.

4. SETTLEMENT PAYMENT

4.1. The Parties have agreed to a settlement of the Investigation in the amount of Sixty Eight Thousand Nine Hundred Fifty One and 87/100 Dollars (\$68,951.87) ("Settlement Payment").

4.2. The Settlement Payment consists of Thirty Thousand and 00/100 Dollars (\$30,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Ten Thousand Eight Hundred Thirty and 37/100 Dollars (\$10,830.37) in investigative costs, pursuant to N.J.S.A. 56:8-11, Nine Thousand Three Hundred Sixty Seven and 50/100 Dollars (\$9,367.50) in attorneys' fees, pursuant to N.J.S.A. 56:8-19, and Eighteen Thousand Seven Hundred Fifty Four and 00/100 Dollars (\$18,754.00) in Consumer Restitution, pursuant to N.J.S.A. 56:8-15.

4.3. Respondent shall make the Settlement Payment within thirty (30) days of the Effective Date of this Consent Order.

4.4. The Settlement Payment shall be made by wire transfer payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Case Initiation and Tracking Unit
New Jersey Department of Law and Public Safety Division of Consumer Affairs
124 Halsey Street, 7th Floor
P.O. Box 45025
Newark, New Jersey 07101
Attention: Van Mallett, Lead Investigator

4.5. Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid. 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 CONSUMER COMPLAINT GROUP I RESOLUTION

5.1. For purposes of Sections 5, 6, and 7, Respondent shall include Respondent as defined herein, as well as an independent third-party purchaser.

5.2 Within fifteen (15) days of the Effective Date, Respondent shall contact the Affected Consumers Group I, and provide them with the following two options: (1) the opportunity to have their Solar Systems uninstalled and removed without expense; and (2) the ability to purchase their Solar Systems at a price set by Respondent, pursuant to the terms of a Settlement Agreement with the Respondent. The decision as to which option will be made solely by the Affected Consumer.

5.3. Within thirty (30) days of the Effective Date, Respondent shall provide the Division with a list of Affected Consumers from the Affected Consumers Group I who: (a) agreed to have their Solar Systems uninstalled and removed without expense; (b) declined to purchase or have their Solar Systems uninstalled and removed without expense; or (c) have not responded to Respondent's inquiry.

5.4. Within forty-five (45) days of the Effective Date, the Division shall contact the Affected Consumers from Affected Consumers Group I to confirm whether they agreed or declined to have their Solar Systems uninstalled and removed without expense or agreed or declined to enter into an agreement for the purchase of the Solar Systems. If either option is elected, Respondent shall advise the Division when the Solar Systems have been removed or the transfer of Solar System ownership has been completed. Within forty-five (45) days of the removal

or transfer of Solar System ownership, the Division shall contact those Affected Consumers to determine whether they have any further issues with Respondent.

5.5. Upon the Division's verification, the complaints of the Affected Consumers from Affected Consumers Group I who have agreed to have their Solar Systems uninstalled and removed without expense or entered into an agreement to purchase the Solar Systems and who have no further issues with Respondent will be deemed closed for purposes of this Consent Order. To the extent those Affected Consumers do not respond to the Division's calls within thirty (30) days of the contact, the complaint shall be deemed closed for purposes of this Consent Order.

5.6. Upon the Division's verification, the complaints of Affected Consumers from Affected Consumers Group I who have declined to have their Solar Systems uninstalled and removed without expense, declined to enter into an agreement to purchase the Solar Systems, and/or who have further issues with Respondent, will be addressed through the process set forth in Section 6.

6. AFFECTED CONSUMER COMPLAINT GROUP II RESOLUTION

6.1. No later than sixty (60) days from the Effective Date, the complaints of Affected Consumers Group II, as well as any Affected Consumers from Affected Consumers Group I whose complaints have not been fully resolved, shall be forwarded 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. Contemporaneously with its execution of this Consent Order, Respondent shall sign and return to the Division the Agreement to Arbitrate (a copy of which is attached as Exhibit C). 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 to 12-3. The Division shall notify in writing the Affected Consumers Group II, and any Affected Consumers from Affected Consumers Group I

whose complaints were not resolved as set forth in Section 5, of the referral of their complaints to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Unit Guidelines (a copy of which is attached as Exhibit D).

6.5. 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 the arbitration award within thirty (30) days of the arbitrator's decision.

6.6. Respondent's failure or refusal to comply with the requirements of this Section and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under those circumstances, the Division may unilaterally discontinue this complaint resolution process upon notice to Respondent.

6.7. If a Consumer within Affected Consumer Group I or Affected Consumer Group II fails or refuses to participate in the ADR Program, such Affected Consumer's complaint shall be deemed closed for purposes of this Consent Order.

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

7. ADDITIONAL CONSUMER COMPLAINTS

7.1. For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division either to the addresses set forth in Section 13.1 of this Agreement, or via email to Respondent's Operations Manager at the email address provided in Section 13.1, provided that failure to forward such complaints within that time shall have no impact upon Respondent's obligations under this Section of the Consent Order. The Division shall forward to Respondent such complaints within thirty (30) days of the Division's receipt thereof. In the event of a sale, Respondent shall provide the Division with notice of a new forwarding address and/or email address for the independent third-

party purchaser within fifteen (15) days of the sale, and the Division will have thirty (30) days from the date of NRG's notice of the new forwarding address and/or email address to forward the complaint to the independent third-party purchaser.

7.2. The Division shall notify the Additional Consumers, in writing, of the following:

- a. that the Additional Consumer's complaint has been forwarded to Respondent;
- b. that he/she should expect a response from Respondent within thirty (30) days from the date of this notice; and
- c. the right to refer his/her complaint to the ADR Unit for binding arbitration if Respondent disputes the complaint and/or requested relief.

7.3. Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to 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 Initiation and Tracking Unit
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101
Fax: (973) 273-8005
E-mail: cmt@dca.lps.state.nj.us
Attn: Van Mallett, Lead Investigator

7.4. If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent shall provide written notification to the Additional Consumer. Within thirty (30) days of an Additional Consumer's execution and return of a resolution agreement, Respondent shall forward the Additional Consumer any agreed upon Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that

such adjustments have been made. Where Restitution concerns a refund or other payment, payment shall be made by check issued from Respondent to the Additional Consumer.

7.5. If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's response shall specify the factual basis for disputing the complaint and attach copies of any documents the Respondent relies upon to dispute the Additional Consumer's complaint.

7.6. Within forty-five (45) days of Respondent's receipt of the Additional Consumer's complaint, Respondent shall notify the Division, in writing, as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

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

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

7.8. If within sixty (60) days of Respondent's receipt of the Additional Consumer's complaint: (a) Respondent has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward the Additional Consumer complaint to the ADR Unit for 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 to 12-3. The Division shall notify in writing any such Additional Consumer and Respondent of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

7.9. If Respondent 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.

7.10. Respondent's failure or refusal to comply with the requirements of this Section and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under those circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondent.

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

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

7.13. Following the expiration of the one (1) year period, Respondent may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods upon written notice by Respondent to the Division provided thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Respondent's request at its sole discretion for any reason.

8. GENERAL PROVISIONS

8.1. 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 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 that any of its acts or practices described in or prohibited by this Consent Order violate any State or Federal laws including, but not limited to, the CFA, the Plain Language Act, the TCCWNA, the Contractors' Registration Act, the Home Improvement Regulations, and/or the Advertising 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) 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 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

8.2. 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.

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

8.4. The Parties have 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.

8.5. This Consent Order contains the entire agreement between 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.

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

8.7. If the Respondent reasonably believes the obligations under any provision in this Consent Order are (a) no longer required by New Jersey state law or federal law, and (b) compliance with such provision is commercially impracticable, it shall advise the Division of such provision in writing to request that the Consent Order be modified to eliminate compliance with such provision. Thereafter, the Respondent and the Division shall meet and confer for a period of sixty (60) days to discuss and share information related to the Respondent's request, including documentary information requested by the Division. If the Respondent is claiming that a provision is no longer required by New Jersey state law or federal law, then the Respondent shall specifically identify which provision and the change in law that is now applicable. If the Respondent is claiming that compliance with a provision is now commercially impracticable, then the Respondent shall specifically identify which provision, why it believes compliance is commercially impracticable, and provide documentary support for same. If the Respondent and

the Division cannot reach agreement on a modification or elimination of such provision, then the Respondent shall have the right to file an action in the Superior Court of New Jersey seeking relief from the provision by demonstrating the obligations under the provision are (a) no longer required by New Jersey state law or federal law, and (b) compliance with such provision is commercially impracticable. 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.

8.8. This Consent Order shall be binding on the Division and Respondent, as herein defined in the first Whereas Clause. This Consent Order also shall be binding on any of Respondent's subsidiaries, subdivisions, successors, assigns, and/or purchasers of all or substantially all of Respondent's business assets. In no event shall any assignment of any right, power or authority under this Consent Order to a party related to, or affiliated with, Respondent, be used to avoid compliance with this Consent Order. Notwithstanding anything stated herein, while this Consent Order shall continue to apply to any Lease Agreements that exist as of the Effective Date, the Consent Order shall not apply to the business operations of an independent third-party who purchases all or substantially all of Respondent's business assets, except to the extent that such independent third-party purchaser will remain responsible for: any Lease Agreement currently in effect as of the Effective Date; any Person who has a Lease Agreement with Respondent dated prior to the Effective Date; the Affected Consumers; the Additional Consumers; and all of Respondent's obligations pursuant to Sections 5 to 7 of this Consent Order. As of the seventh anniversary of the Effective Date, this Consent Order also shall not apply to an Affiliate of NRG Residential Solar Solutions LLC who contracts to do business with an independent third party. For purposes of this Consent Order, "Affiliate of NRG Residential Solar

Solutions LLC” shall mean any wholly owned subsidiary of NRG Energy, Inc., or any successor entity of NRG Energy, Inc., but not NRG Residential Solar Solutions LLC.

8.9. Unless otherwise prohibited by law, any signatures by the Parties required for entry 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.

8.10. This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

9. REPRESENTATIONS AND WARRANTIES

9.1. The Parties Represent and warrant that 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.

9.2. Respondent Represents and warrants that it has fully read and understands this Consent Order, the legal consequences involved in signing the Consent Order, and that there are no other Representations or agreements not stated in writing herein.

10. RELEASE

10.1. In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment as specified in Section 4, 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 prior to the Effective Date against Respondent for violations of the CFA, the Plain Language Act, the TCCWNA, the Contractors’ Registration Act, the Home Improvement Regulations, and/or the Advertising Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

10.2. Notwithstanding any term of this Consent Order, 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 against a Consumer who has received Restitution;
- b. actions to enforce this Consent Order; and
- c. any claims against Respondent by any other agency or subdivision of the State.

11. PENALTIES FOR FAILURE TO COMPLY

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

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

12. COMPLIANCE WITH ALL LAWS

12.1. Unless provided elsewhere 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.

12.2. To the extent there is any conflict between Federal or State Law and the terms of this Consent Order, the terms of the applicable Federal or State Law shall control and Respondent's compliance with such Federal or State Law shall be deemed compliance with the terms of this Consent Order.

13. NOTICES UNDER THIS CONSENT ORDER

13.1. 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:

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

For the Respondent:

Angelo A. Stio, III, Esq.
Troutman Pepper Hamilton Sanders LLP
301 Carnegie Center, Suite 400
Princeton, New Jersey 08543-5276
Email: stioa@troutman.com

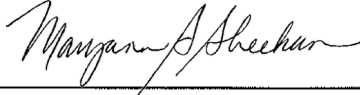
NRG Residential Solar Solutions LLC

Geyra Jimenez
Operations Manager
Campaign Execution
910 Louisiana St #14034B
Houston, Texas 77002
Email: geyra.jimenez@nrg.com

NRG Residential Solar Solutions LLC
Al Galik, Esq.
Senior Counsel
NRG Retail
910 Louisiana St.,
Houston, TX 77002
Email: Albert.Galik@nrg.com

IT IS ON THE 3rd DAY OF May, 2021 SO ORDERED.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
MARYANN SHEEHAN, CHIEF OF STAFF
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: Chanel Van Dyke
Digitally signed by Chanel Van Dyke
DN: cn=Chanel Van Dyke, o, ou,
email=Chanel.VanDyke@law.njsoag.gov, c=US
Date: 2021.04.21 10:16:38 -04'00'
Chanel Van Dyke
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-3540

Dated: 4/21, 2021

FOR THE RESPONDENT:

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: Angelo A. Stio
Angelo A. Stio, III, Esq.
Troutman Pepper Hamilton Sanders LLP
301 Carnegie Center, Suite 400
Princeton, New Jersey 08543-5276
(609) 951-4125

Dated: 4/13, 2021

NRG RESIDENTIAL SOLAR SOLUTIONS LLC

By: Mark Elliott
DocuSigned by:
8CB3648FD3214B8...
Name: Mark Elliott, Vice President

NRG Residential Solar Solutions LLC³
804 Carnegie Center
Princeton, New Jersey 08540
(267) 295-5544

April 9, 2021
Dated: _____, 2021

EXHIBIT A

(Affected Consumers Group I)

Batista, P.

Saluk, A.

EXHIBIT B

(Affected Consumers Group II)

Barbini, M.

Bartel, T.

Conte, A.

Grant-Ford, M.

Gribble, D.

Murray, P.

Poland, K.

Silvestri, R.

Tufano, G.

EXHIBIT C

(Agreement to Arbitrate)

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT
153 Halsey Street - Seventh Floor
New Ark, New Jersey 07101
(973) 504 - 6100**

Arbitration Program

*PLEASE REVIEW THIS DOCUMENT. SIGN IT AND RETURN IT TO THIS OFFICE IN THE
SELF STAMPED ENVELOPE NO LATER THAN 10 DAYS AFTER RECEIVING THIS
AGREEMENT. KEEP A COPY FOR YOUR OWN RECORDS.*

INTRODUCTION

In order to resolve a pending dispute that resulted in the filing of a complaint with or against a State agency, you have agreed to participate in an arbitration conducted by the **Alternative Dispute Resolution Unit ("ADR Unit")** of the New Jersey Department of Law and Public Safety's Division of Consumer Affairs.

Arbitration is a process in which a trained volunteer reviews the facts of the case and the issues in question in order to come up with a final decision which will resolve the controversy. Although the arbitrator is not a judge, the decision issued is final and binding on the parties who have agreed to participate in arbitration as a method of settling a dispute.*

There are certain of your rights that may be altered by participating in arbitration and there are certain agreements to which you must be willing to commit in order for this process to be successful in resolving your complaint. Completion of the "Agreement to Arbitrate" is designed to ensure that you understand the process involved, as well as the impact of a completed arbitration.

By signing this form, you agree to comply with its terms and with the terms of any agreed upon resolution, as set forth below.

DISCLOSURE

Before agreeing to participate in arbitration, all parties must be aware that the arbitrator's decision is final and binding and after a decision has been issued the parties cannot use any process, including the court system, to seek further relief for the dispute at hand. Essentially, once an arbitration has been completed and a decision issued, there is no more dispute. Consequently, decisions are issued as conclusions only. There will be no findings of fact, and no opinion or rationale given by the arbitrator. In short, the arbitrator's award is final, binding and prevents either party from looking for further assistance through any other process.

* There are only a very few instances in which an arbitration can be reviewed by a court or reconsidered by the arbitrator. An arbitrator's award is final and usually not subject to review by the courts unless it can be shown that fraud, corruption, or misconduct occurred in the process of arbitration or by the arbitrator. This is not legal advice nor is it a legal interpretation upon which any party can rely. At no time can any member of the ADR Unit, including the arbitrator, offer or provide any form of legal advice to a participant in dispute resolution.

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

AGREEMENT TO ARBITRATE

By signing this form and participating in the arbitration process, I hereby state that I understand and agree with the following:

1. I am willingly and voluntarily participating in arbitration;
2. I will participate fully in the arbitration process and participate in good faith at all times;
3. I will not subpoena or ask the arbitrator or any member of the ADR staff and its legal counsel to testify or divulge any records or information from the arbitration process in any judicial, administrative or other proceeding or action;
4. I agree that neither the arbitrator nor the staff of the ADR Unit will be liable in any way for damages or injunctive relief for any act or omission in connection with the arbitration conducted in accordance with the rules, procedures and guidelines provided to me before the start of the session;
5. I agree that arbitration sessions are to be private and that persons other than the parties, their attorney or other representative, the director of the ADR Unit or an authorized representative and the arbitrator may attend the proceedings only with the permission and agreement of both parties and the arbitrator;
6. I will not record the arbitration session by or with any electronic or other recording or stenographic device;
7. I will comply with all the rules, procedures and guidelines set out in the document and established by the arbitrator at the start of the session;

8. There will be no finding of fact, and no opinion or rationale provided by the arbitrator.

I HAVE READ THIS DOCUMENT CAREFULLY AND UNDERSTAND THE RULES SET FORTH ABOVE. THE ARBITRATION PROCESS HAS BEEN EXPLAINED TO ME AND ALL OF MY QUESTIONS HAVE BEEN ANSWERED. I UNDERSTAND THAT I DO NOT HAVE TO PARTICIPATE IN THIS ARBITRATION PROGRAM AND THAT PARTICIPATION IS NOT A PRECONDITION TO SEEKING ANY OTHER RELIEF PRIOR TO THE BEGINNING OF THE ADR PROCESS. I AM AWARE AND AGREE THAT ONCE I HAVE SIGNED THIS AGREEMENT TO ARBITRATE I MAY NO LONGER WITHDRAW FROM THIS ARBITRATION PROCESS. ALSO, WHEN A DECISION IS REACHED ALL PARTIES ARE BOUND BY THAT DECISION. MOREOVER, THAT DECISION IS BINDING AND PREVENTS EITHER PARTY FROM PURSUING ADDITIONAL RELIEF RELATED TO THIS MATTER IN ANY OTHER FORUM OR THROUGH ANY OTHER PROCESS.

COMPLAINANT

Signature

Print Name

Address

City, State, and Zip Code

Date

RESPONDENT

DocuSigned by:

Mark Elliott

8CB3B48ED1214B0

Signature

Mark Elliott

Print Name

910 Louisiana St.

Address

Houston, TX 77002

City, State, and Zip Code

April 9, 2021

Date

EXHIBIT D

(ADR Unit Guidelines)

**NEW JERSEY OFFICE OF THE ATTORNEY GENERAL
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 December 2010