

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS & PROTECTION**

In the Matter of

Assurance No. 18-155

**Investigation by BARBARA D. UNDERWOOD,
Attorney General of the State of New York, of**

**Ambit Energy Holdings, LLC, Ambit
Marketing, LLC and Ambit New York, LLC,**

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation into the marketing and provision of retail natural gas and electricity services by Ambit Energy Holdings, LLC, Ambit Marketing, LLC and Ambit New York, LLC (collectively, “Ambit”) pursuant to Executive Law § 63(12) and Article 22-A of the General Business Law (“GBL”) §§ 349, 349-d and 350. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Ambit.

DEFINITIONS

1. For purposes of this Assurance, the following definitions apply:

(a) “**Advertising**” shall include any brochures, websites, promotions, customer solicitations or other electronic or print media used by Ambit to market Ambit’s Retail Electricity or Natural Gas Service.

(b) “**Clear and Conspicuous**” (including “Clearly and Conspicuously”) shall mean that the statement, representation or term being

disclosed is of such size, color, contrast and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable (e.g., no click-through required to access it), and shall be presented prior to the consumer incurring any financial obligation.

(c) **“Commodity Service Charges”** shall mean the charges pertaining to the electricity or natural gas product supplied by an ESCO or, for Full Service Customers, by a Distribution Utility.

(d) **“Customer Disclosure Statement”** shall mean the recitation of essential contract terms as required by Section 5 of the UBP.

(e) **“Customer of Record”** shall mean the individual consumer or business owner named in the Distribution Utility account that has responsibility for payment of the account bills.

(f) **“Customer Service Representative”** shall mean any Ambit employee whose primary duty is to answer telephone calls, emails or letters from customers making inquiries or complaints about their Ambit service, or seeking to dispute their Ambit charges or cancel their Ambit service.

(g) **“Customer Service Contractor”** shall mean any employee of an independent agency with whom Ambit contracts to answer telephone calls, emails

or letters from customers making inquiries or complaints about their Ambit service, or seeking to dispute their Ambit charges or cancel their Ambit service.

(h) **“Delivery Service Charges”** shall mean the charges by the local monopoly electricity or natural gas Distribution Utility to deliver the commodity to the customer.

(i) **“Distribution Utility”** shall mean an electricity or natural gas corporation owning, operating or managing electric or natural gas facilities for the purpose of distributing natural gas or electricity to end users in New York.

(j) **“Distribution Utility Services”** shall mean the services provided by a Distribution Utility as they relate to ESCOs including, but not limited to, the delivery of electricity and natural gas by the Distribution Utility and the Distribution Utility’s responsibility for periodically reading ESCO consumers’ meters to determine usage amounts and billing consumers for both the utility’s Delivery Service Charges and the ESCO’s Commodity Service Charges.

(k) **“Energy Service Company”** or **“ESCO”** shall mean an entity that sells electricity and/or natural gas to end users using the transmission or distribution system of a Distribution Utility.

(l) **“ESCO Consumers Bill of Rights Notice”** shall mean the ESCO Consumers Bill of Rights required by GBL § 349-d, and specified in Section 10 of the UBP.

(m) **“Financial Difference”** shall mean the difference between the Commodity Services Charges paid by the customer to Ambit during the period

enrolled and what the customer would have paid to the Distribution Utility for those Commodity Service Charges during the same period.

(n) “**Full Service Customer**” shall mean an electricity or natural gas consumer who purchases his/her energy from the local Distribution Utility.

(o) “**In-Person Marketing**” or “**In-Person Solicitation**” shall mean offering products or services to prospective customers by means of having an MLM Consultant visit the prospective customer’s home or place of business or meet in person at another location.

(p) “**In-person Solicitor**” shall mean an MLM Consultant or Ambit employee who performs In-Person Marketing or Solicitation.

(q) “**MLM Payment**” shall mean any earnings paid out through Ambit’s multi-level marketing system, including, but not limited to, cash payments.

(r) “**MLM Consultant**” shall mean any individual recruited directly or indirectly to solicit customers by in-person solicitation, telephone calls to friends or family, or other means who participates in Ambit’s Multi-Level Marketing strategy by recruiting other MLM Consultants and by soliciting customers.

(s) “**MLM Sales**” shall mean a sales program or campaign utilizing MLM Consultants to solicit their friends, family, co-workers, and acquaintances by telephone, in-person solicitation, or other means.

(t) **“Retail Electricity Service”** or **“Retail Natural Gas Service”** shall mean any electricity and/or natural gas service marketed or provided to end user customers in New York State.

(u) **“Three-Day Rescission Notice”** shall mean a written or electronic notice provided to the consumer at the point of sale informing him/her of the right to cancel any ESCO contract within three business days from when the Notice is received, as specified in Section 5 of the UBP.

(v) **“Uniform Business Practices”** or **“UBP”** shall mean the ESCO business practices and marketing rules adopted by the New York State Public Service Commission in Case 98-M-1343, as amended.

(w) **“Variable rate”** shall mean a Commodity Service Charge that is adjusted by the Distribution Utility or ESCO at the discretion of the Distribution Utility or ESCO. An ESCO’s Variable Rate may be greater or less than the Distribution Utility’s rate for the same time period.

(x) **“Third Party Verification”** or **“TPV”** shall mean the recorded telephone process described in Section 5, Attachment 1 of the Uniform Business Practice rules for ESCOs adopted by the New York State Public Service Commission.

OAG’s FINDINGS

A. Retail Energy Competition in New York

2. Beginning in 1996, the New York State Public Service Commission (“PSC”) permitted private energy service companies, called ESCOs, to sell natural gas and electricity directly to New York residential and business customers. The goals of

allowing ESCOs were to provide consumers with a choice of providers and services, lower prices and promote competition.¹

3. New ESCOs must first apply to and be deemed eligible by the PSC in order to sell electricity and/or natural gas to residential and business customers. To standardize practices among Distribution Utilities and ESCOs and to protect consumers, the PSC adopted the UBP standards, which it has amended multiple times in recent years in order to provide greater protections for energy consumers.²

4. Consumers can purchase electricity and/or natural gas from either an ESCO or their local Distribution Utility. However, electricity and gas is delivered only by the Distribution Utility. Thus, consumers who purchase Retail Electricity and/or Natural Gas Services from an ESCO still receive their energy over the distribution system (wires or pipes) owned and maintained by their local Distribution Utility. The Distribution Utility remains responsible for periodically reading ESCO consumers' meters to determine usage amounts and billing consumers for both the Distribution Utility's Delivery Service Charges and the ESCO's Commodity Service Charges.

5. The UBP requires that consumers solicited by an ESCO receive certain notices. In connection with any online enrollment of a customer, the UBP requires each ESCO to provide consumers with the ESCO Consumers' Bill of Rights notice, Customer Disclosure Statement and the Three-Day Rescission Notice along with the contract

¹ PSC Case 94-E-0952, Opinion 96-12, In the Matter of Competitive Opportunities Regarding Electric Service, *Opinion and Order Regarding Competitive Opportunities for Electric Service* (May 20, 1996), at 28.

² PSC Case 98-M-1343, Opinion 99-3, *Opinion and Order Concerning Uniform Business Practices* (Feb. 16, 1999); *see, e.g.*, State of New York Public Service Commission Uniform Business Practices (last revised Jan. 2018).

terms and conditions prior to obtaining the consumer's acceptance of an ESCO offer. Following telephone enrollments, the UBP requires the ESCO to mail consumers a copy of the Customer Disclosure Statement and sales agreement, as well as the ESCO Consumers' Bill of Rights.

6. In addition, the UBP requires ESCOs to verify enrollments by a Third-Party Verification under certain circumstances. The UBP also provides that when a consumer contracts with an ESCO, the ESCO notifies the Distribution Utility to switch providers. The UBP requires the Distribution Utility to mail the consumer a notice to confirm the ESCO enrollment was authorized, and the ESCO mails the consumer a welcome package containing the Customer Disclosure Statement and sales agreement, as well as the ESCO Consumers' Bill of Rights, if not previously delivered.

7. Until 2015, switching service to an ESCO has been a process that has taken 30 or more days.³ Consumers often did not receive a utility bill showing the amount owed to the ESCO for their initial month's service until 60 or more days after enrolling. Consumers remained responsible for the ESCO's Commodity Service Charges until the Distribution Utility transferred the account to another energy service provider (either the utility or another ESCO, as directed by the consumer).

³ In recent years, the PSC has implemented two changes to the UBP designed to accelerate the time in which account transfers occur. *See* Case 12-M-0476 et al., Order Authorizing Accelerated Switching of Natural Gas Commodity Suppliers & Related Matters (Dec. 23, 2015); Case 12-M-0476 et al., Order Authorizing Accelerated Switching of Commodity Suppliers (Dec. 15, 2014). Switching Retail Electricity Service now takes as few as five business days and up to one cycle, plus five business days, depending on the timing of the customer's request and the date of the customer's meter reading. Dec. 23, 2015 PSC Order at 3. Switching Retail Natural Gas Service now takes as few as ten business days and up to two billing cycles.

B. Ambit

8. Ambit Energy Holdings, LLC (“Ambit Energy Holdings”) is a Texas limited liability company with its principal office located at 1801 N. Lamar St., Ste. 600, Dallas, TX 75202-1726. Ambit Marketing, LLC (“Ambit Marketing”) is a Texas limited liability company with its principal office located at 1801 N. Lamar St., Ste. 600, Dallas, Texas 75202-1726. Ambit New York, LLC (“Ambit New York”) is a subsidiary of Ambit Energy Holdings and also has a principal office at 1801 N. Lamar St., Ste. 600, Dallas, TX 75202-1726. Collectively, Ambit Energy Holdings, Ambit Marketing and Ambit New York are referred to herein as “Ambit.”

9. Ambit is an ESCO authorized by the PSC to provide Retail Natural Gas and Electricity Services to residential and commercial customers in New York State in areas served by the following Distribution Utilities: Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, National Grid (formerly known as Keyspan NY and LI), and National Fuel Gas Distribution Corporation.

10. In 2007, Ambit launched its Guaranteed Savings Plan (“GSP”), a variable rate product with a savings guarantee that provided a 7% discount to consumers for the first two billing cycles. If consumers remained on the GSP for 12 consecutive months, consumers received a 1% annual savings versus the price they would have paid if they had been a Full Service Customer of the Distribution Utility for the same period, or Ambit would provide them a check for the difference.

11. In January 2012, Ambit changed its Terms of Service to provide that consumers were automatically enrolled on a Select Variable Plan (“SVP”) at the end of their initial 12-month GSP term, unless they affirmatively opted to remain on the GSP. The SVP contained no guarantee of savings. By not guaranteeing consumers any savings, Ambit could adjust consumer prices at any time in response to wholesale energy market volatility and its own profit margin goals. Ambit customers learned what price they must pay for Ambit’s supply service only after the end of each monthly billing period, when their Distribution Utility mailed a consolidated statement containing both Ambit’s Commodity Service Charges and the Distribution Utility’s Delivery Service Charges.

12. In 2014, Ambit introduced a 2% GSP replacing the 1% GSP. The 2% plan eliminated the 7% discount during a consumer’s first two billing cycles. After the initial 12-month GSP period, consumers were automatically enrolled on the SVP, which did not guarantee savings, unless they affirmatively opted to remain enrolled on the GSP.

13. In April 2016, Ambit discontinued its SVP for New York consumers. At that time and until the present, the GSP automatically renews on an annual basis.

14. Since its inception, Ambit has used a multi-level marketing business model by which Ambit’s MLM Consultants solicit friends, family and acquaintances on Ambit’s behalf. Ambit also encourages its MLM Consultants to solicit others to become MLM Consultants and pitch Ambit’s services.

15. As explained further in paragraphs 16-24, an MLM Consultant receives commissions based on each consumer who enrolls as a customer through that MLM Consultant and for each additional MLM Consultant they recruit, provided the requisite

number of customers enroll through that MLM Consultant. Although MLM Consultants may earn income through recruiting customers, the only way to achieve a high income as an MLM Consultant is to recruit other MLM Consultants who also successfully recruit customers. MLM Consultants receive weekly payments based on the number of MLM Consultants recruited (provided those MLM Consultants also sponsor the requisite number of customers), as well as monthly payments based on the number of Ambit customers sponsored by each MLM Consultant. Payments generally increase, up to the seventh level of MLM Consultants,⁴ depending on the number of levels of MLM Consultants there are between the consumer and the original MLM Consultant.

C. Ambit’s Promotional and Marketing Materials Directed to Potential MLM Consultants Make Deceptive Income Claims

16. Ambit provides potential participants in its MLM program promotional materials through the Start a Business portion of its website, ww2.ambitenergy.com/start-a-business. Ambit also provides a variety of written materials and training provided to MLM Consultants such as sales scripts and brochures, including those used to recruit additional MLM Consultants. Some of Ambit’s materials give the misleading impression that MLM Consultants are likely to earn substantial income by becoming an MLM Consultant.

17. For example, Ambit’s website contains a “Start A Business” section to recruit MLM Consultants. The home page of this section contains a video extolling the “life changing opportunity” caused by energy deregulation – the “largest redistributions of wealth ever to impact a single industry.” The video asks, “how do you get in on this

⁴ MLM Consultants can reach up to seven levels in their organization. A one-level promotion requires that the MLM sponsor the requisite number of MLM Consultants and customers.

massive transfer of wealth?” The answer: Ambit is “a major force in redistributing wealth to our independent consultants [i.e., the MLM Consultants].”

18. Ambit’s video depicts MLM Consultants enjoying a revenue stream that will pay them handsome rewards every month:

Think about the power of residual income. This is getting paid month after month after month, every time these customers pay their energy bill for as long as they are Ambit customers. It’s this kind of income that has thousands of Ambit independent consultants on the road to financial freedom. Many of them even earn enough to cover all their monthly bills.

<http://ww2.ambitenergy.com/start-a-business> (4:45-4:55).

19. Ambit’s website provides testimonials of MLM Consultants who claim that they quit their jobs and live entirely on income earned as MLM Consultants. For example, one MLM Consultant states that she has been able to quit her job and hopes to help others “to be able to walk away from their jobs and do Ambit full-time.” In another testimonial, a former nurse claims that she was able to replace her nursing income and retire to promote Ambit full-time. She states, “[n]ow I get to do whatever I want. Our family was able to take more vacations last year than any other time in our lives, thanks to Ambit Energy. That was quality time we will always cherish”:

Debbie Roy Atkinson

National Consultant | League City, TX

On a daily basis, I meet people that are struggling financially. I want to help them be successful in Ambit and earn additional income for their family. It really warms my heart when I know I am helping them financially and making a difference.



"I started my Ambit business to..."

...earn a few EXTRA hundred dollars per month (that was easy, done in 2 months). Then I wanted to replace my nursing income so I could retire and do Ambit full-time (done in 6 months). Now I get to do whatever I want. Our family was able to take more vacations just last year than any other time in our lives, thanks to Ambit Energy. That was quality time we will always cherish.

Before Ambit

I was a registered nurse working at least 60 hours per week. At that schedule, I wasn't able to do much else. I was so busy making a living, I didn't have a life.

Favorite Ambit Moment

November 11, 2006, the day I met Ambit's Co-Founders, Jere Thompson, Jr. and Chris Chambless.

Debbie is an actual Ambit Consultant. Her results may not be typical.

www.ambitenergy.com/start-a-business/testimonials. The disclaimer at the bottom of these testimonials, that "results may not be typical," is insufficient to cure the deception. See 16 C.F.R. § 255.2(b) (noting that an advertisement employing an endorsement by a consumer must be supported by substantiation that the consumer's experience is "representative of what consumers will generally achieve"); *id.* n.105 (observing that a disclosure that "Results not typical" was insufficient to reduce the communication that a consumer's experience was representative).

20. At least one of Ambit's recruitment videos to potential MLM Consultants promises the ability to achieve expensive goals such as enabling "my mom to be a full-time grandmother," "[creating] the residual income and retirement that we don't have," paying for the college education of four children, and the means to "retire early and spend more time with my family."

21. An 11-part Ambit video presentation provided to new MLM Consultants contains detailed instructions for hosting group meetings to recruit potential MLM

Consultants. The video shows a recruiter telling an audience of potential MLM Consultants that MLM Consultants can make \$30,000 per month once they have built an organization comprising seven levels, containing more than 3,000 MLM Consultants. Ambit's "Ambit Pay" video shows an MLM Consultant earning \$292 per month from the fifth level of the organization, \$1,531 per month from the sixth, and \$9,842 from the seventh level.

22. Ambit's recruitment sales scripts, such as the "Consultant Gathering Script: Invitations," promise prospects that they can earn a "serious income." For example, they include statements such as:

Are you open to making more money? Are you willing to work 5-10 hours per week to build a serious income?

....

I have started my own second business on a part-time basis. I am my own boss; there's unlimited income potential and residual income.

23. Ambit charged its MLM Consultants a \$429 "sign-up" fee until April 4, 2015, when it reduced the fee to \$105. (From January 25, 2015 through April 3, 2015, sign-ups were free.) The price fluctuated and is currently \$75. There is also a mandatory monthly fee for use of Ambit-supported websites that has ranged from \$24.95 to \$26.60 per month.

24. Despite the statements made in Ambit's advertising and marketing, the majority of MLM Consultants do not earn income from Ambit that is sufficient to enable them to replace income from other sources. For example, during the three-year period from 2012 through 2015, Ambit's 25,286 MLM Consultants in New York earned, on average, only \$1,762.09 for that entire time period (\$555.05 in weekly commissions plus \$1,207.04 in monthly residual payments).

D. Ambit Deceived Potential and Current Customers

25. More than 2,600 consumers lodged complaints with the PSC about Ambit’s marketing practices during the period from January 2012 through December 2017. Most of those complaints were clustered in the period between 2014 and 2016 (half of the 2,600 complaints occurred in 2015). Ambit’s customer complaints during the period of 2014 through 2016 comprised approximately 25 percent of all customer complaints against ESCOs lodged with the PSC, even though, during that period, there were more than 100 ESCOs authorized to do business in New York. In each of 2012, 2013 and 2017, the complaints regarding Ambit totaled between 2 and 5 percent of all customer complaints against ESCOs lodged with the PSC.

1. False and Misleading Savings Claims

26. Ambit made false and misleading savings claims on its websites, <http://ww2.ambitenergy.com/> and <https://my.ambitenergy.com>, on websites that it rented to MLM Consultants (e.g., james.fox.myambit.com), in its MLM Consultants scripts, and through its MLM Consultants. Similar statements were contained in sample sales scripts made available by Ambit to its Independent Consultants.

27. Ambit’s website misrepresented the savings that consumers would realize by purchasing electricity and natural gas from Ambit instead of a Distribution Utility. Ambit’s website emphasized its “great rates and outstanding value” and promised prospective Ambit customers that they could choose between (a) guaranteed savings of either 1% or 2%, depending on the time period, or (b) a variable green plan.

28. Ambit’s sales scripts also misrepresented savings. The “friends and family” script provides:

I need your help with something. You know how I was telling you the other day that we did not feel comfortable with our current position? Well, you can help us and it won't cost you a dime. In fact it will save you some money!

Ambit's MLM Consultants used this script to encourage prospective customers to sign up with Ambit.

29. In fact, Ambit's variable rates were greater than the Distribution Utilities' rates on average and raised, rather than reduced, consumers' bills. While its Guaranteed Savings Plan customers received a reimbursement if they paid more than the amount they would have paid to their Distribution Utility during each 12-month period in which they were enrolled on the Guaranteed Savings Plan, Ambit's Select Variable Plan and green plan customers at times experienced higher rates that were not reimbursed.

30. During the time period when Ambit promised consumers a 7% discount on the first two months of their contracts and a 1% savings on energy supplied during the 12-month period, Ambit's Guaranteed Savings Plan did not adequately inform consumers that the 7% discount would be included in the calculation of the 1% guaranteed savings during the 12-month contract.

31. In addition, for those customers who were due a savings payment, Ambit did not issue those payments on a timely basis. A number of customers did not receive the required payments from Ambit for a year or longer. During the period 2014-2016, for example, half of all refunds were delayed at least one year. Ambit also failed to disclose to consumers the length of time that it would take for customers to receive the required payments.

2. Slamming

32. In a number of instances, Ambit's MLM Consultants switched consumers to Ambit's services without their consent, a practice known as "slamming." Although Ambit's business model promotes selling Ambit through a "friends and family" model, in the instances of slamming, the consumer is typically not a family member, friend or acquaintance of the MLM Consultant and is sometimes solicited through telephone solicitation or door-to-door visits to consumers' homes. Ambit's own records show investigations into more than one hundred allegations of slamming between 2012 and 2017.

33. Some MLM Consultants have engaged in deceptive tactics to get consumers to switch their accounts. Examples of such tactics include the following: switching consumers who were away from home or out of the country; pretending to work for Con Edison in order to get consumers' account numbers and switch their accounts to Ambit; convincing consumers with limited ability to speak English to switch by taking advantage of their limited English-speaking ability; and convincing individuals who were not the account holders and did not have authority to switch accounts to switch.

34. Under the UBP, Ambit is required to have procedures that are designed to prevent slamming, including, in certain instances, a third-party verification process. However, Ambit's TPV procedures failed to meet UBP requirements. In disputes submitted to the PSC, the PSC found that the TPV recording failed to meet the standards required by the UBP. In one such case, the PSC reviewer noted:

[T]he ESCO did not provide . . . the required details as outlined in the Uniform Business Practices, Section 5, Attachment 1 (A)(2). The conversation must contain, "A description in plain language of the prices, terms, and conditions of the ESCO's offer, including a statement of the

circumstances, if any, under which the ESCO may assess an early termination fee.” These details are not provided, therefore the switch is not valid.

35. In another dispute, the PSC reviewer wrote, “[t]his TPV is deemed invalid, the sales rep is answering questions for the customer.”

36. Although Ambit’s written agreement with its MLM Consultants states that any MLM Consultant who is determined to engage in slamming shall be immediately terminated, Ambit has not always followed its written policy by promptly terminating MLM Consultants found to have engaged in slamming. For example, several MLM Consultants provided the same telephone number and email address for verification purposes in the course of switching consumers over to Ambit. One MLM Consultant used his own telephone number 171 times and his email address 192 times. Another used his telephone number 252 times during ten months. Ambit’s own compliance department found that the MLM Consultant’s repeated use of his own e-mail address and telephone number in the course of recruiting customers to enroll with Ambit evidenced unauthorized switching of consumers to Ambit. Although Ambit ultimately “suspended” these MLM Consultants, it should have identified the problems earlier and taken more severe disciplinary action.

3. Switching Consumers from a Guaranteed Plan to a Variable Plan without Adequate Notice

37. In January 2012, Ambit modified its Terms of Service so that New York consumers were automatically enrolled on the SVP at the end of 12 months unless they affirmatively opted to remain on the GSP.

38. This change resulted in Ambit switching consumers from a guaranteed 1% saving plan to a variable rate plan that did not contain guaranteed savings – a switch

made without the express consent of New York customers who enrolled with Ambit before January 1, 2012. Switching from a guaranteed 1% savings rate plan to a variable rate plan resulted in consumers being charged higher energy bills.

39. Following this change, hundreds of New York consumers complained to the PSC that they were not given adequate notice of their need to renew to remain on the GSP to be eligible to continue to receive the promised savings, or any explanation for the switch.

40. Ambit sent notice renewal letters to consumers that, for a period of time prior to June 2015, failed to comply with UBP § 5.B.5 in at least the following respects: the notice was not in the standardized format required by the UBP and the envelopes containing the renewal notice letters did not include important customer information required by the PSC.⁵ Many consumers complained that they never received these notices.

41. In June 2015, after receiving notice of an investigation by the PSC, Ambit changed its notice procedures to comply with the UBP. In December 2015, the PSC concluded its investigation of Ambit after Ambit provided refunds totaling \$950,700 to 1,566 consumers who had complained to the PSC. Such refunds were not provided to consumers who did not file complaints with the PSC or who did not complain to Ambit directly. Therefore, not all consumers who had been switched from the GSP to the SVP received such refunds.

⁵ UPB 5.B.5.f requires “The renewal notice must be enclosed in an envelope which states in bold lettering: **“IMPORTANT: YOUR [ESCO NAME] CONTRACT RENEWAL OFFER IS ENCLOSED, THIS MAY AFFECT THE PRICE YOU PAY FOR ENERGY SUPPLY.”**”

42. In December 2017, Ambit entered into a settlement agreement resolving claims in a pending consumer class action arising from similar marketing practices by agreeing to provide up to \$21 million in refunds to approximately 699,499 current and former New York customers. The settlement was approved by the New York Supreme Court, Kings County in July 2018.

43. The OAG finds that Ambit's practices, as described in paragraphs 2-42 above, constitute repeated violations of GBL Article 22-A, §§ 349, 349-d and 350, the PSC's UBP and Executive Law § 63(12).

44. Ambit neither admits nor denies the OAG's Findings, paragraphs 2-43 above.

45. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL Article 22-A, §§ 349, 349-d and 350, the PSC's UBP and Executive Law § 63(12) based on the conduct described above from January 2012 to the Effective Date of this agreement.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

General Injunction:

1. Ambit shall not engage, or attempt to engage, in conduct in violation of Article 22-A of the GBL, §§ 349, 349-d, and 350; the Uniform Business Practices adopted by the PSC in Case 98-M-1343 – *In the Matter of Retail Access Business Rules*; Executive Law § 63(12); or any amendments to the foregoing laws and regulations.

Programmatic Relief:

2. Ambit shall Clearly and Conspicuously post this Assurance on the personal dashboard for each New York-based MLM Consultant through Ambit's Powerzone portal (or any similar portal) and shall be responsible for ensuring that all New York MLM Consultants comply with Paragraph 1 above and adhere to the business practices enumerated in Paragraphs 3 through 5 below.

A. Sales Practices and Enrollment Process

3. MLM Consultants, and Ambit employees or agents, if engaged in enrolling new customers, shall not:

a. make any false or misleading representations, directly or by implication, to induce consumers to purchase Retail Electricity Service and/or Natural Gas Service;

b. make any written representation, directly or by implication, about savings that consumers may realize from switching to Ambit's variable price offers unless Ambit Clearly and Conspicuously discloses in close physical proximity to such representation that:

i. Ambit's Commodity Service Charge varies from month-to-month; and

ii. a consumer's total monthly electricity and/or natural gas costs under Ambit's pricing structure may be greater than or less than the costs that the consumer would have incurred if the consumer had continued to purchase electricity and/or natural gas from the Distribution Utility or another ESCO;

c. make any oral representation, directly or by implication, about savings that consumers may realize from switching to Ambit's variable price offers unless Ambit discloses the information in 3(b)(i)-(ii) before the consumer accepts the offer;

d. enter into a sales agreement to change a commodity provider that is not personally accepted by the Customer of Record or his/her spouse or legal guardian or without confirming that any person who grants consent to a service change on behalf of a Customer of Record is, in fact, so authorized and, if it is subsequently discovered that the Customer of Record or his/her spouse or legal guardian did not so authorize the change, Ambit shall take all reasonable actions to return the customer to his/her prior provider;

e. knowingly offer or enter into a sales agreement, or present to a consumer the UBP-required disclosures ("Required Disclosures"), in any language that is different from the language used by the MLM Consultant in soliciting the consumer or by the Customer Service Representative or Customer Service Contractor in enrolling the consumer; or

f. prompt consumers' responses, instruct consumers as to the manner in which to respond to questions, or participate in the Third Party Verification of any sale other than to address logistical requirements. For example, Ambit shall not instruct consumers to answer "Yes" to all questions or to not ask questions during the Third-Party Verification portion of a sales call.

4. All MLM Consultants or Ambit agents (if any) involved in the marketing of Ambit's products or services shall begin every communication with a potential customer by stating in substantially the following manner:

My name is [salesperson's name]. I represent Ambit Energy. Ambit Energy can provide you with your electricity and/or natural gas. I do not work for or represent your utility.

and explain that if the customer receives services from Ambit, his/her bill will reflect a Commodity Charge from Ambit plus a Delivery Charge from the Distribution Utility.

5. When enrolling new customers, Ambit shall comply with the requirements set forth in Sections 5 and 10 and Attachments 1 through 4 of the UBP, as may be amended by the PSC. Consumers shall be informed that the Required Disclosures and contract terms and conditions set out their rights and obligations and shall be provided with the Required Disclosures and contract terms and conditions **before** the consumers enter into contracts with Ambit. When a consumer is enrolled via the telephone, Ambit shall mail the consumer the Required Disclosures and the contract terms and conditions within two (2) business days (excluding holidays).

B. On-line Enrollments

6. Ambit shall ensure that its website to Clearly and Conspicuously displays the Required Disclosures and all contract terms and conditions, as one or multiple unavoidable separate screen page(s) during the electronic customer enrollment process. Ambit shall require new customers to click a screen button acknowledging that they have reviewed each of the Required Disclosures and the contract terms and conditions before proceeding to complete enrollment. The website shall further offer a screen prompt

enabling the consumer to print the Required Disclosures and contract terms and conditions.

7. Ambit shall use its digital verification process, which is an authentication method that requires a customer to verify his or her identity by responding correctly to 3-4 questions pulled from information collected by credit reporting agencies, when enrolling New York customers online for Ambit services.

C. Advertising to Consumers

8. In all Advertising to consumers, Ambit shall include a Clear and Conspicuous notice that Ambit is independent of the consumer's local Distribution Utility and that if the customer receives services from Ambit, his/her bill will reflect a Commodity Service Charge to Ambit for its commodity, plus a Delivery Service Charge to the Distribution Utility for its delivery of the commodity. All Advertising shall Clearly and Conspicuously display Ambit brand identification information and may not identify any Distribution Utility by name.

9. In all Advertising to consumers, Ambit shall not represent that consumers will receive benefits such as travel certificates or travel rewards for signing up for Ambit's energy services unless Ambit has verified that such benefits are available and can be used by consumers.

D. Advertising to Prospective MLM Consultants

10. In all Advertising to prospective MLM Consultants in New York, Ambit shall not represent that MLM Consultants can earn a certain amount during a specified time period (e.g., week/month/year) unless that sum is representative of an amount that a typical MLM Consultant will achieve, based on payments made to the majority of active

MLM Consultants by Ambit for that time period during the 12 months prior in New York State. Where Advertising to prospective MLM Consultants uses testimonials or endorsements that include claims regarding the amounts earned by MLM Consultants, the amount that is typically earned by MLM Consultants, in terms of the amount a majority of active MLM Consultants earn, shall be disclosed Clearly and Conspicuously, and in the same size and color font, as the earnings claims. For the purposes of this paragraph, “active MLM Consultants” is defined as all MLM Consultants within their first 12 months from enrollment and any MLM Consultants who sponsor a new MLM Consultant or enroll a new energy customer within the preceding four months, or who maintain a minimum of 20 pending or enrolled personal energy customers.

11. In all advertising to MLM Consultants in New York, Ambit shall not misrepresent (a) that MLM Consultants are likely to earn income amounts higher than the amounts earned by a typical MLM Consultant (as determined using the criteria described in paragraph 10); (b) the amount of revenue, income or profit a participant actually earned; (c) the likelihood that participation as an MLM Consultant will result in a lavish lifestyle, retirement, paying for a child’s education, the ability to travel, the ability to support charitable organizations or causes, or similar results; or (d) that when MLM Consultants do not earn significant income, it is solely due to a lack of substantial or sufficient effort.

E. Contract Term and Cancellation Policy

12. All variable price retail contracts for Retail Electricity Service and/or Natural Gas Service executed after the date of the execution of this Assurance shall be for a period of one (1) month, renewed automatically at the end of each month unless either

party notifies the other party orally or in writing that the contract is to be terminated.

Ambit shall disclose this month-to-month contract term and cancellation policy Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement. This sales contract shall be provided to all customers who purchase variable pricing Retail Electricity Service and/or Natural Gas Service from Ambit.

13. Whenever any consumer notifies Ambit by telephone or in writing of his/her desire to terminate a service contract, Ambit shall, within two (2) business days (excluding holidays) of such telephone call or receipt of such written communication, notify the appropriate local Distribution Utility and request that the Distribution Utility switch the consumer back to the provider of Retail Electricity Service or Natural Gas Service as indicated by the consumer. Consumers will be responsible for payment of any Retail Electricity Service and/or Natural Gas Service provided by Ambit until the consumers' service with another provider begins, provided that Ambit has given notice to the Distribution Utility within two (2) business days (excluding holidays) following receipt of the request, as provided above. If Ambit delays giving the Distribution Utility notice of the consumer's cancellation beyond two (2) business days (excluding holidays), Ambit shall reimburse the consumer twice the Financial Difference incurred by the consumer for the period caused by such delayed notice.

F. Training

14. Ambit shall prepare training materials and a training program for New York MLM Consultants, Customer Service Representatives and Customer Service Contractors that accurately and comprehensively cover:

- a. the requirements of this Assurance, GBL § 349-d and Chapters 5 and 10 of the UBP, including both prohibited practices and affirmative requirements;
- b. an express warning that deceptive sales practices will not be tolerated by Ambit's management;
- c. an express warning that deceptive sales practices may carry legal consequences for MLM Consultants, including both civil and criminal liability;
- d. a description of the remedial steps that will be taken against any MLM Consultant who violates any term of this Assurance or otherwise engages in improper sales practices, including withholding commissions and termination; and
- e. a description of the quality assurance, monitoring and auditing practices maintained to prevent or identify improper sales practices.

Ambit shall provide to the OAG a copy of all training materials, electronic or paper, prepared pursuant to this Assurance at least 20 days prior to Ambit's distribution of these materials to its MLM Consultants, Customer Service Representatives and Customer Service Contractors.

15. Ambit shall provide this training, along with Ambit's training materials, to each MLM Consultant, Customer Service Representative and Customer Service Contractor. Training for MLM Consultants, Customer Service Representatives and Customer Service Contractors as of the date of this Assurance shall be conducted within 60 days of the date of this Assurance. Training for Customer Service Representatives and Customer Service Contractors shall be in person. Training for MLM Consultants shall be conducted either in person or through video technology that requires MLM Consultants to correctly answer questions about the preceding video segment. If an

MLM Consultant fails to answer 90 percent of the questions correctly, the MLM Consultant shall be required to re-take the video training course until 90 percent or better is achieved. All MLM Consultants hired after the date of this Assurance must complete this training before contacting any prospective customer or MLM Consultant about enrolling with Ambit. All Customer Service Representatives and Customer Service Contractors hired after the date of this Assurance must complete this training prior to direct contact with any customers. Ambit shall obtain and maintain a form executed, either in writing or electronically, by each MLM Consultant, Customer Service Representative and Customer Service Contractor, acknowledging that he or she has received and understood the information provided in the training.

G. Monitoring Sales Practices

16. Ambit shall record all telephonic communications between its New York customers and its Customer Service Representatives. Ambit shall provide an inbound enrollment script to its Customer Service Representatives that is compliant with the UBP. Ambit shall maintain such recordings for at least one (1) year following the date of the communication.

17. Ambit shall require its Customer Service Contractors to record all telephonic communications between Ambit's New York customers and the Customer Service Contractors. Ambit shall provide an inbound enrollment script to its Customer Service Contractors that is compliant with the UBP. Ambit shall require its Customer Service Contractors to maintain such recordings for at least one (1) year following the date of the communication.

18. Ambit shall conduct a prompt and thorough investigation of all oral, electronic and written consumer complaints that allege misconduct committed by MLM Consultants, Customer Service Representatives and/or Customer Service Contractors, including, but not limited to, complaints that the MLM Consultant, Customer Service Representative or Customer Service Contractor falsely promised bill savings, used high pressure sales tactics, failed to comply with the mandatory disclosures of paragraphs 3-5 above or violated other provisions of this Assurance or the UBP. With respect to each such complaint, Ambit shall:

- a. identify, wherever possible, the MLM Consultant, Customer Service Representative or Customer Service Contractor alleged to have committed the misconduct;
 - b. review the recording of the sale, if the sale was made through a Customer Service Representative or Customer Service Contractor;
 - c. use its best efforts to determine whether the MLM Consultant, Customer Service Representative or Customer Service Contractor violated the provisions of this Assurance or the UBP in any manner;
 - d. resolve the consumer's complaint in a fair and expeditious manner;
- and
- e. if the complaint is received within six months or a reasonable time thereafter under the individual circumstances, reimburse the consumer for any Financial Difference whenever the investigation concludes that any of the following deceptive sales practices occurred:

- i. the customer of record or his/her spouse or authorized representative did not authorize the Ambit enrollment;
- ii. the consumer was promised savings in a manner inconsistent with the guaranteed savings promise contained in Ambit's written terms of service;
- iii. Ambit failed to disclose that Ambit's variable rate changes from month to month and may be either greater than or less than the utility's rate in any given month; and
- iv. Ambit failed to provide the consumer a copy of the Required Disclosures prior to enrolling the consumer.

Ambit shall review each complaint-related sale by noting in writing compliance or non-compliance with the provisions of Paragraph 18(e).

19. Any consumer complaint about an MLM Consultant, Customer Service Representative or Customer Service Contractor resulting in a finding of non-compliance in accordance with Paragraph 18, or any other information indicating that an MLM Consultant or Customer Service Representative has violated any term of this Assurance or otherwise engaged in improper sales practices, shall trigger an investigation by Ambit into whether that MLM Consultant, Customer Service Representative or Customer Service Contractor engaged in sales practices that violated the terms of this Assurance or were otherwise improper. Investigations involving Customer Service Representatives or Customer Service Contractors shall include, at a minimum, an examination of the customer records for the ten consumers (or all customers, if fewer than ten) enrolled through the Customer Service Representative or Customer Service Contractor

immediately following and immediately preceding the enrollment that triggered the substantiated consumer complaint. If Ambit identifies additional instances of non-compliance (as specified in paragraph 18(e) above), the MLM Consultant shall forfeit an amount equal to twice the total sales commissions and MLM earnings applicable to the non-compliant sales. All sales commissions claimed by the MLM Consultant shall be subject to forfeiture for a period of six months in the event violations of this Assurance are determined by Ambit to have occurred.

20. Upon notification that a consumer desires to cancel his or her Ambit service, Ambit's Customer Service Representatives or Customer Service Contractors shall ask the consumer who cancels service the reason(s) for the cancellation and shall accurately record the reasons in the customer's account notes. If the stated reasons concern an MLM Consultant's violations of any of the requirements listed in paragraph 18(e), Ambit shall follow the procedure set forth in paragraph 18 above.

21. In the event that Ambit determines that an MLM Consultant, Customer Service Representative or Customer Service Contractor has violated any term of this Assurance or otherwise engaged in improper sales practices, Ambit shall take additional prompt and appropriate remedial actions with respect to the MLM Consultant, Customer Service Representative or Customer Service Contractor, including at a minimum, but not limited to:

- a. For the first violation, provide additional training;
- b. For two violations within a twelve-month period, suspend the MLM Consultant for a period of no fewer than three months; and

c. For any violations in excess of two within a twelve-month period, disqualify permanently the MLM Consultant from marketing Ambit's services.

22. Ambit shall offer a refund in an amount equal to the Financial Difference to any consumer who has been subjected to the improper sales practices described in Paragraph 18(e) to the extent such violations are brought to Ambit's attention within six months or a reasonable time thereafter under the individual circumstances.

23. Within 60 days of the date of this Assurance, Ambit shall designate a compliance officer whose duties shall include, at a minimum:

a. Developing and implementing policies and procedures sufficient to ensure that MLM Consultants, Customer Service Representatives and Customer Service Contractors comply with the terms of this Assurance;

b. Reviewing and approving the training materials and training program for MLM Consultants and Customer Service Representatives referenced in paragraph 14 above;

c. Ensuring that all MLM Consultants, Customer Service Representatives and Customer Service Contractors receive the training described in paragraphs 14-15 above; and

d. Overseeing the investigation of all consumer complaints of improper sales practices as required by paragraphs 18-20 above, and ensuring that remedial measures are implemented as set forth in paragraphs 19-22 above.

Monetary Relief:

25. In consideration of the making and execution of this Assurance, and within ten (10) days thereafter, Ambit will pay to the OAG the sum of \$1,500,000 in penalties and costs.

26. Ambit shall pay this amount by wire transfer, certified or bank check payable to the State of New York and delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Kate Matuschak, 28 Liberty Street, New York, New York, 10005. Any payments and all correspondence related to this Assurance must reference Assurance No. 18-155.

Reporting and Record-Keeping

27. Beginning six months after the Effective Date of this Agreement and continuing for a period of three (3) years thereafter, Ambit shall submit to OAG, no later than thirty (30) days after the conclusion of each three-month period, quarterly reports describing with specificity their compliance with the provisions of this Assurance during the prior quarter. The reporting shall include:

- a. a report prepared by Ambit's designated compliance officer summarizing the results of his or her review of compliance checks and sample calls, if applicable, referenced in paragraph 18;
- b. a summary of each consumer complaint received during the quarter concerning the conduct of an MLM Consultant, and a summary of all steps taken to investigate and resolve the complaint;
- c. a description of any disciplinary or remedial actions taken with respect to any MLM Consultant;

d. copies of all Advertising by Ambit, including revisions to Ambit's website, that relate to the sale of Retail Natural Gas or Electricity Services in New York State;

e. any revisions made in MLM Consultant training materials, advertisements, recruiting materials, disciplinary policies, and consumer contracts or notices; and

f. an accounting showing compliance with the provisions herein requiring penalizing MLM Consultants, Customer Service Representatives and Customer Service Contractors.

28. Ambit agrees to cooperate with OAG and any third party entity approved by OAG to monitor and audit compliance with this Assurance. Ambit agrees to maintain and preserve the following documents for a minimum of twenty-four months, and to provide or make these documents available to OAG upon receiving written request within fifteen (15) days of receiving such request:

a. all Advertising (including point-of-sale Advertisements) issued, published or distributed by Ambit and all advertising submitted to Ambit for approval by or its MLM Consultants;

b. all consumer agreements, consumer account billing records, and consumer communications records (electronic or written);

c. all recordings of telephone interactions between Ambit customers or prospective customers and Customer Service Representatives or Customer Service Contractors; and

d. copies of all documents related to consumer complaints and consumer inquiries and the responses thereto. These records shall contain information identifying the consumer and account at issue, the date the consumer contacted Ambit, a brief summary of the nature of the consumer's complaint or inquiry, and the course of action taken by Ambit to address the consumer's complaint or inquiry.

MISCELLANEOUS

Subsequent Proceedings.

1. Ambit expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 9, and agrees and acknowledges that in such event:
 - a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
 - b. the OAG may use statements, documents or other materials produced or provided by Ambit prior to or after the effective date of this Assurance;
 - c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Ambit irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
 - d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).
2. If a court of competent jurisdiction determines that Ambit has violated the Assurance, Ambit shall pay to the OAG the reasonable cost, if any, of obtaining such

determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

3. This Assurance resolves and releases all claims by the OAG for the acts, practices and omissions described in the Findings from the date of the commencement of the OAG's investigation to the Effective Date of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the OAG's review of acts, practices or courses of conduct that occur after the Effective Date of this Assurance or any claims that may be brought by the OAG to enforce Ambit's obligations from or relating to the provisions contained in this Assurance.

4. This Assurance is not intended for use by any third party in any other proceeding. This Assurance is not intended, and should not be construed, as an admission of liability by Ambit.

5. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Ambit. Ambit shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

6. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

7. Any failure by the OAG to insist upon the strict performance by Ambit of any of the provisions of this Assurance shall not be deemed a waiver of any of the

provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Ambit.

Communications:

8. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 18-155, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Ambit Energy
c/o Patricia Zacharie
Vice President, Legal & Regulatory Affairs
1801 N. Lamar, Suite 600
Dallas, Texas 75202
Telephone: (214) 530-5422
Facsimile: (877) 674-9270

or in her absence, to the person holding the title of Chief Executive Officer.

If to the OAG, to: Kate Matuschak, or in her absence, to the person holding the title of Bureau Chief, Bureau of Consumer Frauds and Protection, at:

New York State Office of the Attorney General
Bureau of Consumer Frauds and Protection
28 Liberty Street
New York, NY 10005
Telephone: (212) 416-8300
Facsimile: (212) 416-6003

Representations and Warranties:

9. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Ambit and its counsel and the OAG's

own factual investigation as set forth in Findings, paragraphs 2-43 above. Ambit represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Ambit or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

10. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Ambit in agreeing to this Assurance.

11. Ambit represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Ambit further represents and warrants that Ambit, by Jere W. Thompson, Jr., as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of Ambit.

General Principles:

12. Nothing in this Assurance shall relieve Ambit of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

13. Ambit agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Ambit's rights to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

14. If the OAG believes that Ambit has violated a provision of this Assurance, prior to taking legal action to enforce this Assurance as a result of the alleged violation, the OAG shall notify Ambit, identifying the alleged violation and the provision of this

Assurance in question. Ambit shall have thirty (30) days (the “Cure Period”) to cure the alleged violation and provide the OAG with a detailed written explanation of the corrective actions taken. In the event a violation has not been cured within the Cure Period, Ambit shall be in breach of this Assurance. Ambit shall not, however, be entitled to notice and an opportunity to cure an alleged violation on more than two occasions or if the OAG determines in good faith that a threat to the health, safety or welfare of the public requires immediate action.

15. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Ambit violates the Assurance after its Effective Date.

16. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

17. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

18. Ambit acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

19. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

20. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

21. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

20. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the dates set forth below:

BARBARA D. UNDERWOOD
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Jane M. Azia
Date: 12/20/18
Jane M. Azia
Bureau Chief
Bureau of Consumer Frauds

By: Kate Matuschak
Date: 12/20/18
Kate Matuschak
Assistant Attorney General

Ambit Energy Holdings, LLC, Ambit
Marketing, LLC and Ambit New York, LLC

By: Joe Thompson, CEO
Date: 12/20/18