

# Ambit Texas, LLC

## Texas Small Commercial

### Terms of Service

**VERSION DATE: MARCH 25, 2016**

The following is your Terms of Service Agreement ("Agreement") with Ambit Texas, LLC d/b/a Ambit Energy ("Ambit Energy," "we," "our") for the purchase of electricity service for the plan you selected, as specified in the Electricity Facts Label ("EFL") and hereby made an integral part of this Agreement along with the Your Rights As A Customer ("YRAC") document. By enrolling for service with Ambit Energy, you agree to be bound by this Agreement and the EFL and pay for the electric service Ambit Energy provides to you under this Agreement and the EFL. Please retain this Agreement, the YRAC, and the EFL for your records. Ambit Energy is certified as a Retail Electric Provider ("REP") by the Public Utility Commission of Texas ("PUC"), PUC Certificate #10117. This Agreement applies only to non-residential customers that have a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12-month period.

#### Contact Information

Internet Address:	www.ambitenergy.com
Mailing Address	P.O. Box 864589 Plano, TX 75086
Customer Service	(877) 282-6248
Hours of Operation	Monday – Friday 8:00 AM – 6:00 PM CT Saturdays 10:00 AM – 5:00 PM CT

Ambit Energy will arrange for the delivery of electricity from your local energy delivery company (officially referred to as your Transmission and Distribution Service Provider or "TDSP" or "TDU" or "transmission distribution utility") to the service location designated by you pursuant to this Agreement.

#### Outage Reporting

In the event of an outage in your area, please call your local TDU:

Oncor Electric Delivery	(888) 313-4747
Centerpoint Energy	(800) 332-7143
AEP Texas Central	(866) 223-8508
AEP Texas North	(866) 223-8508
TNMP	(888) 866-7456
Sharyland Utilities	(800) 545-4513

Ambit Energy is not liable for service interruptions or outages. Any questions relating to your electric distribution lines or meters should be directed to your TDU listed above.

**SERVICE TERM:** Depending on which plan you ("customer") have selected, your service under this Agreement is provided under either a fixed rate ("term") product or a variable price ("month to month") product, as specified in the EFL. The minimum term, if any, for the product you elected to enroll under is stated in the EFL. If you are a new customer, your term will become effective on the day your service begins with Ambit Energy, which coincides with the date your meter is read by your TDU. Because this date is determined by your TDU, Ambit Energy is not able to commit to a specific date for the commencement of service. If you are currently an Ambit Energy customer and are switching to another product, your term will become effective within 24 hours of the request switch to the new plan.

**CONTRACT RENEWAL:** For customers on a fixed rate product, upon the expiration of your term, your service will automatically continue on a month-to-month basis under one of Ambit Energy's variable price products unless either you or Ambit Energy cancels this Agreement, as specified below in the Cancellation Rights Section of this Agreement. A contract expiration notice will be sent to you at least fourteen days prior to the end of your initial contract term. If you fail to take action to ensure the continued receipt of retail electric service upon the contract's expiration, you will automatically continue to be served by Ambit Energy pursuant to a default renewal variable price product on a month to month basis.

**PRICING:** Your price per kWh for electricity service is listed under the Electricity Price Section of the EFL. If you have a demand meter, your price will include the demand charges specified in the EFL. The demand charge, if applicable, equals the amount per kW or kVA, times the kW or kVA recorded at each demand meter during the specified billing period. The price on the EFL does not include non-recurring fees charged by the TDU, Ambit Energy non-recurring fees noted in this Agreement, ERCOT charges, fees imposed by any government entity, and taxes, all of which you agree to pay and that will appear as separate line items on your bill. You are responsible for all federal, state and local taxes and charges. Non-recurring TDU charges may include, but are not limited to out-of-cycle meter reads and self-selected switches, disconnection and reconnection fees, move-in fees, meter tests, meter tampering costs, and broken meter seal repairs. TDU Surcharge(s) may apply dependent upon your TDU area.

Ambit Energy related fees include all fees specifically noted in this Terms of Service document and the EFL. Ambit Energy reserves the right to include in any subsequent bill, adjustments related to previous billings, previous billing errors, meter read errors, miscalculation of taxes or other errors or omissions.

Customers who have enrolled in a variable price product (month to month product) are subject to rate adjustments throughout this agreement, but not



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more than once per billing cycle. Customers that choose a fixed rate product have a fixed rate for the term.

**NON-RECURRING AMBIT ENERGY FEES.** You may also be charged non-recurring fees for services Ambit Energy provides, which will only be incurred in limited cases as described below. These charges will be listed as a separate line item on your bill. The non-recurring Ambit Energy fees listed below do not include TDU non-recurring charges, which will also appear as separate line items on your bill. **Service Orders.** For service activation, standard and expedited move-in orders are available upon request. Ambit Energy will pass through the move-in fee charged by your TDU. This fee will appear on your first invoice. **Insufficient Funds.** For each transaction not processed due to insufficient funds, including (a) returned checks, (b) returned electronic fund transfers, and/or (c) rejected credit card transaction, a \$25.00 Returned Check or a \$25.00 Non-Sufficient Funds Charge will apply. **Minimum Usage Fee:** If total usage on any given invoice is below 1250 kWh on any commercial plan, a \$9.99 fee will apply. **Processing and Transaction Fees:** For payments processed by an Ambit Energy Customer Care Representative, a \$5.00. **Payment Processing Fee** may apply. Payments made with credit or debit card may incur a \$2.50 transaction fee. **Payment Plan Processing Fee.** To establish a payment arrangement, a \$20.00 Payment Plan Fee may apply.

**RIGHT TO RESCIND:** If you are switching to Ambit Energy from another retail electric provider, you may rescind this Agreement without fee or penalty of any kind within three federal business days after receiving the Terms of Service document by notifying Ambit Energy by phone toll-free at 1 (877) 282-6248 or by fax at (214) 969-5928. If rescinding by fax, please write the name on the account, address, phone number, ESI ID, sign, and specify that you are rescinding this Agreement within three federal business days of receiving Ambit Energy's Terms of Service.

**CANCELLATION RIGHTS:** To cancel this Agreement, you may call or fax us at the contact information provided above. Cancellation is permitted for any reason. However, if you enrolled under a fixed rate product, you agree to remain a customer of Ambit Energy until the term expires or be subject to an early termination fee, as specified in the EFL. You may cancel your Agreement with Ambit Energy without penalty if (1) Ambit Energy notifies you of a material change to the Terms of Service and you elect to opt out of the Agreement due to the material change (see the Material Change provision of this Agreement for more information) or (2) you move to another premise and provide evidence that you are moving along with a forwarding address. Ambit Energy reserves the right to terminate this Agreement for non-pay, fraud, believable threats or harm made by the customer to Ambit Energy's owners, employees, or contractors, or for insufficient payments past the due date. Regardless of the method or reason for cancellation of the Agreement, you are responsible for all outstanding charges incurred through the date on which the cancellation is effected by the TDU.

**PAYMENTS:** You will receive a monthly bill; however, Ambit Energy may not send you a bill if your balance is equal to or less than \$5.00. All bills rendered

are due and payable 16 days after issuance ("Due Date"), which is defined as the statement date on your invoice or the postmark date on the envelope, whichever is later. Bills shall be deemed past due and delinquent if payment is not received by Ambit Energy at the close of business on the day the bill is due. Late payments, delinquent or past due balances may result in a Late Payment Penalty equal to 5% of the invoiced past-due amount.

**VOLUNTARY BILL-PAYMENT ASSISTANCE PROGRAM:** Ambit Energy's bill assistance program is funded by voluntary donations made by our customers. The proceeds fund bill payment assistance for residential electric customers. To provide a voluntary donation to our program, please designate the amount you would like to donate on your remittance slip, which is located on each monthly invoice.

#### **PAYMENT PLAN ARRANGEMENTS FOR SINGLE ELECTRIC**

**SERVICE IDENTIFIER (ESI ID) CUSTOMERS:** If you are unable to pay your bill on time, please call Customer Care immediately. Ambit Energy may allow you to pay the outstanding bill after its Due Date but before the Due Date of the next bill. Or you may qualify for a deferred payment plan that allows you to pay an outstanding balance over a period of time.

**DEFERRED-PAYMENT PLANS:** A customer is eligible to enter into a deferred payment plan unless the customer has been issued more than two termination or disconnection notices during the preceding 12 months; or has received service from Ambit Energy for less than three months, and the customer lacks sufficient credit or a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility). A deferred payment plan requires an initial payment of 25% of the outstanding balance, and the remaining balance to be paid over three billing cycles. Your service may still be terminated and disconnected if you do not meet the requirements of a deferred payment plan.

#### **AVERAGE BILLING FOR SINGLE ELECTRIC SERVICE IDENTIFIER**

**(ESI ID) CUSTOMERS:** Ambit Energy's average billing program provides you the convenience of budgeting your electricity expense by calculating your current monthly bill based upon a rolling 365 day historical average usage. If there is no previous billing in your name at the service address, we will take the historical usage at that service address and apply your current price to calculate your average monthly amount. This program is not offered to customers with a delinquent balance. An account reconciliation or true-up will occur at the end of every twelve (12) months that you are on Average Billing, or if: (1) your service is disconnected for non-payment (2) you transfer your electric service to a new residence (3) you cancel your service or (4) you switch to conventional billing.

**DISCONNECTION: WITHOUT NOTICE:** Ambit Energy may disconnect service immediately for the following reasons: (1) a known dangerous condition exists, in which event; prior notice will be given, if possible (notice will be provided by phone or posted on the door of your service location as soon as practicable after service is disconnected); (2) service was connected by a person without authority and without an Agreement; (3) service is reconnected without authority after being disconnected for failure to pay; (4) there is evidence of tampering with equipment of the transmission or Local Distribution utility, municipally owned utility or electric cooperative; or (5) there is evidence of theft of service. If service was disconnected due to a dangerous situation, customer must correct the situation and notify Ambit Energy before service will be reconnected.

**DISCONNECTION: WITH NOTICE:** Ambit Energy may order disconnect of service for non-payment if amounts due remain unpaid ten (10) days after a Disconnection Notice has been sent. Fraud and nonpayment shall be considered

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breaches of this Agreement. To re-instate service with Ambit Energy after a disconnection, you will be required to cure the reason for the disconnection and may be assessed a deposit and a reconnection fee by the TDU, which will appear as a line item on your bill. Disconnection of service will not excuse you from paying any outstanding amounts owed to Ambit Energy. Ambit Energy reserves the right to assess a deposit in the event Ambit Energy issues a disconnect order to your TDU for non-payment. If service is not reconnected within ten days of disconnection for non-payment, Ambit Energy reserves the right to cancel this Agreement and require a new deposit and move-in fee for service initiation.

**COLLECTIONS:** In the event you default in the prompt payment of amounts due under this Agreement, Ambit Energy 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 Energy 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.

**CREDIT:** This Agreement is conditioned upon you demonstrating to us your creditworthiness throughout the Term of your Agreement. You agree to cooperate with Ambit Energy in establishing your creditworthiness.

**DEPOSITS:** Ambit Energy will not deny service based on your creditworthiness; however, you may be required to provide an initial deposit if you do not have a satisfactory credit rating, you are a move-in customer, or you cannot demonstrate satisfactory credit as defined in 25.478 of the PUCT rules ([www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.478/25.478.pdf](http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.478/25.478.pdf)). If a deposit is required, the total amount of your deposit will not exceed an amount equivalent to the greater of either (1) the sum of the next two months estimated billings or (2) one-fifth of the estimated annual billing. A separate deposit may be required for each service location enrolled under this Agreement.

This deposit requirement can be waived if you are an existing customer of another REP and can prove that you have had no more than one late payment in the last 12 months of service.

You may be required to provide a deposit to continue to receive electricity service if (1) your average annual electric service invoice for the last 12 months is at least twice the amount of the original estimated annual invoice or (2) your electricity service has been disconnected once in the previous 12 months. Interest will accrue only on deposits retained for longer than 30 days at the rate approved by the PUCT. The interest shall accrue from the date the deposit is received. Your initial deposit and any accrued interest will be credited to your account after 24 consecutive months of service if (1) you have had no late payments for 24 consecutive months, (2) your service was not disconnected for non-payment and (3) you are not delinquent in the payment of your current bill.

**PAPERLESS BILLING:** Enrollment in Ambit Energy's electronic Paperless Billing program requires your consent to send you important information electronically. Upon enrollment, you may receive your paper statement for one more billing cycle through the mail at your billing address. Thereafter, you will receive a monthly billing statement at the e-mail address you provided.

You agree to provide and keep your e-mail address current with Ambit Energy. If any electronic communication (collectively, "electronic communication"), including Paperless Billing statements are returned to Ambit Energy as undeliverable, you remain responsible for ensuring timely payment. Paperless bills and all other communication are always available through your online account at [www.ambitenergy.com](http://www.ambitenergy.com). Should your e-mail be deemed undeliverable by Ambit Energy, we will attempt to contact you by phone or other means determined by Ambit Energy.

You understand and agree that Ambit Energy may provide you with all disclosures, notices and other communication (collectively, "communication") regarding your Ambit Energy account in electronic form. This communication includes, but is not limited to, monthly billing statements, disconnect notices, payment reminder notices and change in terms of service notifications. You may withdraw your consent to receive electronic communication or update your e-mail address by one of the following methods: Through your MyAmbit Account: Login at [www.ambitenergy.com](http://www.ambitenergy.com). Go to the "My Bill" section and click the Edit/Cancel button to change back to paper billing and postal mail communication. Go to the "My Profile" section to edit your email address. By Phone: You can call Ambit Energy at (877) 282-6248 to withdraw your consent to Paperless Billing and electronic communication. To ensure that our monthly billing statements and other electronic communication are not treated as junk mail by your e-mail account provider, please add the following e-mail address to your e-mail address book: [donotreply@ambitenergy.com](mailto:donotreply@ambitenergy.com).

**AUTOMATIC PAYMENT (AUTOPAY):** If you enroll in Ambit Energy's AutoPay program, you understand and agree that Ambit Energy will directly debit your amount due as follows: Checking or savings account - 5 days prior to the invoice due date. Credit Card - 1 day prior to the invoice due date. You agree to keep your registered bank account active and its information current with Ambit Energy. If an AutoPay transaction fails due to insufficient funds, you may be charged a \$25.00 returned-transaction fee.

**REFUSAL OF SERVICE:** Ambit Energy may refuse to provide electric service to a customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations ([www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.477/25.477.pdf](http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.477/25.477.pdf)).

**DISCRIMINATION:** Ambit Energy will not discriminate, deny service, or require prepayment or deposit for service based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.

**MATERIAL CHANGE:** Ambit Energy will provide you with at least fourteen calendar days advance written notice of any change in the Terms of Service, either in your bill or in a separate mailing to your billing address. The change(s) will become effective on the date stated in the notice. In the event of an unfavorable change to this Agreement, you will have the option to cancel this Agreement without penalty or fee for fourteen days from the date of notice. Your option to cancel will not be provided if the change favors you or is mandated by any applicable law or by any applicable rule or regulation of a regulatory agency or body, including the PUCT. Pricing changes made due to a change in law or regulation may be made without granting any right to cancel this Agreement without penalty. No notice will be sent of contractual changes that benefit the customer.

**CUSTOMER INFORMATION:** By entering into this Agreement, you authorize your TDU to release to Ambit Energy certain information that we need to provide you with service, including your address, phone number, account numbers and

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historical usage information.

**FORCE MAJEURE:** We will endeavor in a commercially reasonable manner to provide service, but we do not guarantee a continuous supply of electrical energy. Events that are out of our control (“force majeure” events) may result in interruptions in service. We will not be liable for any such interruptions. We do not generate your electricity nor do we transmit or deliver electricity to you. Therefore, you agree that we are not liable for damages caused by events of force majeure, including acts of God, acts of any governmental authority, including the Public Utility Commission of Texas, accidents, strikes, labor trouble, required maintenance work, inability to access the TDU system, non-performance of the TDU, changes in laws, rules, regulations, practices or procedures of any governmental authority or the Electric Reliability Council of Texas, or any cause beyond our control.

**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 Energy. Ambit Energy 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 Energy; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Ambit Energy; and/or (d) transfer or assign this Agreement to a certified REP. 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, customer agrees that Ambit Energy shall have no further obligations hereunder.

**LIMITATIONS OF LIABILITY:** LIABILITIES NOT EXCUSED BY REASON OF FORCE AJEURE 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 ENERGY. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

**REPRESENTATIONS AND WARRANTIES:** THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE APPLICABLE TDU'S STANDARDS AND MAY BE SUPPLIED FROM A VARIETY OF SOURCES. AMBIT ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND AMBIT ENERGY 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 and construed, enforced and performed in accordance with the laws of the State of Texas and venue shall be in Dallas County, Texas. The provisions of the Uniform Commercial Code (“UCC”) shall apply to this Agreement, and electricity shall be a “good” for purposes of the UCC (<http://www.statutes.legis.state.tx.us>).

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

Summary:

Most Customer concerns can be resolved quickly and to the Customer's satisfaction by calling our Customer care department at (877) 282-6248. Customer can also contact Ambit in writing at P.O. Box 864589 Plano, TX 75086. Also, the Customer dispute or complaint may be submitted by either party at any time to the PUCT pursuant to its Complaint Handling Procedure. Payment obligation for disputed amounts may be withheld until such dispute is resolved through mutual agreement or as warranted by PUCT decision. **ALL OTHER DISPUTES SHALL BE HANDLED PURSUANT TO THE ARBITRATION AND CLASS ACTION WAIVER BELOW.**

**In the unlikely event that Ambit's Customer care department or PUCT is unable to resolve a complaint you may have to your satisfaction (or if Ambit has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. 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 **ALL DISPUTES AND CLAIMS** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- 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 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**

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**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: Office for Dispute Resolution, at Ambit, P.O. Box 864589 Plano, TX 75086. ("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 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 [att.com/arbitration-forms](http://att.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 filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$125 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](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at [att.com/arbitration-information](http://att.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 filing, 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 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 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.