

# Ambit Energy, L.P.

## New York Residential Sales Agreement and Terms of Service

V. 110708GGCE(b)

The following is your Terms of Service Agreement ("Agreement") with Ambit Energy, L.P. ("Ambit Energy" or "Ambit") for the purchase of electricity and/or natural gas service. Please retain this Agreement for your records.

### Important Information Regarding Your Ambit Plan

- **Contract Term:** Month to Month
- **Price:** Variable Rate. *Ambit Energy's Guaranteed Savings Plan Customers.* The price for all energy sold under this Agreement for the first two billing cycles shall be set based upon a seven percent (7%) discount to Consolidated Edison's published supply rate. Thereafter, your rate will be set at a competitive variable market rate with an annual savings of 1% less than the incumbent utility's published supply rate for the same 12-month period that you received power from Ambit Energy under this Agreement. Customer is also responsible for all applicable taxes and LDU charges. *Ambit Energy's Certified Green Plan Customers.* If Customer enrolled in one of Ambit Energy's Certified Green plans, the price for all energy sold under this Agreement will be two cents per kWh above the standard variable rate applicable for those who signed up for one of the Guaranteed Savings plans. Please see the "Price" Section of this Agreement for more information.
- **Savings Guarantee:** If you enroll in Ambit Energy's Guaranteed Savings Plan, you will receive the following savings guarantee: (1) all energy sold under this Agreement for the first two billing cycles shall be at a seven percent (7%) discount to Con Edison's published supply rate and (2) an annual savings of one-percent (1%) less than the incumbent utility's published supply rate for the same 12-month period that you received power from Ambit Energy under this Agreement.
- **Early Termination Fee:** \$0.00
- **Monthly Customer Fee:** \$0.00
- **Late Payment Fee:** 1.5% of the past due balance per invoice per month.
- **Rescission Period:** You may rescind this agreement within 3 business days of receipt of your Terms of Service. To rescind this Agreement, please call Ambit at 1-877-282-6248 or fax your rescission to 1-214-969-5928. The fax requires you sign and date the fax as well as affirmatively state that you would like to rescind this Agreement within the 3 business day rescission period.
- **Cancellation:** If you would like to cancel your service with Ambit, please contact Ambit at 1-877-282-6248. You can also contact Con Edison to initiate a drop back to the utility. Please see the "Switch Procedures" Section of this Agreement for more information.
- **Renewal:** This Agreement shall automatically renew for successive one (1) month periods unless either party notifies the other party in writing of its desire not to renew. See "Term" Section of this Agreement for more information.

**Agreement to Purchase Energy.** Ambit Energy agrees to sell and Customer agrees to buy the quantity of electricity and/or natural gas supply necessary to meet the Customer's consumption demand. The amount of electricity and/or natural gas supplied is subject to change based upon data affecting consumption obtained by Ambit or the delivery schedule of the Local Delivery Utility ("LDU," "Con Edison," or "Consolidated Edison").

**1. Term.** Unless specified otherwise, the term shall commence as of the date the change of provider to Ambit is deemed effective by the LDU and shall commence for a one (1) month term ("Initial Term"). This Agreement shall automatically renew for successive one (1) month periods ("Renewal Term") unless either party notifies the other party in writing of its desire not to renew, at least thirty (30) days prior to the next meter read date. The Customer has the right to cancel this agreement within three business days after its receipt ("Cancellation Period").

**2. Price.** Unless otherwise agreed to in writing or other form as authorized under

the Uniform Business Practices ("UBP") of the New York State Department of Public Service ("DPS"), the price for all energy sold under this Agreement is as set forth in this Paragraph 2 of this Agreement. If Customer enrolled in one of Ambit Energy's Certified Green plans, the price for all energy sold under this Agreement will be two cents per kWh above the standard variable rate applicable for those who signed up for one of the Guaranteed Savings plans. If Customer enrolled in one of Ambit Energy's Guaranteed Savings plans, the price for all energy sold under this Agreement for the first two billing cycles shall be set based upon a seven percent (7%) discount to Consolidated Edison's published supply rate. Thereafter, your rate will be set at a competitive variable market rate with an annual savings of 1% less than the incumbent utility's published supply rate for the same 12-month period that you received power from Ambit Energy under this Agreement. Customer is also responsible for all applicable taxes and LDU charges.

**3. Consumer Protections.** The services provided by Ambit are protected by the terms and conditions of this Agreement and the Home Energy Fair Practices Act ("HEFPA"). Ambit will provide at least fifteen (15) calendar days notice prior to any cancellation of service to Customer. In the event of non-payment of any charges owed to Ambit, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the DPS. Customer may obtain additional information by contacting the DPS at 1-800-342-3377, the Department's ESCO hotline at 1-888-697-7728, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>.

**4. Emergency Service.** In the event of an electric or gas emergency, gas leaks, or service interruption, you should immediately call your local utility and emergency personnel. You may call Con Edison directly at toll-free 1-877-262-6633 to obtain customer assistance in the event of an emergency. Con Edison will continue to deliver your energy and will continue to respond to gas leaks and other emergencies while Ambit meets your energy supply needs.

**5. Information Release Authorization.** Customer authorizes Ambit to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the LDU: consumption history; billing determinants; credit information; public assistance status; and existence of medical emergencies, status as to whether Customer is elderly, blind or disabled and data applicable to cold weather periods under PSL § 32 (3) and information pertaining to PSL § 33, tax status and eligibility for economic development or other incentives. This information may be used by Ambit or its agents to determine whether it will commence and/or continue to provide energy supply service to Customer and to facilitate regular invoicing and collection of monies owed. Customer's execution of this Agreement shall constitute authorization for the release of this information to Ambit. This authorization will remain in effect during the Initial Term and any Renewal Term of the Sales Agreement. Customer may rescind this authorization at any time by providing written notice thereof to Ambit or calling Ambit at 1-877-282-6248. Ambit reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**6. Dispute Resolution.** In the event of a billing dispute or a disagreement involving any essential element of this Agreement, the parties will use their best efforts to resolve the dispute. Customer should contact Ambit in writing at 1801 North Lamar, Suite 200, Dallas, TX 75202, or by telephone at 1-877-282-6248. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures ("Procedures"). Payment obligation for disputed amounts will be withheld until such dispute is resolved through mutual agreement or as warranted by DPS decision.

**7. Switching Procedures.** Customer or Ambit may cancel a standard variable rate Agreement, for reasons other than non-payment, at any time, by providing written notice to the other party at least thirty (30) days prior to the intended date of termination. If Customer fails to notify Ambit as set forth above, Customer shall remain liable to pay Ambit for energy acquisitions made by Ambit to serve Customer under this Agreement at the price set forth above. Fixed rate or non-standard variable rate (including but not limited to: price ceiling, insurance and combination fixed/variable) agreements cannot be cancelled by Customer without the prior written approval of Ambit or Customer remains liable as above. It may take up to sixty (60) days for Customer's account(s) to be returned to the LDU depending on LDU cancellation procedures, and Customer is responsible for all Ambit supply charges until Customer returns to the LDU or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption

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will be used in the final bill, which will be trued up subsequent to the final meter reading. Pursuant to HEFPA, Customer's distribution service may be suspended if Customer fails to pay Ambit's outstanding balance.

**8. PowerMove Program.** PowerMove is an ESCO referral program implemented by Consolidated Edison in accordance with Public Service Commission governance. Under PowerMove, the Customer selects or is assigned to a participating ESCO by Consolidated Edison, at the Customer's request. All provisions of this Agreement remain in effect for PowerMove except as follows: the term of the agreement shall be month-to-month, allowing either party to cancel upon notice consistent with the agreement. Ambit may change its pricing methodology upon 15 days notice to the customer, with that notice provided at least 30 days prior to the customer's next scheduled meter read. Notwithstanding any other provision of the contract, the customer shall be allowed to cancel the contract, without penalty or termination fee, within the 15 day notice period of a price change from Ambit. If notice of cancellation is not given at least 15 days prior to the next scheduled meter reading, the customer may request a special meter reading, which is typically subject to a service charge. Ambit must give 30 days notice, provided 30 days before a meter read, before it may assign a customer's contract to another service provider. Any change to the contract, other than to the open price provision, shall require the customer's affirmative consent, documented under one of the three methods specified in the Uniform Business Practices (telephonic, electronic or written).

**9. Measurement.** The parties accept for purposes of accounting for electricity and/or gas supplied under this Agreement, the quantity, quality, and measurement determined by the LDU.

**10. Agency.** Customer appoints Ambit as its agent to acquire the supplies necessary to meet its electricity and/or gas needs, contract for and administer transportation, transmission and related services over interstate facilities and those of the LDU needed to deliver electricity and/or gas to the Customer's premises. These services are provided on an arms length basis and market based compensation is included in the price noted above.

**11. Billing and Payment.** Unless otherwise agreed to in writing, Ambit will invoice monthly for electricity and/or gas supplied under this Agreement. Customer will pay each invoice in full within twenty (20) days of the invoice date or be subject to a late payment charge of 1.5% per month. A \$30.00 fee will be applied for returned checks. Customer may receive a single bill for both commodity and delivery costs from either Ambit or the LDU, or each of the LDU and Ambit may invoice separately. Customer payments remitted in response to a consolidated bill shall be pro-rated in accordance with procedures adopted by the DPS. In the event of failure to remit payment when due, Ambit will have the right to terminate commodity service and to seek suspension of distribution service in conformance with HEFPA.

**12. Default Liability.** FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER DAMAGES AT LAW OR IN EQUITY SHALL NOT APPLY. IF NO EXPRESS REMEDY IS PROVIDED, AMBIT'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY (WHICH WILL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING TWELVE MONTHS). SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE HEREBY WAIVED. IN NO EVENT SHALL CUSTOMER OR AMBIT BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, THIRD-PARTY CLAIMS OR OTHER DAMAGES WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, OR FOR LOST PROFITS ARISING FROM A BREACH OF THIS AGREEMENT.

**13. Governing Law.** Venue for any lawsuit brought to enforce any term or condition of this agreement or to construe the terms hereof shall be exclusively

in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York. If at some future date there is a change in any law, rule, regulation or pricing structure, or there is a regulatory or judicial ruling or decision which shall have a detrimental economic impact upon Ambit's performance under this Agreement, or in the event that compliance with such change, ruling or decision shall result in a material change in the way prices are calculated under this Agreement, or a material change in the level of components of pricing under this Agreement, or Ambit is otherwise prevented, prohibited or frustrated from carrying out this Agreement, Ambit shall have the right to terminate this Agreement upon fifteen (15) days' notice.

**14. Assignment.** Customer may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Ambit. Ambit may, without Customer's consent: (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (b) transfer or assign this Agreement to an ESCO affiliate of Ambit; (c) transfer or assign this Agreement to any ESCO succeeding to all or substantially all of the assets of Ambit; and/or (d) transfer or assign this Agreement to another approved ESCO or other entity authorized by the DPS. Upon any such assignment, Customer agrees that Ambit shall have no further obligations hereunder.

**15. Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.

**16. No Warranties.** Unless otherwise expressly set forth in this Agreement, Ambit provides and Customer receives no warranties, express or implied, statutory, or otherwise and Ambit specifically disclaims any warranty of merchantability or fitness for a particular purpose.

**17. Delay or Failure to Exercise Rights.** No partial performance, delay or failure on the part of Ambit in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

**18. Force Majeure.** The term "Force Majeure" shall mean any cause not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence, such Party is unable to prevent or overcome, including but not limited to, any act or cause which is deemed a Force Majeure by the LDU or any transportation or transmitting entity. If either party is unable, wholly or in part, by Force Majeure to perform or comply with any obligations or conditions of this Agreement, such party shall give immediate written notice, to the maximum extent practicable, to the other party. Such obligations or conditions, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during the period. The party claiming suspension of obligations must in good faith attempt to mitigate and/or terminate the Force Majeure.

**19. Taxes and Laws.** Except as otherwise provided in this Agreement or by law, all taxes of whatsoever kind, nature and description, due and payable with respect to Customer's performance of its obligations under this Agreement, shall be paid by Customer. The parties' obligations under this Agreement are subject to present and future legislation, orders, rules, or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided herein.

**20. Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the terms and conditions of this transaction; any and all other agreements, understandings and representations by and between the parties with respect to the matters addressed herein are superseded by this Agreement.

**21. Acceptance and Amendments.** This Agreement shall not become effective until accepted by Ambit. Ambit reserves the right to reject Customer or to cancel this Agreement upon failure of Customer to maintain satisfactory credit standing as determined by Ambit, or to meet minimum or maximum threshold consumption levels as determined by Ambit. Ambit may amend the terms of this Agreement at any time, consistent with any applicable law, rule or regulation, by providing notice to Customer of such amendment at least thirty (30) days prior to the effective date thereof.

