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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

██████████,

**Individually and on Behalf of All Others
Similarly Situated,**

Plaintiff,

v.

IDT ENERGY, INC.,

Defendant.

CLASS ACTION COMPLAINT

Case No: 14-cv-4107

JURY TRIAL DEMANDED

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Plaintiff [REDACTED] (“Plaintiff”), by his attorneys Wittels Law, P.C, brings this consumer protection action in his individual capacity, and on behalf of a class of persons defined below, against IDT, Energy, Inc. (“Defendant,” “IDT,” or the “Company”), and hereby alleges the following with knowledge as to his own acts, and upon information and belief as to all other acts:

OVERVIEW OF IDT’S DECEPTIVE PRACTICES

1. Until the late 90s, the rate a residential energy supplier could charge was strictly regulated. In 1996, however, New York’s energy market was opened to competition and gas and electricity consumers were permitted to choose from a variety of companies selling residential energy in addition to traditional utilities like Con Edison. Seizing on the deregulation in New York and other states, independent energy companies like Defendant IDT Energy, Inc. (called “ESCOs”) jumped into the market and have grown rapidly.

2. Founded in 2004, Defendant IDT quickly became one of the nation’s largest ESCOs, now serving over 1 million electric and natural gas customers in New York and four other states and the District of Columbia. In achieving its rapid expansion, IDT has not simply bested its competitors. Rather, it has developed and deployed the following deceptive and unlawful marketing and sales practices that result in its energy customers paying far more than they would have paid had they stayed with their traditional energy suppliers.

3. **The Undisclosed Volatile Variable Rate** – While IDT boasts that its “bottom line” is to “offer choice, reliability and savings,” it fails to adequately inform consumers who switch that they can see their energy rates skyrocket. IDT’s rates can shoot up because unlike the vast majority of its competitors, IDT does not primarily offer its energy at a fixed rate. Instead, like the risky adjustable-rate mortgages that contributed to the financial crisis, IDT’s variable energy rates can fluctuate rapidly and have no ceiling. IDT conceals this fact with an extensive marketing campaign that bombards consumers with promises of savings while failing

to warn them of the factors affecting IDT's variable rates and that those factors can fiercely turn. In fact, unlike the fixed rate plans offered by other ESCOs, IDT's variable rate plan limits the Company's exposure to fluctuating energy prices by shifting the risk of these volatile commodity prices onto consumers. IDT, however, doesn't tell consumers this key fact when it trumpets how consumers who switch will save on their monthly energy bills.

4. IDT's own investor presentations describe the energy company's marketing strategy, stating that the "value proposition" offered to consumers includes an "expectation of savings." The undisclosed truth to consumers, however, is that by switching to IDT they are gambling with their monthly utility bills. Further, the expectation of savings is a mere illusion created by Defendant IDT's misleading conduct.

5. In particular, Defendant IDT's marketing campaign i) fails to adequately inform consumers that with a variable rate plan the consumers' energy costs can spike at any time, causing substantially increased monthly energy bills; and ii) fails to clearly and conspicuously describe what factors might cause consumers' energy costs to rise. Defendant's omissions violate both New York's ESCO Consumers Bill of Rights, N.Y. Gen. Bus. Law § 349-d(7), which mandates that all ESCO contracts and all ESCO marketing materials clearly and conspicuously describe all variable charges included as part of an energy plan, as well as New York's general consumer protection law, N.Y. Gen. Bus. Law § 349, which prohibits deceptive conduct in consumer transactions.

6. In stark contrast to what the law requires, IDT's marketing deceptively highlights purported savings but fails to even mention (much less clearly and conspicuously) that IDT's rates are variable and can precipitously rise. For example, in one TV commercial IDT repeatedly encourages customers to "switch and save" and "switch suppliers and start saving." *See* <https://www.youtube.com/watch?v=Um0k89TQORk>. IDT's hyperbole about the likelihood of saving extends to the radio spots it recently put up throughout the northeast that tell consumers to

“stop worrying” about high energy bills, and “don’t go another day worrying about those high energy bills.” *See, e.g.* <https://www.youtube.com/watch?v=ael4116gog>. In reality, however, consumers who switch to IDT should be worrying, as they are rolling the dice on IDT’s volatile variable energy rates.

7. Once a consumer has decided to switch to IDT, the Company funnels new customers through an automated, rapid fire telephone enrollment, and like Defendant’s marketing, the automated enrollment fails to adequately disclose that IDT’s rates are variable rates or the factors that affect those variable rates. The Company buries the existence of the variable rate amid a promotion for its deceptive rebate program; the automated phone enrollment makes only a fleeting and inconspicuous bare bones reference to a variable rate.

8. IDT’s “Terms and Conditions” (the “contract”), which arrives after customers have already switched over to IDT, likewise fails to meet the New York ESCO Consumers Bill of Rights’ requirement of clear and conspicuous disclosure about variable energy rates. The contract is chock full of confusing fine print. Moreover, the cursory reference to variable charges is deceptively buried without highlighting or other emphasis amid the prolix of the contract’s other paragraphs. This is hardly the conspicuous disclosure mandated by law.

9. Had IDT provided Plaintiff McLaughlin with adequate and appropriate disclosures about the risks of the Company’s variable rate, he would not have switched his electricity account to IDT. He also would not have been an IDT customer when the Company’s electricity rates shot up in early 2014 by a shocking 111% from the prior month and then stayed almost as pricey for the two additional months Mr. McLaughlin had to wait to return his account to Con Edison. Mr. McLaughlin was far from the only IDT customer to see his rates spike; according to IDT’s securities filings, its electricity revenue jumped 75.8% during this period generating gross profits of \$8.8 million.

10. **The Deceptive Rebate Program** – In addition to boasting that customers who switch will save money, Defendant markets a rebate program that is supposed to provide its customers with a refund after 12 months based on the amount of energy purchased. As bait to show how generous its rebate program is, IDT provides potential customers with estimated rebates based on the potential customer's prior electric and/or natural gas usage. The estimates, however, are grossly exaggerated and do not reflect the consumer's prior usage or the size of the rebate they are likely to receive.

11. Further, the rebate IDT actually pays is miscalculated. For example, the rebate Mr. McLaughlin received for his electricity consumption was approximately 32% lower than the rebate he was owed based on Defendant's rebate formula.

12. IDT's deceptive rebate program violates both New York's ESCO Consumers Bill of Rights, N.Y. Gen. Bus. Law § 349-d(3), which explicitly prohibits deceptive acts and practices in the marketing of residential energy, as well as New York's general consumer protection statute, N.Y. Gen. Bus. Law § 349.

13. **Summary of IDT's Unlawful Conduct** – IDT's deceptive enrollment and energy sales practices run afoul of New York State law in multiple ways, including:

- a. Violating N.Y. G.B.L. § 349-d(7) by failing to clearly and conspicuously disclose in both its contracts and in all marketing materials that IDT charges variable rates;
- b. Violating N.Y. G.B.L. § 349-d(7) by failing to clearly and conspicuously disclose in both its contracts and in all marketing materials the factors that affect IDT's variable rates;
- c. Violating N.Y. G.B.L. §§ 349 and 349-d(3) by failing to adequately inform consumers that with IDT's variable rates the consumers' energy costs can precipitously rise;
- d. Violating N.Y. G.B.L. §§ 349 and 349-d(3) by highlighting potential savings and failing to mention that any purported savings would be quickly erased by a significant increase in energy prices;

- e. Violating N.Y. G.B.L. §§ 349 and 349-d(3) by misrepresenting the amount a consumer is likely to receive from IDT's rebate program and bolstering its misrepresentation by stating that those estimates are based on a customer's prior usage; and
- f. Violating N.Y. G.B.L. §§ 349 and 349-d(3) by miscalculating and underpaying its promised rebate.

14. **Relief Sought** – Plaintiff brings this action on behalf of himself and a Class of IDT customers similarly harmed and described below. Plaintiff seeks, *inter alia*, statutory damages, treble damages up to ten thousand dollars for each class member, injunctive and declaratory relief, and attorneys' fees and costs.

15. Only through a class action can the Company's customers remedy IDT's ongoing wrongdoing. Because the loss suffered by each IDT customer is small compared to the much higher cost a single consumer would incur in trying to challenge IDT's unlawful practices, it makes no financial sense for an individual consumer to bring his or her own lawsuit. Further, many customers don't even realize they are victims of IDT's deceptive conduct.

16. With this class action, Plaintiff and the Class seek to level the playing field and make sure that companies like IDT engage in fair and upright business practices. Plaintiff therefore seeks equitable relief in addition to monetary damages. Plaintiff asks that the Court declare Defendant's business practices impermissible, and enjoin Defendant from continuing its dishonest practices.

PARTIES

17. **Plaintiff** [REDACTED] is a citizen of New York residing in Brooklyn, New York.

18. In June 2012, Mr. McLaughlin was contacted via telephone by an IDT representative. Based on the representatives' claims about saving money and the \$100 estimated rebate he was informed he would receive by purchasing his electricity from IDT for 12 months, Plaintiff agreed to switch his electric account to IDT. Plaintiff also enrolled both his gas and

electric accounts into IDT's rebate program. (Mr. McLaughlin had previously been purchasing his residential gas from IDT since August 2008, but during that time had his electricity supplied by Con Edison). Once his electricity account was successfully transferred from Con Edison, IDT began supplying Plaintiff's electricity on August 1, 2012.

19. After Mr. McLaughlin received only a fraction of the \$100 estimated rebate and his electricity rate reached unprecedented levels, he notified IDT in February 2014 that he wanted to cancel his gas and electricity accounts. In April 2014 both of Plaintiff McLaughlin's accounts were returned to Con Edison.

20. **Defendant IDT Energy, Inc.** is a Delaware corporation with its principal place of business at 520 Broad Street in Newark, New Jersey. In November 2004, the global telephone company IDT Corporation launched IDT Energy in New York State. In October 2011, IDT Corporation spun off Genie Energy, Ltd., Defendant's IDT Energy's parent company.

21. Genie Energy Ltd.'s shares are now traded on the New York Stock Exchange bearing the ticker symbol "GNE." Genie Energy is comprised of IDT Energy and Genie Oil and Gas ("GOGAS"). GOGAS is an oil and gas exploration company with projects in Colorado, Israel and Mongolia. IDT Energy markets and sells residential and commercial gas and electricity to over a million consumers in New York, New Jersey, Pennsylvania, Maryland, Illinois, and the District of Columbia. According to securities filings, IDT Energy is also considering expanding into Massachusetts and Connecticut. IDT Energy's 2013 revenue was \$279.2 million.

22. The Company's securities filings disclose a key difference between it and the vast majority of ESCOs: IDT Energy primarily offers variable rate plans to residential gas and electricity consumers. Unlike the fixed rate plans offered by other ESCOs, IDT's variable rate plans shifts the Company's exposure to volatile commodities prices onto consumers. IDT's investor presentations advertise the Company as having the most variable rate customers of any

ESCO.

JURISDICTION AND VENUE

I. Subject Matter Jurisdiction

23. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332 (the "Class Action Fairness Act").

24. This action meets the prerequisites of the Class Action Fairness Act, because the claims of the Class defined below exceed the sum or value of \$5,000,000, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendant.

II. Personal Jurisdiction

25. This Court has general personal jurisdiction over Defendant IDT because since its inception in 2004, IDT has been doing business in New York through continuous, permanent, and substantial activity in New York.

26. This Court has specific personal jurisdiction over Defendant IDT because it maintains sufficient contacts in this jurisdiction, including the advertising, marketing, distribution and sale of natural gas and electricity to New York consumers.

III. Venue

27. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2). Substantial acts in furtherance of the alleged improper conduct occurred within this District and Plaintiff McLaughlin resides within this District.

FACTUAL ALLEGATIONS

I. The Deregulation of New York's Energy Markets

28. In 1996, New York deregulated the sale of retail gas and electricity. As a result of deregulation, New York consumers can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities.

These third-party energy suppliers are known as energy service companies, or “ESCOs.” Since New York opened its retail gas and electric markets to competition, more than a million New York consumers have switched to an ESCO.

29. ESCOs are subject to minimal regulation by New York’s utility regulator, the New York State Public Service Commission (the “PSC”). ESCOs like IDT do not have to file their rates with the PSC, or the method by which those rates are set.

30. If a customer switches to an ESCO, the customer will then have his or her energy “supplied” by the ESCO, but still “delivered” by their existing utility (in the New York metro area, typically Con Edison). The customer’s existing utility then continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is which company sets the price for the customer’s energy supply.

31. After a customer switches to an ESCO, the customer’s energy supply charge [based either on a customer’s kilowatt hour (electricity) or therm (gas) usage] is calculated using the supply rate charged by the ESCO and not the regulated rate charged by customer’s former utility. The supply rate charged is itemized on the customer’s bill as the number of kilowatt hours (“kWh”) or therms multiplied by the rate. For example, if a customer uses 145 kWh at a rate of 10.0¢ per kWh, the customer will be billed \$14.50 (145 x \$.10) for their energy supply.

II. IDT’s Rapid Expansion

32. Founded in 2004, Defendant IDT first supplied energy to consumers only in New York State. According to its website, IDT has since “grown into one of the leading suppliers of electric and natural gas” in the northeast and has become one of the largest ESCOs in the United States. With annual revenue surpassing \$279 million and a New York market share of nearly 20%, IDT is a dominate player in the deregulated energy markets. IDT’s success, however, comes at consumers’ expense. Using deceptive business tactics, IDT has taken advantage of deregulation and the resulting lack of oversight to sweep up customers eager to lower their

household energy costs. While the acts described below harmed Plaintiff McLaughlin in New York, IDT's deceptive acts have injured customers everywhere it sells energy.

III. IDT Hides the Financial Risks Consumers Incur by Switching to IDT

33. N.Y. G.B.L. § 349-d, the Energy Services Company Consumers Bill of Rights, was enacted to “establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers.” *See* New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009) attached as **Exhibit A**. As the sponsoring memorandum notes, Section 349-d sought to end the exact type of deceptive conduct Plaintiff challenges here:

Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.

* * *

High-pressure and *misleading sales tactics*, onerous contracts with unfathomable *fine print*, short-term “teaser” rates followed by *skyrocketing* variable prices – many of the problems recently seen with subprime mortgages are being repeated in energy competition. Although the PSC has recently adopted a set of guidelines, its “Uniform Business Practices” are limited and omit important consumer protections in several areas. The fact is, competition in supplying energy cannot succeed without a meaningful set of standards to weed out companies whose business model is based on taking unfair advantage of consumers.

Id. at 3-4 (emphasis added).

34. As a result of the above-described concerns, the Legislature adopted two crucial safeguards meant to protect New York's residential energy consumers. First, N.Y. G.B.L. § 349-d(3), which prohibits deceptive acts or practices in the marketing of energy services. Second, N.Y. G.B.L. § 349-d(7), which requires that “[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified.”

35. Through its conduct, IDT has violated both the spirit and letter of N.Y. G.B.L. §

349-d, the law that is explicitly designed to allow energy consumers to make informed choices: “These provisions will go a long way toward restoring an orderly marketplace where consumers can make informed decisions on their choices for gas and electric service” Exhibit A, New York Sponsors Memo at 4.

36. At all relevant times Mr. McLaughlin was charged variable rates for the energy he purchased from IDT. Defendant, however, never clearly and conspicuously apprised him of its variable rates, or the risk the variable rates posed to his finances.

37. Defendant’s telephone sales scripts, mailers, radio and television spots, and other marketing materials are deceptive because they highlight that IDT will save consumers on their utility bills but fail to inform consumers that a spike in energy rates can dramatically increase their energy costs. These marketing materials also violate N.Y. G.B.L. § 349-d(7) by not clearly and conspicuously setting forth all of the factors affecting IDT’s variable rates. Indeed, the marketing materials don’t even mention that IDT’s rates are variable, nor do they comply with the statute’s conspicuousness requirement. Further, as described below, the various incarnations of IDT’s Terms and Conditions since at least June 2012 as well as Defendant’s telephonic enrollment system also violate N.Y. G.B.L. § 349-d(7).

38. Upon information and belief, the IDT sales rep who signed up Mr. McLaughlin during a marketing call in 2012 used IDT’s standard sales script, and emphasized that customers who switch to IDT save money. The sales rep failed to mention, however, that any purported savings would be quickly erased by a significant increase in energy prices. Based on the sales rep’s statements, Mr. McLaughlin decided to switch his electricity account from Con Edison to IDT.

39. Upon information and belief, the call script IDT’s representative used to solicit Mr. McLaughlin also did not contain language clearly and conspicuously explaining that IDT’s rates are variable, nor did the script describe the factors that affect IDT’s variable rates.

40. Following his agreement to switch his electricity account to IDT, Mr. McLaughlin's enrollment was confirmed by IDT's automated enrollment system. During the rapid fire enrollment process, Defendant failed to provide the lawfully mandated clear and conspicuous disclosure that the energy company charges a variable rate. Rather, the speedy enrollment process highlighted the advantages of the Company's rebate program while mentioning a variable rate only in passing, thus stressing the savings from switching but not adequately disclosing the risks.

41. The mailers Mr. McLaughlin received after he confirmed his enrollment also uniformly fail to mention that IDT charges a variable rate, much less clearly and conspicuously describe the various factors that can cause IDT's rates to rise. For example, the welcome letter Mr. McLaughlin received after completing the automated telephone enrollment prominently touts that IDT is a company "where we put *your* energy needs first" but is entirely silent about its variable rates. *See* Welcome Letter, attached as **Exhibit B** (emphasis in original).

42. Similarly, the contract, which the Company provides only *after* a customer is already enrolled, likewise fails to make the clear and conspicuous disclosure of Defendant's variable rates as mandated by New York's ESCO Consumers Bill of Rights. The contract states incoherently that: [t]he variable price for all electricity and natural gas sold under this Agreement and established on an approximately monthly basis based upon electricity and natural gas market pricing, transportation or transmission, and other market and business price related factors. [*Sic*]. Terms and Conditions, attached as **Exhibit C**.

43. Not only is this one-liner incomprehensible, but it is also inconspicuous. Hidden in the same small print as all the other "terms" in the form contract, this obtuse reference to a variable rate is the opposite of clear and conspicuous. There are no special boxes, colors, or larger font sizes to set off Defendant's nebulous reference. *See* Exhibit C. IDT's contract not only violates N.Y. G.B.L. § 349-d(7), but also contradicts the "Consumer Bill of Rights" posted on IDT's webpage

which states that IDT's customers are entitled to clear and simple disclosure of the terms and conditions of their agreement with IDT, including "price and all variable charges or fees."

44. In fact, Defendant IDT's entire marketing strategy violates the pledge heralded on the Company's website: to "[p]rotect customers participating in the deregulated energy market." Mr. McLaughlin would have never signed up to be part of IDT's energy market gamble had he been adequately informed that, unlike the regulated rates charged by his local utility, IDT's rates could go through the roof. Similarly, Mr. McLaughlin would have never switched to IDT had the Company clearly and conspicuously described the factors that cause its rates to fluctuate.

45. Unfortunately, in January 2014, IDT's rates did in fact go through the roof. At that point, IDT increased Plaintiff McLaughlin's electricity rate from the prior month by 111% to an unprecedented 27.5¢ per kWh. February was almost as bad for Mr. McLaughlin when IDT billed him a kWh rate of 25.6¢. In March 2014 (the last month Plaintiff was an IDT customer) he was saddled with a 20.2¢ per kWh rate.

46. Mr. McLaughlin was not alone. According to IDT's securities filings, these "extraordinarily large spikes," some of which were as large as eight times the prior level, occurred in all of the markets where IDT sells energy. As a result of these spikes, IDT's revenues from electricity grew 94.9% year over year to \$96 million. IDT's gross profit on these spikes was \$8.8 million. Its customers saw only losses.

47. If IDT had given Plaintiff McLaughlin adequate disclosures concerning its variable rates, he would not have switched to IDT. Similar to other reasonable consumers who were harmed by IDT's conduct, Mr. McLaughlin had no choice but to pay IDT's inflated rates.

IV. IDT's Illusory Rebate

48. During the 2012 marketing call to Mr. McLaughlin, the IDT representative told Plaintiff McLaughlin that if he switched he would gain the benefit of IDT's rebate program. Upon information and belief, this is a core message of Defendant's standard sales script.

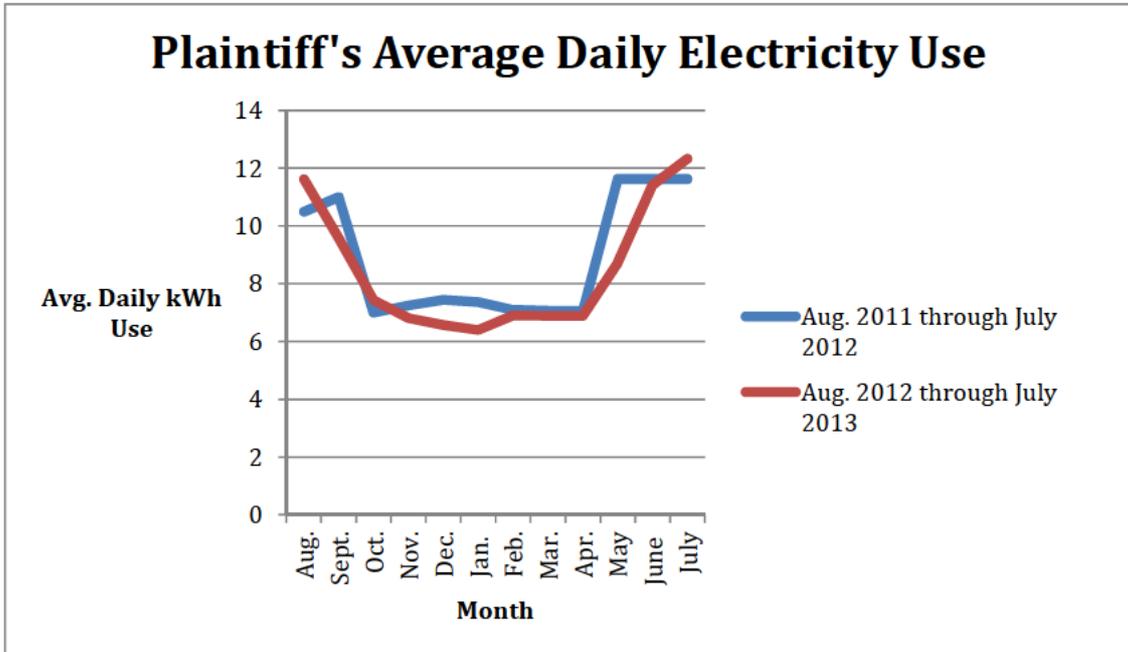
49. Enrollment in IDT's rebate program was supposed to provide customers a refund based on the amount of energy they purchased during the prior 12 months. The representative led Mr. McLaughlin to believe that based on his prior usage he would likely receive a \$100 check. The representative did not tell Plaintiff McLaughlin how the estimate or the rebate was calculated. Having had relatively steady energy consumption at his home in Brooklyn for the preceding five years, Mr. McLaughlin relied on the estimated rebate in making the decision to begin purchasing his electricity from IDT.

50. On August 4, 2012, IDT mailed Plaintiff McLaughlin the "Additional Terms and Conditions for the IDT Energy Rebate Program" which stated that his "start date" was August 4, 2012. *See* Additional Terms, attached as **Exhibit D**. The Additional Terms repeated and reinforced the sales rep's \$100 rebate estimate. It presented \$100 as the average rebate and stated "***All Rebate amounts advertised and presented to Buyers are estimates based upon Buyer's prior electric and/or natural gas usages.***" *Id.* (emphasis in original). Similar to the phone call from the IDT representative, the Additional Terms did not describe how Mr. McLaughlin's rebate would be calculated; leaving Plaintiff with no way to verify whether IDT's estimate was accurate, or (as it turned out) embellished.

51. Mr. McLaughlin later received in the mail IDT's 14-inch, single-spaced, form contract which like the Additional Terms states that "***[a]ll rebate amounts advertised and Presented (sic) to customers are estimated based upon customer's prior electric and/or natural gas usages." *See* Exhibit C. Similar to the sales pitch and the Additional Terms, IDT's contract omits any mention of how the promised rebate is calculated.

52. For the next 12 months, Mr. McLaughlin continued using energy in his home in the same way he had for the previous five years. By making no significant changes in his energy consumption, Mr. McLaughlin purchased almost the same amount of energy he had the prior year. The graph on the next page shows the approximate average daily electricity usage in

Plaintiff McLaughlin's home during both the year he was a participant in IDT's rebate program (Red) and the prior year (Blue, which is the "prior usage" IDT stated that it relied on to estimate Mr. McLaughlin's rebate).

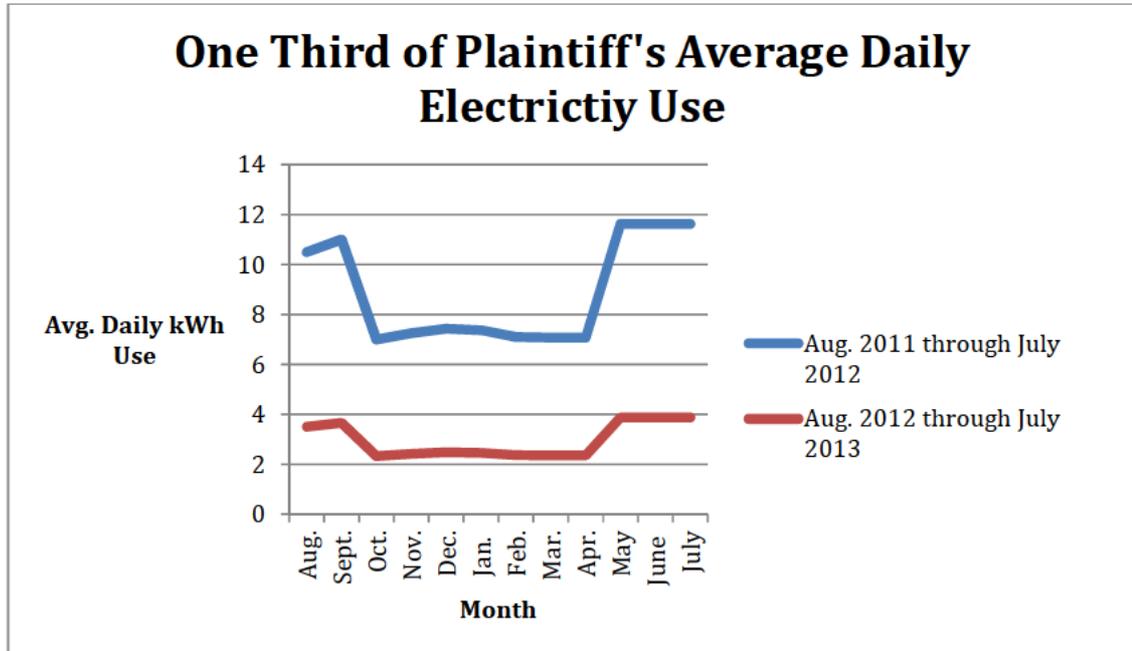


53. Mr. McLaughlin's gas usage during the relevant periods was no different, fluctuating at most one therm above or below the two therms per month usually consumed in his household.

54. Despite the lack of a material change in Plaintiff's energy consumption, and far from the rosy estimate that lured Mr. McLaughlin into becoming an IDT electricity customer, on September 17, 2013 Defendant sent Mr. McLaughlin a rebate check for only \$23.26. While the \$23.26 was attributable to only Plaintiff's electricity usage, upon information and belief, Defendant also sent Plaintiff a \$5.00 rebate check for his gas consumption. This total \$28.26, however, is less than one third of the rebate estimate IDT provided at the time he was solicited to switch to IDT.

55. Mr. McLaughlin's energy consumption during the rebate period, however, was not two thirds less than his prior consumption: it was almost identical. Indeed, the following

graph compares Plaintiff McLaughlin's average daily energy consumption during 2011 (Blue) with a hypothetical customer who used only one third of the energy the following year (Red).



56. In short, IDT's low-ball rebate had no relation to the \$100 estimate purportedly based on Plaintiff's prior energy usage, a fact Mr. McLaughlin only learned when he received IDT's parsimonious refund.

57. Accompanying the small rebate check Plaintiff received in September 2013 was an additional mailer insert that shows three things: (1) the company miscalculated and underpaid Mr. McLaughlin's rebate, (2) it reveals how inaccurate and inflated IDT's \$100 estimate was, and adding insult to injury (3) it attempts to lull consumers like Plaintiff into continuing on IDT's rebate plan. The insert urges customers to continue purchasing their energy from IDT, stating "[c]ustomers who use an average of 1,000 therms (natural gas) and 12,000 (kWh) could see an annual rebate of up to \$150 or more." See Mailer Insert, attached as **Exhibit E**.¹ Aside from the

¹ Unfortunately for consumers, IDT's mailer (and all of its other marketing) fails to lay out the formula it uses to arrive at the \$150.

fact that IDT was well aware that at all relevant times Mr. McLaughlin never consumed even close to this amount (his consumption never even reached 40 therms and 4000 kWh per year), IDT's example shows that it underpaid Mr. McLaughlin by approximately 32%.

58. In order to arrive at a \$150 rebate for the hypothetical household that consumed 1,000 therms and 12,000 kWh, each kWh used would have to be reimbursed 1¢ (12,000 x \$.01= \$120) and each therm would have to be reimbursed 3¢ (1,000 x \$.03= \$30). Thus, using the Company's formula Mr. McLaughlin should have received a check for about \$34.00 based on his approximately 3,400 kWh consumption during the relevant period, and not the smaller \$23.00 check he received for that usage.

59. Not only did IDT deceive Plaintiff with the bait of a \$100 check that was supposedly based on his prior usage, but the Company also did not honor its own formula for calculating the rebate owed.

60. IDT's deceptive rebate ploy proved successful in luring in Mr. McLaughlin together with thousands of other IDT customers, a fact noted in the Company's securities filings: "IDT Energy's rebate programs keyed to new customer acquisition and retention have . . . accelerated customer acquisition in recent quarters and intensified competition in some utility territories." Just like Mr. McLaughlin, those other IDT customers were harmed by Defendant's unlawful conduct.

CLASS ACTION ALLEGATIONS

61. Plaintiff sues on his own behalf and on behalf of a Class for damages and injunctive relief under Rules 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

62. The Class, preliminarily defined as two subclasses, is as follows:

- a. All IDT customers who were charged a variable rate for their energy from July 2, 2008 and thereafter (the "Variable Rate Subclass"); and

- b. All IDT customers who participated in IDT's rebate program from July 2, 2008 and thereafter (the "Rebate Subclass").

63. Excluded from the Subclasses are the officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, and its legal representatives, heirs, successors or assigns and any entity in which Defendant has or has had a controlling interest. Also excluded are all federal, state and local government entities; and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

64. Plaintiff does not know the exact size of the Subclasses (hereafter collectively the "Class" unless otherwise specified), since such information is in the exclusive control of Defendant. Plaintiff believes, however, that based on the number of IDT customers, the Class encompass hundreds of thousands of individuals whose identities can be readily ascertained from Defendant's records. Plaintiffs also believe that both the Rebate Subclass and the Variable Rate Subclass each have hundreds of thousands of members. Accordingly, the members of the Class are so numerous that the joinder of all such persons is impracticable.

65. Plaintiff is an adequate class representative. His claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiff and the other members of the Class were subject to the same or similar conduct. Further, Plaintiff and the Class sustained substantially the same injuries and damages arising out of Defendant's conduct.

66. Plaintiff will fairly and adequately protect the interests of all Class members. Plaintiff has retained competent and experienced class action attorneys to represent his interests and those of the Class.

67. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class members, and a class action will generate common

answers to the questions below, which are apt to drive the resolution of this action:

- a. Whether Defendant's conduct violates New York General Business Law §349-d;
- b. Whether Defendant's conduct violates New York General Business Law §349;
- c. Whether Defendant was unjustly enriched as a result of its conduct;
- d. Whether the Class members have been injured by Defendant's conduct;
- e. Whether, and to what extent, equitable relief should be imposed on Defendant to prevent it from continuing its unlawful practices; and
- f. The extent of class-wide injury and the measure of damages for those injuries.

68. A class action is superior to all other available methods for resolving this controversy because i) the prosecution of separate actions by Class members will create a risk of adjudications with respect to individual Class members that will, as a practical matter, be dispositive of the interests of the other Class members not parties to this action, or substantially impair or impede their ability to protect their interests; ii) the prosecution of separate actions by Class members will create a risk of inconsistent or varying adjudications with respect to individual Class members, which will establish incompatible standards for Defendant's conduct; iii) Defendant has acted or refused to act on grounds generally applicable to all Class members; and iv) questions of law and fact common to the Class predominate over any questions affecting only individual Class members.

69. Further, the following issues are also appropriately resolved on a class-wide basis under Fed. R. Civ. P. 23(c)(4):

- a. Whether Defendant's conduct violates New York General Business Law §349-d;
- b. Whether Defendant's conduct violates New York General Business Law §349;

- c. Whether Defendant was unjustly enriched as a result of its conduct; and
- d. Whether, and to what extent, equitable relief should be imposed on Defendant to prevent it from continuing its unlawful practices;

70. Accordingly, this action satisfies the requirements set forth under Fed. R. Civ. P. 23(a), 23(b), and 23(c)(4).

CAUSES OF ACTION

COUNT I

NEW YORK GENERAL BUSINESS LAW § 349-d(7)

(ON BEHALF OF THE VARIABLE RATE SUBCLASS)

71. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

72. Plaintiff brings this claim under N.Y. G.B.L. § 349-d(7) on his own behalf and on behalf of each member of the Variable Rate Subclass who became an IDT energy or gas customer on or after January 10, 2011, the operative date of Section 349-d.

73. N.Y. G.B.L. § 349-d(7) provides that “[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified.”

74. None of Defendant’s marketing materials disclose that IDT charges a variable rate, much less do they make the required disclosure in a clear and conspicuous manner. Indeed, the mailers created and distributed by IDT to Plaintiff McLaughlin and prospective customers also make no reference at all to the fact that IDT’s rates are variable, and similarly fail to provide a clear and conspicuous explanation of the factors affecting IDT’s variable rates.

75. Part of Defendant IDT’s marketing strategy is also to rely on telephone solicitations to convince customers to switch to Defendant IDT. The call scripts IDT’s

representatives use to solicit customers do not clearly and conspicuously inform consumers that IDT's energy rates are variable nor do they describe all of the factors affecting IDT's variable rates. Similarly, IDT's automated telephone enrollment system fails to clearly and conspicuously disclose that IDT charges a variable rate.

76. The Terms and Conditions Defendant IDT has provided to customers since January 10, 2011 – after they are enrolled – likewise does not clearly and conspicuously inform consumers about IDT's variable energy rates or the factors affecting IDT's variable rates.

77. Through its conduct described above, Defendant has violated N.Y. G.B.L. § 349-d(7) and caused financial injury to Plaintiff and IDT's other variable rate customers.

78. Because IDT's Terms and Conditions violate N.Y. G.B.L. § 349-d(7), they are void and unenforceable as contrary to New York's public policy under Section 349-d(8). Further, any purported waiver by Plaintiff of the rights afforded by Section 349-d is void and unenforceable by IDT. *See* N.Y. G.B.L. § 349-d(8).

79. N.Y. G.B.L. §349-d(10) also provides that “any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.”

80. As a direct and proximate result of Defendant's conduct, Plaintiff and the Variable Rate Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

81. Plaintiff and the other members of the Variable Rate Subclass further seek an order enjoining Defendant from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

COUNT II

NEW YORK GENERAL BUSINESS LAW § 349-d(3)

(ON BEHALF OF THE VARIABLE RATE SUBCLASS)

82. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

83. N.Y. G.B.L. §349-d(3) provides that “[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.”

84. Defendant offers for sale energy services for and on behalf of an ESCO.

85. Plaintiff brings this claim under New York General Business Law §349-d(3) on his own behalf and on behalf of each member of the Variable Rate Subclass who was an IDT customer on or after January 10, 2011.

86. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. G.B.L. § 349-d(3) by (i) failing to adequately inform consumers that with IDT’s variable rates the consumers’ energy costs can precipitously rise, and (ii) by highlighting potential savings and failing to mention that any purported savings would be quickly erased by a significant increase in energy prices.

87. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

88. As a direct and proximate result of Defendant’s unlawful deceptive acts and practices, Plaintiff and the Variable Rate Subclass have suffered injury and monetary damages in

an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

89. Plaintiff and the other members of the Variable Rate Subclass further seek an order enjoining Defendant from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

COUNT III

NEW YORK GENERAL BUSINESS LAW § 349

(ON BEHALF OF THE VARIABLE RATE SUBCLASS)

90. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

91. Plaintiff brings this claim under N.Y. G.B.L. §349 on his own behalf and on behalf of each member of the Rebate Subclass.

92. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. G.B.L. §349 by (i) failing to adequately inform consumers that with IDT's variable rates the consumers' energy costs can precipitously rise, and (ii) by highlighting potential savings and failing to mention that any purported savings would be quickly erased by a significant increase in energy prices.

93. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

94. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiff and the Variable Rate Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$50 for each violation, such damages to be trebled, plus attorneys' fees.

95. Plaintiff and the other members of the Variable Rate Subclass further seek equitable relief against Defendant. Pursuant to N.Y. G.B.L. §349, this Court has the power to award such relief, including but not limited to, an order declaring Defendant's practices as alleged herein to be unlawful, an order enjoining Defendant from undertaking any further unlawful conduct, and an order directing Defendant to refund to Plaintiff and the Variable Rate Subclass all amounts wrongfully assessed, collected, or withheld.

COUNT IV

NEW YORK GENERAL BUSINESS LAW § 349-d(3)

(ON BEHALF OF THE REBATE SUBCLASS)

96. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

97. Plaintiff brings this claim under New York General Business Law §349-d(3) on his own behalf and on behalf of each member of the Rebate Subclass who was an IDT customer on or after January 10, 2011.

98. N.Y. G.B.L. §349-d(3) provides that "[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services."

99. Defendant offers for sale energy services for and on behalf of an ESCO.

100. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. G.B.L. § 349-d(3) by:

- a. Misrepresenting the amount a consumer is likely to receive from IDT's rebate program and bolstering its misrepresentation by stating that those estimates are based on a customer's prior usage; and
- b. Miscalculating and underpaying its promised rebate.

101. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

102. As a direct and proximate result of Defendant's conduct, Plaintiff and the Rebate Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys' fees.

103. Plaintiff and the other members of the Rebate Subclass further seek an order enjoining Defendant from undertaking any further unlawful conduct. Pursuant to N.Y. G.B.L. § 349-d(10), this Court has the power to award such relief.

COUNT V

NEW YORK GENERAL BUSINESS LAW § 349

(ON BEHALF OF THE REBATE SUBCLASS)

104. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

105. Plaintiff brings this claim under N.Y. G.B.L. §349 on his own behalf and on behalf of each member of the Rebate Subclass.

106. N.Y. G.B.L. §349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

107. Defendant's acts described herein are consumer-oriented in that they are directed at members of the consuming public.

108. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. G.B.L. §349 by:

- a. Misrepresenting the amount a consumer is likely to receive from IDT's rebate program and bolstering its misrepresentation by stating that those estimates are based on a customer's prior usage; and
- b. Miscalculating and underpaying its promised rebate.

109. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

110. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiff and the Rebate Subclass have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$50 for each violation, such damages to be trebled, plus attorneys' fees.

111. Plaintiff and the other members of the Rebate Subclass further seek equitable relief against Defendant. Pursuant to N.Y. G.B.L. §349, this Court has the power to award such relief, including but not limited to, an order declaring Defendant's practices as alleged herein to be unlawful, an order enjoining Defendant from undertaking any further unlawful conduct, and an order directing Defendant to refund to Plaintiff and the Rebate Subclass all amounts wrongfully assessed, collected, or withheld.

COUNT VI

UNJUST ENRICHMENT

(IN THE ALTERNATIVE AND ON BEHALF OF ALL SUBCLASSES)

112. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

113. Plaintiff brings this claim on his own behalf and on behalf of each member of the Class.

114. As a result of its deceptive, unlawful, and unfair conduct, Defendant has been enriched by (i) failing to adequately disclose to consumer that it charges variable rates and the factors that can cause its rates to spike, (ii) highlighting potential savings and failing to mention that any purported savings would be quickly erased by a significant increase in energy prices, (iii) misrepresenting the amount a consumer is likely to receive from IDT's rebate program and

bolstering its misrepresentation by stating that those estimates are based on a customer's prior usage, and (iv) miscalculating and underpaying its promised rebate.

115. By reason of Defendant's wrongful conduct, Defendant has benefited from receipt of improper funds, and under principles of equity and good conscience, Defendant should not be permitted to keep this money.

116. As a result of Defendant's collection of excessive energy charges and failure to make adequate rebates, it would be unjust and/or inequitable for Defendant to retain the benefits of its conduct without restitution to Plaintiff and the Class of the monies paid to Defendant. Accordingly, Defendant must account to Plaintiff and the Class for its unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff [REDACTED] respectfully requests that the Court:

- (a) Issue an order certifying the Classes defined above, appointing the Plaintiff as Class representative, and designating the undersigned firm as Class Counsel;
- (b) Find that Defendant has committed the violations of law alleged herein;
- (c) Enter an order granting monetary relief pursuant to G.B.L. §349-d on behalf of the Class;
- (d) Enter an order granting monetary relief pursuant to G.B.L. §349 on behalf of the Class;
- (e) Determine that Defendant has been unjustly enriched as a result of its wrongful conduct, and enter an appropriate order awarding restitution and monetary damages to the Class;
- (f) Render an award of compensatory damages of at least \$50,000,000, the precise amount of which is to be determined at trial;
- (g) Issue an injunction or other appropriate equitable relief requiring Defendant to refrain from engaging in the deceptive practices alleged herein;
- (h) Render an award of punitive damages;

Exhibit A


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 Bill No.:
 [Summary](#) [Actions](#) [Votes](#) [Memo](#) [Text](#) ([Printer friendly text](#))

A01558 Summary:

BILL NO A01558C
 SAME AS SAME AS [S02361-C](#)
 SPONSOR Gianaris (MS)
 COSPNSR Pheffer, Robinson, Dinowitz, Gabryszak, Rosenthal, Schimel, Clark, Schroeder, Colton
 MLTSPNSR Alfano, Boyland, Brennan, Crouch, Errigo, Fields, Galef, Giglio, Glick, Gottfried, Gunther, Hyer-Spencer, Kellner, Koon, Latimer, Lopez V, Magee, Maisel, McDonough, McKeivitt, Millman, Reilly, Rivera J, Saladino, Sweeney, Weisenberg, Wright

Add S349-d, Gen Bus L

Requires energy services companies to provide customers with a consumer bill of rights; establishes civil cause of action and civil penalties for violations of such provisions.

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A01558 Memo:

BILL NUMBER:A1558C

TITLE OF BILL: An act to amend the general business law, in relation to establishing an energy service company consumers bill of rights

PURPOSE OR GENERAL IDEA OF BILL: This bill establishes important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers.

SUMMARY OF SPECIFIC PROVISIONS: Bill S1 adds a new S349-d to the General Business Law to set forth an energy services company consumers bill of rights. Subdivision 1 defines the terms "energy services" (electricity and/or natural gas), "energy services company" or "ESCO" (an entity eligible to sell energy services to end-use customers using the transmission or distribution system of a utility), "customer" (any person sold or offered an energy services contract by an ESCO for residential utility service or through door-to-door sales), and "door to door sales."

Pursuant to subdivision 2, any person who sells or offers for sale any energy services for or on behalf of an ESCO shall (a) properly identify himself or herself and the energy services company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; (d) provide each prospective customer with a statement of an "ESCO consumers bill of rights" developed by the Public Service Commission (PSC), in consultation with the Long Island Power Authority (LIPA), the Consumer Protection Board (CPB) and the Department of Law; and (e) provide contracts and other written materials in the language used to solicit the prospective customer.

Subdivision 3 provides that no person selling or offering energy services for or on behalf of an ESCO shall engage in any deceptive acts or practices in such marketing.

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Subdivisions 4-7 set forth the following ESCO contract requirements:

> no required prepayment for energy services - an ESCO may offer a customer an option of prepayment which can be cancelled without penalty within 90 calendar days.

> no fee for termination or early cancellation of the contract in excess of \$100 if less than 12 months remain in the contract term, \$200 if the remaining term is twelve months or more, or twice the estimated bill for energy services for an average month (to charge this fee, an ESCO must provide the customer, when the contract is offered, with that customer's estimated average monthly bill for energy services and the fee that would be charged thereon).

> no material changes in the terms or duration of any contract for energy services without the express consent of the customer, provided that the automatic renewal of contracts is allowed only if the ESCO follows

explicit statutory requirements, including clear advance notice and a period for opting out without any termination fee, and any additional regulatory protections adopted by the PSC or LIPA.

> all variable charges shall be clearly and conspicuously identified.

Per subdivision 8, any contract for energy services which does not comply with the applicable provisions of this section shall be void and unenforceable as contrary to public policy and any waivers by a buyer shall be deemed void and unenforceable by the ESCO.

Subdivision 9 authorizes the Attorney General, upon his own motion or upon referral from the PSC, LIPA or CPB, to bring a civil action against any ESCO that violates any provision of this section and to recover (a) a civil penalty not to exceed \$1000 per violation and (b) costs and reasonable attorney's fees. In any such proceeding the court may direct restitution.

Subdivision 10 authorizes a right of private action by any person who has been injured by reason of any violation of S349-d to enjoin such unlawful act or practice and/or recover actual damages or \$500, whichever is greater. The court may, in its discretion, increase the award to an amount not to exceed three times the actual damages up to \$10,000, if it finds a willful or knowing violation. The court may award reasonable attorney's fees to a prevailing plaintiff.

Subdivision 11 preserves the existing authority of the PSC and LIPA to limit, revoke or suspend an ESCO's eligibility for violation of requirements enforceable by the respective agency.

Subdivision 12 preserves such agencies' existing authority to adopt additional compliance requirements relating to the types of products offered by ESCOs and the manner in which they are marketed to residential and commercial customers.

Bill SS2 & 3 provide that the PSC and LIPA, respectively, shall amend their consumer protection regulations and related guidelines, practices and policies to incorporate the provisions of bill S1.

Bill S4 charges the PSC, in consultation with LIPA, CPB and the Attorney General to develop a short, plain-language statement of an "ESCO consumers bill of rights" which summarizes the protections afforded to consumers of energy services by this chapter and other applicable laws.

Bill S5 sets forth a severability clause for the provisions of the legislation.

SUMMARY OF SPECIFIC AMENDMENTS: New S349-d(1)(d) is amended to clarify that visits to a buyer's premises pursuant to a requested appointment are not considered "door-to-door sales."

Clarifications are made to new S349-d(2) as follows: requirements pertaining to ESCO marketer identification and provision of a copy of the ESCO consumers bill of rights are made applicable to residential

customers and door-to-door sales, while the ban against engaging in deceptive acts and practices is relocated to a new subdivision 3 and remains applicable to all marketing activities. (The ensuing subdivisions are renumbered accordingly.)

Subdivision 4 of S349-d is amended to permit ESCOs to offer customers contracts providing for prepayment on an optional basis only, with an extended rescission period of 90 days. Subdivision 5 was amended to provide that the \$100 limit on early termination fees applies to all contracts with less than a full year remaining in the contract. Longer contracts would be subject to a maximum fee of \$200. ESCOs that offer contracts with a termination fee based on the customer's average monthly bill would have to provide the customer's estimated average bill and the actual fee amount prior to execution of the contract.

Renumbered S349-d(6) is amended to permit renewal of contracts, with additional consumer protections where the renewal is automatic (i.e. without the customer's express consent).

Further amendments also exclude marketing to commercial accounts at trade or business shows, conventions or expositions from the "door-to-door sales" definition, incorporate recommendations to provide a greater role for the Consumer Protection Board in safeguarding the interests of customers, clarify an ESCO's responsibilities in soliciting new or renewal business, and provide a more realistic level of maximum recoverable damages. Finally, the bill is amended to ensure that the existing authority of the PSC and LIPA to protect consumer's interests is preserved.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER: Chapter 686 of 2002 extended the provisions of the Home Energy Fair Practices Act (HEFPA) to cover ESCOs, but its protections only apply after a contract has been executed. This bill would augment recently-adopted PSC guidelines for ESCO marketing, protect consumers from excessive termination fees and deceptive marketing of initial contracts and renewals, make fair marketing standards broadly enforceable on a statewide basis, and extend protections to small business customers who are often targeted by unscrupulous door-to-door marketers without being covered under any current PSC protections.

JUSTIFICATION: Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process. The pressing need for consumer protections in dealing with ESCOs is highlighted by recent news items from around the state:

> Stopped outside her home in Flushing by a uniformed salesman promising her utility bills will be cut in half, a senior citizen signs a contract with an energy services company (ESCO). When she finds out later that the contract is for 5 years and her monthly bills are \$200 higher, she tries to cancel - only to be told that she must pay an \$1800 "exit fee".

> A small business owner in Brooklyn is convinced to sign an energy services contract by a sales agent's assurances that the price would be fixed and he could save at least \$200 a month. After a few months, his monthly bill had doubled, and he learned that the contract had a variable charge that fluctuated wildly -- and that canceling it would cost him \$7000.

> Complaints from various communities cite ESCO marketing reps masquerading as utility employees, making misleading statements to induce people to sign a contract, and even switching consumers' energy suppliers without their knowledge or consent.

High-pressure and misleading sales tactics, onerous contracts with unfathomable fine print, short-term "teaser" rates followed by skyrocketing variable prices -- many of the problems recently seen with subprime mortgages are being repeated in energy competition. Although the PSC has recently adopted a set of guidelines, its "Uniform Business Practices" are limited and omit important consumer protections in several

areas. The fact is, competition in supplying energy cannot succeed without a meaningful set of standards to weed out companies whose business model is based on taking unfair advantage of consumers.

This bill would build on the approach taken by the PSC by (1) extending consumer protections statewide, including to customers in LIPA's service territory; (2) protecting small businesses from being victimized by dishonest door-to-door marketing; (3) protecting customers from excessive termination fees, "bait-and-switch" contract changes and deceptive renewal practices; (4) allowing broader enforcement; and (5) providing clear, plain-language notices of an ESCO consumer's rights. The bill requires the PSC and LIPA to adopt regulations including the following mandatory consumer protections:

>requiring ESCO marketing reps to identify themselves as such and explain that they don't represent a utility;

>ensuring that any prepayments are at the customer's discretion and providing an adequate time period for the customer to assess the ESCO's performance before locking in a prepayment option;

>limiting cancellation fees to \$100 (\$200 for a multi-year contract) or an amount twice the initial estimated average monthly bill;

>all variable charges must be clearly and conspicuously identified;

>no contract terms could be changed without the consumer's affirmative consent, and any automatic renewals would have to follow strict guidelines to protect customers; and

> a short, plain language "ESCO consumer bill of rights (to be developed by the PSC, LIPA, CPB and Attorney General) will be given to prospective customers in writing or repeated in telephone sales pitches.

These safeguards would apply to "door-to-door sales" to small businesses as well as residential customers. The Attorney General could prosecute violations of marketing standards including those referred by the PSC, LIPA or CPB, or consumers could enforce the standards themselves through third-party actions.

These provisions will go a long way toward restoring an orderly marketplace where consumers can make informed decisions on their choices for gas and electric service with the confidence that state government will prevent fraudulent practices and ensure a level playing field.

PRIOR LEGISLATIVE HISTORY: A.10180-B (2008) - passed Assembly, referred to Senate Rules Committee.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: Minimal.

EFFECTIVE DATE: 150th day after becoming law and applicable to all energy services sold or offered for sale on or after such date; provided, however, that the PSC and LIPA are immediately authorized and directed to take any and all actions, including but not limited to the promulgation of any necessary rules, necessary to fully implement the provisions of this bill on such date.

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Exhibit B



Monday, June 25, 2012

*****AUTO**MIXED AADC 140



"Thank you for choosing IDT Energy, a leading independent supplier of electricity and natural gas."

Going Green for the environment...

IDT Energy would also like to offer you the option of buying alternative energy. For a few extra dollars each month, you can buy energy from sources that capitalize on our natural resources without harming the environment. "Buying Green" also promotes the creation of domestic jobs while reducing America's vulnerability to fluctuating oil prices.

Supply and billing information

IDT Energy will start supplying your electricity and/or natural gas on the next available transfer date, which should coincide with your next meter reading date. Your monthly bill from the local utility company will now indicate that you have chosen IDT Energy as your alternative supplier of electricity and/or natural gas.

If you already pay your bill via Direct Debit, unless you choose otherwise, you will continue with this billing option. If you would like to setup a Budget Billing plan, call our Customer Service line today at 877-887-6866 for further information.

Our Customer Service – Committed and Responsive

If you have any questions, please call our Customer Service representatives at 877-887-6866. They are ready and waiting to help. Office hours are 8:00am – 7:00pm, Monday through Friday.

Once again, I welcome you to IDT Energy, where we put **your** energy needs first.

Yours sincerely,

Anne L Wilson
Executive V.P. Marketing

IDT Energy(www.idtenergy.com)

Exhibit C

IDT ENERGY, Inc. Terms and Conditions

1. SCOPE. These terms and conditions apply to the purchase by you (also referred to here as "Customer") and sale by IDT Energy of electricity and/or natural gas as specified herein.

2. INFORMATION RELEASE AUTHORIZATION. Customer designates IDT Energy as its agent for receiving customer billing information from the local distribution company (LDC), and for procuring and scheduling the transmission and ancillary services necessary to deliver electricity and/or natural gas purchased by you to LDC system. This information may be used by (ESCO) to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third-party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to IDT. This authorization will remain in effect during the Term of this Agreement or any renewal thereof. Customer may rescind this authorization at any time by providing written notice thereof to IDT or calling IDT at 1-877-887-6866. IDT reserves the right to cancel this Agreement in the event Customer rescinds the authorization

3. RATES. Variable Price: The variable price for all electricity and natural gas sold under this Agreement and established on an approximately monthly basis based upon electricity and natural gas market pricing, transportation or transmission, and other market and business price related factors. Notwithstanding any other provision in this Agreement, IDT Energy may change the Variable Price without additional notice and such price may be higher or lower than LDC's price in any particular month. Rebates and Special Promotions: From time to time IDT Energy may offer a Rebate Program. If a Customer participates in IDT Energy's Rebate Program, the Customer must remain in the program for the entire agreed upon term in order to qualify for the rebate. If a Customer cancels at any time prior to the agreed upon term, the Customer shall forfeit all rights and claims to any and all rebate offers. **All rebate amounts advertised and Presented to customers are estimates based upon customer's prior electric and/or natural gas usages. Actual rebate amounts will be based on customer's actual usage over the term of this agreement, which may vary from any estimate provided. From time to time IDT Energy may offer eligible new customers an Introductory Price, which will be in effect for the introductory price term, at which point it shall revert to the variable price. IDT will send any rebate or promotion payment to the customer address given to IDT at the time of sign up. It is the responsibility of the customer to notify IDT of any changes to the customers billing address either in writing to: 550 Broad Street, Newark NJ 07102 or by calling IDT customer service at 1.877.887.6866. IDT will send all rebates and promotional payments and notices via first class mail and is not responsible for invalid addresses or undelivered items. Green Supply Option: If a customer chooses a green supply option IDT will ensure that 100% of the Customer's electricity usage is supplied with renewable energy certificates or renewable energy attributes. IDT may take up to 24 months after the end of each calendar year under which this Agreement is in effect to address any deficiency that may arise in the green renewable content of electricity sold under this Agreement in the previous calendar year. The price for green energy will be comprised of the IDT variable price plus an amount up to 2.5 cents per kw delivered, plus a monthly fee of \$4.95. Customer can cancel the green option of this agreement with at least fifteen (15) calendar days' notice of its intent to cancel by calling IDT Energy at 1-877-887-6866. The requested drop of the green supply option will occur on the next available according to the LDC's switching/change request rules.

4. BILLING AND PAYMENT. You will normally receive one bill each month issued by LDC, or by IDT Energy if directed by you or LDC. Unless otherwise provided herein, payment terms are governed by the terms of LDC's tariff if LDC issues the bill. If IDT Energy issues the bill, payment of the full amount billed is due twenty-five (25) days after the date the bill is mailed. Late payments or partial payment balances will be subject to collection fees and/or reasonable attorneys' fees and court costs, as allowed by law. All accounts, which are overdue, may be referred to a collection agency consistent with New York Law. Your bill will be based on scheduled meter readings and/or estimates provided by LDC. The parties agree to accept, for purposes of accounting for electricity and natural gas delivered under this Agreement, the quantity, quality, and measurement determined by LDC. A twenty-dollar (\$20) fee will be charged for all returned checks. Failure by a commercial customer to make full payment of IDT Charges due on any consolidated bill prepared by the LDC for IDT will be grounds for disconnection of utility services in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR 13.3.

5. TITLE AND TAXES. Under this Agreement, title to the electricity shall pass from IDT Energy to you prior to delivery to LDC, and title to gas shall pass from us to you prior to delivery to New York State. Our price does not include sale taxes that may apply, and these taxes generally will appear as a separate item on your bill. You shall reimburse IDT Energy for sales or other taxes, however designated, imposed with respect to the sale or transportation of electricity and/or natural gas unless, prior to execution of this Agreement, you have given us a valid tax exemption certificate(s).

6. TERM; TERMINATION; AND EARLY TERMINATION FEES. This Agreement shall continue on a month to month basis until either party provides at least fifteen (15) calendar days' notice of its intent to cancel and until LDC completes the termination in accordance with its rules. A residential customer may cancel this Agreement at any time during the three (3) business following receipt of this Agreement by calling IDT Energy at 1-877-887-6866. If a Commercial Customer terminates this Agreement prior to the end of the Initial or Renewal Term or if IDT Energy terminates this Agreement due to Customer's breach, the customer shall pay IDT in addition to any other applicable charges, a cancellation or early termination fee of \$250. Notwithstanding the foregoing, for all commercial customers solicited through door-to-door marketing, the early termination fee will be no greater than \$100 if the remaining term is less than 12 Months and \$200 if the remaining term is 12 months or more.

7. ASSIGNMENT. IDT Energy may assign or transfer its rights or obligations under this Agreement after first informing you in writing of such transfer or assignment. You may not assign or transfer your rights or obligations under this Agreement.

8. CHOICE OF LAW. This Agreement shall be construed in accordance with and be governed by the laws of the State of New York without regard to the conflicts of law provisions thereof.

9. NO WARRANTIES. Customer acknowledges and agrees that no warranty, duty or remedy, whether expressed, implied or statutory, is given or intended to arise out of this agreement except as otherwise expressly stated herein, and IDT Energy specifically disclaims all other warranties, expressed or implied including any warranty of merchantability or fitness for a particular purpose or use.

10. SEVERABILITY. Should any part of this Agreement be declared invalid for any reason, such decision shall not in any manner affect the validity of the remaining portion of this Agreement, which shall remain in full force and effect as if the part determined to be invalid had not been contained herein at the time of the execution of this Agreement. If at some future date there is a change in any law, rule, or regulation whereby IDT Energy is prevented, prohibited or frustrated from carrying out the terms of the Agreement, then, at the sole discretion of IDT Energy, this Agreement may be cancelled. If, at some future date, there is a change in a federal or state approved tariff affecting IDT Energy's costs to purchase electricity and/or natural gas required to provide your service, then, at the sole discretion of IDT Energy, this Agreement may be modified to reflect those costs.

11. FORCE MAJEURE. Except as otherwise set forth herein, Force Majeure is the only excuse for non-performance and all other excuses (at law or in equity) are waived. Except for payment obligations, a Force Majeure event will, upon notice, excuse both parties' performance during the event. "Force Majeure" means those events not reasonably anticipated on the effective date hereof and outside the control of the claiming party and include Force Majeure events associated with LDC or the commodity supplier or others used to deliver electricity and/or natural gas to Customer's residence.

12. LIMITATION OF LIABILITY. In no event shall IDT Energy or customer be liable to the other or to any third party for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations, whether or not IDT Energy or customer has been advised of the possibility of such damages. IDT Energy's liability and customer's exclusive remedies against IDT Energy, for any damages caused by any service outage, defect or failure shall be the termination provisions set forth above in section 6. IDT Energy's liability for other claims arising in connection with any service or this agreement, if not otherwise limited by another provision of this agreement, shall be limited to proven direct damages not to exceed per claim (or in the aggregate during any 12-month period), the total net payments made by customer for the applicable service during the 12 month's preceding the month in which the damage occurred.

13. INDEMNIFICATION. Customer is responsible for and will indemnify IDT Energy against any and all liabilities resulting from Customer's failure to fully comply with this Agreement, and damage or injury caused by the electricity and/or natural gas after its delivery to the Customer's residence.

14. DISPUTE Resolution (Residential). Customer agrees first to contact IDT Energy in writing and attempt to resolve all billing disputes or service problems directly. All disputes regarding transmission, distribution, power outages, and bills from LDC should be directed to LDC. Both Customer and IDT Energy shall try in good faith to resolve any dispute. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures ("Procedures") by calling the DPS at 1.800.342.3377 or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: www.dps.state.ny.us. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute.

Complaint Handling Procedures ("Procedures") by calling the DPS at 1.800.342.3377 or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: www.dps.state.ny.us. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute.

15. Dispute Resolution (Commercial). In the event of a billing dispute or disagreement involving IDT's service, Customer should contact IDT's Customer Service Center as provided above. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute. If the parties cannot resolve the dispute within 45 days, either party may avail itself of all remedies available under law or equity. The DPS will not resolve Non Residential disputes associated with the services provided under this Sales Agreement. However, the DPS will monitor inquiries and contacts from Non-Residential customers regarding energy service companies and an excessive number of confirmed complaints may result in an energy service company no longer being eligible to supply natural gas or electricity in New York State. The DPS Office of Consumer Services can be reached at: New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; or by visiting www.dps.state.ny.us.

16. MODIFICATION. Subject to Section 3 herein, IDT Energy may modify the terms of this Agreement at any time and such amended Agreement will supersede any previous agreement between Customer and IDT Energy. IDT Energy will provide Customer thirty (30) days prior written notice of any such modification. After receipt of such notice, Customer may cancel the Agreement by providing written notice to IDT Energy before the commencement of the next billing cycle.

17. PROTECTION OF CUSTOMER RIGHTS. IDT Energy hereby provides notice that its services are governed by the terms of this Agreement, the rules and regulations issued by LDC, and the NYPSC's Uniform Business Practices. If you are a residential customer, you are protected by the NYPSC's HEFPA (Home Energy Fair Practices Act) residential protections. Your LDC's transmission and distribution functions will continue to be regulated by the NYPSC. Electric and natural gas service may be disconnected only by LDC and only in compliance with rules set by the NYPSC. In the event of failure to pay IDT Energy for electricity and/or natural gas provided to you, IDT Energy may terminate the business relationship between us and service may be disconnected by LDC at the request of IDT Energy. The NYPSC may be contacted at 1-800-342-3355 (hotline); <http://www.dps.state.ny.us> (internet address); or at 3 Empire Plaza, Office of Consumer Services, Albany, NY 12223-1350.

18. IDT ENERGY CONTACT INFORMATION. Any questions regarding these terms and conditions or your service with IDT Energy should be directed to us in writing at IDT Energy, Inc., 550 Broad Street, Newark, New Jersey 07102. IDT Energy may also be contacted by telephone at 1-877-887-6866, by fax at 1-716-664-2297 or by e-mail at catchall@idtenergy.com.

IDT ENERGY, Inc. Términos y Condiciones.

- 1. ÁMBITO DE APLICACIÓN.** Estos términos y condiciones se aplican a la compra por usted (también se hace referencia aquí como "Cliente") y la venta por IDT Energy de la electricidad y / o gas natural según lo especificado en este documento.
- 2. AUTORIZACION PARA DIVULGACION DE INFORMACION.** Cliente designa a IDT Energy como su agente para que pueda recibir información de la facturación de la compañía de distribución local (LDC), y para la adquisición y la programación de la transmisión y los servicios auxiliares necesarios para suministrar electricidad y / o gas natural comprado por usted al sistema de su compañía de distribución local (LDC). Esta información puede ser utilizada por (ESCO) para determinar si se iniciará o continuará proporcionando el servicio de suministro de energía al cliente y no se revelará a una tercera parte menos que sea requerido por la ley. La ejecución del Cliente de este Acuerdo se constituirá la autorización para la liberación de esta información a IDT. Esta autorización permanecerá en vigor durante la vigencia del presente Acuerdo o cualquier renovación del mismo. El cliente puede rescindir esta autorización en cualquier momento mediante notificación por escrito a IDT o llamando a IDT al 1.877.887.6866. IDT se reserva el derecho de cancelar este Acuerdo en el caso que el cliente rescinda la autorización.
- 3. TARIFAS. Precio Variable:** El precio variable para toda la electricidad y el gas natural vendido bajo este acuerdo y establecido sobre una base de aproximadamente un mes, basado en los precios de la electricidad y gas natural del mercado, transporte o transmisión, y otro mercado y factores de negocio relacionados con los precios. No obstante cualquier otra provisión en este acuerdo, IDT Energy puede cambiar el precio variable sin previo aviso y el precio de estos puede ser mayor o menor que el precio de la compañía de distribución local (LDC) en cualquier mes en particular. **Descuentos y Promociones especiales:** De vez en cuando IDT Energy puede ofrecer un programa de reembolso. Si el cliente participa en el programa de reembolso de IDT Energy, el cliente debe permanecer en el programa para todo el plazo acordado con el fin de calificar para el reembolso. Si un cliente cancela en cualquier momento antes del plazo acordado, el cliente perderá todos los derechos y créditos a cualquiera y todas las ofertas de descuentos. **Todas las cantidades de reembolso anunciado y presentado a los clientes se basa en las estimaciones del uso anterior del cliente del uso eléctrico y/o gas natural. Cantidades actuales de reembolso se basa en uso actual del cliente sobre el plazo de este acuerdo, que pueden variar de cualquier estimado proveído. De vez en cuando IDT Energy pueden ofrecer a nuevos clientes elegibles un precio de introducción, que estará en vigor para el plazo del precio de introducción, momento en el que se ingresará en el precio variable. IDT enviará cualquier reembolso o pagos de promoción a la dirección dada por el cliente en el momento de inscribirse con IDT. Es responsabilidad del cliente notificar a IDT de cualquier cambio en la dirección de facturación ya sea por escrito a: 550 Broad Street, Newark NJ 07102 o llamando al servicio al cliente al 1.877.887.6866 IDT. IDT enviará todos los reembolsos, los pagos de promoción y avisos por correo de primera clase y no es responsable por direcciones inválidas o los artículos no entregados. **Opción de Suministro Verde:** Si un cliente elige una opción de suministro verde IDT se asegurará de que el 100% del consumo eléctrico del cliente se suministre con energía renovable certificada o los atributos de energía renovable. IDT puede tardar hasta 24 meses después del final de cada año natural en que este Convenio está en vigor para corregir posibles deficiencias que puedan surgir en el contenido verde renovable de la electricidad vendida en virtud del presente Acuerdo en el año calendario anterior. El precio de la energía verde se compone del precio variable de IDT más una cantidad de hasta 2.5 centavos por kilovatio entregado, más un cargo mensual de \$ 4.95. El cliente puede cancelar la opción verde de este acuerdo con una antelación mínima de quince (15) días naturales de su intención de cancelar llamando a IDT Energy al 1.877.887.6866. La solicitud de su cancelación de la opción de suministro verde se producirá en su próxima disponible lectura al contador de acuerdo con las reglas de cambios y solicitud de su LDC's.
- 4. FACTURACION Y PAGOS.** Normalmente, recibirá una factura cada mes emitidos por su compañía de distribución local (LDC), o por IDT Energy si es dirigida por usted o su compañía de distribución local (LDC). A menos que se disponga otra cosa, condiciones de pago se rigen por los términos de las tarifas de su (LDC) si (LDC) emite su factura. Si IDT Energy emite su factura, el pago de la cantidad correspondiente facturada se debe veinticinco (25) días después de la fecha de envío de su factura. Retrasos en los pagos o saldos de pagos parciales estarán sujetos a cargos de colección y / o honorarios razonables de abogados y costos judiciales, según lo permitido por la ley. Todas las cuentas, que están en atraso, se pueden referir a una agencia de cobro en conformidad con Ley de Nueva York. Su factura se basa en lecturas programadas y / o estimaciones provistas por su compañía de distribución local (LDC). Las partes se comprometen a aceptar, para efectos de calcular la electricidad y el gas natural entregado en virtud del presente Acuerdo, la cantidad, calidad, y la medida determinada por su compañía de distribución local (LDC). Un cargo de veinte dólares (\$ 20) se le cobrará por cada cheque devuelto. El incumplimiento por parte de un cliente comercial de hacer el pago completo de los cargos de IDT debido en cualquier factura consolidada preparado por la LDC para IDT será motivo de desconexión de los servicios públicos en conformidad con las normas y reglamentos de NYPSC en la terminación del servicio para clientes no residenciales, 16 NYCRR 13.3.
- 5. TÍTULO Y LOS IMPUESTOS.** Bajo este acuerdo, el título de la electricidad pasará de IDT Energy para su anterior compañía de distribución local, y el título de gas pasará de nosotros a su anterior compañía para la entrega al Estado de Nueva York. Nuestro precio no incluye los impuestos sobre la venta que se pueden aplicar, y estos impuestos en general, aparecerán como una partida separada en su factura. Usted deberá reembolsar a IDT Energy por las ventas u otros impuestos, cual fuera su denominación, impuesta con respecto a la venta o transportación de electricidad y / o gas natural a menos que, antes de la ejecución del presente Acuerdo, que nos han dado un certificado de exención fiscal válido (s).
- 6. TÉRMINO; TERMINACION; Y CARGOS DE TERMINACION TEMPRANA.** Este Acuerdo continuará en una base de mes a mes hasta que cualquiera de las partes presente por lo menos quince (15) días calendario de aviso de su intención de cancelar y hasta que su compañía de distribución local (LDC) complete la terminación en conformidad con sus normas. Un cliente residencial puede cancelar este Acuerdo en cualquier momento durante tres (3) días laborables siguientes a la recepción de este Acuerdo llamando a IDT Energy al 1.877.887.6866. Si un cliente comercial termina este Acuerdo con anterioridad a la finalización del plazo inicial o de renovación o si IDT Energy terminado el presente Convenio por incumplimiento del cliente, el cliente deberá pagar IDT además de otros cargos aplicables, una cancelación o un cargo por terminación anticipada de \$ 250. No obstante lo anterior, para todos los clientes comerciales solicitados a través de la comercialización puerta a puerta, el cargo por terminación anticipada no será mayor de \$ 100 si el plazo restante es menor de 12 meses y \$ 200 si el tiempo restante es de 12 meses o más.
- 7. ASIGNACION.** IDT Energy podrá asignar o transferir sus derechos u obligaciones bajo este acuerdo después de informarle a usted por de dicha transferencia o asignación. Usted no podrá asignar ni transferir sus derechos u obligaciones bajo este Acuerdo.
- 8. OPCION DE LEY.** Este Acuerdo se interpretará de acuerdo con y se regirá por las leyes del Estado de Nueva York sin tener en cuenta los conflictos de las disposiciones legales del mismo.
- 9. NO HAY GARANTIAS.** El cliente reconoce y acepta que no hay ninguna garantía, derechos o remedio, ya sea, expresa, implícitas o legales, se da o destinados que vayan a surgir en este acuerdo con la excepción de que aquí se expresan, y IDT Energy expresamente renuncia a toda garantía, expresa o implícita, incluyendo cualquier garantías de comercialización o idoneidad para un propósito particular o uso.
- 10. DIVISIBILIDAD.** Si alguna parte de este acuerdo se declara inválida por cualquier razón, tal decisión no afectará de ninguna manera la validez de la porción restante del presente Acuerdo, las cuales permanecerán en pleno vigor y efecto ya que si la parte considerada inválida no había sido contenida en el presente acuerdo en el momento de la ejecución de este acuerdo. Si en un futuro próximo se produzca un cambio en cualquier ley, regla o regulación por el que IDT Energy es prevenido, prohibido o frustrado de llevar a cabo los términos del Acuerdo, entonces, a la sola discreción de IDT Energy, el presente Acuerdo podrá ser cancelado. Si, en una fecha futura, hay un cambio en la tarifa aprobada por el estado federal o que afectan los costos de IDT Energy para la compra de electricidad y / o gas natural necesario para proporcionar su servicio, entonces, a la sola discreción de IDT Energy, el presente Acuerdo podrá ser modificado para reflejar los costos.
- 11. FUERZA MAYOR.** Excepto en los casos establecidos en este documento, una fuerza mayor es la única excusa para el incumplimiento y todas las otras excusas (en derecho o en equidad) son de aplicación. Excepto por las obligaciones de pago, un evento de fuerza mayor, previa notificación, excusa el desempeño de ambas partes durante el evento. "Fuerza Mayor" significa los eventos no razonablemente previsible en la fecha de vigencia del mismo y fuera del control de la parte que solicita e incluyen casos de fuerza mayor asociados con su compañía local de distribución local (LDC) o el proveedor u otros utilizados para entregar la electricidad y / o gas natural a la residencia del cliente.
- 12. LIMITACIÓN DE RESPONSABILIDAD.** En ningún caso IDT Energy, o el cliente se hace responsable de otros o cualquier terceras partes por ningún daño indirectos, incidentales, consecuentes, morales, dependencia o daño especial, incluyendo sin limitación, daños por pérdidas de beneficios, ventaja, ahorro o ingresos de cualquier tipo o aumento del costo de operaciones, sea o no IDT Energy o el cliente ha sido informado de la posibilidad de tales daños. La responsabilidad de IDT Energy, y exclusivos recursos del cliente en contra de IDT Energy, por daños causados por corte de servicio, defecto o no será el fin disposiciones establecidas en la sección 6. la responsabilidad de IDT Energy para otras reclamaciones que se plantean en relación con cualquier servicio o de este acuerdo, en contrario limitado por otra disposición de este acuerdo, se limita a probado daños directos no exceda por demanda (o en el agregado durante un periodo de 12 meses), el pago neto total hecho por el cliente por el servicio durante el mes 12 antes del mes en que ocurrieron los daños.
- 13. INDEMNIZACIÓN.** El cliente es responsable por y deberá indemnizar a IDT Energy en contra de cualquier y todas las responsabilidades que se deriven del incumplimiento del cliente para cumplir plenamente con el presente Acuerdo, y el daño o perjuicio causado de la electricidad y / o gas natural después de su entrega a la residencia del cliente.
- 14. RESOLUCION DE DISPUTA (Residencial).** El Cliente acepta contactar primero a IDT Energy por escrito y tratar de resolver todas las disputas de facturación o problemas de servicio directamente. Todas las controversias relativas a la transmisión, distribución, cortes de energía, y las facturas de la compañía de distribución local (LDC) deben ser dirigidas a la compañía de distribución local (LDC). Tanto los clientes y IDT Energy deben tratar de buena fe para resolver cualquier controversia. La disputa o reclamación relativa a un cliente residencial puede ser presentada por cualquiera de las partes en cualquier momento a la DPS en conformidad con sus procedimientos de gestión de las reclamaciones ("Procedimientos") llamando a DPS al 1.800.342.3377 o por escrito a DPS a: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, o a través de su página web: www.dps.state.ny.us. El cliente debe pagar la factura en su totalidad, a excepción de la cantidad en disputa específica, durante la tramitación de la controversia.
- 15. RESOLUCION DE DISPUTA (Comercial).** En el caso de una disputa de facturación o el desacuerdo que involucre el servicio de IDT, el cliente debe comunicarse con el

reclamación relativa a un cliente residencial puede ser presentada por cualquiera de las partes en cualquier momento a la DPS en conformidad con sus procedimientos de gestión de las reclamaciones ("Procedimientos") llamando a DPS al 1.800.342.3377 o por escrito a DPS a: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, o a través de su página red: www.dps.state.ny.us. El cliente debe pagar la factura en su totalidad, a excepción de la cantidad en disputa específica, durante la tramitación de la controversia.

15. **RESOLUCION DE DISPUTA (Comercial).** En el caso de una disputa de facturación o el desacuerdo que involucre el servicio de IDT, el cliente debe comunicarse con el Centro de Servicio al Cliente de IDT según lo dispuesto anteriormente. El cliente debe pagar la factura en su totalidad, a excepción de la cantidad en disputa específica, durante la tramitación de la controversia. Si las partes no pueden resolver la disputa dentro de 45 días, cualquiera de las partes podrá hacer uso de todos los recursos disponibles bajo la ley o la equidad. El DPS no va a resolver las disputas no residenciales asociados a los servicios prestados en virtud de este Contrato de Venta. Sin embargo, el DPS supervisará las investigaciones y contactos de clientes no residenciales con respecto a empresas de servicios energéticos y de un número excesivo de quejas confirmados podría resultar en una empresa de servicios energéticos ya no estar en condiciones de suministrar gas natural o electricidad en el estado de Nueva York. La Oficina de DPS de Servicios al Consumidor puede ser contactado en: New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; o a través de su página red: www.dps.state.ny.us

16. **MODIFICACION.** Sujeto a la Sección 3 del presente acuerdo, IDT Energy podrá modificar los términos de este Acuerdo en cualquier momento y tal modificación del Acuerdo sustituirá a cualquier acuerdo anterior entre el Cliente e IDT Energy. IDT Energy proporcionará al Cliente con treinta (30) días de aviso previo por escrito tal modificación. Después de recibir dicha notificación, el cliente puede cancelar este acuerdo mediante notificación escrita a IDT Energy antes del inicio del próximo ciclo de facturación.

17. **PROTECCIÓN DE LOS DERECHOS DEL CLIENTE.** IDT Energy notifica por este medio que sus servicios se rigen por los términos de este acuerdo, las normas y regulaciones emitidos por la compañía local de distribución (LDC) y de NYPSC's *Practicas Uniformes para Negocios*. Si usted es un cliente residencial, usted esta protegido por la NYPSC's HEFPA (Home Energy Fair Practices Act) protecciones residenciales. Su compañía de distribución local (LDC) sus funciones de transmisión y distribución seguirá siendo regulado por NYPSC. Su servicio de electricidad y gas natural puede ser desconectado solo por su compañía de distribución local (LDC) y sólo en el cumplimiento de normas establecidas por NYPSC. En caso de falta de pago para IDT Energia para electricidad y / o gas natural proporcionado a usted, IDT Energia podrá rescindir la relación comercial entre nosotros y el servicio puede ser desconectado por su compañía de distribución local (LDC) a petición de IDT Energy. La NYPSC puede ser contactado al 1.800.342.3355 (línea directa); <http://www.dps.state.ny.us> (página red); o al 3 Empire Plaza, Office of Consumer Services, Albany, NY 12223-1350.

18. **INFORMACION DE CONTACTO DE IDT ENERGY.** Cualquier pregunta relacionada con estos términos y condiciones o su servicio con IDT Energy deberán dirigirse a nosotros por escrito a IDT Energy, Inc., 550 Broad Street, Newark, New Jersey 07102. También puede contactarse por teléfono al 1.877.887.6866, por fax al 1.888.859.9184 o por correo electrónico a catchall@idtenergy.com.

Exhibit D



Start Date: 8/4/2012

Rebate Term of Service: 12 Active Billing Cycles

Rebate End of Term: At the End of 12 Active Billing Cycles



ACCT # 622254427500062

Thank you for choosing to participate in the IDT Energy, Inc. Rebate Program!

Additional Terms and Conditions for the IDT Energy Rebate Program

You will receive a rebate based upon the amount of energy you use. Rebate amounts average around \$100 for an average IDT Energy gas and electric customer.** Your rebate will be based upon actual usage and may vary from this estimate.

IDT Energy Rebate Program Terms and Conditions

- In order to qualify for the full rebate amount you must remain an IDT Energy Customer for the entire term of this agreement
- You may cancel this agreement at any time with no penalty by providing proper notice
- If you cancel this agreement prior to the agreed upon End of Term date you will forfeit your rebate
- Rebates will be fulfilled within 30 days of the End of Term date as noted on this agreement
- Your rebate amount will be based upon the actual energy provided by IDT Energy during the term of this agreement
- You can call IDT Energy Customer Service at 877-887-6866 during the term of this agreement to get find out how much your accrued rebate amount is

Rebate. From time to time Seller may offer a Rebate Program. If Buyer participates in Seller's Rebate Program, Buyer must remain in the program for the entire agreed upon term in order to qualify for the rebate. If Buyer cancels at any time prior to the agreed upon term, Buyer shall forfeit all rights and claims to any and all rebate offers. Payment of Rebate to Buyer shall be made via check which must be cashed within 90 days of check date. Failure to cash the check within the applicable period will result in the immediate termination of the rebate and a forfeiture of Buyer's rights therein.

**** All Rebate amounts advertised and presented to Buyers are estimates based upon Buyer's prior electric and/or natural gas usages. Actual rebate amounts will be based on Buyer's actual usage over the term of this agreement, which may vary from any estimate provided.**

Exhibit E



Dear [REDACTED]

Thank you for choosing IDT Energy as your energy supplier. We're one of the leading suppliers of electric and natural gas in your region. When you selected us you took advantage of our "12-Month Electric Rebate" offer. As promised when you enrolled, below is your rebate check based upon your actual electric usage over the last 12 months.

As a special BONUS for remaining a customer, we'll continue to send you an annual rebate* check every 12 months, for as long as you remain enrolled in our program. Plus, if you enrolled your natural gas meter with us, you can expect a separate annual rebate based on your natural gas usage as well. Our goal is to reduce your energy expenses and it's just our way of saying thank you for being a customer.

For even more opportunities to save, visit us online at www.idtenergy.com to check out our new Refer-a-Friend program. Get \$25 for each referral that becomes a customer. It's a great opportunity to earn more cash rewards.

Remember, we work in cooperation with your local utility to provide the safe, reliable energy you depend on, with the added convenience of our own dedicated Customer Care team here to assist you. For questions or to add services, please call us at 877-887-6866. Our agents are based right here in the US and are ready and waiting to help. Office hours are 8:00am – 7:00pm, Monday through Friday.

Once again, thank you for choosing IDT Energy as your energy supplier.

Sincerely,

Anne L. Wilson
Executive VP Marketing
IDT Energy, Inc. (www.idtenergy.com)

*Special BONUS will be paid based on your energy consumption for each consecutive 12-month period you remain a customer in good standing. At the end of every 12 consecutive months, IDT Energy will issue your rebate based upon the amount of energy supplied by IDT Energy during the 12-month term. Customers who use an average of 1,000 therms (natural gas) and 12,000 kWh (electric) could see an annual rebate of up to \$150 or more. Actual rebate amount will vary based upon usage during the rebate term. Rebate not valid if service is terminated prior to 12 consecutive months. IDT Energy reserves the right to end this special promotion at any time.