

**PRIVILEGED AND CONFIDENTIAL
CUSTOMER AGREEMENT**



AMPEX ENERGY LLC

MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT

COMMERCIAL SALES

(herein "Agreement")

EFFECTIVE DATE:

CUSTOMER:

CUSTOMER ADDRESS:

SERVICE ADDRESS:

TEL:

FAX:

TAX ID:

UDC NAME:

UDC ACCOUNT#:

CUSTOMER CONTACT:

CUSTOMER DISCLOSURE STATEMENT

Contract Type	Electric Fixed Price or Electric Variable Price
<p data-bbox="191 1327 609 1354">Electricity Charge or Purchase Price</p> <p data-bbox="191 1451 750 1514">(Electricity Charge as defined below) Terms and Components</p>	<p data-bbox="776 1327 1209 1354">Electric Fixed Price: \$ ____ per kWh.</p> <p data-bbox="776 1388 1481 1451">Electric Variable Price: shall EACH month reflect the cost of electricity obtained from all sources.</p> <p data-bbox="776 1484 1481 1852">The prices contained in this Agreement include all the costs listed below and will only be subject to change per Sections 3 and 20 of this Agreement. The Purchase Price each month will reflect the cost of electricity including energy costs, ancillary services and other ISO costs, auction revenue rights credits, capacity costs, transmission costs, transmission loss costs, line loss costs and other market related factors plus all applicable taxes, fee, charges or other assessments and Ampex's costs, expenses and margins.. At any time during the term of this Agreement, Customer may request the purchase of renewable energy certificates in an amount equal</p>

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	to a percentage of Customer’s load volume.
Initial Term of the Agreement and Start/End Date	For Variable Price service the Term is month to month and for Fixed Price Service it is 12 to 24 months. For more details See Section 2 of this Agreement.
Amount of Early Termination Fee (“ETF”) and method of calculation for Customer	The ETF shall be calculated as follows: the termination payment applicable to Customer, shall be equal to the sum of (a) the positive difference between the market price and the Purchase Price set forth in this Agreement, multiplied by the undelivered volume of electricity which Customer would consume beginning on the Early Termination Date through the current initial or subsequent renewal term of this Agreement and as reasonably calculated by Ampex, (b) Ampex’s costs, and (c) any unpaid amounts due from Customer to Ampex up to the Early Termination Date.
Amount of Late Payment Fee and method of calculation	Invoices not paid on or before the Payment Due Date will accrue interest daily on any outstanding amounts until paid in full, at the lesser of 1.0% per month or the highest rate permitted by law.
Agreement Renewal	At the expiration of the Initial Term, this Agreement will automatically renew on a month to month basis unless terminated by either party with not less than thirty days written notice. For more details see Section 2 of this Agreement.

- 1. Agreement to Sell and Purchase Electric Power.** This is an agreement between Ampex Energy LLC (herein “Ampex”), an independent energy services company, and the undersigned customer (herein “Customer”). Customer and Ampex are sometimes referred to individually as a Party and collectively as the Parties. This Agreement sets forth the terms and conditions relative to transactions for the purchase and sale of electricity and related products and services to one or more of Customer’s accounts (each, an “Account”) as agreed between the Parties from time to time (each a “Transaction”). Subject to the terms and conditions of this Agreement, Ampex agrees to sell and supply, and Customer agrees to purchase and accept the quantity of electricity, as estimated by Ampex, necessary to meet Customer’s requirements based upon consumption data obtained by Ampex or the delivery schedule of the utility distribution company (the “UDC”). Ampex is not affiliated with and does not represent the UDC. The amount of electricity supplied under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by Ampex or the UDC’s delivery schedule. The UDC will continue to deliver the electricity supplied by Ampex.

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2. **Term.** This Agreement will commence on the Effective Date or Start Date and end on or about the date set forth under End Date as noted in the customer disclosure statement and in accordance with the terms of this Agreement. Unless otherwise agreed to by the Parties, upon completion of the Initial Term, this Agreement will automatically renew for successive one month terms on a monthly variable rate (“Renewal Term”) unless terminated by either Party upon thirty (30) days prior written notice to the other Party provided that termination shall not affect the completion of any obligations on any Accounts that are currently served by Ampex and have not been terminated or have not expired.

3. **Pricing, Billing, and Payment.** After receiving Customer’s usage for the Accounts, customer will be billed for electricity usage, unless otherwise agreed and based on eligibility of the Accounts, in the form of Dual Billing whereby Customer will receive two (2) invoices, one from Ampex for the Electricity Charge and one from the UDC for the amounts payable by Customer for services provided by the UDC (“Delivery Charges”). “Electricity Charge” represents the sum of (a) the fixed or variable price for electricity, and other related fixed and/or ancillary or pass through charges for related products and services supplied for each Account and the billing components associated with such charges during the applicable period. If there is a material adverse change in the business or financial condition of Customer (as determined by Ampex at its discretion) or if Customer fails to meet its obligations under this Agreement then, in addition to any other remedies that it may have, Ampex may terminate this Agreement upon 15 days’ written notice to Customer. For fixed price service if usage over the course of the year exceeds the level of usage in the same month in the previous year (“Base Load”), the Customer will be charged a variable price for all usage in excess of the Base Load and the fixed price for usage up to the Base Load. If the usage in any month falls below the Base Load, the Customer will be charged the fixed price for all usage and shall be charged for hedging, cash out costs, settlement or balancing costs related to the positive difference between the Base Load and actual consumption. If Ampex concludes that a change in laws increases Ampex’s costs, the purchase price may be adjusted by Ampex to reflect such costs. "Laws" mean all tariffs, laws, orders, rules, taxes, regulations and utility changes to customer’s monthly capacity and/or transmission obligations. Ampex’s invoices will be sent to Customer in accordance with Ampex’s normal billing cycle, as adjusted from time to time consistent with the applicable UDC’s meter read dates. The invoices will state any applicable Electricity Charge, and other amounts related to the purchase and delivery of electricity. Ampex’s invoices are due and payable on the 20th day after receipt of the applicable invoice or such other date as required by Law or as set forth as the Payment Due Date. Invoices not paid on or before the Payment Due Date will accrue interest daily on outstanding amounts from the

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Payment Due Date until paid in full, at the lesser of 1.0% per month or the highest rate permitted by Law.

4. **Event of Default.** An "Event of Default" means any one of the following: (a) Customer's inability or failure to timely make payment required under the Agreement if not paid within 15 Business Days (or such longer period required by applicable Law) following written notice to Customer that such payment is in arrears; (b) any representation or warranty made by a Party in the Agreement is false or misleading in any material respect when made or ceases to remain true in all material respects during the term of the Agreement, if not cured within 8 Business Days after written notice from the other Party; (c) the failure by a Party to perform any material obligation set forth in the Agreement where such failure is not cured within 8 Business Days after receipt of written notice thereof; or (d) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets; (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law for the protection of creditors, or has such petition filed against it; (iv) otherwise becomes bankrupt or insolvent; (v) is unable to pay its debts as they fall due; or (vi) is dissolved (other than pursuant to a consolidation, amalgamation or merger).

5. **Early Termination.** If Customer terminates this Agreement prior to the end of the Initial or Renewal Term or if Ampex terminates this Agreement due to Customer's default, the early termination fee shall be equal to the sum of, as applicable, if Customer is the defaulting party: (a) the positive difference, if any between the Electricity Purchase Price and the Market Price, multiplied by the estimated undelivered volume of Base Load or the electricity that the Customer would consume from the Early Termination Date through the then current initial or renewal term in effect for the applicable Account(s), as calculated by Customer; (b) Customer costs; plus (c) any unpaid amounts due from Customer to Ampex prior to the Early Termination Date. Further, the early termination fee shall be equal to the sum of, as applicable, if Ampex is the defaulting party: (a) the positive difference, if any between the Electricity Purchase Price and the Market Price, multiplied by the estimated undelivered volume of Base Load or the electricity that the Customer would consume from the Early Termination Date through the then current initial or renewal term in effect for the applicable Account(s), as calculated by Apex; (b) Apex's costs; minus (c) any unpaid amounts due from Customer to Ampex prior to the Early Termination Date. "Costs" means with respect to the early termination fee, brokerage fees, commissions, legal, consulting and other similar transaction costs and expenses reasonably incurred by such party as a result of early termination. The "Market Price" shall be the price of electricity and services as of the Early Termination Date.

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Ampex may determine the Market Price of a terminated transaction by reference to information either available to it internally or supplied by one or more third parties. Ampex shall not be required to enter into a replacement transaction with Customer in order to be entitled to an early termination fee.

6. **Assignment.** Customer may assign all its rights and obligations under the Agreement, if (i) it gives Ampex 45 days prior written notice of its intent to do so, with assignment not to be withheld solely on less than 45 days notice, if operationally reasonable, (ii) if assignee satisfies Ampex's credit requirements; (iii) assignee assumes in writing all of Customer's obligations; and (iv) Customer is liable for performance and payment for services and goods received prior to the assignment date. Ampex may assign, sell, pledge, transfer, or encumber any of its rights and obligations under the Agreement or the Accounts, revenue or proceeds hereof to any person or entity as authorized by the DPS succeeding to all or substantially all of Ampex's assets or business the division or region of Ampex to which the Agreement relates or into which Ampex is merged provided that the succeeding entity agrees to be bound to the Agreement.
7. **Information Release Authorization.** Customer hereby authorizes Ampex to act as necessary to enroll the Customer accounts with the UDC so as to be served by Ampex and to meet its obligations under this Agreement. This Agreement constitutes the written authorization by Customer for Ampex to obtain from time to time from the UDC and ISO all current and historical energy billing, usage data and other related information. Customer shall take steps or execute documents and provide any information as Ampex reasonably requires to meet its obligations under the Agreement. This information may be used by Ampex to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to Ampex. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to Ampex or by calling Ampex at []. Ampex reserves the right to cancel this Agreement in the event Customer rescinds the authorization.
8. **Consumer Protections.** The services provided by Ampex to Customer are governed by the terms and conditions of this Agreement. Ampex will provide Customer at least 15 days' notice prior to the cancellation of service to Customer. Customer may obtain additional information by contacting Ampex at [] or the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its

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website at: <http://www.dps.state.ny.us>. You may also contact the Department for inquiries regarding the competitive retail energy market at 1.888.697.7728.

9. **Agency-Electric:** Customer hereby designates Ampex as agent to; (a) arrange and administer contracts and service agreements between Customer and Ampex and those entities including the New York Independent System Operator ("NYISO") engaged in the generation, transmission and delivery of Customer electricity supplies; and (b) nominate and schedule with the appropriate entities including the UDC for the delivery of electricity to the Sales Point and the Customer's end-use premises. Ampex as agent for the Customer will schedule the delivery of adequate supplies of electricity that meet the Customer's requirements as established by the UDC and in response to information provided by the UDC. The Sales Points for the electricity will be a point at the NYISO Ampex load bus (located outside of the municipality where Customer resides). These services are provided on an arm's length basis and market-based compensation is included in the price noted above.
10. **Title.** Customer and Ampex agree that title to, control of, and risk of loss to the electricity supplied by Ampex under this Agreement will transfer from Ampex to Customer at the Sales Point(s).
11. **Warranty.** This Agreement, including any enrollment form and applicable attachments, as written comprise the entire Agreement between Customer and Ampex. Ampex makes no representations or warranties other than those expressly set forth in this Agreement, and Ampex expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.
12. **Force Majeure.** Ampex will make commercially reasonable efforts to provide electricity hereunder but Ampex does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of Ampex ("Force Majeure Events") may result in interruptions in service. Ampex will not be liable for any such interruptions caused by a Force Majeure Event, and Ampex is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the UDC (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), changes in laws, rules, or regulations of any governmental authority or any other cause beyond Ampex's control.

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13. **Indemnification; Limitations.** Each Party agrees, to defend, indemnify and hold harmless the other Party, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors, affiliates and assigns, from and against all claims, losses, expenses (including reasonable attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, including but not limited to, claims for personal injury, death, business losses or property damage, arising out of, or in connection with, the performance of a Party's obligations under the Agreement, to the extent caused by the negligence or willful misconduct of the indemnifying Party ("Claims"). Customer acknowledges and agrees that the UDC and ISO are exclusively responsible for the energy transmission and delivery system, that Ampex has no independent control over their systems and will have no liability for any of their acts or omissions. Notwithstanding any provision to the contrary, the remedy in any claim or suit by each Party for any claim or suit will be solely limited to direct actual damages as calculated in Section 5 of this Agreement. All other remedies at law or in equity are hereby waived. In no event will either Ampex or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages.
14. **Ampex Contact Information.** Customer may contact Ampex's Customer Service Center at [], Monday through Friday 8:00 a.m. - 8:00 p.m. EST (contact center hours subject to change). Customer may write to Ampex at: Ampex, [] N.Y. [10801].
15. **Dispute Resolution (Commercial).** In the event of a billing dispute or disagreement involving Ampex's service, Customer should contact Ampex's Customer Service Center as provided above. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute. If the parties cannot resolve the dispute within 45 days, either party may avail itself of all remedies available under law or equity. The DPS will not resolve Non Residential disputes associated with the services provided under this Agreement. However, the DPS will monitor inquiries and contacts from Non-Residential customers regarding energy service companies and an excessive number of confirmed complaints may result in an energy service company no longer being eligible to supply electricity in New York State. The DPS Office of Consumer Services can be reached at: New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; or by visiting www.dps.state.ny.us.
16. **Confidentiality.** Each Party agrees to keep all terms and provisions of the Agreement and all communications provided in connection with the Agreement, including the pricing offered to Customer, confidential to the extent not otherwise publicly available and not to disclose them to any third parties without the prior written consent of the other Party, except as otherwise required by Law. Each Party may disclose such information to

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its affiliates and to its and its affiliates' employees, agents, advisors; and on a need to know basis, to its independent contractors, provided each such recipient agrees to hold such information in confidence. Ampex may disclose information respecting Customer to third parties that are representing Customer in the purchase of energy or related services. Furthermore, Ampex may make such other disclosures to third parties of information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of confidential information is sought through a court, or a state or federal regulatory agency or other legal compulsion, the Party receiving such request will notify the other Party immediately to afford it the opportunity to oppose such disclosure via a protective order or other relief as may be available and will provide reasonable support.

17. **Choice of Law, Venue, Attorney Fees and Expense.** The Agreement will be governed and interpreted in accordance with the laws of the state of New York without giving effect to conflict of law principles. Any controversy or claim arising from or relating to the Agreement will be settled in accordance with the express terms of the Agreement by a court located in the governing jurisdiction (and each Party hereto waives any right to object to venue in this regard). TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. If either Party pursues court action to enforce its rights under the Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.
18. **Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on Ampex's net income, shall be paid by Customer, and Customer agrees to indemnify Ampex and hold Ampex harmless from and against any and all such taxes.
19. **Notice.** Any and all notices required or permitted to be given under this Agreement shall be sufficient if furnished in writing and personally delivered or sent by registered or certified mail, return receipt requested or sent by a nationally recognized overnight courier service to:

If to Customer:

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If to Ampex:

20. Regulatory Changes. This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder. If at some future date there is a change in any law, rule, regulation, tariff, or regulatory structure (“Regulatory Change”) which impacts any term, condition or provision of this Agreement including, but not limited to price, Ampex shall have the right to modify this Agreement to reflect such Regulatory Change by providing 30 days’ written notice of such modification to the Customer.

21. Emergency Service. The UDC will continue to respond to emergencies. In the event of a gas leak, service interruption or other emergency, Customer should immediately call the UDC at Con Edison 1-800-752-6633; Orange and Rockland at 1-877-434-4100; National Grid (NYC) at 718-643-4050 and 1-800-490-0045 (Long Island); RG&E at 1-800-743-1701 and NYSEG at 1-800-527-2714.

22. Parties Bound. This Agreement is binding upon the Parties hereto and their respective successors and legal assigns. Customer and Ampex have caused this Agreement to be executed as of the date noted above on the first page of this Agreement, by individuals authorized to bind each Party, and Customer has reviewed all terms herein.

Ampex Energy LLC

Customer Name

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____