

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission to Assess
Certain Aspects of the Residential and Small
Non-Residential Retail Energy Markets in New York State Case 12-M-0476

In the Matter of Retail Access Business Rules Case 98-M-1343

In the Matter of Energy Service Company Price Reporting
Requirements Case 06-M-0647

In the Matter of Electronic Data interchange Case 98-M-0667

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**AMBIT NEW YORK, LLC's PETITION FOR RECONSIDERATION AND WAIVER OF
THE PROHIBITION ON SERVICE TO LOW-INCOME CUSTOMERS BY ENERGY
SERVICE COMPANIES**

Dated: January 13, 2017

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WAIVER OF THE PROHIBITION ON SERVICE TO LOW-INCOME CUSTOMERS
BY ENERGY SERVICE COMPANIES**

I. PRELIMINARY STATEMENT

Ambit New York, LLC (“Ambit” or “Ambit Energy”) hereby requests Reconsideration and Waiver of the Prohibition on Service to Low-Income Customers by Energy Service Companies (“ESCO”) because the company offers a guaranteed savings product for its customers, and has offered such a product since entry into the New York market in 2007. Ambit’s GSP methodology and calculations have been fully vetted by the Commission.

In the Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies issued and effective on December 16, 2016, the NY Public Service Commission (“NYDPS” or “Commission”) stated that an individual ESCO that wishes to offer a guaranteed

savings program to customers who are participants in the utility low-income assistance programs (Assistance Program Participant or APP) may petition the Commission for a waiver of the prohibition within 30 days of the issuance of its Order.

II. AMBIT ENERGY'S GUARANTEED SAVINGS PRODUCT

A. Background

Ambit's first launch of its Guaranteed Savings Plan ("GSP"), a variable-rate product with a savings guarantee, was in Consolidated Edison Company of New York's ("ConEd") territory for electric customers in 2007. Currently, Ambit offers its GSP product to customers in seven (7) electric markets and nine (9) gas markets in New York. Since inception, over 763,000 savings periods have been completed and evaluated and correspondence sent to customers regarding savings or refunds due. Today, Ambit Energy offers only two products to New York customers – GSP and a 100% green energy product. The company estimates that, since its introduction, Ambit's GSP product has saved New Yorkers in excess of \$40 million when compared to incumbent providers in the State. All Ambit customers, including those enrolled in its GSP, may also qualify for additional savings through the company's "Free Energy Referral Program." Ambit is proud to have issued over \$5 million in "free energy credits" to New York customers since that program's inception.

B. Ambit's GSP Program

Ambit has made changes and updates to its GSP program over the years, but Ambit's GSP has always guaranteed that, if you remain a customer of Ambit's Guaranteed Savings Plan for twelve (12) consecutive months, you will save 1% annually versus the price you would have paid if you had been a full-service customer of the utility for the same period. Currently, Ambit's Terms and Conditions provide that, if the customer decides not to remain an Ambit customer for

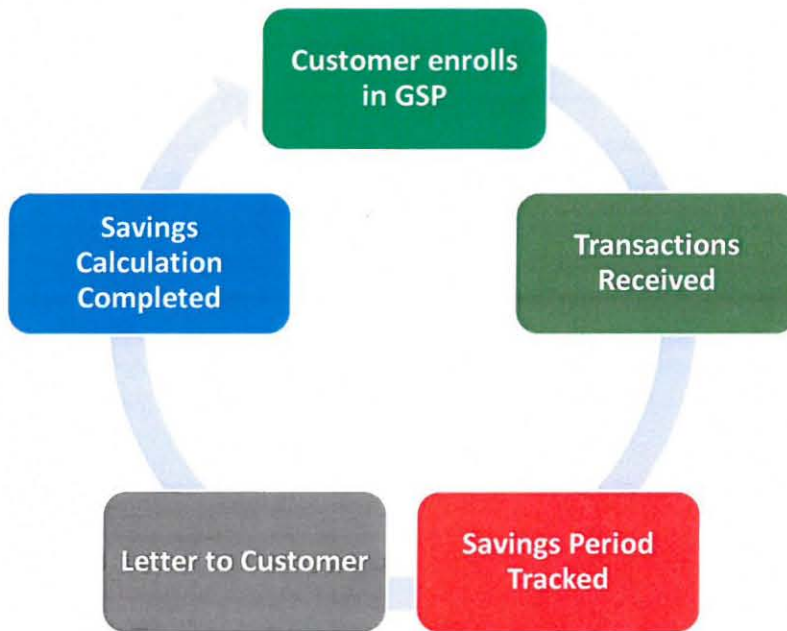
12 consecutive months, Ambit Energy guarantees that the customer will pay *no more* for supply service than they would have paid as a full service customer of their incumbent utility (see GSP Terms of Service attached) for the same time period.

Ambit sends out a notice to inform its GSP customers that their savings period is coming to a close, at least 30 days prior to the end of each customer's 12-month guaranteed savings period. After the savings period ends, and approximately 90 days later (based on meter read dates), Ambit Energy provides to its customers a cost analysis which provides the customer a summary of their savings with Ambit. If the customer did not realize an annual savings of at least 1%, based on their incumbent utilities supply rates and charges, Ambit sends the customer a refund check along with their cost analysis. As a result, a customer is informed, approximately 90 days after their 12-month anniversary, whether they saved money with Ambit and, if they did not, they receive a refund check.

Since 2007, Ambit has invested in and developed an extensive back office process to monitor, report and audit its guaranteed savings program to create a seamless experience for the benefit of its customers. Ambit has a team dedicated to the development and maintenance of the system and processes that allow our GSP products to work. Ambit uses a sophisticated software program to gather incumbent rates. Rates are obtained for service class and zone, and a customer profile is created for all customer classes served by Ambit. This information is then loaded into a database for future use in the GSP calculations. Incumbent rate calculators are used periodically to test the automated rate pulls and gauge the accuracy of the incumbent rates used by Ambit. Ambit relies on the expertise of its staff from its various departments, including Pricing, Finance, Regulatory, Product Management and Billing/Transaction Management. These departments work collaboratively to ensure that all of the applicable information is digested and

included in our GSP calculations. As depicted below, Ambit's guaranteed savings program has an established process flow which is bolstered by reporting, auditing and monitoring by the Ambit staff mentioned above.

OUR PROCESS



Ambit's GSP product meets the Commission's mandate that a guaranteed savings program ensures delivery of the claimed savings, and has the appropriate reporting and the ability to verify compliance.

III. CONCLUSION

For the reasons set forth above, Ambit request that the Commission approve this Petition and issue a waiver of the Commission's prohibition allowing Ambit to continue to serve low-income customers in the State of New York.

Respectfully submitted,

/s/ Patricia Zacharie
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Attorney for Ambit New York, LLC

Dated: January 13, 2017

Ambit New York, LLC

New York Central Hudson Electric Service Area

Sales Agreement and Terms of Service

Residential Disclosure Statement

EFFECTIVE: 1/13/2017
VERSION #: 030216.12604.011317

New York Guaranteed Savings Plan - 7.6000¢ per kWh
Electric

The following is your Sales Agreement and Terms of Service ("Agreement") with Ambit New York, LLC, d/b/a/ Ambit Energy, a wholly owned subsidiary of Ambit Energy Holdings ("Ambit Energy" or "Ambit") for the purchase of electricity and/or natural gas service. Ambit Energy agrees to sell and Customer agrees to buy the quantity of electricity and/or natural gas delivered to you, as measured or estimated by your Distribution Utility (DU). Ambit Energy is an Energy Services Company (ESCO) and will supply electricity and/or natural gas for your residence or business address enrolled under this Agreement. By enrolling for service with Ambit Energy, you agree to be bound by this Agreement and pay for the energy service Ambit Energy provides you. The words "we," "us" and "our" refer to Ambit Energy, and the words "you" and "your" refer to the Customer. **Retain this Agreement for your records.**

Disclosures

1. Guaranteed Savings Plan: This Agreement guarantees that, if you remain a customer of Ambit's Guaranteed Savings Plan for 12 consecutive months, you will save 1% annually versus the price you would pay if you were a full-service customer of the utility for the same period, beginning from the meter read date after you enroll in this plan. In the event you do not complete 12 consecutive months with Ambit, this Agreement guarantees you will pay no more than if you were a full service customer of the utility for the period in which we provided energy.

2. Price: Variable 7.6000¢ per kWh (guaranteed for first bill cycle)

3. How Electricity and Natural Gas Price is Determined: The electricity/natural gas rate includes, but is not limited to, the cost of commodity, including energy, capacity, settlement, ancillaries, and other market-related factors. Variable rates may change due to current and predicted weather patterns, retail competition, wholesale commodity energy costs, fluctuations in energy supply and demand, industry regulations, pricing strategies, costs to serve Customers among many factors. You are responsible for all applicable taxes, fees, charges, and supply costs.

4. Length of the Agreement and Renewal: The term of this Agreement shall commence as of the date the change of provider to Ambit is deemed effective by the incumbent utility and shall commence on an annual basis on the Savings Guarantee at 1% ("Initial Term"). This Agreement shall renew on an annual basis on the Savings Guarantee at 1% ("Renewal Term") unless either party notifies of its desire not to renew prior to the next meter read date. You may view other available options by logging in to your account at ambitenergy.com, calling Customer Care at (877) 282-6248 or by faxing your request to (877) 805-5606.

5. Right to Rescind: You may rescind this agreement within 3 business days of receipt of your Terms of Service. To rescind this Agreement, please call Ambit at (877) 282-6248 or fax your rescission to (877) 805-5606. Please 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.

6. Amount of Early Cancellation Fee and Method of Calculation: There is no cancellation or early termination fee.

7. Amount of Late Payment Fee and Method of Calculation: 1.5% of the past due balance per invoice per month.

Ambit New York, LLC

New York Service Area

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VERSION DATE: MARCH 2, 2016

Product Selection: You understand and acknowledge that Product selection at enrollment is subject to Ambit Energy approval, based on the premise type and/or service class that was previously assigned to your account by your DU. If the information received from the DU does not match the requested Ambit Energy product, you agree that Ambit Energy may switch the product type to match information received from the DU, if such a product is currently offered by Ambit Energy. You understand that if the product is changed to one which matches the correct premise/service class type, rates may vary. You will receive written notice of the product's terms and will have the ability to exercise your right of rescission as described above. (See Right to Rescind)

CONTACT INFORMATION:

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

Ambit Energy

Internet Address: www.ambitenergy.com
P.O. Box 864589
Plano, TX 75086
Customer Service (877) 282-6248
Fax (877) 805-5606
Operating Hours:
Monday - Friday 9:00 a.m. - 7:00 p.m. ET
Saturdays 11:00 a.m. - 6:00 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 & Gas (877) 262-6633

National Grid (Formerly Keyspan & Niagara Mohawk)

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

NYSEG

Electricity (800) 572-1131
Gas (800) 572-1121

Orange & Rockland

Electricity (877) 434-4100
Gas (800) 533-5325

RG&E

Electricity (800) 743-1701
Gas (800) 743-1702

Central Hudson

Electricity (800) 527-2714
Gas (800) 942-8274

National Fuel Gas

Gas (800) 444-3130

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
(800) 342-3377
www.dps.ny.gov

PLANS: (ELECTRIC, GAS AND RENEWABLE ENERGY)

Ambit Energy's Guaranteed Savings Plan: Ambit's Guaranteed Savings Plan is a variable-rate product which assures you will pay no more, on an annual basis, than if you were a full-service customer of the utility, beginning from the meter read date after you enroll in this plan. The guaranteed savings calculation is inclusive of all Ambit credits (such as Customer referral credits), and will be compared to the DU's published supply rates which is made up of all rate components including but not limited to: Electricity Supply Reconciliation Mechanism, Gas Cost Factor, Government Surcharges, Gross Receipt Tax Rate, Merchant Function Charge, MFC Net Loss Revenue, MFC Supply Charge, MFC Surcharge and MSC Adjustment Factors, bill credits, and taxes on supply for the same 12-month period or shorter period that you are enrolled in the Guaranteed Savings Plan. Due to variations in meter read schedules, some Guaranteed Savings Plan calculation periods may exceed twelve (12) months. You are responsible for all applicable taxes and DU charges. A notice will be sent to you at least thirty days (30) prior to the end of your 12-month guaranteed savings period. No action is required to ensure the continued receipt of retail energy service upon the contract's expiration; you will automatically continue to be served by Ambit Energy pursuant to a Guaranteed Savings plan on an annual basis unless you select another product or retail energy supplier.

The evaluation and notification of savings will typically be completed within three (3) months following the twelfth consecutive month on the plan or from the date service is discontinued. Savings guarantees only apply to products with "Guaranteed Savings Plan" in the name.

RENEWABLE ENERGY: Please see your Product Content Label for plan-specific renewable resources and other details.

SWITCHING AND CANCELLATION: You may cancel a variable rate plan at any time. If you would like to cancel your service with Ambit, please contact Ambit at (877) 282-6248. You can also contact your DU to initiate a change back to the utility. It may take up to sixty (60) days for Customer's account(s) to be returned to the DU depending on DU cancellation procedures, and you are responsible for all Ambit supply charges until you return to the DU or switch to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if meter access is unavailable, an estimate of consumption will be used in the final bill, which will be trued up subsequent to the final meter reading. Pursuant to HEFPA, your distribution service may be suspended if you fail to pay Ambit's outstanding balance. Ambit will provide at least fifteen (15) calendar days' notice prior to any cancellation of service to you.

BUDGET BILLING: (NYSEG, RGE, Keyspan Customers) To qualify for Budget Billing, Ambit Energy must have at least 6 months of historical or actual usage from the DU 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 accommodate 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.

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"). 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

Ambit New York, LLC New York Service Area Sales Agreement and Terms of Service

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: <http://www.dps.ny.gov>.

For Energy Assistance such as 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 billing and payment information will be provided to Ambit Energy from your DU. 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 or payment arrangement preference. 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 Energy.

BILLING AND PAYMENT: You may receive a single bill for both commodity and delivery costs from either Ambit or the DU, or each of the DU and Ambit may invoice separately. Your payments remitted in response to a consolidated bill shall be pro-rated in accordance with procedures adopted by the PSC. 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. Customer will pay each monthly bill in full in accordance with regulatory requirements of the New York State Public Service Commission or be subject to a late payment charge calculated in accordance with the Commission's rules.

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.

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 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.

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 reserves the right to cancel this Agreement upon failure of your ability to maintain satisfactory credit standing 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 you notice of such amendment at least thirty (30) days prior to the effective date thereof. 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 DU 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 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 ESCO. 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 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 Energy. There are no third-party beneficiaries to this agreement.

REPRESENTATIONS AND WARRANTIES: The electricity and/or gas sold under this agreement will meet the applicable DU'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, enforced and performed in accordance with the rules of the New York State Public Service Commission. 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, Ambit shall have the right to change this Agreement with thirty (30) to sixty (60) days' notice to the Customer.

Ambit New York, LLC

New York Service Area

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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 PSC 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 PSC decision. **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 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, 1801 North Lamar Street, Suite 600, Dallas, TX 75202. ("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 ww2.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 filing fee, unless your claim is for greater than \$75,000. (The filing 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 ww2.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 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.

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(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 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.