

**Exhibit \_\_\_\_ (UIU/NYAG-4(I))**

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

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**In the Matter of the  
Investigation by Eric T. Schneiderman,  
Attorney General of New York, of**

**HIKO Energy, LLC**

**AOD # 14-069**

**Respondent.**

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**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW § 63(15)**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation into the marketing and provision of retail natural gas and electricity services by HIKO Energy, LLC (“HIKO”) pursuant to Executive Law § 63(12), Article 22-A of the General Business Law (“G.B.L.”) §§ 349, 349-d and 350 and G.B.L. § 399-p. This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and HIKO.

1. For purposes of this Assurance, the following definitions apply.
  - (a) “**Advertising**” shall include any brochures, websites, promotions, home and telephone solicitations or other electronic or print media used to market HIKO’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 (i.e., 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 employee of HIKO, independent agent or contractor whose duties include answering telephone calls, emails or letters from customers making inquiries or complaints about their HIKO service, or seeking to dispute their HIKO charges or cancel their HIKO service.

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

(h) **“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.

(i) **“Distribution Utility Services”** shall mean the services provided by a Distribution Utility as it relates to ESCOs including, but not limited to, the delivery of electricity and gas delivered by the Distribution Utility, 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.

(j) **“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.

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

(l) **“Financial Harm”** shall mean difference between HIKO Commodity Services Charges paid by the consumer for the period enrolled and what the consumer would have paid his/her prior provider under that provider’s rates during the same period.

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

(n) **“In-person Marketing”** or **“In-person Solicitation”** shall mean offering products or services to prospective customers by means of having a Sales Representative visit the prospective customer’s home or place of business.

(o) **“In-person Solicitor”** shall mean a Sales Representative of HIKO or its Contractor who performs In-person Marketing or Solicitation.

(p) **“Marketing Contractor”** or **“Contractor”** shall mean an entity or individual retained by the ESCO to solicit consumers by telephone, in-person solicitation, or Internet.

(q) **“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.

(r) **“Sales Representative”** shall mean any employee of HIKO or a Contractor engaged in offering HIKO's Retail Electricity and/or Natural Gas Service to consumers, including In-person Solicitors, Telemarketers, Customer Service Representatives and anyone offering HIKO’s Retail Electricity and/or Natural Gas Service to consumers via the Internet.

(s) **“Telemarketing”** shall mean a sales program or campaign which is conducted to induce the purchase of services by the use of telephone, including inbound and outbound calls.

(t) **“Three-Day Rescission Notice”** shall mean a written notice delivered 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.

(u) “**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.

(v) “**Variable rate**” shall mean a Commodity Service Charge that is adjusted by the Distribution Utility or ESCO at will and without prior notice to consumers, who only learn the actual price they must pay for Electric or Natural Gas Service after each billing cycle ends. An ESCO’s Variable Rate may be greater or less than the Distribution Utility’s rate for the same time period.

(w) “**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.

## I. 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.<sup>1</sup>

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

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<sup>1</sup> PSC Case 94-E-0952 – In the Matter of Competitive Opportunities Regarding Electric Service, *Opinion and Order Regarding Competitive Opportunities for Electric Service*, Opinion 96-12, issued May 20, 1996 at 28.

standardize practices among Distribution Utilities and ESCOs and to protect consumers, the PSC adopted the UBP standards.<sup>2</sup> On October 15, 2008, as a result of improper marketing practices by various ESCOs, the PSC amended the UBP,<sup>3</sup> adding stronger marketing standards to “provide even greater confidence and security to consumers.”<sup>4</sup> Following enactment of GBL § 349-d in 2010, the Commission further amended the UBP to require that ESCOs provide consumers an ESCO Consumer’s Bill of Rights notice when offering its services.<sup>5</sup> On February 25, 2014, the PSC further amended the UBP, requiring greater transparency of ESCO pricing and other measures to protect residential and small business customers of ESCOs.<sup>6</sup>

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

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<sup>2</sup> PSC Case 98-M-1343, Opinion 99-3, *Opinion and Order Concerning Uniform Business Practices*, issued Feb. 16, 1999, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8543A612-83DD-45E3-9262-EB1CBF591743}>.

<sup>3</sup> See Case 98-M-1343, *supra*, *Order Adopting Amendments to the Uniform Business Practices*, etc., issued October 27, 2008), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={31D26C4B-DE73-49F3-A836-AC0D94188B90}>.

<sup>4</sup> Oct. 15, 2008 Public Service Commission Press Release, <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={E291D790-8EA9-4F08-AA77-36EB7AE1}>.

<sup>5</sup> Case 98-M-1343, *supra* *Order Implementing Chapter 416 of the Laws of 2010*, issued Dec. 17, 2010, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={328751D7-8DE4-4D5E-852F-60A69A2134B5}>.

<sup>6</sup> Case 12-M-0476, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State, *Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets*, issued February 25, 2014, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E91E5DEB-92C0-42A1-927F-442395427249}>.

Distribution Utility remains responsible 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.

5. The UBP requires that consumers solicited by an ESCO receive certain notices. During any In-person Solicitation, the UBP requires ESCOs or their Marketing Contractors to provide consumers with the ESCO Consumers' Bill of Rights Notice, Customer Disclosure Statement and the Three-Day Rescission Notice along with the contract 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 these Notices.

6. In addition, the UBP requires ESCOs to verify certain aspects of telephone enrollments by a Third-Party Verification. 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 Contract and Notices listed above, if not previously delivered.

7. Switching service to an ESCO is effected at the next meter reading cycle, a process that usually takes 30 or more days. Consumers often do 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.



**B. HIKO**

8. HIKO is a New York limited liability corporation with its principal offices located at 12 College Road, Monsey, New York 10952. HIKO is also an ESCO authorized by the PSC to provide Retail Natural Gas or 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, Niagara Mohawk Power 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.

9. HIKO offers consumers a month-to-month Variable Rate contract for the supply of electric and/or gas services. By not guaranteeing consumers a fixed price for the electricity and natural gas it sells, HIKO bears no market risk and can adjust consumer prices at any time in response to wholesale energy market volatility and its own profit margin goals. HIKO customers learn what price they must pay for HIKO's supply service only after the end of each monthly billing period, when their Distribution Utility mails a consolidated statement containing both HIKO's Commodity Service Charges and the Distribution Utility's Delivery Service Charges.

10. Because HIKO buys the electricity and gas it supplies to its customers from the same sources as the Distribution Utilities and other ESCOs, there is no qualitative difference between the electricity and gas supplied by HIKO and that of its competitors. HIKO competes with the Distribution Utilities and other ESCOs solely on the basis of price. Unless consumers are promised that they will save money, there is no

economic reason for them to switch to HIKO from their local Distribution Utility or another ESCO.

11. HIKO solicits new customers through Telemarketing and In-person Solicitations, and directly through its website, *hikoenergy.com*. From June 2011 to July 2013, HIKO employed various Marketing Contractors to conduct in-person solicitations and telemarketing on its behalf. In turn, HIKO's Marketing Contractors employed Sales Representatives to pitch HIKO's services to consumers by telephone or at the consumers' homes. HIKO supplied its Marketing Contractors with a variety of written information, including sales and TPV scripts to be used by its Sales Representatives, background information, brochures and other marketing materials. HIKO provided training materials for the Sales Representatives employed by its Contractors. HIKO has marketed solely through Marketing Contractors.

12. From at least June 2011, these Marketing Contractors repeatedly engaged in deceptive business practices, described below, and more than 300 consumers lodged complaints with the PSC about HIKO's marketing practices.

**C. HIKO's Deceptive Practices**

**1. False and Misleading Savings and Price Claims**

13. HIKO made false and misleading savings and price claims on its website, *hikoenergy.com*, in its door-to-door sales and TPV scripts, and through Marketing Contractors performing Telemarketing and In-person Solicitations.

**a. Website**

14. HIKO's website misrepresents the savings that consumers will realize by purchasing electricity and natural gas from HIKO instead of the Distribution Utility.

HIKO's website emphasizes its competitive commodity pricing and asserts that HIKO is able to procure natural gas and electricity at better prices than other providers. HIKO advertises that it provides consumers with "various plans . . . to lower electric bill[s], lower gas bill[s], and to reduce utility bill[s]." HIKO also claims that it offers "a tailored cost savings plan that's right for each person or need" and that it "strive[s] to offer the most competitive pricing." In fact, HIKO's rates are greater than the Distribution Utilities' rates on average and raise, rather than reduce, consumers' bills. For example, during 2012, HIKO's residential customers in New York City and Westchester paid on average \$129 more for electricity and \$86 more for natural gas than they would have as Full Service Customers of Consolidated Edison. Over a two-year period the average HIKO consumer in the territory served by Niagara Mohawk Corporation (NiMo) paid \$300 more for electricity and \$183 more for gas than if he or she had purchased directly from NIMO.

**b. Sales and TPV Scripts**

15. HIKO's scripts for telemarketing and door-to-door sales provided that consumers were "eligible to receive a competitive monthly variable rate," but the scripts failed to explain that in reality the rate may, and routinely did, exceed the Distribution Utility's rate, and thus was not consistently competitive.

16. The telemarketing TPV script directed Sales Representatives to tell consumers that "you will be receiving HIKO Energy's variable rate product which can save you up to 7% over the course of a year" even though HIKO's average rates are higher than the Distribution Utilities' rates. It also provided that HIKO "is very proud of

its competitive offers” giving the misleading impression that the rates would not be higher than that of the Distribution Utilities.

**c. Telemarketing**

17. In their telephone solicitations to prospective customers, Sales Representatives repeatedly promised consumers substantial savings compared with the Distribution Utility’s rates, including promising to lower consumers’ utility bills by as much as 10% to 15%. Yet, the actual Commodity Service Charges paid by consumers who switched to HIKO were on average higher than they would have been with their local Distribution Utility.

18. During telephone solicitations, some Sales Representatives also falsely offered “special savings programs,” “refunds” or a “special program for seniors” from the consumer’s current Distribution Utility as a means of deceptively enrolling new HIKO customers when no such programs or refunds existed.

**2. Slamming**

19. Although an ESCO is required to ask the consumer for his or her Distribution Utility account information to process an ESCO enrollment, HIKO Sales Representatives repeatedly resorted to deception to obtain this information so the account could be switched without the consumers’ consent, a practice known as “slamming.”

**a. Telemarketing**

20. In telemarketing sales calls, Sales Representatives represented that consumers were entitled to a “rebate” and asked consumers to verify their account information “to process the rebate,” thus giving the misleading impression that they were

from the Distribution Utility. The Sales Representatives did not inform the consumers that the account numbers would be used to transfer the consumers' account to HIKO.

21. Consumers were also falsely assured by Sales Representatives that they worked for the Distribution Utility and that the consumers' accounts would not be switched from the Distribution Utility. For example, a Sales Representative told one consumer who did not want to switch to HIKO: "Nothing is going to change; everything will still stay the same. You will still be with the same company. . . . it's like you live in New York but you also live in America and America is in charge of New York."

22. Even when Sales Representatives identified themselves as from HIKO and the consumer informed them that they did not want to switch their utility, the Sales Representatives still misrepresented to consumers that "you are not leaving [the Distribution Utility]".

23. In many cases, at the conclusion of sales marketing calls, Sales Representatives instructed consumers to respond "yes" to all questions asked during the TPV portion of the call and to hold any questions until after the TPV call was concluded. By instructing these consumers to answer "yes" to each of the TPV call questions, the Sales Representative made it appear on the TPV as if the consumer consented to transfer service to HIKO.

24. Sales Representatives also failed to consistently ensure that the person consenting to a new provider was authorized to make that decision. Instead, many Sales Representatives pitched HIKO's electric and gas offer to household members other than the Customer of Record or his/her spouse, and used that individual's approval to effect

the provider switch without verifying that the decision was authorized by the Customer of Record.

25. HIKO's telemarketing sales script did not require Sales Representatives to ask whether the person answering the sales call was the customer of record or his/her spouse or, whether the person was 18 years old and authorized by the Customer of Record to consent to the switch. Instead, the script directed Sales Representative to make affirmative statements such as "you are over 18 years old" or "you are a person authorized to switch to HIKO Energy?" without confirming the person's age or authorization to consent to a change.

**b. In-person Solicitations**

26. In-person Solicitors also engaged in deceptive, abusive and harassing tactics to get consumers to switch their accounts. For example, an In-person Solicitor posed as someone looking to rent an apartment to gain access to a consumer, and then refused to leave until the consumer signed a HIKO contract. Another In-person Solicitor visited a consumer and after asking to see the consumer's utility bill on the pretense of checking her rate, asked for a glass of water. While the consumer went to another room to get the water, the In-person Solicitor copied her Distribution Utility account information and falsified the consumer's consent.

**3. Failure to Comply with Customer Contact Procedures**

27. HIKO's sales agreement provides that customers may contact its Customer Service Center, Monday through Friday 8:00 a.m. - 8:00 p.m. However, when consumers call HIKO to cancel their contracts, they are unable to get through either

because HIKO's voicemail box is full or no one at HIKO's Customer Service Center answers their calls during these hours.

28. By failing to answer consumers' calls, consumers' attempts to cancel HIKO's service are delayed and HIKO is able to bill the consumer for additional months.

**4. Violations of the Do Not Call Registry**

29. HIKO Contractors repeatedly solicited consumers by telephone despite the fact that their telephone numbers had been registered on the federal Do Not Call registry. A sample of all HIKO's telemarketing calls from June to December 2013 reveals that Sales Representatives made 600 calls to consumers whose numbers were registered. During this period, over 20% of HIKO's telemarketing sales violated the do not call provisions of the Telephone Consumer Protection Act, 47 U.S.C § 227, G.B. L. §§ 399-p or 399-z. There is no evidence to suggest that the Do Not Call violations were limited to this time period.

30. The NYAG finds that HIKO's practices as described in paragraphs 2-29 above constitute repeated violations of GBL Article 22-A, §§ 349, 349-d and 350, GBL §§ 399-p and 399-z, the Telephone Consumer Protection Act, 27 U.S.C. § 227, the PSC's UBP and Executive Law § 63(12).

**II. PROSPECTIVE RELIEF**

**WHEREAS**, HIKO neither admits nor denies the NYAG's Findings in paragraphs 2-30.

**WHEREAS**, the NYAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation;

**WHEREAS**, the parties hereto wish to fully and finally resolve all claims that are the subject of this Assurance; and

**WHEREAS**, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY AGREED by NYAG and HIKO, its principals, successors and assigns and on behalf of its agents, representatives, employees and by any corporation, subsidiary or division through which it acts or hereafter acts, as follows:

1. HIKO will comply with Article 22-A of the GBL, §§ 349, 349-d, and 350; Article 26 of the GBL, §§ 399-p and 399-z; 47 U.S.C. § 227 (Telephone Consumer Protection Act) and the Uniform Business Practices adopted by the PSC in Case 98-M-1343 – *In the Matter of Retail Access Business Rules* and any further amendments to the foregoing laws and regulations that may be adopted subsequent to the execution of this Assurance.

2. HIKO shall provide a copy of this AOD to its Marketing Contractors and shall be responsible for ensuring that Sales Representatives employed by Marketing Contractors on behalf of HIKO 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. Sales Representatives and HIKO employees 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 representations, directly or by implication, about savings that consumers may realize from switching to HIKO that are not fully substantiated by a twelve consecutive months' rate comparison of HIKO's pricing to the consumer's Distribution Utility pricing for comparable services during the same period within eighteen months of the representation;

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

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

ii. a consumer's total monthly electricity and/or natural gas costs under HIKO'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;

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

e. other than in connection with an accurate description of Distribution Utility Services, represent, directly or by implication, that HIKO is working on behalf of, in cooperation with, or "for" the consumer's local Distribution Utility, or is

affiliated in any way with the local Distribution Utility; including, but not limited to wearing any apparel or insignia resembling any Distribution Utility uniform;

f. represent, directly or by implication, that HIKO is providing a service that is “authorized by” or “approved by” the consumer's local Distribution Utility;

g. represent, directly or by implication, that HIKO is working on behalf of, in cooperation with, or “for” the New York State Public Service Commission or any other governmental regulatory agency, or is affiliated in any way with such entities;

h. enter into a sales agreement or change the commodity provider for any customer that is not personally accepted by the Customer of Record or his/her spouse or legal guardian and Sales Representatives shall confirm that any person who grants consent to a service change on behalf of a Customer of Record is, in fact, so authorized;

i. offer or enter into a sales agreement, or present to the consumer the Required Disclosures in any language that is different from the language used by the Sales Representative in soliciting the consumer; and

j. 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, HIKO shall not instruct consumers to answer “Yes” to all questions or to not ask questions during the Third Party Verification portion of the sales call.

4. HIKO’s In-person Solicitors shall wear a cap, jacket, shirt, lanyard or other clothing branded with HIKO logos that are visible to the consumer and display accurate photo identification, affirmatively identify themselves as representatives of

HIKO when soliciting consumers. All Sales Representatives involved in the marketing of HIKO's products or services shall begin every communication with a potential customer by stating in substantially the following manner:

My name is [Sales Representative's name]. I represent HIKO Energy LLC. HIKO 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 HIKO, his/her bill will reflect a Commodity Charge from HIKO plus a Delivery Charge from the Distribution Utility.

5. When enrolling new customers, HIKO 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. In-person Solicitors shall provide consumers with the Required Disclosures and contract terms and conditions **before** presenting a contract for the consumer's signature and inform consumers that the documents sets out their rights and obligations. When a consumer is enrolled via the telephone HIKO shall mail the consumer the Required Disclosures and the contract terms and conditions within two (2) business days.

**B. On-line Enrollments**

6. In the event HIKO allows online enrollments, it will revise its website to Clearly and Conspicuously display the Required Disclosures and all contract terms and conditions, as one or multiple unavoidable separate screen page(s) during the electronic customer enrollment process. HIKO will 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.

**C. Advertising**

7. In all Advertising to consumers, HIKO shall include a Clear and Conspicuous notice that HIKO is independent of the consumer's local Distribution Utility and that if the customer receives services from HIKO, his/her bill will reflect a Commodity Service Charge to HIKO 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 HIKO brand identification information and may not identify any Distribution Utility by name.

**D. Contract Term and Cancellation Policy**

8. 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. HIKO 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 HIKO.

9. All fixed rate retail contracts for Retail Electricity Service and/or Natural Gas Service executed after the date of the execution of this Assurance shall disclose the initial term and renewal provision Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement. Any early termination fee shall also

be disclosed Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement, and shall be consistent with the limitations set forth in GBL §349-d.

10. Whenever any consumer notifies HIKO by telephone or in writing of his/her desire to terminate a service contract, HIKO shall notify the appropriate local Distribution Utility within two (2) business days to switch the consumer back to the provider of Retail Electricity Service or Natural Gas Service as indicated by the consumer. Other than the provisions of the preceding paragraph pertaining to fixed rate contracts terminated prior to expiration of their initial term, no charge for returning such consumers to another provider shall be imposed by HIKO. Consumers will be responsible for payment of any Retail Electricity Service and/or Natural Gas Service provided by HIKO until the consumer's service with another provider begins, provided that HIKO has given notice to the Distribution Utility within two (2) business days as provided above. If HIKO delays giving the Distribution utility notice of the consumer's cancellation beyond two (2) business days, HIKO shall reimburse the consumer twice the Financial Harm incurred by the consumer for the period caused by such delayed notice.

**E. Training**

11. HIKO shall prepare training materials and a training program for Sales Representatives and Customer Service Representatives 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 HIKO's management;
- c. an express warning that deceptive sales practices may carry legal consequences for Sales Representatives, including both civil and criminal liability;
- d. a description of the remedial steps that will be taken against any Sales Representative 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.

HIKO shall provide to NYAG a copy of all training materials, electronic or paper, prepared pursuant to this Assurance at least 20 days prior to HIKO's distribution of these materials to its Marketing Contractors, Sales Representatives and Customer Service Representatives.

12. HIKO shall require Marketing Contractors to provide this training, along with HIKO's training materials, to each Sales Representative employed by the Contractor as a condition of employment. Training for Sales Representatives and Customer Service Representatives who are HIKO employees as of the date of this Assurance shall be conducted in-person within 60 days of the date of this Assurance. All Sales Representatives and Customer Service Representatives employed by Contractors and HIKO employees hired after the date of this Assurance must complete this training prior to conducting any sales calls or door-to-door solicitations. HIKO shall obtain and maintain a written form signed by each Sales Representative and Customer Service

Representative acknowledging that he or she has received and understood the information provided in the training.

**F. Monitoring Sales Practices**

13. HIKO shall record all communications between consumers and its Customer Services Representatives. HIKO shall also require that its Sales and Customer Service Representatives and Contractors record all marketing communications with consumers that result in a sale, including all communications required by the UBP, including but not limited to the disclosures required under Section 10. HIKO shall maintain such recordings for at least one (1) year following the date of the communication. No commissions shall be paid to any Contractor for any enrollment unless a recording of the entire sales presentation to that consumer is supplied to HIKO within three days of the sale.

14. HIKO shall conduct a prompt and good faith effort investigation of all oral, electronic and written consumer reports that indicate Sales Representatives' misconduct, including, but not limited to, reports that the Sales Representative falsely promised bill savings, misrepresented that he/she worked on behalf of the Distribution Utility or a government agency, 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, HIKO will:

- a. identify, wherever possible, the Sales Representative responsible for the alleged misconduct;
- b. review the recording of the sale;

c. use its best efforts to determine whether the Sales Representative 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 Harm whenever the investigation concludes that any of the following deceptive sales practices occurred:

i. the customer of record or his/her spouse did not authorize the HIKO enrollment;

ii. the consumer was promised savings or lower utility bills during the sale;

iii. the Sales Representative failed to clearly disclose that he/she was offering services for HIKO;

iv. the Sales Representative failed to clearly disclose that HIKO is not affiliated in any way with the Local Distribution Utility;

v. the Sales Representative misrepresented that he/she was working for or at the direction of, or impersonated the Local Distribution Utility or any governmental agency;

vi. the Sales Representative failed to disclose that HIKO'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;



- vii. the Sales Representative failed to provide the consumer a copy of the Required Disclosures prior to enrolling the consumer;
- viii. the Sales Representative used high pressure sales tactics to intimidate the consumer into accepting HIKO's offer;
- ix. the Sales Representative solicited the consumer at his or her home or place of business in violation of local municipal home solicitation registration or licensing requirements; or
- x. the Sales Representative solicited the consumer by telephone in violation of the do not call or robocall provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227, G.B.L. §§ 399-p or 399-z.

HIKO shall review each complaint-related sale by noting in writing compliance or non-compliance with the provisions of Paragraph 14.

15. Any substantiated consumer complaint about a Sales Representative or any other information indicating that a Sales Representative has violated any term of this Assurance or otherwise engaged in improper sales practices, shall trigger an investigation by HIKO into whether any of the other HIKO consumers enrolled by that Sales Representative were subjected to sales practices that violated the terms of this Assurance or were otherwise improper. Such investigations shall, at a minimum, include examination of consumer enrollment records, sales service call notes for the ten consumers enrolled by the Sales Representative immediately following and immediately preceding the enrollment that triggered the substantiated consumer complaint. If HIKO identifies additional non-compliant sales (as specified in paragraph 14 above), the Marketing Contractor shall forfeit an amount equal to twice the total Marketing

Contractor's sales commissions applicable to the non-compliant Sales. All sales commissions claimed by Marketing Contractors shall be subject to forfeiture for a period of six months in the event violations of this Assurance are found by HIKO.

16. HIKO's Customer Service Representatives shall ask any consumer who cancels service the reason(s) for the cancellation and shall accurately record the reasons in HIKO's consumer contact log. If the stated reasons concern a Sales Representative's violations of any of the requirements listed in paragraph 14(e)(i) – (x), HIKO shall follow the procedure set forth in paragraph 15 above.

17. In addition, within fifteen (15) days of the end of each month, HIKO shall review a random sample of no less than 50 recordings of sales made by Sales Representatives of each Contractor during the prior month to evaluate the sales practices employed by the Sales Representative and ensure that his or her conduct complied with this Assurance. The sample shall include no fewer than three sales for each Sales Representative, unless fewer than three sales were made during the month by said Sales Representative, in which case all sales shall be reviewed. HIKO shall review each sale by noting compliance or non-compliance as set forth in paragraphs 14-15 above. Whenever such sample reveals two or more non-compliant sales by an individual representative, HIKO shall treat those sales in the manner set forth in paragraph 15.

18. In the event that HIKO determines that a Sales Representative has violated any term of this Assurance or otherwise engaged in improper sales practices, HIKO shall take additional prompt and appropriate remedial actions with respect to the Sales Representative, 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 Sales Representative 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 Sales Representative from marketing HIKO's services.

19. HIKO shall offer a refund in an amount equal to the Financial Harm the consumer incurred to any consumer who has been subjected to the deceptive sales practices described in Paragraph 14(e) to the extent such violations are brought to HIKO's attention within six months or a reasonable time thereafter under the individual circumstances.

20. Within 60 days of the date of this Assurance, HIKO shall employ a compliance officer whose duties shall include, at a minimum:

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

b. Reviewing and approving the training materials and training program for Sales Representatives and Customer Service Representatives referenced in paragraph 10 above;

c. Ensuring that all Sales Representatives and Customer Service Representatives receive the training described in paragraphs 10-11 above;

d. Overseeing the investigation of all consumer reports or complaints of improper sales practices as required by paragraphs 13 and 14 above, and ensuring that remedial measures are implemented as set forth in paragraphs 15 and 17 above;

e. Overseeing the review of sample recorded sales as required by paragraph 16 above, and preparing a written report summarizing the results of the reviews;

f. Verifying that all Sales Representatives comply with the New York Do Not Call statute (G.B.L. § 399-z) and regulations, the New York automatic dialer telemarketing law (G.B.L. § 399-p) and the federal Telephone Consumer Protection Act, 27 U.S.C. § 227, do not call and robocall statute and regulations. Any telemarketing sale that is found to have violated these statutes or their regulations shall be deemed invalid, no enrollment shall be processed and no commission paid to the Marketing Contractor.

g. Verifying that all In-person Solicitors comply with all local laws requiring registration or licensing to solicit consumers door-to-door, which shall include obtaining written proof of such compliance from the employee or Contractor. Any sale that is found to have been solicited in violation of such door-to-door regulations shall be deemed invalid, no enrollment shall be processed and no commission paid to the Marketing Contractor.

h. Verifying that all sales reports include the consumer's telephone number. Any sale report that is found to have submitted an invalid consumer telephone number shall be deemed invalid, no enrollment shall be processed and no commission paid to the Marketing Contractor.

### **III. MONETARY RELIEF**

21. In consideration of the making and execution of this Assurance, HIKO will pay by certified or bank check payable to the State of New York the sum of

\$1,250,000.00 to be used by the NYAG for restitution to certain current and former HIKO consumers and the administrative costs of said restitution. Such amount shall be payable within thirty (30) days after the date of this Assurance. Restitution shall be distributed by the NYAG in a manner determined by the NYAG to be appropriate. The payment shall be delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Kate Hutchins, Consumer Frauds and Protection Bureau, New York State Office of the Attorney General, 120 Broadway, 3<sup>rd</sup> Floor, New York, NY 10271.

*Matuschak*

22. Within thirty (30) days of the date of this Assurance, HIKO shall submit to the NYAG an electronic database that identifies the following information for each current or former HIKO consumer: name; last known address; telephone number; email address, if known; the period during which the consumer received Retail Electricity Service and/or Natural Gas Service from HIKO; whether the consumer is still receiving service from HIKO; the total amount paid by the consumer to HIKO for Retail Electricity Service and/or Natural Gas Service; and the name of the local Distribution Utility. Within ten days of the execution of this Assurance, HIKO will provide NYAG with a consumer contact log database updated to include all call entries from January 1, 2011 through the execution date of this Assurance.

23. Any funds that remain after the restitution process is completed shall be retained by NYAG as additional penalties, costs and fees.

24. Any payments and all correspondence related to this Assurance must reference Assurance No. 14-069.

#### IV. REPORTING AND RECORD-KEEPING

25. Beginning six months after the Effective Date of this Agreement and continuing for a period of three (3) years thereafter, HIKO shall submit to NYAG no later than fifteen 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. the compliance officer's report summarizing the results of his or her review of compliance checks and sample calls referenced in paragraph 20(f);
- b. a summary of each consumer complaint received during the quarter concerning the conduct of a Sales Representative, 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 Sales Representative;
- d. copies of all Advertising, including revisions to HIKO's website that relate to the sale of Retail Natural Gas or Electricity Services in New York State;
- e. any revisions made in Sales Representative training materials, disciplinary policies, and consumer contracts or notices;
- f. an accounting showing compliance with the provisions herein requiring penalizing Marketing Contractors;
- g. documentation that all telemarketing Contractors retained by HIKO provided proof to the compliance officer before conducting any telephone solicitations that such marketing was conducted in accordance with the requirements of

the federal Telephone Consumer Protection Act , 27 U.S.C. § 227 and G.B. L. §§ 399-p and 399-z;

h. documentation that all In-person Solicitation Marketing Contractors and Sales Representatives retained by HIKO provided proof to the compliance officer before conducting any in-person solicitations that such marketing was conducted in accordance with the requirements of any applicable home solicitation licensing and registration requirements of municipalities where such solicitations took place; and

i. documentation of any price comparison data used by HIKO in compliance with paragraphs 3(b) and 14(e) above.

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

a. all Advertising (including point-of-sale Advertisements) issued, published or distributed by HIKO or its agents or Contractors;

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

c. all recordings made of sales calls that result in a sale; 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 HIKO, a

brief summary of the nature of the consumer's complaint or inquiry, and the course of action taken by HIKO to address the consumer's complaint or inquiry.

**V. MISCELLANEOUS**

27. This Assurance resolves and releases all claims by the NYAG that are the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the NYAG'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 NYAG to enforce HIKO's obligations arising from or relating to the provisions contained in the Assurance.

28. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by HIKO and its counsel and NYAG's own factual investigation as set forth in Findings 2-30 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

29. If the Assurance is voided or breached, HIKO agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, HIKO expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against HIKO or from using in any way any statements, documents or other materials produced or provided by HIKO prior to or after the date of this Assurance.



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

31. HIKO represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. HIKO shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects HIKO's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by HIKO.

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

33. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

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

35. To the extent not already provided under this Assurance, HIKO shall,

upon request by NYAG, provide all documentation and information necessary for NYAG to verify compliance with this Assurance.

36. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to HIKO to:

HIKO  
Compliance Officer  
12 College Road  
Monsey, N. Y. 10952

and

Motty Shulman  
Boies, Schiller & Flexner LLP  
333 Main Street  
Armonk, New York 10504  
Telephone: 914-749-8304  
Facsimile: 914-749-8300

If to the NYAG, to:

~~New York State Office of the Attorney General  
Bureau of Consumer Frauds and Protection  
Attn: Kate Hutchins, Assistant Attorney General  
120 Broadway, 3rd floor  
New York, NY 10271  
Telephone: (212) 416-8455  
Facsimile: (212) 416-6003~~ Matuschak

Within ten days, HIKO shall provide written notice to NYAG of any change in address.

37. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

38. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any

action or proceeding thereafter commenced by NYAG.

39. If a court of competent jurisdiction determines that the Company has breached this Assurance, the Company shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

40. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

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

42. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

43. 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:

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
120 Broadway  
New York, NY 10271

By: Jane M. Azia  
Date: 10/1/2014  
Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds

By: Jeanna E. Hussey  
Date: 10/1/2014  
Jeanna E. Hussey  
Assistant Attorney General

By: Kate Matuschak  
Date: 10/1/14  
~~Kate Hutchins~~ Matuschak  
Assistant Attorney General

HIKO Energy LLC

By: Harvey Klein  
Date: 7/25/2014  
Harvey Klein  
Chief Executive Officer  
12 College Road  
Monsey, NY 10952