

Ambit New York, LLC

New York Service Area

Sales Agreement and Terms of Service

VERSION DATE: APRIL 9, 2021

SERVICE TERM AND PRODUCT SELECTION: Ambit agrees to sell and you agree to buy the quantity of electricity or natural gas delivered to you, as measured or estimated by your Utility. The Term of this Agreement will become effective on the day your Service begins with Ambit, which coincides with your next available meter reading date after Ambit and your Utility processes your enrollment request, and: (i) for a fixed rate will continue for the Initial Term and any applicable Renewal Term, or (ii) for a variable rate will continue month-to-month. The price of the product plan selected includes

CONTACT INFORMATION:

For questions concerning your rate, service initiation or service cancellation, please contact Ambit Energy using the information below:

AMBIT ENERGY

www.ambitenergy.com
P.O. Box 864589
Plano, TX 75086

Customer Service (877) 282-6248
Fax (877) 805-5606
Operating Hours:
Monday – Sunday 8:00 a.m. – 11:00 p.m. ET

In the event of an electricity or gas emergency, outage or service interruption, you should immediately contact your DU:

CON EDISON

Electricity (877) 262-6633

NATIONAL GRID (Formerly Niagara Mohawk)

Electricity (800) 867-5222
Gas (800) 892-2345

NYSEG

Electricity (800) 572-1131

ORANGE & ROCKLAND

Electricity (877) 434-4100

RG&E

Electricity (800) 743-1701

CENTRAL HUDSON

Electricity (800) 527-2714

If a dispute cannot be resolved, or if you have any questions, concerns or conflict, regarding Ambit or the program, please contact the commission using the contact information below:

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

Three Empire State Plaza
Albany, New York 12223
(888) 697-7728
dps.ny.gov

charges for Ambit Service. You also agree to pay applicable Utility charges, surcharges, state and local taxes. Ambit may choose to lower your price without your consent provided there are no other changes to this Agreement.

CANCELLATION AND SWITCHING PROCEDURES: In addition to the right of rescission outlined in this Agreement, you or Ambit may cancel this Agreement at any time. Cancellation will be effective on your next available meter reading date after Ambit and your Utility processes your cancellation request (“Cancellation Effective Date”). You agree to pay for the Service provided through your Cancellation Effective Date. Pursuant to HEFPA, your distribution service may be suspended if you fail to pay Ambit’s outstanding balance. Ambit reserves the right to cancel this Agreement (i) if your Utility is unable to read your meter for three (3) consecutive months; (ii) if at any time you request separate bills from your Utility and Ambit; or (iii) if the Utility removes you from their consolidated billing program and requires that Ambit bill you separately for your energy supply. Ambit will provide at least fifteen (15) calendar days’ notice prior to any cancellation of service to you.

This Agreement will be automatically terminated if: (i) your requested service location is not served by the Utility, (ii) if you move outside the Utility’s territory, or outside Ambit’s service area, or (iii) Ambit returns you to Utility service.

DEFAULT SERVICE – GAS AND ELECTRICITY CUSTOMERS: You understand that you are not required to choose a competitive supplier, and may continue to have the Utility supply your electricity and/or natural gas. Full Utility service is provided automatically to customers who do not choose to sign a contract with an ESCO for their energy unless the Utility notifies you of its intent to terminate its delivery service on or before the date Ambit ceases to supply Service to you.

BILLING AND PAYMENT: Your Utility will continue to deliver your electricity and/or natural gas, read your meter, respond to emergencies, send your bill, and make necessary repairs. Your Utility monthly bill will include Ambit Service charges, as well as applicable Utility charges, surcharges, state and local taxes, and any other charges incurred in accordance with this Agreement.



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You may receive a single bill for both commodity and delivery costs from either Ambit or the Utility, or Ambit and the Utility may each invoice separately. Your payments remitted in response to a consolidated bill will shall be pro-rated in accordance with the procedures adopted by the PSC. You will continue to be responsible for all charges assessed by your Utility, including any applicable switching fees, service and delivery charges, late fees, other fees, or taxes specifically associated with services it provides during the term of this Agreement. Except for the utilities specifically listed below, Ambit does not offer budget billing for the generation portion of the bill. Bills will continue to be based on actual or estimated meter readings. In the event the Utility is unable to read your meter, the Utility will estimate your usage and your charges will be calculated accordingly and adjusted on a future bill.

You will make payment directly to the Utility in accordance with the payment terms stated in the Utility's tariffs, unless it is necessary that Ambit bill you directly. Failure to pay Utility or Service charges may result in your disconnection in accordance with the Utility's tariff and additional termination penalties may apply. 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. You will pay each monthly bill in full in accordance with applicable tariffs or regulations or be subject to a late payment charge calculated in accordance with such tariffs or regulations. Ambit will not charge you a deposit for Service.

BUDGET BILLING: (NYSEG, RGE, Keyspan Customers) To qualify for Budget Billing, Ambit must have at least six (6) months of historical or actual usage from the Utility to process the request. The account will continue to invoice under conventional billing until the account qualifies for budget billing. Your account will be reviewed periodically over the Budget Billing term period. During the review if it is determined that the monthly budget billing charge is too high or too low, it may be adjusted to avoid having a credit or debit balance accumulating on the account. Upon termination of the Budget Billing plan the entire variance, if any, will be applied to the account on your next invoice.

COLLECTIONS: In the event you default in the prompt payment of amounts due under this Agreement, Ambit reserves the right to charge you for any and all fees or charges reasonable and necessary in order to collect or attempt to collect delinquent balances. Ambit may use the services of debt-collection agencies, consumer reporting agencies and other remedies as allowed by law to collect any unpaid balances on your account.

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 your performance of your obligations under this Agreement, shall be paid by you.

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.

ELIGIBILITY: Ambit does not determine eligibility for pricing based on credit history, utility payment data or credit score. Ambit does not deny service based on a customer or applicant's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer/applicant in an economically distressed geographic area, or qualification for low income or energy efficiency services.

CONSUMER PROTECTIONS: The services provided by Ambit to you are governed by the terms and conditions of this Agreement and the New York State Public Service Commission rules and regulations (Orders) including the Uniform Business Practices (UBP) and HEFPA for residential customers. In the event of non-payment of any charges owed to Ambit, you may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the New York State Public Service Commission ("PSC"). You may obtain additional information by contacting the PSC at (800) 342-3377, the Department's ESCO hotline at (888) 697-7728, or by writing to the PSC at: Office of Consumer Services, New York State Department of Public Service, Three Empire State Plaza, Albany, New York 12223, or through its website at dps.ny.gov.

For energy assistance such as the Low Income Home Energy Assistance Program (LIHEAP), call (800) 342-3009. For Fuel Fund, contact the United Way at (845) 457-4774.

INFORMATION RELEASE AUTHORIZATION: You acknowledge that your billing and payment information may be provided to Ambit from your Utility. This information includes, but is not limited to, your account number, meter reading data, rate class and energy usage. This may include your address(es) and telephone number, and your budget billing plan, payments, or payment arrangement preferences. All authorizations provided by you will remain in effect for the Term and, if applicable, the Renewal Term of this Agreement. At any time, your authorization may be rescinded by you by contacting Ambit.

ENVIRONMENTAL CHARACTERISTICS: Ambit will provide regularly updated environmental disclosures regarding the known sources of electricity and emissions. These

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disclosures will be available at www.ambitenergy.com.

AGENCY: You appoint Ambit as its agent to acquire the supplies necessary to meet its energy needs, contract for and administer transportation, transmission and related services over interstate facilities and those of the Utility needed to deliver energy to your premises. These services are provided on an arm's-length basis and market-based compensation is included in the price noted in your Agreement.

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.

DELAYS 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.

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.

ACCEPTANCE AND AMENDMENTS: This Agreement shall not become effective until accepted by Ambit. Ambit may terminate this Agreement at any time by providing you notice as required by law. Ambit may amend the terms of this Agreement at any time, consistent with any applicable law, rule or regulation, by providing you notice of such amendment at least thirty (30) days prior to the effective date thereof, and receiving your express consent for material changes. Upon receipt of written notice of a material change, you may terminate this Agreement prior to the date such change becomes effective without penalty. However, any amendment of the Dispute Resolution, Binding Arbitration Clause and Class Action Waiver shall not apply retroactively to any claim initiated or accrued prior to the date of amendment. Any such claim shall be governed by the terms of the Dispute Resolution, Binding Arbitration Clause and Class Action Waiver in effect on the date the claim accrued.

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 Utility 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.

ASSIGNMENT: You 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 your 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 affiliate of Ambit; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Ambit; and/ or (d) transfer or assign this Agreement to an ESCO, as applicable. In the case of (b), (c) or (d), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Upon any such assignment, you agree that Ambit shall have no further obligations hereunder.

LIMITATIONS OF LIABILITY: Liabilities not excused by reason of Force Majeure or otherwise shall be limited to direct actual damages. Neither party will be liable to the other for consequential, incidental, punitive, special, exemplary or indirect damages. Lost profits or penalties of any nature are hereby waived; these limitations apply without regard to the cause of any liability or damage, including the negligence of Ambit. There are no third-party beneficiaries to this Agreement.

REPRESENTATIONS AND WARRANTIES: The Service under this Agreement will meet the applicable Utility's standards and may be supplied from a variety of sources. Ambit makes no representations or warranties other than those expressly set forth in this Agreement, and Ambit expressly disclaims all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose.

GOVERNING LAW: This Agreement shall be governed by, enforced and performed in accordance with the rules of the PSC. 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

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this Agreement, Ambit shall have the right to change this Agreement with your affirmative consent.

DISPUTE RESOLUTION BY BINDING ARBITRATION: PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

SUMMARY: The Services provided by Ambit to you are governed by the terms and conditions of this Agreement and the New York State Public Service Commission rules and regulations (Orders) including the Uniform Business Practices (UBP) and HEFPA for residential customers. In the event of a billing dispute or a disagreement involving Ambit's Services hereunder, the parties will use their best efforts to resolve the dispute. You should contact Ambit by telephone or in writing as provided above. For consumer complaints that cannot be resolved with the company, you may contact the New York Department of Public Service (DPS). DPS complaints may be directed as follows: Website: www.dps.ny.gov/complaints; Phone: DPS Helpline at (800) 342-3377 (Monday – Friday 8:30 a.m. – 4:00 p.m.); or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of DPS. **THE PARTIES EXPRESSLY ACKNOWLEDGE THAT RESIDENTIAL CUSTOMERS HAVE HEFPA RIGHTS, INCLUDING THE RIGHT TO SUBMIT A COMPLAINT TO AMBIT OR THE PUBLIC SERVICE COMMISSION, AS PROVIDED BY THE DISPUTE RESOLUTION PROCEDURES IN HEFPA. TO WAIVE THESE HEFPA RIGHTS, THE RESIDENTIAL CUSTOMER MUST DO SO IN WRITING, DULY NOTARIZED, AND SUCH WRITING SHALL INCLUDE A STATEMENT THAT THE RESIDENTIAL CUSTOMER DISCUSSED ITS HEFPA RIGHTS WITH PSC OFFICE OF CONSUMER SERVICES PRIOR TO THE WAIVER. FOR THE AVOIDANCE OF DOUBT, ABSENT THIS NOTARIZED WAIVER WITH THE MANDATORY LANGUAGE, NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO DIMINISH ANY RIGHTS A RESIDENTIAL CUSTOMER MAY HAVE UNDER HEFPA AND THE NOTARIZED WAIVER SHALL BE THE EXCLUSIVE AND ONLY MEANS OF ADDRESSING A COMPLAINT OUTSIDE OF HEFPA.**

For those disputes not resolved by either submitting a complaint to Ambit or the Public Service Commission under the dispute resolution procedures in HEFPA for the reason that the waiver process set forth above was invoked as the exclusive and only means of addressing a complaint outside of HEFPA, the Parties agree that such disputes shall be resolved by arbitration, rather than a lawsuit, in accordance

with the procedures specified below. The Parties further agree to be bound by the class action waiver specified below. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.** For any non-frivolous claim that does not exceed \$75,000, Ambit will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from Ambit to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), Ambit will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what Ambit has offered you to settle the dispute.

ARBITRATION AGREEMENT

(1) Ambit and you agree to arbitrate **ONLY THOSE DISPUTES AND CLAIMS** between us **REMAINING AFTER WAIVER OF THE HEFPA PROCESS** set forth above. This agreement to arbitrate is intended to be interpreted as **SUBJECT TO THE HEFPA WAIVER PROCESS**, but following waiver would include:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "Ambit," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal

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Trade Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND AMBIT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Ambit should be addressed to: Legal Department, Ambit Energy, 6555 Sierra Drive, Irving, TX 75039. ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Ambit and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or Ambit may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Ambit or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Ambit is entitled. You may download or copy a form Notice and a form to initiate arbitration at www.ambitenergy.com/arbitration-forms.

(3) After Ambit receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the ling fee, unless your claim is for greater than \$75,000. (The ling fee currently is \$200 for claims under \$10,000 but is subject to change by the arbitration provider. If you are unable to pay this fee, Ambit will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at adr.org, by calling the AAA at (800) 778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at www.ambitenergy.com/arbitration-information.) The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless Ambit and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address.

If your claim is for \$10,000 or less, we agree that you may

choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, Ambit will pay all AAA ling, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse Ambit for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

(4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of Ambit's last written settlement offer made before an arbitrator was selected, then Ambit will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If Ambit did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

(5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover

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duplicative awards of attorneys' fees or costs. Although under some laws Ambit may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, Ambit agrees that it will not seek such an award.

(6) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AMBIT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Ambit agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(7) Notwithstanding any provision in this Agreement to the contrary, we agree that if Ambit makes any future change to this arbitration provision (other than a change to the Notice Address) during the term of your Agreement, you may reject any such change by sending Ambit written notice within thirty (30) days of change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between Ambit in accordance with this provision.