

# FIXED RATE RENEWABLE ELECTRIC SUPPLY SALES AGREEMENT COMBINED MASS MARKET

## CUSTOMER DISCLOSURE STATEMENT

Price	Renewable Fixed Rate per KWH is \$ <u>0.1409</u> . AP&G has the right to modify the fixed rate to reflect Regulatory Change, see below Section 7 for more details. The price does not include charges for services normally charged by the local utility.
Length of the agreement and end date	The Term is 12 months. Start date will begin on the date the utility switches your account(s) to AP&G and continue 12 Billing cycles thereafter. For more details, see below Section 2. Term.
Process customer may use to rescind the agreement without penalty.	A Residential or Commercial Customer may rescind by calling the toll-free number within 3 business days of receipt of the sales agreement.
Amount of Early Termination Fee ("ETF") and method of calculation.	There are no cancellation fees. For more details, see below Section 6. Termination.
Amount of Late Payment Fee and method of calculation.	As per the Utility tariff.
Provisions for renewal of the agreement.	After Initial Term, unless otherwise agreed and upon affirmative consent, this Agreement will renew on a month-to-month basis at a variable renewable product rate until terminated by either party. Two notices will be sent prior to contract expiration. The <u>Electric Variable</u> Price shall each month reflect a blend of NYISO settled wholesale prices and any hedges, if applicable, bought for AP&G's aggregated load (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors, plus applicable taxes, fees, charges or other assessments and AP&G's costs, expenses, and margins. For more details see Section 2 - Term.
Guaranteed Savings	This agreement does not offer guaranteed savings below the utility price.
Compensation Disclosure	If an energy consultant was used as part of this transaction, the consultant representative receives a commission payment between \$8 and \$25 paid by bank wire. Depending on tiers and production levels, the Consultant may also receive additional compensation, bonuses, commissions, and/or prizes.
Renewable Energy Product	50% of your electric energy under this agreement will be matched with electricity generated by deliverable renewable energy sources. For more details see Section 3.1.

## TERMS & CONDITIONS

**1. Agreement to Sell and Purchase Energy.** This is an agreement between American Power & Gas LLC ("AP&G"), an independent energy services company, and the undersigned customer ("Customer") under which Customer shall initiate electricity service and begin enrollment with AP&G (the "Agreement"). Subject to the terms and conditions of this Agreement, AP&G agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity, as estimated by AP&G, necessary to meet Customer's requirements based upon consumption data obtained by AP&G from the delivery schedule of your Local Distribution Company or "**LDC**" (your electric Utility Company). Note: AP&G is not affiliated with and does not represent the LDC.

**2. Term.** This Agreement's start date will begin on the date the utility switches your account(s) to AP&G and continue for 12 billing cycles thereafter (the "Initial Term"). Unless otherwise agreed to, upon completion of the Initial 12-month Term, and with affirmative consent this Agreement will automatically switch to a renewable variable rate methodology and continue until terminated by either party. Two notices will be sent no less than 30 days or more than 90 days prior to the contract expiration.

**3. Rate/Billing.** The price per kWh for all electricity sold to the customer during the term under this Agreement is as stated in the above disclosure.

**Billing:** AP&G will invoice Customer monthly for electricity supplied under this Agreement, as measured by the Local Distribution Company (LDC) (this is your local utility company). Customer will receive a single bill for both commodity and delivery costs from your local utility company/LDC. AP&G may assign and sell Customer accounts receivable to the LDC. As applicable, the LDC will handle your budget billing service. In the event of failure to remit payment when due by a residential customer, AP&G may terminate commodity service and seek suspension of distribution service in conformance with the Home Energy Fair Practices

Act ("HEFPA"). Failure by a commercial customer to make full payment of AP&G charges due on any consolidated bill prepared by the LDC for AP&G will be grounds for disconnection of utility services in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR Section 13.3.

**3.1 Renewable Energy Product.** Electric customers are guaranteed that 50% of your electricity usage is matched by the generation of energy from renewable resources by retiring renewable energy certificates (RECs). RECs represent the environmental attributes associated with the applicable amount of renewable energy generation from various renewable sources that comply with the appropriate locational and delivery requirements. RECs will be purchased and retired to satisfy the percentage of renewable generation guaranteed by this agreement. The renewable mix provided under this agreement must be at least 50% greater than the applicable Renewable Energy Standard (RES) obligation for the current year. In order to satisfy the terms of this contract, RECs must be purchased from eligible renewable generators through NYGATS or by purchasing eligible RECs from NYSERDA or by procuring RECs from eligible renewable generators through bilateral contracts or by entering into bundled energy and REC purchase agreements with eligible renewable generators or by making Alternative Compliance Payments to NYSERDA.

**4. Credit/Security Deposit.** The customer acknowledges that AP&G has the right to administer a credit review prior to providing the service(s) listed within this agreement. The result of the check may determine that a security deposit or other credit assurances is required. The amount determined due by AP&G shall be paid within ten (10) days of the date the request is made. If you fail to make such a deposit within this timeframe, you will not be enrolled for service with AP&G.

**5. Load Changes.** The customer will give AP&G a minimum of 30-day notice of any significant load change in its usage, including, but not limited to the sale or closure of a site. AP&G will use the load information from your utility company to purchase power for you, the customer, and as the customer, you are responsible for payment of any actual damages incurred as a result of such changes. If the Customer has a change in usage over 15%, the customer will pay for the increase in Load at AP&G's full cost of providing that usage, plus margin. If the Customer has a change in usage below 15%, the customer will pay the full cost of liquidating that load. AP&G will calculate the amount of such costs in a reasonable manner and submit an invoice to the customer which will be due and payable (within thirty (30) days). AP&G reserves the right to cancel any account that falls 15% above or below the usage established at the start of this agreement.

**6. Termination.** In order for AP&G to supply fixed price electricity, long term supply arrangements are made with generators of electricity to meet the forecasted consumption of you, the customer. If the customer cancels/terminates this agreement for any reason, there is no early termination fee (ETF). In the event the customer is deceased before the end of the contract term, no fee for termination or early cancellation will be assessed.

**7. Regulatory Changes/Rate 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 your rate, AP&G shall have the right to modify this Agreement upon affirmative consent to reflect such Regulatory Change by providing 30 days' written notice of such modification to the Customer.

**8. Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of AP&G. AP&G may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the DPS (Department of Public Service).

**9. Information Release Authorization.** Customer authorizes AP&G to obtain and review the following information from the LDC: consumption history; billing determinants; account number; credit information; public assistance status; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods under PSL § 32 (3); and information pertaining to PSL § 33, tax status and eligibility for economic development or other incentives. This information may be used by AP&G 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 AP&G. 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 AP&G or by calling AP&G at 1.800.205.7491. AP&G reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**10. Consumer Protections Regarding Termination of Services.** The services provided by (ESCO) to Customer are governed by the terms and conditions of this Agreement and the New York State Public Service Commission rules and regulations (Orders) including the Uniform Business Practices (UBP) and HEFPA for residential customers. AP&G will provide at least 30 days' notice prior to the cancellation of service to Customer. In the event of non-payment of any charges owed to AP&G, a residential Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the DPS. Customer may obtain additional information by contacting AP&G at 1.800.205.7491 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 website at: <http://www.dps.ny.gov>. You may also contact the Department ESCO hotline for inquiries regarding the competitive retail energy market at 1.888.697.7728.

**11. Rescission.** A residential or commercial Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting AP&G at 1.800.205.7491 or in writing. Customer is liable for all AP&G charges until Customer returns to the LDC or goes to another supplier.

**12. Agency:** Customer hereby designates AP&G as agent to: (a) arrange and administer contracts and service agreements between Customer and AP&G 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 LDC for the delivery of electricity to the Sales Point and the Customer's end-use premises. AP&G as agent for the Customer will schedule the delivery of adequate supplies of electricity that meet the Customer's requirements as established by the LDC and in response to information provided by the LDC. The Sales Points for the electricity will be a point at the NYISO AP&G 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. The foregoing is not intended to and in no way shall operate to create any fiduciary duties between AP&G and Customer, nor shall the foregoing operate to create any Principal-Agent relationship between AP&G and Customer for any other purposes.

**13. Warranty.** This Agreement, including any enrollment forms and applicable attachments, as written, makes up the entire Agreement between Customer and AP&G. AP&G makes no representations or warranties other than those expressly set forth in this Agreement, and AP&G expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

**14. Force Majeure.** AP&G will make commercially reasonable efforts to provide electricity hereunder but AP&G does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of AP&G ("Force Majeure Events") may result in interruptions in service. AP&G will not be liable for any such interruptions caused by a Force Majeure Event, and AP&G 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, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDC (including, but not limited to, an electric facility outage), or any other cause beyond AP&G's control.

**15. Liability.** The remedy in any claim or legal proceeding by Customer against AP&G will be solely limited to direct actual damages, which will under no circumstances exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months of the time period in dispute. Customer shall not pursue or recover any additional damages or amounts from AP&G, and all other remedies at law or in equity are hereby waived. In no event will either AP&G 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. Customer & AP&G acknowledge that there are no third-party beneficiaries to this Agreement.

**16. AP&G Contact Information.** Customer may contact AP&G's Customer Service Center Monday through Friday 9:00 a.m. - 5:00 p.m. EST (contact center hours subject to change) at 1-800-205-7491, or customerservice@goapg.com or by writing to AP&G at: American Power & Gas, 10601 Belcher Road South, Seminole, FL 33777.

**17. Dispute Resolution.** The services provided by AP&G to Customer are governed by the terms and conditions of this Agreement and HEFPA for residential customers. In the event of a billing dispute or a disagreement involving AP&G's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact AP&G by telephone or in writing as provided above. For consumer complaints that cannot be resolved with the company, you may contact the New York Department of Public Service (DPS). DPS complaints may be directed as follows: Website: [www.dps.ny.gov/complaints](http://www.dps.ny.gov/complaints); Phone: DPS Helpline at 1-800-342-3377 (M-F 8:30a - 4:00p); or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223 Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of DPS.

**18. Confidentiality.** Unless disclosure is required by law, neither party will divulge the disclosure or terms of this agreement. The parties shall be entitled to all remedies available in seeking relief in connection with this confidentiality obligation. This provision will survive the end of this agreement for a period of two years.

**19. Customer Generation:** The Rate per kWh for the Term specified within this agreement is conditioned on Customer's warranty that, the Customer does not own any on-site generation (except for emergency back-up generation used when the LDC is not capable of delivering energy) or thermal storage capabilities. Customer acknowledges that the use of such on-site generation impacts the customer's historical consumption, current and future usage and that the implementation of such on-site generation would be a breach of this agreement.

**20. Arbitration of Disputes/Waiver of Jury Trial/ and Participation in Class Actions.** Except as to matters submitted to DPS as described in Paragraph 14 of this Agreement, any dispute between AP&G and Customer, whether arising or based in any contract, statute, regulation, or tort, shall be decided by binding arbitration under the Consumer Arbitration Rules of the American Arbitration Association ("AAA") and pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., and shall be venued exclusively in the State of New York and in the County where services are being provided under this Agreement, or where AP&G and Customer mutually agree. Any claim, arbitration, action, or proceeding shall proceed only on an individual basis. Neither AP&G nor Customer shall be permitted to join or consolidate disputes involving others in any claim, arbitration, action, or proceeding, nor shall any claim, arbitration, action, or proceeding be brought or maintained as a class action or in any representative capacity. **AP&G AND CUSTOMER UNDERSTAND THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO A TRIAL BY JURY AND WAIVING THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION.**

**21. Choice of Laws.** This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

**22. 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 AP&G's net income, shall be paid by Customer, and Customer agrees to indemnify AP&G and hold AP&G harmless from and against any and all such taxes.

**23. Emergency Service.** The LDC will continue to respond to leaks and emergencies. In the event of a service interruption or other emergency, Customer should immediately call the LDC at Con Edison 1-800-75CONED; Orange and Rockland at 1.877.434.4100; KeySpan 718.643.4050 (NYC) and 1.800.490.0045 (Long Island); Niagara Mohawk at 1.800.892.2345; Central Hudson at 1.800.527.2714; RG&E at 1.800.743.1701; NYSEG at 1.800.572.1131. Customer should then call AP&G at: 1.800.205.7491.

**24. Parties Bound.** This Agreement is binding upon the parties hereto and their respective successors and legal assigns.

**In the case of telephonic or electronic enrollment, execution shall be deemed provided in accordance with, and pursuant to the methods authorized under the New York Uniform Business Practices codes.**