

SUFFOLK, SS.

In the Matter of

PLATINUM ADVERTISING II, LLC

The Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General Maura Healey (“AGO”), hereby enters into this Assurance of Discontinuance (“Assurance”) and its provisions with Platinum Advertising II, LLC (“Platinum”), without trial or adjudication of any issue of fact or law. The parties enter into this agreement to resolve the Commonwealth’s claims against Platinum without the risks and expenses associated with litigation.

1. "Agent" or "Platinum Agent" shall mean any real person, business, educational institution, non-profit organization, and any other entity who markets or sells Electricity Supply in Massachusetts on behalf of Platinum and Platinum's Clients.
2. "Basic Service" shall mean that term as it is defined in G.L. c. 164, § 1.
3. "Client" shall mean any Retail Seller of Electricity, as that term is defined in 940 C.M.R. 19.02, who has engaged Platinum to market or sell Electricity Supply on its behalf.
4. "Consumer" shall mean any person, business, educational institution, governmental

agency, and any other entity that purchases Electricity Supply services in the Commonwealth.

5. “Consumer Complaint” shall constitute any contact made by a Consumer to either Platinum; Platinum’s Client; a governmental agency, such as the Department of Public Utilities and the Attorney General’s Office; or a utility, such as Eversource and National Grid, that describes any conduct that, if proven, would constitute a violation of the terms of this Assurance, G.L. c. 164, § 1F, 940 CMR §§ 3.00 *et seq.*, 6.00 *et seq.*, and/or 19.00 *et seq.*, or where the Consumer claims that he or she had any misunderstanding relative to a contract to purchase electricity supply from a competitive supplier arising from such Consumer’s contact with any Platinum agent.
6. “Customer” shall mean any person, business, educational institution, governmental agency, and any other entity with a meter or meters located within the Commonwealth for which Platinum receives, or received, a commission based on Platinum’s enrollment of the Customer with a competitive electric supplier.
“Customer,” however, shall not include any business, governmental agency, or other entity that takes service under a local distribution company’s large commercial and industrial customer distribution rate.
7. “Department” shall mean the Department of Public Utilities.
8. “Distribution Company” or “Local Distribution Company” shall mean that term as it is defined in G.L. c. 164, § 1.
9. “Door-to-Door Sale” shall mean the sale of competitive electric supply services in which the buyer’s agreement to purchase is induced at a place other than Platinum’s place of business.

10. "Electricity Supply" shall mean the sale or provision to a Retail Customer (as that term is defined by G.L. c. 164, § 1) of electricity previously purchased at wholesale prices.
11. "Introductory Rate" shall mean an electricity rate charged to a Customer during the initial stages of a contract for Electricity Supply services that is lower than the rate to be charged over the remaining balance of the contract.
12. "Marketing Materials" shall mean all sales presentation scripts, third-party verification scripts, form Electricity Supply contracts, training materials, disclosures required by 220 C.M.R. § 11.06, form correspondence, brochures, websites, and other customer-facing hard-copy or electronic material used in connection with the sale or marketing of Electricity Supply services to Consumers.
13. "Supplier" shall mean that term as it is defined in G.L. c. 164, § 1.

II. PARTIES SUBJECT TO ASSURANCE

14. This Assurance shall apply to the Commonwealth and to Platinum, acting directly or indirectly, individually or through their employees, agents, successors, and assigns, or through any corporate or other device, and shall constitute a continuing obligation.

III. ALLEGATIONS

15. The Commonwealth alleges that Platinum, directly and through its agents, employees, subsidiaries, and/or affiliated companies, have engaged in policies and practices in violation of G.L. c. 93A and G.L. c. 164, § 1F and regulations promulgated thereunder, including, but not limited to, 940 C.M.R. 3.00 *et seq.*, 940 C.M.R. 6.00 *et seq.*, and 940 C.M.R. 19.00 *et seq.*, in the course of Platinum's door-to-door marketing of retail Electricity Supply to Consumers, beginning in or around May

2014.

16. The Commonwealth alleges the following, without limitation:
 - a. Platinum Agents represented to consumers that contracts with Platinum's Clients would result in savings, when in fact customers entering into those contracts ultimately paid more than they would have paid if they had received basic service electricity from their Distribution Company;
 - b. Platinum Agents switched customers to Platinum's Client's electricity supply services without those customers' authorization;
 - c. Platinum Agents impersonated customers on third-party verification calls;
 - d. Platinum Agents falsely represented that they were employees of customers' electric distribution companies;
 - e. Platinum Agents harassed customers through repeated solicitations;
 - f. Platinum Agents entered into customers' homes without permission; and
 - g. Platinum Agents threatened or berated customers who refused to sign a contract with one of Platinum's Clients.
17. Platinum denies all wrongdoing, including the allegations in Paragraph Nos. 15-16.

IV. PAYMENTS

18. Pursuant to G.L. c. 93A, § 4, Platinum agrees to a settlement in the sum of \$150,000. The aforementioned payment shall be made in the manner and times described in the ensuing paragraphs in this Section IV.
19. Within thirty (30) days of the effective date of this Assurance, Platinum shall pay the amount of \$150,000 to the general fund of the Commonwealth.
20. Payments made to the Commonwealth under this Section IV shall be made by

Platinum by wire transfer or certified check, made payable to the “Commonwealth of Massachusetts,” and delivered to Rebecca Tepper, Division Chief, Energy and Telecommunications Division, One Ashburton Place, Boston, Massachusetts 02108.

V. CONDUCT-BASED RELIEF

21. Platinum and its agents, servants, employees, sales and customer service representatives, successors or assigns, directly or indirectly, alone or in active concert or participation with others, through any corporation, partnership, trust, association, franchise, distributorship or other device, shall cease from engaging or assisting, in any way, now or in the future, in any conduct that is unlawful pursuant to G.L. c. 164, § 1F, G.L. c. 93A and the regulations promulgated pursuant to these statutes, including, but not limited to, any conduct that violates 940 C.M.R. 3.00 *et seq.*, 940 C.M.R. 6.00 *et seq.*, and 940 C.M.R. 19.00 *et seq.*. This obligation shall extend to any amendments to any of the statutes and regulations referred to in this paragraph, regardless of whether said amendments occurred before or after the effective date of this Assurance.
22. For a period of one (1) year beginning retroactively on October 14, 2019, Platinum shall not market or sell electricity or gas supply agreements to Customers in Massachusetts, including, but not limited to, through Door-to-Door Sales.
23. Platinum shall not market or sell Electricity Supply on behalf of any entity, unless said entity has submitted an application for a license to the Department pursuant to 220 CMR § 11.05(2); nor shall Platinum facilitate or otherwise arrange for the purchase and sale of electricity products on behalf of any entity in any manner that violates the terms of 220 CMR § 11.05(5) as interpreted by the Department, whether

such terms continue to appear at 220 CMR § 11.05(5) or are re-codified at another section of the CMR.

24. Platinum shall record all Consumer Complaints it receives in the Massachusetts market and shall identify the person or persons whose conduct precipitated the Consumer Complaint. For a period of three (3) years following the effective date of this Assurance, Platinum shall terminate any agent who receives three Consumer Complaints in the Massachusetts market in any rolling six-month period. Platinum shall terminate each such agent regardless of whether it believes that one or more of the Consumer Complaints lack merit.
25. No later than thirty (30) days prior to re-entering the Massachusetts market following the one (1) year stay-out, as detailed in Paragraph No. 22, Platinum shall:
 - a. not include in any current, new or revised Marketing Material any representation or instruction to represent, in any manner, expressly or by implication, that the Platinum Agent, or Platinum's Client, is affiliated with the Consumer's distribution company. This includes, but is not limited to, any representations that the Platinum Agent, or Platinum's Client, is "with" or "working with" the distribution company.
 - b. not include in any current, new or revised Marketing Material any representation or instruction to represent, in any manner, expressly or by implication, that a Consumer will save, or is likely to save, money on electricity bills as a result of switching to Platinum's Client as an electricity supplier, unless the terms and conditions of the Client's products and services contractually obligate the Client to provide such savings to the customer. For the avoidance of doubt, Platinum

may not include representations or instructions concerning any type of savings, including but not limited to, “savings over time” and “estimated savings,” unless the terms and conditions of the Client’s products and services contractually obligate the Client to provide such savings to the customer;

- c. include, in plain language and in a clear and conspicuous manner, in any current, new or revised Marketing Material for a specific product, a complete and accurate disclosure of the length of the product’s contract term; whether the contract will automatically renew; and the amount of any early termination fees;
 - d. where Platinum quotes an Introductory Rate in any current, new or revised Marketing Material or in any verbal representation, provide a complete and accurate disclosure that immediately precedes or follows such quote that both informs the Consumer that the quoted rate is an “introductory rate” and discloses the time period during which such “introductory rate” will be effective;
 - e. ensure that any current, new or revised Marketing Material complies with G.L. c. 93A, 940 C.M.R. 3.00 *et seq.*, 940 C.M.R. 6.00 *et seq.*, and 940 C.M.R. 19.00 *et seq.*, G.L. c. 164, § 1F, and the Department’s regulations promulgated thereunder;
 - f. not request, or include in any current, new, or revised Marketing Material a request for or instruction to request a Consumer’s electricity account information, including but not limited to any requests for a copy of the Consumer’s electricity bill, until such time as the Consumer expressly indicates that he or she is prepared to enter into a contract to purchase Electricity Supply from Platinum’s Client.
26. No later than thirty (30) days prior to re-entering the Massachusetts market following the one (1) year stay-out, as detailed in Paragraph No. 22, Platinum shall provide re-

training to all Platinum Agents selling in Massachusetts:

- a. that they are not to represent that a Client's products or services provide "savings" to Consumers unless the terms and conditions of the Client's products and services contractually obligate the Client to provide such savings to the customer;
 - b. that they are not to represent affiliation with the Consumer's distribution company;
 - c. that they are not to request a Consumer's electricity account information, including but not limited to any requests for a copy of the Consumer's electricity bill, until such time as the Consumer expressly indicates that he or she is prepared to enter into a contract to purchase Electricity Supply from Platinum's Client;
 - d. that once a Consumer provides a reasonably clear expression that the Consumer does not wish to engage Platinum to purchase Electricity Supply from Platinum's Client, to:
 - i. immediately cease soliciting that Consumer; and
 - ii. cease any solicitations of that Consumer for the next six months, except where such solicitation is initiated by the Consumer.
 - e. that they should immediately cease solicitation of a Consumer where it would be clear to a reasonable person that the Consumer is unable to understand the substance of the transaction due to a language barrier, advanced age, or diminished capacity.
27. Platinum shall prepare a handout for its agents marketing or selling gas or electricity supply agreements in Massachusetts, explaining the provisions of this Assurance as they relate to activities of those sales agents on behalf of Platinum and Platinum's

Clients. Platinum shall provide this handout to the AGO for its review by January 31, 2020. Platinum shall present the handout to its current agents, with a presentation on the importance of complying with the provisions, no later than thirty (30) days prior to re-entering the Massachusetts market following the one (1) year stay-out, as detailed in Paragraph No. 22. For a period of three (3) years following the effective date of this Assurance, Platinum shall provide the handout, with the presentation, to any new sales agents in Massachusetts during their initial training.

28. Platinum shall at all times cause its agents to conform their conduct to the directives of the re-training set forth in Paragraph Nos. 26 and 27 above.

VI. MONITORING AND COMPLIANCE

29. On December 1, 2020, and every six months thereafter, for a period of three (3) years following the effective date of this Assurance, Platinum shall deliver to the AGO an affidavit that describes the actions taken by Platinum in order to comply with this Assurance. The affidavit shall also state whether or not Platinum is in substantial compliance with this Assurance.
30. If Platinum is not in substantial compliance with this Assurance, the aforementioned affidavit shall include a remedial plan for bringing Platinum in compliance with this Assurance.
31. For avoidance of doubt, the delivery of the affidavit described in this section VI shall not in any way limit the AGO's rights to pursue relief for violations of this Assurance or the laws of the Commonwealth, including but not limited to, G.L. c. 93A.
32. Platinum will create and maintain, for a period of at least three (3) years from the date of entry of this Assurance, all records necessary to demonstrate Platinum's

compliance with its obligations under this Assurance and will provide such records to the AGO upon request.

33. Pursuant to this Assurance, the AGO may request, orally or in writing, documents or information relative to Platinum's actions in the Commonwealth following the effective date of this Assurance, and Platinum shall comply with all such requests.

VII. NOTICES

34. All notices and documents required by this Assurance shall be provided in writing to the parties as follows:

- a. If to the Attorney General:

Nathan C. Forster
Deputy Division Chief
Energy & Telecommunications Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

- b. If to Platinum:

Joseph M. Armstrong
Offit Kurman
1801 Market Street, Suite 2300
Philadelphia, PA 19103

35. No later than thirty (30) days after the effective date of this Assurance, Platinum and its successors and assigns shall deliver a copy of this Assurance to all current principals, officers, directors, and supervisory personnel with responsibility for the Massachusetts market, and shall secure from each such person a signed and dated statement acknowledging receipt of the Assurance. For new principals, officers, directors, and supervisory personnel with responsibility for the Massachusetts market, Platinum will, for a period of three (3) years following the date of this Assurance,

provide a copy of this Assurance to each such person prior to their assuming such position or responsibilities. Platinum shall secure and maintain all acknowledgments of receipt of this order and shall make them available for inspection upon request by the AGO.

VIII. GOVERNING LAW

36. The provisions of this Assurance shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IX. MISCELLANEOUS

37. Compliance with this Assurance resolves and settles all civil claims as alleged by the Commonwealth herein, or which the Commonwealth could have alleged herein, against Platinum, its parent corporations, affiliates, subsidiaries and subdivisions, officers, employees or shareholders, as well as any of its successors, assigns, and/or purchasers of all or substantially all of its assets, based on the same facts; however, this release shall not include any claims that may be brought pursuant to G.L. c. 12, § 5A. The Commonwealth reserves all other claims against Platinum, including, but not limited to, future claims against Platinum involving alleged violations of the Consumer Protection Act that arise after the effective date of this Assurance. Nothing in this Assurance resolves, settles, or otherwise affects any claim or action that has been or could be brought against Platinum by any other person or administrative or regulatory agency or which is not civil in nature. For avoidance of doubt, nothing in this Assurances resolves, settles, or otherwise affects any claim or action that has been or could be brought against any Client of Platinum.
38. Pursuant to G.L. c. 93A, § 5, violation of this Assurance shall constitute prima facie

evidence of a violation of G.L. c. 93A, § 2(a) in any action or proceeding commenced by the Commonwealth.

39. This Assurance shall be binding upon Platinum and any of Platinum's agents, subsidiaries, subdivisions, successors, assigns, and/or purchasers of all or substantially all of its business assets. No change in ownership or relocation will alter in any way the responsibilities under this Assurance. Platinum shall provide a signed copy of this Assurance to any successor or assign.
40. Nothing in this Assurance shall be construed as relieving Platinum of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.
41. The provisions of this Assurance shall be severable and should any provision be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Assurance shall remain in full force and effect.
42. Consent to this Assurance does not constitute affirmative approval by the Commonwealth of any of Platinum's business acts and practices, and Platinum shall make no representations to the contrary.
43. This Assurance contains the complete agreement between the parties, and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Assurance.
44. This Assurance may be amended upon written agreement of all parties. For good cause shown, any time period within which a party must perform, or begin to perform, or complete any obligation of this Assurance shall be extended upon request of any party only upon a material change of circumstances that could not have been

reasonably anticipated, or upon other good cause shown, and such extension shall not be unreasonably withheld.

45. This Assurance may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole.
46. This Assurance becomes effective upon October 16, 2019, and all periods of time described herein commence as of that date (the "effective date").


PLATINUM ADVERTISING II, LLC

By:


William Siveter
Manager

COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL


Nathan C. Forster, BBO #666435
Elizabeth A. Anderson, BBO #688135
Joseph Dorfler, BBO #691718
Assistant Attorneys General
Energy and Environment Bureau
Energy and Telecommunications Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Nathan.Forster@mass.gov
Elizabeth.A.Anderson@mass.gov
Joseph.Dorfler@mass.gov