

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

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|-------------------------------------|---|---------------------------------|
| MARTIN FORTE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 6:17-CV-0264 (FJS/ATB) |
| v. |) | |
| |) | CLASS ACTION |
| DIRECT ENERGY SERVICES, LLC, a |) | |
| Delaware Limited Liability Company, |) | JURY TRIAL DEMANDED |
| |) | |
| Defendant. |) | |
| _____ |) | |

Class Action Complaint

Plaintiff brings this consumer protection class action in his individual capacity, and on behalf of a class of persons defined below, against Direct Energy Services, LLC (“Defendant,” “DES,” or the “Company”), and hereby alleges the following with knowledge as to his own acts, and upon information and belief as to all other acts:

INTRODUCTION

1. For decades, the prices paid by consumers for their electricity and gas were strictly regulated. However, in 1996, the New York legislature opened New York’s energy market to “competition,” whereby consumers could choose from a variety of companies selling residential energy in addition to traditional utilities like Consolidated Edison. Taking advantage of the deregulation in New York and other states, companies like Defendant (called energy services companies, or “ESCOs”) jumped into the market and began to grow rapidly.

2. Defendant has fueled its rapid expansion not by providing a good service for a fair price, but rather by developing and using deceptive and unlawful marketing and sales practices that often result in its energy customers paying far more than they would have paid had they stayed with their traditional energy suppliers. And regardless of any savings, or lack thereof,

DES fails to conspicuously disclose its variable rate pricing structure, in violation of New York law. DES advertises low, temporary fixed rates, and then buries the long-term variable rate pricing structure in the fine print of a dense contract without any highlighting or call to attention.

3. These deceptive practices violate New York's Energy Services Consumers Bill of Rights, N.Y. Gen. Bus. Law § 349-d (the "ESCO Bill of Rights" or "Section 349-d"), which mandates that all ESCO contracts and all ESCO marketing materials clearly and conspicuously identify all variable charges included as part of an energy plan; and New York's consumer protection law, N.Y. Gen. Bus. Law § 349 ("Section 349"), which prohibits deceptive conduct in consumer transactions.

4. DES's deceptive enrollment and energy sales practices violate New York law in multiple ways, including:

a. Violating Section 349-d.7. by failing to clearly and conspicuously disclose in both its contracts and in all marketing materials that DES charges variable rates, and that its fixed-rate plans automatically switch to a variable-rate plan upon the expiration of the initial term;

b. Violating Section 349 and Section 349-d.3 by failing to adequately inform consumers that after the expiration of the initial teaser rate DES's variable rates (and thus consumers' energy costs) can quickly rise; and

c. Violating Section 349 and Section 349-d.3 by deceptively highlighting consumers' potential savings while neglecting to mention that any such savings could be quickly erased by a subsequent jump in energy prices when the initial teaser rate switched to a variable rate.

5. Plaintiff brings this action on behalf of himself and a Class of DES customers

similarly harmed and described below. Plaintiff seeks, *inter alia*, actual damages, statutory damages, treble damages up to ten thousand dollars for each class member, injunctive and declaratory relief, and attorneys' fees and costs.

6. A class action is the only way the Company's customers can remedy DES's ongoing wrongdoing. The loss suffered by each DES customer is small compared to the cost of trying to challenge DES's unlawful practices. It is thus untenable for each individual consumer to bring his or her own lawsuit. In addition, many customers may not even realize they are victims of DES's deceptive conduct.

7. With this class action, Plaintiff and the Class seek to ensure that DES engages in forthright and non-deceptive business practices. Plaintiff therefore seeks equitable relief in addition to monetary damages. Plaintiff asks that the Court declare Defendant's business practices impermissible, and enjoin Defendant from continuing its dishonest practices.

PARTIES

8. **Plaintiff Martin Forte** is a citizen of New York residing in Utica, New York.

9. **Defendant Direct Energy Services, LLC** is a Delaware limited liability company with its principal place of business at 12 Greenway Plaza Suite 250, Houston, Texas.

10. Defendant DES was founded in Toronto, Ontario in 1986 and has become one of the largest ESCOs in the United States, now serving nearly 5 million electric and natural gas customers across its North American operations. DES sells electricity or natural gas in New York, eighteen other states, and the District of Columbia.

11. DES is a wholly-owned subsidiary of Centrica plc, a British multinational utility company headquartered in Windsor, Berkshire, United Kingdom.

JURISDICTION AND VENUE

A. Subject Matter Jurisdiction

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

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

B. Personal Jurisdiction

14. This Court has general personal jurisdiction over Defendant DES because DES has been doing business in New York through continuous, permanent, and substantial activity in New York.

15. This Court has specific personal jurisdiction over Defendant DES because it maintains sufficient minimum contacts in this jurisdiction through the advertising, marketing, and sale of electricity and natural gas to New York consumers.

C. Venue

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

FACTUAL ALLEGATIONS

A. New York's Energy Markets

17. In 1996, New York deregulated the sale of retail gas and electricity, allowing New York consumers to purchase natural gas and electricity through third-party suppliers while

continuing to receive delivery of the energy from their existing utilities. More than a million New York consumers have switched to an ESCO since New York opened its retail gas and electric markets to competition.

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

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

20. After a customer switches to an ESCO, the customer’s energy supply charge—based either on a customer’s kilowatt hour (for electricity) or therm (for gas) usage—is calculated using the supply rate charged by the ESCO and not the regulated rate charged by customer’s former utility. The supply rate charged is itemized on the customer’s bill as the number of kilowatt hours (“kWh”) or therms multiplied by the rate. For example, if a customer uses 300 kWh at a rate of 11.0¢ per kWh, the customer will be billed \$33.00 (300 x \$.11) for his or her energy supply.

21. In 2009, the New York Legislature passed a crucial safeguard to protect New York’s residential energy consumers from deceptive and predatory practices by ESCOs: the ESCO Bill of Rights. Among the consumer protections in the ESCO Bill of Rights, Section 349-d.3. prohibits deceptive acts or practices in the marketing of energy services, while Section 349-d.7. requires that “[i]n every contract for energy services and in all marketing materials provided

to prospective purchasers of such contracts, all variable charges shall be *clearly and conspicuously* identified” (emphasis added).

22. DES’s practices violate Section 349-d and further violate Section 349’s general prohibition on deceptive acts or practices in the conduct of any business or trade, or in the furnishing of any service.

B. DES’s Deceptive Conduct

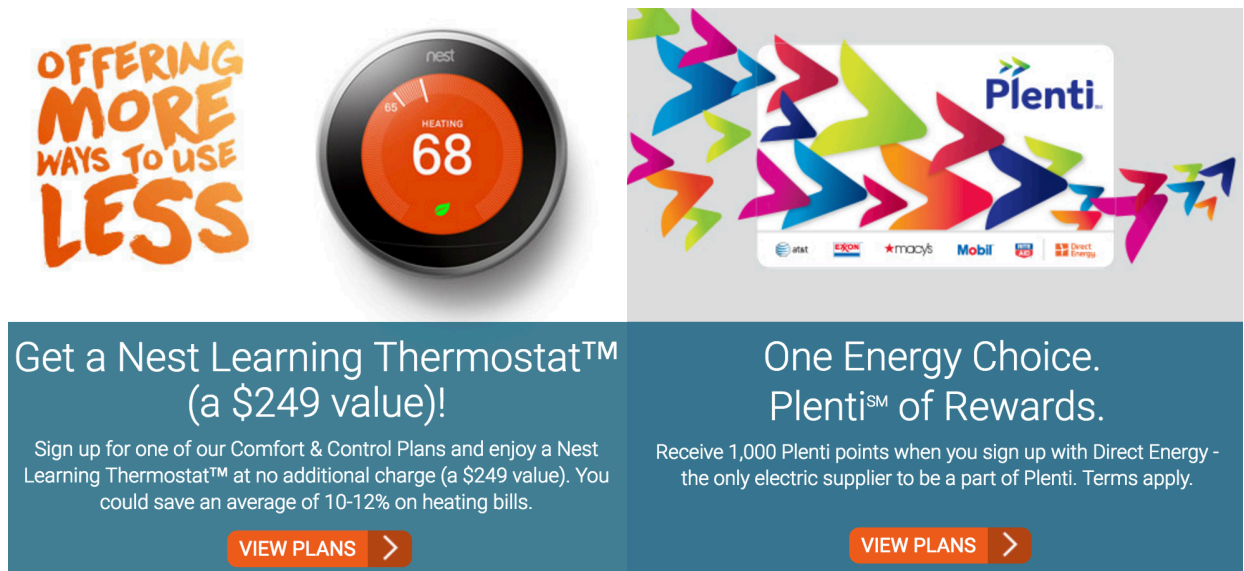
23. DES claims that its “fixed New York electricity rates give you freedom from seasonal price fluctuations imposed by your utility,” but it fails to adequately inform consumers who switch that once their low “teaser” rate expires their energy rates can skyrocket.

24. Once the initial low rate expires, DES customers’ plans automatically switch to a variable rate plan. DES’s variable energy rates can rise rapidly and have no upper limit.

25. DES conceals this fact with a marketing campaign that promises consumers savings and entices them with free smart thermostats, rewards points, and other incentives to switch, while failing to adequately inform consumers that their plan will ultimately switch to DES’s variable rate plans, and that these variable rates can rapidly rise:

Why You Should Switch to Direct Energy:

- Our Live Brighter Plans lock in a specific New York electricity rate the entire contract term.
- Big rewards! Our [Plenti](#) program allows you to earn 1,000 points when signing up and more each month on your eligible energy supply charges.
- Our fixed New York electricity rates give you freedom from seasonal price fluctuations imposed by your utility program.
- We give you a variety of contract options so that you can choose the term that makes sense for your life.
- Thanks to deregulation, you have the power to choose the New York electricity supplier that fits your lifestyle the best!
- Switching to Direct Energy is easy, convenient, and secure, whether you order online or over the phone.
- You’ll never experience any change in your power during the switch to us.
- You’ll continue to be billed by your current New York utility company.



The advertisement is split into two columns. The left column features the text "OFFERING MORE WAYS TO USE LESS" in orange, a Nest Learning Thermostat showing "HEATING 68", and a "VIEW PLANS" button. The right column features the Plenti logo, a list of partner logos (AT&T, Exxon, Macy's, Mobil, KFC, Direct Energy), and a "VIEW PLANS" button. The background of the right column is a collage of colorful birds.

26. DES’s variable rate plans limit the Company’s exposure to energy price fluctuations and shift the risk of volatile commodity prices onto consumers. DES does not bother to inform consumers of these facts when it promotes how consumers who switch will save on their monthly energy bills.

27. While DES highlights potential savings, it deceptively fails to clearly and conspicuously mention that DES’s variable rates can precipitously rise. DES fails to: a) adequately inform consumers that a variable rate plan can result in large increases in monthly energy bills when energy prices rise; and b) clearly and conspicuously describe the factors that can cause consumers’ energy costs to rise.

28. The terms of a consumer’s relationship with DES are memorialized in the New York Residential & Small Commercial Terms and Conditions (the “Agreement”),¹ which is only visible by clicking a link from the final section of the page to enroll with DES:

¹ A true copy of the Terms and Conditions visible to consumers during DES’s online sign-up process as of December 2016 is attached hereto as Exhibit A.

Consumers must click here to find language about variable rates (buried in the text of the Agreement).

➔ YOUR DIRECT ENERGY LOGIN INFORMATION

Create a user name and password to access your account online
User names and passwords must be 8-25 characters in length

User name:* Password:* Confirm Password:*

I confirm my enrollment for service and have read, understand, accept and agree to the Electricity Terms and Conditions and "Disclosure Statement", enrollment form and other materials and disclosures relating to my agreement for service. An electronic acceptance of the sales agreement is an agreement to initiate service and begin enrollment. I authorize Direct Energy to obtain and review information regarding my consumption history from the Utility. This information may be used by Direct Energy and any of its affiliates, agents or representatives to determine whether it will commence and/or continue to provide energy supply service to me and shall not be disclosed to a third-party unless required by law. I authorize the release of information to Direct Energy. This authorization will remain in effect during the Initial Term and any Renewal Term of this agreement.*

You may request a hard copy of this sales agreement. Direct Energy will send a hard copy by mail within 3 business days after this request. You may rescind this sales agreement and authorization within 3 calendar days after electronic acceptance of the sales agreement, and may rescind the authorization for release of information at anytime. You may request a hard copy of your sales agreement or request to rescind by calling into our toll-free telephone number at 1-866-348-4194 or email us at csdirectenergy@directenergy.com. To print a copy of the Terms and Conditions and Rate Plan Summary please click the links above.

Upon successful enrollment of your account with Direct Energy you will receive 1,000 Plenti points within 14 days from your service start date. In order to receive your points you must link Direct Energy your Plenti card number within 30 days on your Online Account Manager if you did not do so during your enrollment.

By checking the check box on the left, I also verify that I have read and understand the [Customer Bill of Rights](#).

SUBMIT YOUR ORDER >

29. The Agreement utterly fails to meet the requirement of Section 349-d.7 that variable energy rates be clearly and conspicuously disclosed in a contract for energy services.

The Agreement provides the following disclosure regarding DES’s variable rates:

After the Initial Term and during the Renewal Period, Direct Energy will charge you at a variable price per kWh based upon generally prevailing market prices for electricity in the LDU load zone for the applicable period, plus an adder, determined solely by Direct Energy in its discretion. Your variable price will include ancillary charges, cost of capacity, generation, line losses, New York City Utility Tax (when applicable), and other miscellaneous charges.

The reference to variable charges is buried without highlighting or other emphasis amid the Contract’s sea of confusing fine print (highlighting added):



NEW YORK RESIDENTIAL & SMALL COMMERCIAL TERMS AND CONDITIONS

Electricity Supply Service
Direct Energy Services, LLC

1. Terms of Service. These Terms and Conditions together with the Customer Disclosure Statement (defined below), which is incorporated herein by reference, constitute the agreement ("Agreement") between you and Direct Energy Services, LLC ("Direct Energy"). "Customer Disclosure Statement" means, as applicable, either the section of the enrollment consent form letter of authorization entitled "Customer Disclosure Statement" or the Schedule A accompanying these Terms and Conditions entitled "Customer Disclosure Statement – Schedule A to Terms and Conditions".

2. Agreement to Purchase Energy. We will supply your retail electricity, as delivered to you by your Local Distribution Utility ("LDU"), subject to the terms and conditions of this Agreement.

3. Agency. You appoint us as your agent to provide retail electric service, including the electric transportation, transmission and related services appropriate to provide that service to you.

4. Eligibility. For electric service, you must (a) be eligible to receive service from your LDU and stay eligible for such service during the Term of this Agreement and (b) meet all eligibility requirements to enable Direct Energy to provide electric service. We can terminate this Agreement by giving you notice if you are not eligible. For the Comfort & Control Plan, and Back to Business Plan, you must meet the eligibility requirements set forth in Section 9a and 9b respectively.

5. Term of Agreement. The "Initial Term" of your service can be found on the Customer Disclosure Statement. The Initial Term will continue for the number of monthly billing cycles as indicated on the Customer Disclosure Statement. Thereafter, you will be notified in advance that this Agreement will automatically renew on a month-to-month basis at the same terms, unless Direct Energy sends you written notice of proposed changes to such terms in advance of the renewal date (each such renewal are collectively referred to as the "Renewal Term"). Any such written notice will be sent at least thirty (30) days and no more than sixty (60) days prior to the renewal date, apprising you of any proposed changes in the terms and conditions of this Agreement and of your right to renew, terminate or renegotiate this Agreement. If you wish to reject the renewal of this Agreement without incurring an early cancellation fee, if any, you will have three (3) business days from the day you receive the first billing statement of your Renewal Term to cancel by calling us as detailed in Section 27. When receiving service on a month-to-month basis, you may provide written notice of termination or call us as detailed in Section 27 or call LDU to terminate the agreement. We may terminate this Agreement by providing thirty (30) days' written notice to you.

6. Price, the Rate and Daily Fee. During the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement. For a fixed or variable rate, your rate per kWh will be for electric generation service and New York City Utility tax (when applicable), and excludes other taxes and regulated charges from the utility, including but not limited to, delivery and distribution charges. You may also be charged a flat daily fee, which you will find in the Customer Disclosure Statement. Upon completion of the Initial Term, this Agreement will automatically renew on a month-to-month basis (the "Renewal Period") with no cancellation fee unless Direct Energy sends you advance written notice of a change. After the Initial Term and during the Renewal Period, Direct Energy will charge you at a variable price per kWh based upon generally prevailing market prices for electricity in the LDU load zone for the applicable period, plus an adder, determined solely by Direct Energy in its discretion. Your variable price will include ancillary charges, cost of capacity, generation, line losses, New York City Utility Tax (when applicable), and other miscellaneous charges. If you are a tax exempt customer, you must provide us with an appropriate exemption certificate before we will waive any assessment and collection of taxes. The amount

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www.directenergy.com – cadirectenergy@directenergy.com

you pay may change for reason for allowed by law, including, without limitation: (a) a change in charges, or new charges imposed by your LDU, NYPSC or other government agency; or (b) determine that the service plan originally designated is incorrect.

7. Renewable Energy Certificate Plan. If you are purchasing a Renewable Energy Certificate Plan, in addition to receiving your retail electric supply from us, we will purchase and retire Renewable Energy Certificates ("RECs") to offset 100% of your electricity usage, as determined by your LDU under this Agreement. Our Renewable Wind Energy Product combines locally generated electricity with national RECs generated from 100% wind energy. Our RECs are generated by wind farms in Texas. One (1) REC is equal to one (1) megawatt-hour of electricity generated from an eligible renewable energy source.

8. Solar Advantage Plan. If you are purchasing our Solar Advantage Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that is supported 100% by renewable energy credits, in an amount sufficient to match your annual consumption from your LDU. Direct Energy will purchase and retire RECs at any time and from time to time throughout the year. Direct Energy does not guarantee that the RECs purchased and retired by Direct Energy will be generated from any specific eligible renewable energy source (for example, sources may include wind, biomass, waste-to-energy, solar and hydroelectric). Direct Energy does not make any representations that the purchase of RECs under the Solar Advantage Plan includes eligible renewable generation required by state or federal RPS requirements, legislation, or settlement agreements. The electricity actually distributed to your service location will not contain electricity generated from any specific electric generation facility. The availability of electric generation facilities varies hour to hour, and from season to season, as does electricity use by customers. Direct Energy may take up to three (3) months following the close of a calendar year to make up any deficiency in the volume of RECs needed from particular generation facilities associated with your Solar Advantage Plan.

9a. Comfort & Control Plan. If you are purchasing our Comfort & Control Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes retail electric supply and at least one (1) but no more than three (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Comfort & Control Plan you: (i) must reside in a single family home; and (ii) have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market you may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 13) but within the Initial Term (as defined in Section 5), then you will be required to pay us a device cost recovery fee in the amount set forth in the Customer Disclosure Statement per NEST Learning Thermostat. You cannot return the NEST Learning Thermostat(s) to avoid the device cost recovery fee(s).

9b. Back to Business Plan. If you are purchasing our Back to Business Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes electricity service and at least one (1) but no more than three (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Back to Business Plan, you must have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 13) but within the Initial Term

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30. Even for those customers who read and understand the terms of the Agreement, the Agreement is still entirely unclear as to how a customer would determine what he or she would pay under a variable plan: while the Agreement mentions "generally prevailing market prices for electricity," it offers no suggestion of where a consumer might be able to see those prices before being billed. More important, the Agreement also references an "adder, determined solely by Direct Energy in its discretion." So a consumer truly has no way to determine what his or her variable rate would be; DES states that it can charge whatever it wants. This is hardly the clear and conspicuous disclosure of variable charges mandated by the ESCO Consumers Bill of

Rights.

31. Through its conduct, DES has violated both the spirit and letter of Section 349-d, the law that is explicitly designed to protect energy consumers and allow them to make informed choices when deciding whether to switch to an ESCO.

C. Plaintiff Forte's Experience

32. Plaintiff Forte switched to DES to supply his electricity in December 2014.

33. DES sent Plaintiff a welcome letter dated December 22, 2014 (the "Welcome Letter"), which included DES's Terms and Conditions.

34. Page 6 of the Welcome Letter spells out that Plaintiff would pay a fixed price of \$0.07890/KWH for the first year of service with DES. The ninth row on page 6 of the Welcome Letter also states: "*We will send you a renewal notice between 30 and 60 days prior to the end of your Initial Term. This Agreement shall automatically renew for successive month-to-month periods at our standard variable rate plan as per the price applicable to the Terms and Conditions.*"²

35. Thus, Forte's fixed rate electricity supply plan with DES automatically converts to a variable rate without any action required by Forte. And just as with the sign-up process, DES does not state clearly or simply all variable charges or fees that Forte will automatically be charged after twelve months. Instead, just as with the sign-up process, DES refers to its Terms and Conditions. Page 3 of the Welcome Letter contains that relevant Terms and Conditions and states, in relevant part, as follows:

6. Price: the Rate and Daily Fee. During the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement. . . . For variable rate, each month will reflect the cost of electricity, including energy, capacity, settlement,

² A true copy of the December 22, 2014 Welcome Letter—including the Terms and Conditions DES sent to Plaintiff—is attached hereto as Exhibit B.

ancillaries, related transmission and distribution charges and other market-related factors; plus all applicable taxes, fees, charges, costs, expenses and margins. You may also be charged a flat daily fee, which you will find in the Customer Disclosure Statement. After the Initial Term and during the Renewal Term, your rate per kWh, as well as the daily fee, will both be variable, and will not change more than once each monthly billing cycle, unless we send advance written notice indicating otherwise. Each will change as we solely determine based on business and market conditions, and will not increase more than 40% over the rate for previous monthly billing cycle.



NEW YORK RESIDENTIAL & SMALL COMMERCIAL TERMS AND CONDITIONS

Electricity Supply Service
Direct Energy Services, LLC

1. Terms of Service. These Terms and Conditions together with the Customer Disclosure Statement (defined below), which is incorporated herein by reference, constitute the agreement ("Agreement") between you and Direct Energy Services, LLC ("Direct Energy"). "Customer Disclosure Statement" means, as applicable, either the section of the enrollment consent form/letter of authorization entitled "Customer Disclosure Statement" or the Schedule A accompanying these Terms and Conditions entitled "Customer Disclosure Statement – Schedule A to Terms and Conditions".

2. Agreement to Purchase Energy. We will supply your retail electricity, as delivered to you by your Local Distribution Utility ("LDU"), subject to the terms and conditions of this Agreement.

3. Agency. You appoint us as your agent to provide retail electric service, including the electric transportation, transmission and related services appropriate to provide that service to you.

4. Eligibility. For electric service, you must (a) be eligible to receive service from your LDU and stay eligible for such service during the Term of this Agreement and (b) meet all eligibility requirements to enable Direct Energy to provide electric service. We can terminate this Agreement by giving you notice if you are not eligible. For the Comfort & Control Plan, you must meet the eligibility requirements set forth in Section 8.

5. Term of Agreement. The "Initial Term" of your service can be found on the Customer Disclosure Statement. The Initial Term will continue for the number of monthly billing cycles as indicated on the Customer Disclosure Statement. Thereafter, you will be notified in advance that this Agreement will automatically renew on a month-to-month basis at the same terms, unless Direct Energy sends you written notice of proposed changes to such terms in advance of the renewal date (each such renewal are collectively referred to as the "Renewal Term"). Any such written notice will be sent at least 30 days and no more than 60 days prior to the renewal date, apprising you of any proposed changes in the terms and conditions of this Agreement and of the your right to renew, terminate or renegotiate this Agreement. If you wish to reject the renewal of this Agreement without incurring an early cancellation fee, if any, you will have three (3) business days from the day you receive the first billing statement of your Renewal Term to cancel by calling us as detailed in Section 24. When receiving service on a month-to-month basis, you may provide written notice of termination or call us as detailed in Section 24 or call their delivery company to terminate the agreement. We may terminate this Agreement by providing 30 days' written notice to you.

6. Price: the Rate and Daily Fee. During the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement. For a fixed rate, your rate per kWh excludes: (a) transmission, transportation, capacity and ancillary service charges; (b) fees, charges and other assessments imposed by your LDU, the New York Public Service Commission (including the New York Department of Public Service, the "NYPSC") or other governmental agency; and (c) federal, state and local taxes. These items are in addition to your per kWh rate. For variable rate, each month will reflect the cost of electricity, including energy, capacity, settlement, ancillaries, related transmission and distribution charges and other market-related factors; plus all applicable taxes, fees, charges, costs, expenses and margins. You may also be charged a flat daily fee, which you will find in the Customer Disclosure Statement. After the Initial Term and during the Renewal Term, your rate per kWh, as well as the daily fee, will both be variable, and will not change more than once each monthly billing cycle, unless we send advance written notice indicating otherwise. Each will change as we solely determine based on business and market conditions, and will not increase more than 40% over the rate for the previous monthly billing cycle. Your rate per kWh excludes: (a) transmission, transportation, capacity and ancillary service charges; (b)

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fees, charges and other assessments imposed by your LDU, the New York Public Service Commission (including the New York Department of Public Service, the "NYPSC") or other governmental agency; and (c) federal, state and local taxes. These items are in addition to your per kWh rate. If you are a tax-exempt customer, you must provide us with an appropriate exemption certificate before we will waive any assessment and collection of taxes. The amount you pay may change for reasons allowed by law, including, without limitation (a) a change in charges, or new charges, imposed by your LDU, NYPSC or other government agency; or (b) we determine that the service plan originally designated is incorrect.

7. Renewable Energy Certificate Plan. If you are purchasing a Renewable Energy Certificate Plan, in addition to receiving your retail electric supply from us, we will purchase and retire Renewable Energy Certificates ("RECs") to offset 100% of your electricity usage, as determined by your LDU under this Agreement. Our Renewable Wind Energy Product combines locally generated electricity with national RECs generated from 100% wind energy. Our RECs are generated by wind farms in Texas. One (1) REC is equal to one (1) megawatt-hour of electricity generated from an eligible renewable energy source.

8a. Comfort & Control Plan. If you are purchasing our Comfort & Control Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes retail electric supply and at least one (1) but no more than (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Comfort & Control Plan you (i) must reside in a single family home and (ii) have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 10) but within the Initial Term, then you will be required to pay us a device cost recovery fee in the amount set forth in the Customer Disclosure Statement per NEST Learning Thermostat. You cannot return the NEST Learning Thermostat(s) to avoid the device cost recovery fee(s).

8b. Back to Business Plan. If you are purchasing our Back to Business Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes electricity service and at least one (1) but no more than (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Back to Business Plan, you must have high speed internet service (Dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 11) but within the Initial Term (as defined in Section 6), then you will be required to pay us a device cost recovery fee in the amount set forth in the Rate Plan Summary per NEST Learning Thermostat.

9. Billing. Our electric service, daily fee, and other charges will appear in your service bill from your LDU. Your LDU calculates and determines your usage and charges. Your LDU bills will specify where payments are due, and you agree to pay your bill as required by your LDU. Your payments may be pro-rated in accordance with procedures adopted by the NYPSC. Additionally, if your LDU is Central Hudson, you may be offered a billing cycle ending either monthly or every other month. If you receive residential service, your LDU may offer budget, leveled, or other payment plans, as provided in New York's Home Energy Fair Practices Act ("HEFPA"). The LDU's measurement of electricity will be definitive for

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36. This disclosure is not clear or simple, and it does not clearly and conspicuously identify all variable charges, as required by law. Also, the Customer Disclosure Statement (page 6 of the Welcome Letter) does not include the “flat daily fee” mentioned.

37. In addition, the Terms and Conditions demonstrate the willfulness of DES’s conduct. Contrast “[d]uring the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement” with the long, winding quoted language starting with “[f]or variable rate.” The Initial Rate language is clear and simple while the variable rate language essentially states, “DES will charge whatever it chooses.” DES demonstrably knows how to draft Terms and Conditions that are clear and simple, but chooses not to use clear and simple language for variable rate customers.

38. Furthermore, Plaintiff did not receive a renewal notice at least thirty days prior to the contract renewal date that clearly, simply, or conspicuously identified all variable charges.

39. None of the materials DES provided Plaintiff—from marketing materials to sign-up materials to post-sign-up materials—clearly, simply, or conspicuously identified all variable charges.

40. As a result of DES’s conduct, Plaintiff was injured because he paid more for DES’s variable rate electricity supply than he would have from an alternative energy supplier.

CLASS ACTION ALLEGATIONS

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

42. The Class is preliminarily defined as follows:

All Direct Energy Services variable rate energy customers in New York from the date three years prior to the date of the filing this action to the date of Class Certification of this action (the “Class”).

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

44. Plaintiff does not know the exact size of the Class because such information is in the exclusive control of Defendant. Plaintiff believes, however, that based on the number of DES customers, the Class encompasses thousands of individuals whose identities can be readily ascertained from Defendant's records. Accordingly, the members of the Class are so numerous that the joinder of all such persons is impracticable.

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

46. Plaintiff will fairly and adequately protect the interests of all Class members. Plaintiff has retained competent attorneys experienced in the prosecution of class actions to represent his interests and those of the Class.

47. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, and a class action will generate common answers which are apt to drive the resolution of this action. These common questions of law and fact include, without limitation:

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

48. A class action is superior to other methods for resolving this controversy because:

- a. the prosecution of separate actions by Class members creates a risk of adjudications with respect to individual Class members that would be dispositive of the interests of other Class members not parties to that action, or substantially impair or impede their ability to protect their interests;
- b. the prosecution of separate actions by Class members creates a risk of inconsistent or varying adjudications, which would establish inconsistent standards for Defendant's conduct;
- c. Defendant's wrongful conduct is generally applicable to all Class members; and
- d. there will be no difficulty in managing this action as a class action.

49. Accordingly, this action satisfies the requirements set forth under Federal Rules of Civil Procedure 23(a) and 23(b).

COUNT I
VIOLATION OF NEW YORK GENERAL BUSINESS LAW SECTION 349-d.7

50. Plaintiff incorporates by reference the allegations contained in the preceding

paragraphs as if fully set forth herein.

51. Plaintiff brings this claim under Section 349-d.7 on his own behalf and on behalf of the members of the Class.

52. Section 349-d.7 provides that “[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified.”

53. None of Defendant’s marketing materials adequately disclose that DES charges a variable rate in a clear and conspicuous manner. Indeed, the marketing materials created by DES and distributed to Plaintiff and prospective customers make no reference at all to the fact that DES’s rates are variable, and similarly fail to provide a clear and conspicuous explanation of the factors affecting DES’s variable rates.

54. The contracts Defendant provided to customers likewise fail to clearly and conspicuously inform consumers about DES’s variable energy rates or the factors affecting DES’s variable rates.

55. Through its conduct described above, Defendant has violated Section 349-d.7 and caused financial injury to Plaintiff and DES’s other variable rate customers by causing Plaintiff and Class members to pay more for electricity than they would have had they stayed with their previous energy supplier or chosen a different energy supplier.

56. Because the Agreement violates Section 349-d.7, it is void and unenforceable as contrary to New York’s public policy under Section 349-d.8. Any purported waiver by Plaintiff of the rights afforded by Section 349-d is similarly void and unenforceable by DES. N.Y. Gen. Bus. Law § 349-d.8.

57. Section 349-d.10 also provides that

any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

58. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class suffered injury and were damaged in an amount to be determined at trial, but in any case not less than \$500 for each violation.

59. As shown above, Defendant willfully or knowingly violated Section 349-d.

60. Because Defendant's violations of Section 349-d have damaged Plaintiff and the Class, and Defendant's continued violations threaten additional injury for which Plaintiff and the Class have no adequate remedy at law, Plaintiff seeks an order pursuant to Section 349-d enjoining Defendants from such future conduct.

61. Pursuant to Section 349-d, Plaintiff seeks actual, statutory, and treble damages, costs and expenses, pre and post-judgment interest, and attorneys' fees.

COUNT II
VIOLATION OF NEW YORK GENERAL BUSINESS LAW SECTION 349-d.3

62. Plaintiff incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

63. Plaintiff brings this claim on his own behalf and on behalf of the members of the Class.

64. Section 349-d.3 requires that "[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services."

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

66. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of Section 349-d.3 by (a) emphasizing the potential savings from switching to DES while neglecting to mention that any brief savings would be quickly erased by a substantial increase in energy prices, and (b) failing to adequately inform consumers that their energy costs can precipitously rise with DES's variable rate plans.

67. Through its conduct described above, Defendant has violated Section 349-d.3 and caused financial injury to Plaintiff and DES's other variable rate customers by causing Plaintiff and Class members to pay more for electricity than they would have had they stayed with their previous energy supplier or chosen a different energy supplier.

68. This conduct is willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

69. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class suffered injury and were damaged in an amount to be determined at trial, but in any case not less than \$500 for each violation.

70. Defendant willfully or knowingly violated Section 349-d.

71. Because Defendant's violations of Section 349-d have damaged Plaintiff and the Class, and Defendant's continued violations threaten additional injury for which Plaintiff and the Class have no adequate remedy at law, Plaintiff seeks an order pursuant to Section 349-d enjoining Defendants from such future conduct.

72. Pursuant to Section 349-d, Plaintiff seeks actual, statutory, and treble damages, costs and expenses, pre and post-judgment interest, and attorneys' fees.

COUNT III
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

73. Plaintiff incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

74. Plaintiff brings this claim on his own behalf and on behalf of the members of the Class.

75. Defendant has engaged in, and continues to engage in, deceptive acts and practices in violation of Section 349 by (a) emphasizing the potential savings from switching to DES while neglecting to mention that any brief savings would be quickly erased by a substantial increase in energy prices, and (b) failing to adequately inform consumers that their energy costs can precipitously rise with DES's variable rate plans.

76. Through its conduct described above, Defendant has violated Section 349 and caused financial injury to Plaintiff and DES's other variable rate customers by causing Plaintiff and Class members to pay more for electricity than they would have had they stayed with their previous energy supplier or chosen a different energy supplier.

77. Defendant's conduct is unfair, unconscionable, willful, and contrary to the public policy of New York, which aims to protect consumers.

78. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class suffered injury and were damaged in an amount to be determined at trial, but in any case not less than \$50 for each violation.

79. Defendant willfully or knowingly violated Section 349.

80. Because Defendant's violations of Section 349 have damaged Plaintiff and the Class, and Defendant's continued violations threaten additional injury for which Plaintiff and the

Class have no adequate remedy at law, Plaintiff seeks an order pursuant to Section 349(h) enjoining Defendants from such future conduct.

81. Pursuant to Section 349, Plaintiff seeks actual, statutory, and treble damages, costs and expenses, pre and post-judgment interest, and attorneys' fees.

**COUNT IV
UNJUST ENRICHMENT**

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

83. Common law prohibits breaches of contract, including breach of a contract implied under the circumstances of a relationship between parties, where such breach results in the unjust and inequitable enrichment of one party at the expense of another.

84. Common law prohibits one party's possession of money that belongs to another and that, in the absence of an agreement, and in equity and good conscience, the party possessing such money ought not retain.

85. Through the deceptive, unlawful, and unfair conduct alleged in this Complaint, Defendant has been enriched by (a) emphasizing the potential savings from switching to DES while neglecting to mention that any brief savings would be quickly erased by a substantial increase in energy prices, and (b) failing to adequately inform consumers that their energy costs can precipitously rise with DES's variable rate plans.

86. Defendant has benefited from its deceptive, unlawful, and unfair conduct. Defendant has retained these benefits that rightfully belong to Plaintiff and the Class.

87. Defendant's retention of those benefits constitutes its unjust enrichment at the expense of Plaintiff and the Class.

88. Defendant appreciates and has knowledge of such benefits.

89. Under principles of equity and good conscience, Defendant should not be permitted to retain the revenue that they acquired by virtue of their unlawful conduct. All funds, revenue, and benefits received by Defendant rightfully belong to Plaintiff and the Class, which Defendant has unjustly received as a result of its actions.

90. Plaintiff and the Class have no adequate remedy at law.

91. As a result of Defendant's wrongful retention of benefits to which Plaintiff and the Class are entitled, Plaintiff and the Class have suffered substantial damages and losses and are entitled to recover benefits wrongfully retained by Defendant and such other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Forte respectfully requests that the Court:

- a. Issue an order certifying the Class defined above, appointing the Plaintiff as Class representative, and designating the undersigned firm as Class Counsel;
- b. Find that Defendant has committed the violations of law alleged herein;
- c. Enter an order granting monetary relief pursuant to Section 349-d on behalf of the Class;
- d. Enter an order granting monetary relief pursuant to Section 349 on behalf of the Class;
- e. Determine that Defendant has been unjustly enriched as a result of its wrongful conduct, and enter an appropriate order awarding restitution and monetary damages to the Class;
- f. Render an award of compensatory damages of at least \$5,000,000, the precise amount of which is to be determined at trial;

- g. Issue an injunction or other appropriate equitable relief preventing Defendant from engaging in the deceptive practices alleged herein;
- h. Render an award of treble damages;
- i. Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- j. Grant all such other relief as the Court deems appropriate.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: March 6, 2017

Respectfully submitted,

KamberLaw, LLC

By:

s/ Adam C. York

One of the attorneys for Plaintiff, individually and on behalf of a class of similarly situated individuals

Adam C. York (Bar Number: 520506)
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Exhibit A

Direct Energy New York Residential & Small Commercial
Terms and Conditions, as viewed December 14, 2016



NEW YORK RESIDENTIAL & SMALL COMMERCIAL TERMS AND CONDITIONS

Electricity Supply Service
Direct Energy Services, LLC

1. Terms of Service. These Terms and Conditions together with the Customer Disclosure Statement (defined below), which is incorporated herein by reference, constitute the agreement ("Agreement") between you and Direct Energy Services, LLC ("Direct Energy"). "Customer Disclosure Statement" means, as applicable, either the section of the enrollment consent form/letter of authorization entitled 'Customer Disclosure Statement' or the Schedule A accompanying these Terms and Conditions entitled 'Customer Disclosure Statement – Schedule A to Terms and Conditions'.

2. Agreement to Purchase Energy. We will supply your retail electricity, as delivered to you by your Local Distribution Utility ("LDU"), subject to the terms and conditions of this Agreement.

3. Agency. You appoint us as your agent to provide retail electric service, including the electric transportation, transmission and related services appropriate to provide that service to you.

4. Eligibility. For electric service, you must (a) be eligible to receive service from your LDU and stay eligible for such service during the Term of this Agreement and (b) meet all eligibility requirements to enable Direct Energy to provide electric service. We can terminate this Agreement by giving you notice if you are not eligible. For the Comfort & Control Plan, and Back to Business Plan, you must meet the eligibility requirements set forth in Section 9a and 9b respectively.

5. Term of Agreement. The "Initial Term" of your service can be found on the Customer Disclosure Statement. The Initial Term will continue for the number of monthly billing cycles as indicated on the Customer Disclosure Statement. Thereafter, you will be notified in advance that this Agreement will automatically renew on a month-to-month basis at the same terms, unless Direct Energy sends you written notice of proposed changes to such terms in advance of the renewal date (each such renewal are collectively referred to as the "Renewal Term"). Any such written notice will be sent at least thirty (30) days and no more than sixty (60) days prior to the renewal date, apprising you of any proposed changes in the terms and conditions of this Agreement and of your right to renew, terminate or renegotiate this Agreement. If you wish to reject the renewal of this Agreement without incurring an early cancellation fee, if any, you will have three (3) business days from the day you receive the first billing statement of your Renewal Term to cancel by calling us as detailed in Section 27. When receiving service on a month-to-month basis, you may provide written notice of termination or call us as detailed in Section 27 or call LDU to terminate the agreement. We may terminate this Agreement by providing thirty (30) days' written notice to you.

6. Price: the Rate and Daily Fee. During the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement. For a fixed or variable rate, your rate per kWh will be for electric generation service and New York City Utility tax (when applicable), and excludes other taxes and regulated charges from the utility, including but not limited to, delivery and distribution charges. You may also be charged a flat daily fee, which you will find in the Customer Disclosure Statement. Upon completion of the Initial Term, this Agreement will automatically renew on a month-to-month basis (the "Renewal Period") with no cancellation fee unless Direct Energy sends you advance written notice of a change. After the Initial Term and during the Renewal Period, Direct Energy will charge you at a variable price per kWh based upon generally prevailing market prices for electricity in the LDU load zone for the applicable period, plus an adder, determined solely by Direct Energy in its discretion. Your variable price will include ancillary charges, cost of capacity, generation, line losses, New York City Utility Tax (when applicable), and other miscellaneous charges. If you are a tax exempt customer, you must provide us with an appropriate exemption certificate before we will waive any assessment and collection of taxes. The amount

you pay may change for reason for allowed by law, including, without limitation: (a) a change in charges, or new charges imposed by your LDU, NYPSC or other government agency; or (b) determine that the service plan originally designated is incorrect.

7. Renewable Energy Certificate Plan. If you are purchasing a Renewable Energy Certificate Plan, in addition to receiving your retail electric supply from us, we will purchase and retire Renewable Energy Certificates ("RECs") to offset 100% of your electricity usage, as determined by your LDU under this Agreement. Our Renewable Wind Energy Product combines locally generated electricity with national RECs generated from 100% wind energy. Our RECs are generated by wind farms in Texas. One (1) REC is equal to one (1) megawatt-hour of electricity generated from an eligible renewable energy source.

8. Solar Advantage Plan. If you are purchasing our Solar Advantage Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that is supported 100% by renewable energy credits, in an amount sufficient to match your annual consumption from your LDU. Direct Energy will purchase and retire RECs at any time and from time to time throughout the year. Direct Energy does not guarantee that the RECs purchased and retired by Direct Energy will be generated from any specific eligible renewable energy source (for example, sources may include wind, biomass, waste-to-energy, solar and hydroelectric). Direct Energy does not make any representations that the purchase of RECs under the Solar Advantage Plan includes eligible renewable generation required by state or federal RPS requirements, legislation, or settlement agreements. The electricity actually distributed to your service location will not contain electricity generated from any specific electric generation facility. The availability of electric generation facilities varies hour to hour, and from season to season, as does electricity use by customers. Direct Energy may take up to three (3) months following the close of a calendar year to make up any deficiency in the volume of RECs needed from particular generation facilities associated with your Solar Advantage Plan.

9a. Comfort & Control Plan. If you are purchasing our Comfort & Control Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes retail electric supply and at least one (1) but no more than three (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Comfort & Control Plan you: (i) must reside in a single family home; and (ii) have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market you may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 13) but within the Initial Term (as defined in Section 5), then you will be required to pay us a device cost recovery fee in the amount set forth in the Customer Disclosure Statement per NEST Learning Thermostat. You cannot return the NEST Learning Thermostat(s) to avoid the device cost recovery fee(s).

9b. Back to Business Plan. If you are purchasing our Back to Business Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes electricity service and at least one (1) but no more than three (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Back to Business Plan, you must have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 13) but within the Initial Term



(as defined in Section 5), then you will be required to pay us a device cost recovery fee in the amount set forth in the Customer Disclosure Statement per NEST Learning Thermostat.

10. RateFlex Plan. If you are purchasing our RateFlex Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes electricity service. Beginning on the next available meter read date that your electricity service supplier is changed to Direct Energy by the LDU, Direct Energy will charge you a series of rates through pre-defined periods ("Price Blocks") as determined in your Customer Disclosure Statement. After your electricity service supplier is changed to Direct Energy, during each Price Block, as defined in your Customer Disclosure Statement, Direct Energy will charge you the price per kWh as set forth in the Customer Disclosure Statement for such Price Block. You understand that your rate per kWh will be for electric generation service and New York City Utility tax (when applicable), and excludes other taxes and regulated charges from the LDU, including but not limited to, delivery and distribution charges (as defined in Section 6). If you cancel this Agreement after the Rescission Period (as defined in Section 13 below) but within the Initial Term (as defined in Section 5), then you may be required to pay us an early cancellation fee in the amount set forth in the Customer Disclosure Statement.

11. Smart & Bright Plan. If you are purchasing a plan with a Hive Active Light™ Starter Pack pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes natural gas supply service and one (1) Hive Active Light™ Starter Pack. The Hive Active Light™ Starter Pack consists of one (1) Hive Hub and two (2) A19 dimmable white light bulbs. To utilize the full features of the Hive Active Light™ Starter Pack, you must have high speed, Wi-Fi internet service (dial up and mobile internet access is not compatible) and a router with a spare Ethernet port. To download the Hive app, you will need a device running iOS7 or later or Android 4.0.3 or higher. The Hive Active Light™ Starter Pack may also collect usage data that may be shared between Hive and Direct Energy and/or their affiliates and trusted third parties. For more information on the Hive Active Light™ Starter Pack, please visit <https://www.hivehome.com/faqs>. If you cancel this Agreement after the Rescission Period (as defined in Section 13) but within the Initial Term (as defined in Section 5), then you will be required to pay us an early cancellation fee in the amount set forth in the Customer Disclosure Statement. You cannot return the Hive device(s) to avoid the early cancellation fee.

12. Billing. Our electric service, daily fee, and other charges will appear in your service bill from your LDU. Your LDU calculates and determines your usage and charges. Your LDU bills will specify when payments are due, and you agree to pay your bill as required by your LDU. Your payments may be pro-rated in accordance with procedures adopted by the NYPSC. Additionally, if your LDU is Central Hudson, you may be offered a billing cycle ending either monthly or every other month. If you receive residential service, your LDU may offer budget, leveled, or other payment plans, as provided in New York's Home Energy Fair Practices Act ("HEFPA"). The LDU's measurement of electricity will be definitive for the purpose of calculating your charges under this Agreement. This determination may include any combination of actual meter reading usage, usage estimations or pro-rated usage.

13. Your Right of Rescission and Termination by You. Residential and Small Commercial customers may rescind this Agreement within three (3) business days after receiving a copy of it ("Rescission Period") without an early cancellation fee and/or device cost recovery fee. Thereafter, Residential and Small Commercial customers may terminate service under this Agreement at any time during the Initial Term; provided, however, such customer will be required to pay us the early termination fee and/or device cost recovery fee as set forth in the Customer Disclosure Statement immediately, but in no event no later than ten (10) days after the date you receive an oral or written notice requesting payment. The early termination fee will not to exceed (a) one hundred dollars for any contract with a remaining term of less than twelve

months; (b) two hundred dollars for any contract with a remaining term of twelve months or more.

To terminate service under this Agreement, contact us at our Customer Service Contact Center (see Section 27 for contact information). If you terminate service with us, your service will be switched to the LDU at the end of the next switching cycle following your request for termination.

14. Termination by Us. We can terminate this Agreement for any of the following reasons by providing you fifteen (15) days' advance written notice: (a) fraudulent or misrepresented information was used to secure this Agreement; (b) you rescind your information release authorization provided in Section 18 below; (c) we determine that your credit is inadequate; (d) you change your physical address or location; (e) a court or administrative agency takes action that renders ineffective any material provision of this Agreement, prohibits material performance under the Agreement, or otherwise constitutes a material adverse change for us; (f) a Force Majeure Event that materially impacts our service; or (g) you breach this Agreement. If terminated, your service will switch to the LDU no later than the end of the second following billing cycle. After the end of the Initial Term, we may terminate this Agreement at any time for any reason, and if we do, your service will cease no later than the end of the second following billing cycle.

15. Effect of Termination. Upon termination, you may either select another energy service company or return to your LDU service. A final bill will be sent for charges through the date your service ends within twenty (20) calendar days after the final scheduled meter reading by your LDU (or, if access to your meter is unavailable, an estimate of your usage will be used for the final bill, which will be trued-up when the final meter reading is performed). Upon your request for termination, we will provide you with a termination verification number.

16. Transfer. If you relocate within the LDU service territory, this Agreement will continue for the remainder of the Term for services at your new location. You are responsible for (1) calling your LDU (see the Customer Disclosure Statement for contact information) to inform them of your request to transfer your LDU service to another location; (2) obtaining your new account information from your LDU; and (3) contacting us using the information in Section 27, to provide your new account information and location to complete the transfer of service. You understand that this Agreement will automatically terminate if you relocate outside the LDU service territory, or if the requested service location is not served by the LDU. You must provide to us, at the address provided in Section 27, written proof of your new location outside the LDU service territory. In connection with your relocation in accordance with this Section 16, you will not be charged an early cancellation fee; however, if you are enrolled in our Comfort & Control Plan, Direct Energy will have the right to charge you the device cost recovery fee per thermostat set forth in the Customer Disclosure Statement.

17. Assignment. You are responsible for payment to us. You may not assign or delegate this Agreement to anyone without our prior written consent. We may assign or delegate this Agreement to anyone, and that includes transferring our financial interest in your account. If such an assignment is made, and if required by law, we will provide written notice no later than thirty (30) calendar days prior to the transfer date. The notice shall include details of the assignment and your right to choose another supplier or to return to full utility service. After assignment, Direct Energy will have no further obligations under this Agreement.

18. Information Release Authorization. You authorize us to obtain and review information regarding your credit, consumption and billing history from any credit or payment reporting agency. We may also obtain and review the following information from the LDU: public assistance status, existence of medical emergencies, status as to whether you have a medical emergency or are elderly, blind or disabled, and data applicable to cold weather periods under New York PSL Section 32(3), information pertaining to New York PSL Section 33, tax status and eligibility for economic development or other incentives. This authorization will remain in effect during the Term of this Agreement. You may rescind this authorization at any time by notifying us at our Customer Service Contact



Center (see Section 27 for the contact information). If you do so, we can cancel this Agreement (see Section 14 above). We, and any of our affiliates, agents or representatives, may use this information, along with information you provide, to review your creditworthiness, eligibility for services, and to properly serve you. Such information may be disclosed to a third-party if: (a) required by law; (b) such disclosure is to a third-party service provider under confidentiality obligations not to disclose such information and to use it solely for the purpose of providing services to us; or (c) as provided below. You understand that we may refuse to offer service to you as allowed by law. You also understand that we may report payment activity on your account with us to any credit reporting agency. Your acceptance of this Agreement is an authorization for release of this information.

19. Consumer Protections. Residential and non-residential service is governed by this Agreement and the applicable regulations and orders of the NYPSC. Residential service is additionally governed by HEFPA, which deals, among other matters, with the time and form of the Final Termination Notice and Final Suspension Notice, physical termination and suspension of service, ending termination and suspension of service, restoration of service, deferred payment agreements, billing adjustments, multiple and two-family dwellings, persons receiving social services assistance and special procedures for medical emergencies, the elderly, blind or disabled, and during cold weather. You may obtain additional information about consumer protections at our Customer Service Contact Center or the NYPSC (see Section 27 for the contact information). The NYPSC monitors complaints against all energy companies. An excessive number of complaints may result in an energy service company no longer being eligible to supply electricity in New York State.

20. Dispute Resolution. If there is a billing dispute or a disagreement involving our service, the parties will attempt to resolve the dispute. In order to resolve a dispute, you should first contact our Customer Service Contact Center (see Section 27 for the contact information). We will work to resolve your inquiry fairly and efficiently. We will provide an acknowledgment to you within two (2) days, and will respond to you within five (5) days with the results of our investigation, and we will provide a written report if requested. If we do not resolve the dispute related to your residential service within forty-five (45) days, you have the right to seek NYPSC review as described in Section 19 above. And if your dispute concerns non-residential service, you may submit your dispute to small claims court or any other court of competent jurisdiction.

21. Confidentiality. If you are not receiving service for residential use, the parties will keep the terms and conditions of this Agreement confidential, except as may be required to provide service or to meet the requirements of any regulatory body.

22. Title. All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for electricity shall be at the New York Independent System Operator load bus (located outside of the municipality where you reside), and shall constitute the point at which title transfers and the sale occurs. We shall indemnify and hold you harmless from all taxes, royalties, fees or other charges incurred with respect to the electricity before title passes.

23. Warranty. This Agreement, including any attachments, makes up the entire Agreement between the parties. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

24. Force Majeure. We will make commercially reasonable efforts to provide your service, but do not guarantee a continuous supply of electricity. Events beyond our control ("Force Majeure Events") may result in interruptions in service. We will not be liable for any interruptions caused by a Force Majeure Event. We do not transmit or distribute electricity. Therefore, we will not be liable for damages caused by a Force Majeure Event, including but not limited to acts of God, acts of any governmental authority, accidents, strikes, labor disputes or problems,

required maintenance work, inability to access the LDU system, non-performance by the LDU (including a facility outage on its distribution lines), changes in laws, rules or regulations of any governmental authority or any other cause or event beyond our control.

25. Remedies and Limitations of Liability. THE ONLY REMEDY IN ANY CLAIM OR SUIT YOU BRING AGAINST US WILL BE DIRECT, ACTUAL DAMAGES YOU HAVE INCURRED. YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY IN LAW OR EQUITY. NEITHER YOU NOR WE WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. IN ADDITION TO THE PROVISION OF SECTION 24 ABOVE, WE ARE NOT LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM (A) INTERRUPTIONS TO, OR SHORTAGES OF, ELECTRICITY SUPPLY, OR (B) ERRORS IN THE QUANTITY, QUALITY AND MEASUREMENT OF ELECTRICITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

26. Indemnification and No Third-Party Beneficiaries. You are responsible for, and will immediately indemnify us against, any and all loss or damage resulting from (a) your failure to fully comply with this Agreement; or (b) your use or misuse of electricity after it is delivered to you. There are no third-party beneficiaries to this Agreement.

27. Contact Information.

Direct Energy - You may contact our Customer Service Contact Center at 1-866-348-4194. Our hours are Monday through Friday 8:00 a.m. to 8:00 p.m. EST and Saturday 8:00 a.m. to 5:00 p.m. EST, (hours subject to change without notice). You may also correspond in writing at: Direct Energy Customer Service Contact Center, PO Box 180, Tulsa, OK 74101-0180. Always include your account number in your correspondence.

Your LDU - Contact information for your LDU is below, as applicable to your specific LDU:

Central Hudson Gas and Electric: 1-800-527-2714; Consolidated Edison of NY: 1-800-752-6633; Coning Natural Gas: 1-607-936-3755; National Grid (KED-NY): 1-718-643-4050; National Grid (KED-LI): 1-800-490-0045; National Grid: 1-800-892-2345; National Fuel Gas: 1-800-444-3130; NYSEG: 1-800-572-1131; Orange and Rockland: 1-877-434-4100; or Rochester Electric: 1-800-743-1701.

New York State Public Service Commission - You may contact NYPSC at 1-800-342-3377 or by writing to the NYPSC at: New York State Public Service Commission, Department of Public Service - Office of Consumer Affairs, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

28. Venue and Choices of Law. Venue for any lawsuit related to this Agreement shall lie exclusively in the State of New York. Further, this Agreement shall be construed under and shall be governed by the laws of the State of New York, without regard to the application of its conflicts of law principles.

29. Taxes and Laws. Except as otherwise provided in the Agreement or provided by law, any and all taxes due and payable with respect to the performance of your obligations under this Agreement shall be paid by you. The parties' obligations under this Agreement are subject to any validly issued present and future legislation, orders, rules or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or over the services to be provided herein.

30. Emergency Services. While your energy supply will be provided by Direct Energy, your energy delivery service shall continue to be provided by your LDU. In the event of an electric outage, service interruption or other emergency, you should immediately call your LDU at the contact information provided in Section 27.

30. Parties Bound. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

Exhibit B

December 22, 2014 Welcome Letter to Plaintiff Martin Forte



We're glad you're with us.

P.O. Box 180
Tulsa, OK 74101-0180

December 22, 2014

Martin Forte



Hi Martin,

Thank you for choosing Direct Energy! By switching to us, you've joined thousands of New York customers who have selected Direct Energy.

You'll rest easy knowing that Direct Energy is one of the largest providers of natural gas, electricity and related services in North America, with more than 6 million customers, a service area spanning all 50 states, the District of Columbia and 10 Canadian provinces. This allows us to design plans that give you a range of options to meet your energy needs.

Enclosed you'll find everything you need to know about your electric/gas plan, including your rights as a customer and pricing information. We have received your application and it is currently being processed with your utility. Following the acceptance of your enrollment, your service will begin within 1-2 billing cycles.

The bill you receive from your utility company will remain the same, but your energy supply charge will now be from Direct Energy.

Questions?

If you have questions about your enrollment, visit directenergy.com or call us directly at **1-866-348-4194**. Our Customer Care team is available to assist you Monday through Friday from 8 a.m. - 8 p.m. EST and Saturday from 8 a.m. - 5 p.m. EST.

And again, thank you for choosing Direct Energy.

Sincerely,
Direct Energy



PRICE PROTECTION

Your new plan will begin within 1-2 billing cycles*.



CONTACT US

directenergy.com

1-866-348-4194

Monday through Friday from 8 a.m. - 8 p.m. EST and Saturday from 8 a.m.

*Service will begin depending on your billing cycle or utility territory, as determined by your local utility company. If Direct Energy does not appear on your bill after three months, please call 1-866-348-4194, Monday through Friday, 8:00 a.m. to 8:00 p.m. EST, and Saturday, 8:00 a.m. to 5:00 p.m. EST.

© 2014 Direct Energy. All Rights Reserved. Direct Energy and the Lightning Bolt design are registered trademarks or trademarks of Direct Energy Marketing Limited in the United States and/or Canada used under license, as applicable.

How to contact us

For more information, please contact our Customer Care Department at 1-866-348-4194, Monday through Friday 8:00 a.m. to 8:00 p.m. EST, and Saturday 8:00 a.m. to 5:00 p.m. EST (contact center hours subject to change without notice). You can also send an e-mail to csdirectenergy@directenergy.com.

Verify your information

Please verify that your name, address, utility company and utility account number shown on this letter are correct. If you need to update your information, please contact our Customer Care Department at 1-866-348-4194.

Overview of Account

Your Account Information

Electric

National Grid (NiMo)

Utility Account Number:

[REDACTED]

Service Address:

[REDACTED]

Account Breakdown

Terms and Conditions

The Terms and Conditions are included in this package. Please review all the information contained in this package and retain it for your records.

Commodity: Electric
Rate plan selected: Fixed, \$0.07890
Effective through: 12 billing cycles
Early termination fee of: \$000.00

Rescission Notice: You have within 3 business days from the date you received this letter to rescind your decision to switch to Direct Energy. Please contact us at 1-866-348-4194, if you would like to rescind.



NEW YORK RESIDENTIAL & SMALL COMMERCIAL TERMS AND CONDITIONS

Electricity Supply Service
Direct Energy Services, LLC

1. Terms of Service. These Terms and Conditions together with the Customer Disclosure Statement (defined below), which is incorporated herein by reference, constitute the agreement ("Agreement") between you and Direct Energy Services, LLC ("Direct Energy"). "Customer Disclosure Statement" means, as applicable, either the section of the enrollment consent form/letter of authorization entitled 'Customer Disclosure Statement' or the Schedule A accompanying these Terms and Conditions entitled 'Customer Disclosure Statement – Schedule A to Terms and Conditions'.

2. Agreement to Purchase Energy. We will supply your retail electricity, as delivered to you by your Local Distribution Utility ("LDU"), subject to the terms and conditions of this Agreement.

3. Agency. You appoint us as your agent to provide retail electric service, including the electric transportation, transmission and related services appropriate to provide that service to you.

4. Eligibility. For electric service, you must (a) be eligible to receive service from your LDU and stay eligible for such service during the Term of this Agreement and (b) meet all eligibility requirements to enable Direct Energy to provide electric service. We can terminate this Agreement by giving you notice if you are not eligible. For the Comfort & Control Plan, you must meet the eligibility requirements set forth in Section 8.

5. Term of Agreement. The "Initial Term" of your service can be found on the Customer Disclosure Statement. The Initial Term will continue for the number of monthly billing cycles as indicated on the Customer Disclosure Statement. Thereafter, you will be notified in advance that this Agreement will automatically renew on a month-to-month basis at the same terms, unless Direct Energy sends you written notice of proposed changes to such terms in advance of the renewal date (each such renewal are collectively referred to as the "Renewal Term"). Any such written notice will be sent at least 30 days and no more than 60 days prior to the renewal date, apprising you of any proposed changes in the terms and conditions of this Agreement and of your right to renew, terminate or renegotiate this Agreement. If you wish to reject the renewal of this Agreement without incurring an early cancellation fee, if any, you will have three (3) business days from the day you receive the first billing statement of your Renewal Term to cancel by calling us as detailed in Section 24. When receiving service on a month-to-month basis, you may provide written notice of termination or call us as detailed in Section 24 or call their delivery company to terminate the agreement. We may terminate this Agreement by providing 30 days' written notice to you.

6. Price: the Rate and Daily Fee. During the Initial Term, your rate per kWh will be as set forth on the Customer Disclosure Statement. For a fixed rate, your rate per kWh excludes: (a) transmission, transportation, capacity and ancillary service charges; (b) fees, charges and other assessments imposed by your LDU, the New York Public Service Commission (including the New York Department of Public Service, the "NYPSC") or other governmental agency; and (c) federal, state and local taxes. These items are in addition to your per kWh rate. For variable rate, each month will reflect the cost of electricity, including energy, capacity, settlement, ancillaries, related transmission and distribution charges and other market-related factors; plus all applicable taxes, fees, charges, costs, expenses and margins. You may also be charged a flat daily fee, which you will find in the Customer Disclosure Statement. After the Initial Term and during the Renewal Term, your rate per kWh, as well as the daily fee, will both be variable, and will not change more than once each monthly billing cycle, unless we send advance written notice indicating otherwise. Each will change as we solely determine based on business and market conditions, and will not increase more than 40% over the rate for the previous monthly billing cycle. Your rate per kWh excludes: (a) transmission, transportation, capacity and ancillary service charges; (b)

fees, charges and other assessments imposed by your LDU, the New York Public Service Commission (including the New York Department of Public Service, the "NYPSC") or other governmental agency; and (c) federal, state and local taxes. These items are in addition to your per kWh rate. If you are a tax-exempt customer, you must provide us with an appropriate exemption certificate before we will waive any assessment and collection of taxes. The amount you pay may change for reasons allowed by law, including, without limitation (a) a change in charges, or new charges, imposed by your LDU, NYPSC or other government agency; or (b) we determine that the service plan originally designated is incorrect.

7. Renewable Energy Certificate Plan. If you are purchasing a Renewable Energy Certificate Plan, in addition to receiving your retail electric supply from us, we will purchase and retire Renewable Energy Certificates ("RECs") to offset 100% of your electricity usage, as determined by your LDU under this Agreement. Our Renewable Wind Energy Product combines locally generated electricity with national RECs generated from 100% wind energy. Our RECs are generated by wind farms in Texas. One (1) REC is equal to one (1) megawatt-hour of electricity generated from an eligible renewable energy source.

8a. Comfort & Control Plan. If you are purchasing our Comfort & Control Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes retail electric supply and at least one (1) but no more than (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Comfort & Control Plan you (i) must reside in a single family home and (ii) have high speed internet service (dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 10) but within the Initial Term, then you will be required to pay us a device cost recovery fee in the amount set forth in the Customer Disclosure Statement per NEST Learning Thermostat. You cannot return the NEST Learning Thermostat(s) to avoid the device cost recovery fee(s).

8b. Back to Business Plan. If you are purchasing our Back to Business Plan pursuant to this Agreement, you are agreeing to purchase from Direct Energy a product that includes electricity service and at least one (1) but no more than (3) NEST Learning Thermostats. You may request up to three (3) NEST Learning Thermostats; however, Direct Energy may limit the number of NEST Learning Thermostats provided to you in its sole discretion. To be eligible to enroll in the Back to Business Plan, you must have high speed internet service (Dial up and mobile internet access is not compatible). The NEST Learning Thermostat works with a significant majority (but not all) of the heating and cooling systems in the market. You may check the compatibility of the NEST Learning Thermostat with your heating and/or cooling system at the following website <http://support.nest.com/>. If you cancel this Agreement after the Rescission Period (as defined in Section 11) but within the Initial Term (as defined in Section 6), then you will be required to pay us a device cost recovery fee in the amount set forth in the Rate Plan Summary per NEST Learning Thermostat.

9. Billing. Our electric service, daily fee, and other charges will appear in your service bill from your LDU. Your LDU calculates and determines your usage and charges. Your LDU bills will specify where payments are due, and you agree to pay your bill as required by your LDU. Your payments may be pro-rated in accordance with procedures adopted by the NYPSC. Additionally, if your LDU is Central Hudson, you may be offered a billing cycle ending either monthly or every other month. If you receive residential service, your LDU may offer budget, leveled, or other payment plans, as provided in New York's Home Energy Fair Practices Act ("HEFPA"). The LDU's measurement of electricity will be definitive for



the purpose of calculating your charges under this Agreement. This determination may include any combination of actual meter reading usage, usage estimations or pro-rated usage.

10. Your Right of Rescission and Termination by You. Residential and Small Commercial customers may rescind this Agreement within three (3) business days after receiving a copy of it ("Rescission Period") without an early cancellation fee and/or device cost recovery fee. Thereafter, Residential and Small Commercial customers may terminate service under this Agreement at any time during the Initial Term; provided, however, such customer will be required to pay us the early termination fee and/or device cost recovery fee as set forth in the Customer Disclosure Statement immediately, but in no event no later than ten (10) days after the date you receive an oral or written notice requesting payment. To terminate service under this Agreement, contact us at our Customer Service Contact Center (see Section 24 for contact information). If you terminate service with us, your service will be switched to the LDU by the end of the second billing cycle following your request for termination.

11. Termination by Us. During the Initial Term, we can terminate this Agreement for any of the following reasons by providing you 15 days' advance written notice: (a) fraudulent or misrepresented information was used to secure this Agreement; (b) you rescind your information release authorization provided in Section 15 below; (c) we determine that your credit is inadequate; (d) you change your physical address or location; (e) a court or administrative agency takes action that renders ineffective any material provision of this Agreement, prohibits material performance under the Agreement, or otherwise constitutes a material adverse change for us; (f) a Force Majeure Event that materially impacts our service; or (g) you breach this Agreement. If terminated, your service will switch to the LDU no later than the end of the second following billing cycle. If we are terminating due to nonpayment or other breach of this Agreement, you will have 15 days to remedy the breach of nonpayment. After the end of the Initial Term, we may terminate this Agreement at any time for any reason, and if we do, your service will cease no later than the end of the second following billing cycle.

12. Effect of Termination. Upon termination, you may either select another energy service company or return to your LDU service. A final bill will be sent for charges through the date your service ends within 20 calendar days after the final scheduled meter reading by your LDU (or, if access to your meter is unavailable, an estimate of your usage will be used for the final bill, which will be trued-up when the final meter reading is performed). Upon your request for termination, we will provide you with a termination verification number.

13. Transfer. If you relocate within the LDU service territory, this Agreement will continue for the remainder of the Term for services at your new location. You are responsible for (1) calling your LDU (see the Customer Disclosure Statement for contact information) to inform them of your request to transfer your LDU service to another location; (2) obtaining your new account information from your LDU; and (3) contacting us using the information in Section 24, to provide your new account information and location to complete the transfer of service. You understand that this Agreement will automatically terminate if you relocate outside the LDU service territory, or if the requested service location is not served by the LDU. You must provide to us, at the address provided in Section 24, written proof of your new location outside the LDU service territory. In connection with your relocation in accordance with this Section 13, you will not be charged an early cancellation fee; however, if you are enrolled in our Comfort & Control Plan, Direct Energy will have the right to charge you the device cost recovery fee per thermostat set forth in the Customer Disclosure Statement.

14. Assignment. You are responsible for payment to us. You may not assign or delegate this Agreement to anyone without our prior written consent. We may assign or delegate this Agreement to anyone, and that includes transferring our financial interest in your account. If such an assignment is made and required by law, we will provide written notice no later than 30 calendar days prior to the transfer date, and shall include

details of the assignment and your right to choose another supplier or to return to full utility service.

15. Information Release Authorization. You authorize us to obtain and review information regarding your credit, consumption and billing history from any credit or payment reporting agency. We may also obtain and review the following information from the LDU: public assistance status, existence of medical emergencies, status as to whether you have a medical emergency or are elderly, blind or disabled, and data applicable to cold weather periods under New York PSL Section 32(3), information pertaining to New York PSL Section 33, tax status and eligibility for economic development or other incentives. This authorization will remain in effect during the Term of this Agreement. You may rescind this authorization at any time by notifying us at our Customer Service Contact Center (see Section 24 for the contact information). If you do so, we can cancel this Agreement (see Section 11 above). We, and any of our affiliates, agents or representatives, may use this information, along with information you provide, to review your creditworthiness, eligibility for services, and to properly serve you. Such information may be disclosed to a third-party if: (a) required by law; (b) such disclosure is to a third-party service provider under confidentiality obligations not to disclose such information and to use it solely for the purpose of providing services to us; or (c) as provided below. You understand that we may refuse to offer service to you as allowed by law. You also understand that we may report payment activity on your account with us to any credit reporting agency. Your acceptance of this Agreement is an authorization for release of this information.

16. Consumer Protections. Residential and non-residential service is governed by this Agreement and the applicable regulations and orders of the NYPSC. Residential service is additionally governed by HEFPA, which deals, among other matters, with the time and form of the Final Termination Notice and Final Suspension Notice, physical termination and suspension of service, ending termination and suspension of service, restoration of service, deferred payment agreements, billing adjustments, multiple and two-family dwellings, persons receiving social services assistance and special procedures for medical emergencies, the elderly, blind or disabled, and during cold weather. You may obtain additional information about consumer protections at our Customer Service Contact Center or the NYPSC (see Section 24 for the contact information). The NYPSC monitors complaints against all energy companies. An excessive number of complaints may result in an energy service company no longer being eligible to supply electricity in New York State.

17. Dispute Resolution. If there is a billing dispute or a disagreement involving our service, the parties will attempt to resolve the dispute. In order to resolve a dispute, you should first contact our Customer Service Contact Center (see Section 24 for the contact information). We will work to resolve your inquiry fairly and efficiently. We will provide an acknowledgment to you within 2 days, and will respond to you within 5 days with the results of our investigation, and we will provide a written report if requested. If we do not resolve the dispute related to your residential service within 45 days, you have the right to seek NYPSC review as described in Section 16 above. And if your dispute concerns non-residential service, you may submit your dispute to small claims court or any other court of competent jurisdiction.

18. Confidentiality. If you are not receiving service for residential use, the parties will keep the terms and conditions of this Agreement confidential, except as may be required to provide service or to meet the requirements of any regulatory body.

19. Title. All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for electricity shall be at the New York Independent System Operator load bus (located outside of the municipality where you reside), and shall constitute the point at which title transfers and the sale occurs. We shall indemnify and hold you harmless from all taxes, royalties, fees or other charges incurred with respect to the electricity before title passes.

20. Warranty.



This Agreement, including any attachments, makes up the entire Agreement between the parties. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

21. Force Majeure. We will make commercially reasonable efforts to provide your service, but do not guarantee a continuous supply of electricity. Events beyond our control ("Force Majeure Events") may result in interruptions in service. We will not be liable for any interruptions caused by a Force Majeure Event. We do not transmit or distribute electricity. Therefore, we will not be liable for damages caused by a Force Majeure Event, including acts of God, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the LDU system, non-performance by the LDU (including a facility outage on its distribution lines), changes in laws, rules or regulations of any governmental authority or any other cause or event beyond our control.

22. Remedies and Limitations of Liability. THE ONLY REMEDY IN ANY CLAIM OR SUIT YOU BRING AGAINST US WILL BE DIRECT, ACTUAL DAMAGES YOU HAVE INCURRED. YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY IN LAW OR EQUITY. NEITHER YOU NOR WE WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. IN ADDITION TO THE PROVISION OF SECTION 19 ABOVE, WE ARE NOT LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM (A) INTERRUPTIONS TO, OR SHORTAGES OF, ELECTRICITY SUPPLY, OR (B) ERRORS IN THE QUANTITY, QUALITY AND MEASUREMENT OF ELECTRICITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

23. Indemnification and No Third-Party Beneficiaries. You are responsible for, and will immediately indemnify us against, any and all loss or damage resulting from (a) your failure to fully comply with this Agreement or (b) your use or misuse of electricity after it is delivered to you. There are no third-party beneficiaries to this Agreement.

24. Contact Information.

Direct Energy - You may contact our Customer Service Contact Center at 1-866-348-4194. Our hours are Monday through Friday 8:00 a.m. to 8:00 p.m. EST and Saturday 8:00 a.m. to 5:00 p.m. EST, (hours subject to change without notice). You may also correspond in writing at: Direct Energy Customer Service Contact Center, PMB #51, 7385 North State Route 3, Westerville, OH 43082. Always include your account number in your correspondence.

Your LDU – Contact information for your LDU is below, as applicable to your specific LDU:

Central Hudson Gas and Electric: 1-800-527-2714; Consolidated Edison of NY: 1-800-752-6633; Corning Natural Gas: 1-607-936-3755; National Grid (KED-NY): 1-718-643-4050; National Grid (KED-LI): 1-800-490-0045; National Grid: 1-800-892-2345; National Fuel Gas: 1-800-444-3130; NYSEG: 1-800-572-1131; Orange and Rockland: 1-877-434-4100; or Rochester Electric: 1-800-743-1701.

New York State Public Service Commission – You may contact NYPSC at 1-800-342-3377 or by writing to the NYPSC at: New York State Public Service Commission, Department of Public Service - Office of Consumer Affairs, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

25. Venue and Choices of Law. Venue for any lawsuit related to this Agreement shall lie exclusively in the State of New York. Further, this Agreement shall be construed under and shall be governed by the laws of the State of New York, without regard to the application of its conflicts of law principles.

26. Taxes and Laws. Except as otherwise provided in the Agreement or provided by law, any and all taxes due and payable with respect to the

performance of your obligations under this Agreement shall be paid by you. The parties' obligations under this Agreement are subject to any validly issued present and future legislation, orders, rules or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or over the services to be provided herein.

27. Emergency Services. While your energy supply will be provided by Direct Energy, your energy delivery service shall continue to be provided by your local distribution utility. In the event of an electric outage, service interruption or other emergency, you should immediately call your LDU at the contact information provided in Section 24.

28. Parties Bound. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

DIRECT ENERGY CUSTOMER DISCLOSURE STATEMENT FOR ELECTRICITY OR NATURAL GAS
 Schedule A to Terms and Conditions

| | |
|--|--|
| PRICE ¹ | \$0.07890/KWH |
| FIXED OR VARIABLE | Fixed rate. |
| RENEWABLE ENERGY PLAN | If this box <input type="checkbox"/> is checked, you chose the Renewable Energy Plan! (See Section 7 of the Terms & Conditions for additional details.) |
| COMFORT & CONTROL PLAN | If this box <input type="checkbox"/> is checked, you chose the Comfort & Control Plan! |
| LENGTH OF THE AGREEMENT | 12 monthly billing cycles. |
| PROCESS FOR THE RESCISSION OF THE AGREEMENT WITHOUT PENALTY | Customer may contact us at 1-866-348-4194 to rescind within 3 business days. |
| EARLY TERMINATION FEE | \$99.00 |
| AMOUNT OF LATE PAYMENT FEE AND METHOD OF CALCULATION | Past due charges may incur a late fee of 1.5% per month or the interest rate posted in your local utility's tariff. |
| PROVISIONS FOR RENEWAL OF THE AGREEMENT | We will send you a renewal notice between 30 and 60 days prior to the end of your Initial Term. This Agreement shall automatically renew for successive month-to-month periods at our standard variable rate plan as per the price applicable to the Terms and Conditions. |
| CONDITIONS UNDER WHICH SAVINGS ARE GUARANTEED | None. |

1. For electricity products, this price includes your electricity supply only, and excludes transmission charges, all other utility fees and charges, and applicable taxes. For natural gas products, this price includes your natural gas supply only, and excludes fees, charges and other assessments imposed by your LDU, the NYPSC or other governmental agencies. This also excludes federal, state and local taxes.

New York State Public Service Commission

Your Rights as an Energy Services Company Consumer ESCO Consumers Bill of Rights

Customers can purchase energy from an Energy Services Company (ESCO) or from a traditional utility. If you choose to purchase energy from an ESCO you are entitled to:

- A clear description of the services offered by the ESCO.
- Receive energy delivery and 24 hour emergency services from your utility company.
- Clear procedures for switching energy suppliers, including information about the enrollment process.
- Disclosure, in simple and clear language, of the terms and conditions of the agreement between you and the ESCO including:
 - price and all variable charges or fees;
 - length of the agreement;
 - terms for renewal of the agreement;
 - cancellation process and any early termination fees, which are limited by law; and
 - conditions, if any, under which the ESCO guarantees cost savings.
- Rescind an agreement with an ESCO within three days of receiving the agreement, if you are a residential customer.
- A description of how pre-payment agreements work, if offered.
- Notice from the ESCO, no less than thirty days prior to the contract renewal date, of the renewal terms and the options you have as a customer.
- A fair and timely complaint resolution process.
- Provision of any written documents (contracts, marketing materials, and this ESCO Consumer Bill of Rights), in the same language used to enroll you as a customer.

If you are a residential customer you are also entitled to the rights and protections of the Home Energy Fair Practices Act (HEFPA) which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. For more information go to <http://www.dps.state.ny.us/resright.html>.

ESCOs that do not assure these consumer rights could lose their eligibility to provide service in New York. Please report any complaints to the Department of Public Service at 1-800-342-3377 (8:30 am – 4:00 pm), by mail at Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, or online at <http://www.dps.state.ny.us>.

You can find more information about your energy alternatives by visiting: www.askpsc.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Martin Forte

(b) County of Residence of First Listed Plaintiff Oneida (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Adam C. York KamberLaw, LLC, 220 N Green St., Chicago, IL 60607, 212-920-3072

DEFENDANTS

Direct Energy Services, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Violations of NY GBL §§ 349-d.7; 349-d.3; and 349.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/06/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Adam C. York

FOR OFFICE USE ONLY

RECEIPT # 0206-3947108 AMOUNT \$400.00 APPLYING IFP JUDGE FJS MAG. JUDGE ATB

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Tries to Shed Light on Direct Energy Services' Pricing Tactics](#)
