



South Bay Energy Corp. (ESCO)
 54 State Street, Suite 804 #7818
 Albany, NY 12207

Toll Free: 877-724-9010
 Fax: 631-724-9011

Natural Gas Sales Agreement – Large Commercial

Customer: _____ **Date:** _____
Address: _____ **Gas Utility (LDC):** _____
 _____ **Security Question:** _____
Contact Name: _____ **Telephone:** _____
Tax ID#: _____ **Sales Representative:** _____
Gas Account #: _____ **Signature:** _____

CUSTOMER DISCLOSURE STATEMENT

Price: Fixed or Variable	Fixed: \$ _____ /Therm	Variable: \$ _____ /Therm
How price is determined	Fixed. Price identified above; however, Fixed Price may be modified due to a Change in Law or Practice as detailed in the Agreement. Variable: Price changes each month reflect the cost of energy from all sources, capacity, settlement, ancillaries, related transmission and distribution charges and other market-related factors; plus all applicable taxes, fees, charges or other assessments and ESCO's costs, expenses and profit margins based upon business and market related factors and at ESCO's discretion.	
Length of Agreement & End Date:	From: _____ To: _____ ("Initial Term")	
Process Customer May Use to Rescind Agreement Without Penalty	Customer may rescind by calling toll free number within 3 business days of receipt of the sales agreement or by contacting ESCO or utility prior to the expiration of the contract.	
Amount of Early Termination Fee and Method of Calculation	Fixed Rate: The projected amount of commodity to be consumed by you for the remainder of the current Term multiplied by the difference between the fixed price in effect for the remainder of the current Term and the price at which ESCO can sell such commodity following the termination Variable Rate: None	
Late Payment Fee & Calculation	South Bay Energy Corp. does not charge any late payment fees.	
Renewal	ESCO will notify Customer in writing of the terms of renewal of this Agreement 30-60 days prior to the completion of the Initial Term. At the end of the Initial Term, this Agreement will renew for the same duration as the Initial Term at a variable rate, unless agreed upon otherwise agreed to by the Parties.	
Guaranteed Savings	ESCO does not guarantee savings against the utility rate.	
Compensation	ESCO will pay broker/consultant a \$ per therm in conjunction with this agreement.	

Customer represents it is a non-residential customer that on an annual basis uses more than 750 dekatherms when usage is aggregated across all accounts. ESCO represents Customer was not solicited Door-to-Door. By entering into this Agreement, Signatory affirms that they are authorized to transact on behalf of Customer and agrees to the terms above (along with the attached Terms and Conditions) and authorizes ESCO to act as Customer's agent in dealing with the Utility. Customer and ESCO have caused this Agreement to be executed as of the date first set forth above, and this shall be the effective date of Customer Enrollment.

For: _____
 South Bay Energy Corp.
 ESCO

For: _____
 CUSTOMER'S NAME

By: _____

By: _____

Date: _____

Date: _____

SIGNATURE

CUSTOMER'S SIGNATURE

Terms and Conditions - Commercial

Agreement to Sell and Purchase Energy: This is an agreement between South Bay Energy Corp. (“ESCO”) and the undersigned customer (“Customer”) under which Customer shall initiate energy service (natural gas and/or electricity) and begin enrollment with ESCO (the “Agreement”). Subject to the terms and conditions of this Agreement, ESCO agrees to sell and supply, and Customer agrees to purchase and accept the quantity of energy, necessary to meet Customer’s requirements based upon consumption data obtained by ESCO or the delivery schedule of the Local Distribution Company (the “LDC”). The amount of energy delivered under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by ESCO or the LDC’s delivery schedule.

Term; Termination: This Agreement shall commence as of the date Customer’s notice regarding the change of Customer’s provider to ESCO is deemed effective by the LDC, and shall continue for the term identified in the Customer Disclosure Statement (“Initial Term”) (“CDS”) months thereafter. Customer will receive a written notification of any proposed changes to such terms at least 30 days but no more than 60 days prior to the renewal date (the “Renewal Term”). After the Initial Term, this Agreement will renew for the same timeframe as the Initial Term on a variable rate, which may change on a month-to-month basis, unless agreed to otherwise by Customer and ESCO in writing (or verifiable oral consent). Customer shall retain the right to renew, terminate or renegotiate this Agreement prior to the anniversary date of the renewal period. If there is a material adverse change in the business or financial condition of Customer (as determined by ESCO 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, ESCO may terminate this Agreement upon 15 days’ written notice to Customer. Such termination will constitute a Customer breach. The Customer may provide written notice of termination or call ESCO at 1-877-724-9010 or call their delivery company to terminate the agreement. For any reason, or no reason at all, ESCO may terminate this Agreement by providing 30 days’ written notice to the Customer.

Price; Swing: The price for all energy sold under this Agreement shall include and be subject to all applicable taxes. For fixed price service if usage in any month exceeds the level of usage in the same month in the previous year by ten percent or more (“Base Load”), the Customer, at ESCO’s option, may 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 by ten percent or more of the Base Load, the Customer will be charged the fixed price for all usage and shall be charged for hedging, cash out costs or balancing costs.

Billing: ESCO will invoice Customer monthly for energy delivered under this Agreement, as measured by the LDC. Customer may receive a single bill for both commodity and delivery costs from either ESCO or the LDC, or each of the LDC and ESCO may invoice Customer separately. Failure to make full payment of ESCO charges due on any consolidated bill prepared by the LDC for ESCO will be grounds for disconnection of utility services and commodity service in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR Section 13.3. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the New York State Department of Public Service (the “DPS”). No fee will be charged for any returned payments.

Information Release Authorization: Customer authorizes ESCO to obtain and review information regarding Customer’s credit history from credit reporting agencies and the following information from the LDC: consumption history; billing determinants; utility account number; credit information; public assistance status; tax status and eligibility for economic development or other incentives. This information may be used by ESCO 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 ESCO. 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 to ESCO or by calling ESCO at 1-877-724-9010. ESCO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

Delivery Point, Title and Taxes (Natural Gas): ESCO will deliver Customer’s natural gas supply to the transfer point where gas first enters the interstate pipeline. Title to, and risk of loss of the natural gas will pass from ESCO to Customer at the transfer point(s). ESCO warrants good title to the natural gas sold and delivered to Customer. If Customer requests, ESCO will act as Customer agent and arrange transportation of natural gas from transfer point(s) to the respective LDC’s City Gate. Customer will be liable for and pay all taxes or surcharges, which are imposed with respect to the sale of natural gas. If Customer is exempt from such taxes, Customer is responsible for identifying and requesting any exemption from the collection of the taxes by filing appropriate documentation with ESCO.

Consumer Protection: Customer may obtain additional information by contacting ESCO at 877-724-9010 or the DPS at 1-888-697-7728, 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 dps.ny.gov

Cancellation: Customer is liable for all ESCO charges until Customer returns to the LDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if 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.

Agency: Customer hereby appoints ESCO as agent for the purposes of (i) acquiring the supplies necessary to meet Customer’s energy needs, and (ii) arranging, contracting for and administering transportation and related services over transmission and pipeline facilities and those of the LDC needed to deliver energy to the Customer’s premises. These services are provided on an arm’s length basis and

market-based compensation is included in the price noted above.

Warranty: This agreement, including any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and ESCO. ESCO makes no representations or warranties other than those expressly set forth in this agreement, and ESCO expressly disclaims all other warranties, expressed or implied, including merchantability and fitness for a particular use.

Force Majeure: ESCO will make commercially reasonable efforts to provide energy hereunder but ESCO does not guarantee a continuous supply of energy to Customer. Certain causes and events out of the control of ESCO ("Force Majeure Events") may result in interruptions in service. ESCO will not be liable for any such interruptions caused by a Force Majeure Event, and ESCO 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, pandemic, 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, a facility outage on its energy distribution network), changes in laws, rules, or regulations of any governmental authority or any other cause beyond ESCO's control.

Liability: The remedy in any claim or suit by Customer against ESCO will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). All other remedies at law or in equity are hereby waived. In no event will either ESCO 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. There are no third-party beneficiaries to this Agreement.

Contact Information: Customer may contact ESCO's Customer Service Center at 1-877-724-9010, Monday through Friday 8:00 a.m. - 5:30 p.m. EST (contact center hours subject to change). Customer may write to ESCO at: South Bay Energy 54 State Street, Suite 804 #7818, Albany, NY 12207.

Dispute Resolution: In the event of a billing dispute or a disagreement involving ESCO's service, Customer should contact ESCO's office. 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 Sales 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 on an energy service company no longer being eligible to supply electricity or natural gas 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; 1-800-342-3377, or by visiting dps.ny.gov

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 ESCO's net income, shall be paid by Customer, and Customer agrees to indemnify ESCO and hold ESCO harmless from and against any and all such taxes. 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.

Change in Law or Practice: 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 ("Change in Law") which impacts any term, condition or provision of this Agreement including, but not limited to price or, if there is a change to the manner in which any transporter, LDC, EDC, pipeline, NYISO agency or any other authority implements or interprets any law, rule, regulation, tariff, or regulatory structure that increases ESCO's costs ("Change in Practice"), ESCO shall have the right to pass on such additional costs and/ or modify this Agreement to reflect such change. If at some future date there is a change in any law, rule, regulation or pricing structure whereby ESCO is prevented, prohibited or frustrated from carrying out the terms of the Agreement, at its sole discretion ESCO shall have the right to cancel this Agreement on 15 days' notice to Customer.

Assignment: Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of ESCO. ESCO may sell, transfer, pledge, or assign the accounts receivable, revenues, or proceeds hereof, in connection with any financing agreement, purchase of accounts receivables program or billing services agreement, and may assign this Agreement and the rights and obligations there under, to another energy supplier, energy services company or other entity as authorized by the DPS.

Emergency Service Contacts: The LDC will continue to respond to leaks and emergencies. In the event of a gas leak, service interruption or other emergency, Customer should immediately call the LDC at National Grid (800) 490-0045; Con Ed (800) 752-6633.

Choice of Laws: Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York. 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.

AGREEMENT TO ARBITRATE; WAIVER OF JURY TRIAL, WAIVER OF PARTICIPATION IN CLASS ACTIONS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE NEW YORK LAW, IF THERE IS AN ISSUE, CLAIM OR DISPUTE BETWEEN CUSTOMER AND ESCO, RELATING TO THIS AGREEMENT, ESCO'S SERVICES, OR THE SALE OR MARKETING OF ESCO'S SERVICES THAT CANNOT BE RESOLVED INFORMALLY, IT SHALL BE DECIDED THROUGH FINAL, BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR UNDER THE CONSUMER ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE VENUE FOR ANY ARBITRATION SHALL BE IN NASSAU COUNTY,

NEW YORK. THE FILING FEES, ARBITRATOR FEES, ATTORNEYS' FEES AND ALL OTHER COSTS, FEES AND EXPENSES SHALL BE SOLELY BORNE BY THE PARTY SEEKING ARBITRATION. CUSTOMER AND ESCO MUTUALLY WAIVE THE RIGHT TO BRING AN ACTION IN A COURT OF LAW AND FURTHER WAIVE THE RIGHTS TO TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION. BOTH PARTIES UNDERSTAND AND ACKNOWLEDGE THAT THIS APPLIES REGARDLESS OF WHETHER THE ISSUE, CLAIM OR DISPUTE INVOLVES A TORT, FRAUD, BREACH OF CONTRACT, MISREPRESENTATION, PRODUCT LIABILITY, NEGLIGENCE, AND/OR VIOLATION OF ANY STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. BOTH PARTIES UNDERSTAND AND ACKNOWLEDGE THAT THE SCOPE OF THIS WAIVER APPLIES TO ALL ISSUES, CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO ANY ASPECT OF CUSTOMER'S: (i) AUTHORIZATION TO SWITCH NATURAL GAS SUPPLY SERVICE AND/OR ELECTRICITY SUPPLY SERVICE TO ESCO. AND/OR (ii) RECEIPT OF NATURAL GAS AND/OR ELECTRICITY UNDER THIS AGREEMENT. THE MANDATORY ARBITRATION OF CLAIMS PROVISION SET FORTH HEREIN SHALL APPLY EVEN AFTER CUSTOMER CEASES RECEIVING NATURAL GAS AND/OR ELECTRICITY FROM ESCO. ALL ARBITRATIONS SHALL BE CONDUCTED ON AN INDIVIDUAL (AND NOT A CLASS-WIDE) BASIS AND AN ARBITRATOR SHALL HAVE NO AUTHORITY TO AWARD CLASS-WIDE RELIEF. CUSTOMER AND ESCO ACKNOWLEDGE AND AGREE THAT EACH IS PROHIBITED FROM COMMENCING ARBITRATION OR ANY OTHER PROCEEDINGS AS A REPRESENTATIVE OF OTHERS OR JOINING IN ANY ARBITRATION OR ANY OTHER PROCEEDINGS BROUGHT BY ANY OTHER PERSON AND/OR ENTITY. NOTWITHSTANDING THE FOREGOING, THIS PARAGRAPH DOES NOT PREVENT CUSTOMER FROM FILING A COMPLAINT TO THE PUBLIC SERVICE COMMISSION.

Any demand for arbitration or notice of intention to arbitrate shall be served by either Customer or ESCO within ninety (90) days of the accrual of such arbitrable claim. Failure to demand arbitration or serve a notice of intention to arbitrate within this timeframe shall result in a waiver of any rights to arbitrate unless otherwise provided by applicable law or agreed upon by the parties in writing. This ninety (90) day requirement takes priority over all other provisions of this Agreement. Parties acknowledge and agree to the importance of timely commencement and the consequences of failing to adhere to this requirement.

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

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.

Forward Contract. Each Party acknowledges that: (a) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (b) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodities; (c) ESCO is not a "Utility" as defined in the Code; (d) Commodity supply will be provided by ESCO under this Agreement, but delivery will be provided by the Utility; and (e) the Utility, and not ESCO, is responsible for responding to service problems or emergencies should they occur.

Confidentiality. Customer agrees that for so long as this Agreement remains in effect and for a period of two (2) years following cancellation of this Agreement, this Agreement and all pricing provided there under is commercially sensitive and shall not, unless required by law, be disclosed to any third party, or any Customer employee without a need to know, without the prior written consent of ESCO.

Communications. By accepting this Agreement, you consent to receive calls and/or texts for any purpose, including with marketing offers and other information, from ESCO its affiliates and/or assigns, at the telephone number(s) you provide to ESCO its affiliates and/or assigns, possibly through use of automated technology or pre-recorded voice. You agree that this consent survives the termination of your contract and that your consent to receive marketing communications is not a condition of purchase and may be revoked at any time. Customer agrees to receive communications from Seller at the email address provided above.