

Confidentiality Agreement

This Confidentiality Agreement (“Agreement”) is made and entered into effective as of this _____ day of _____, _____ (the “Effective Date”) by and between South Bay Energy Corp. (“South Bay”), a New York corporation, with mailing address 54 State Street Suite 804 #7818, Albany, NY 12207 and _____ (“Counterparty”), a _____ with offices at _____ . South Bay and Counterparty are sometimes hereafter referred to individually as “Party” and collectively as “Parties.”

Recitals:

WHEREAS, the Parties desire to enter into this Agreement in connection with the evaluation of a possible business transaction (“Transaction”), and in particular the exchange of information, which the Parties deem to be confidential or proprietary related to such possible Transaction; and

WHEREAS, the Parties wish to define in this Agreement their respective rights and obligations with respect to such information.

In consideration of the mutual agreements, covenants, and conditions contained herein, the Parties agree as follows:

1. Definition. As used herein, the term “Confidential Information” means, subject to Section 2, all information disclosed by a Party or its affiliates (the “Disclosing Party”) to the other Party (the “Receiving Party”) pursuant to this Agreement that is non-public information of the Disclosing Party or any of its affiliates. “Confidential Information” includes, without limitation, all documents; products; reports; studies; memoranda; analyses; compilations; summaries; trade secrets; project descriptions; computer programs and models and the inputs thereto and outputs there from; commercial, financial, process or economic data or information; financial and other projections; statements, and results; pricing proposals; cost analyses; test results; research and business strategies; information received from a third party; and contract proposals and contract terms. Confidential Information may be in any form whatsoever, including, without limitation, writings, computer code or programs, logic diagrams, component specifications, drawings, or other media, and may be written or oral.
2. Exceptions. Notwithstanding the provisions of Section 1, the term “Confidential Information” shall not include any information (or any portion thereof) to the extent the Receiving Party can establish such information:
 - (i) was known to the Receiving Party prior to disclosure under this Agreement, or was made available to the Receiving Party or its representatives (as defined below) on a non-confidential basis prior to its disclosure under this Agreement, provided the source of such information was not prohibited from disclosing such information by a legal, contractual or fiduciary obligation;

- (ii) is at the time of disclosure, or becomes following disclosure, available to the Receiving Party or the public other than as a result of disclosure in violation of this Agreement or other legal, contractual or fiduciary obligation; or
- (iii) is independently developed by the Receiving Party without reference to the Confidential Information and without the breach of any disclosure or use restrictions or obligations under this Agreement or any other similar agreement.

Specific information shall not be deemed to be within the exceptions of subparts (i) and (ii) above merely because such information is embraced by more general information within such exceptions.

3. Limitations on Disclosure. The Receiving Party must hold Confidential Information in strict confidence and may not disclose Confidential Information received hereunder to any other person or entity, except that Confidential Information may be disclosed (i) to any third party to whom the Receiving Party is or becomes legally compelled by any governmental, judicial, or regulatory authority with jurisdiction to disclose Confidential Information (e.g., by order, deposition, interrogatory, civil investigative demand, request for documents, subpoena, or similar process or rule of procedure, or by statute, rule or regulation, or other legal requirement), but only to the extent disclosure is required, and (ii) to any of the Receiving Party's or its affiliates, shareholders, members, partners, directors, officers, employees, agents, contractors, lenders and representatives, including legal counsel, financial advisors, and accountants (collectively, "Representatives") who are directly involved in and require access to such information in connection with the Transaction and who are made aware of this Agreement and its terms and agree to be bound by the terms hereof. In the event the Receiving Party is required to disclose Confidential Information under (i) above, where legally permissible, the Receiving Party shall give prompt written notice of the existence, terms, and circumstances surrounding such requirement to the Disclosing Party so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other relief in the appropriate forum and/or waive compliance by the Receiving Party with the terms of this Agreement. The Receiving Party agrees that any of its Representatives to whom Confidential Information is or may be disclosed will be informed of the confidential or proprietary nature thereof and that they are required to abide by the Receiving Party's obligations under this Agreement. The Receiving Party shall be responsible and liable for and shall take reasonable measures to prevent any unauthorized use or disclosure of Confidential Information by any of its Representatives.
4. Limitations on Use. Absent the express prior written consent of the Disclosing Party, Confidential Information disclosed hereunder may be utilized by the Receiving Party only for the purpose of evaluating and negotiating the terms of the Transaction and for no other purpose.
5. Reservation of Rights. The Parties agree: (i) all rights to and ownership of Confidential Information disclosed pursuant to this Agreement are reserved to the Disclosing Party; (ii) nothing in this Agreement shall diminish or restrict in any way the rights that each Party has

to market, lease, sell, or otherwise make available its products and services to any customer or third party; and (iii) no license or conveyance of any rights under any discoveries, inventions, or patents is granted or implied by either Party to the other.

6. Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period of two (2) years from the Effective Date.
7. No Obligation to Disclose or Proceed. This Agreement does not and shall not be construed to obligate either Party to disclose Confidential Information to the other Party. Disclosure of Confidential Information shall be at the sole discretion of the Disclosing Party. This Agreement does not constitute a commitment or promise by either Party to proceed with the Transaction, in whole or in part. If the Parties elect to proceed with the Transaction, all agreements, representations, warranties, covenants, and conditions with respect thereto will be set forth in a separate written agreement to be negotiated and executed by the Parties.
8. Return of Confidential Information. While this Agreement remains in effect, the Receiving Party, upon the Disclosing Party's written request, shall destroy all Confidential Information provided to the Receiving Party and in its possession or the possession of its Representatives, including, without limitation, all copies of such Confidential Information, notes or other documents with respect to or reflecting such Confidential Information, and materials derived from such Confidential Information. Receiving Party shall not be required to review backup storage devices or destroy same, but rather such Confidential Information shall be held in confidence in accordance with this Agreement until it is destroyed or erased pursuant to such Party's backup and record keeping policies. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party shall continue to be bound to its obligations hereunder for the duration of the term hereof.
9. Integration Clause. This Agreement embodies all of the understandings, and merges all prior discussions and writings, between the Parties concerning the subject matter hereof.
10. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party. Upon any assignment made in compliance with this Section 10, this Agreement shall inure to the benefit of and be binding upon each assignee of the assigning Party. No assignment permitted hereunder shall relieve the assigning Party of responsibility or liability in respect of any of the obligations assigned.
11. Equitable Relief. The Receiving Party acknowledges and agrees that in the event of any breach or threatened breach by the Receiving Party of the provisions hereof, and without prejudice to any other right and/or remedy available to the Disclosing Party at law or in equity, the Disclosing Party shall be entitled to seek injunctive relief and specific performance of the terms hereunder, without the posting of a bond if permitted by law. Any liability of the Receiving Party hereunder shall be limited to direct damages and shall exclude

any other liability, including, without limitation, liability for special, indirect, punitive, incidental or consequential or lost profit damages of any kind whether based in contract, tort, warranty, strict liability or otherwise.

12. Governing Law. South Bay consents to personal jurisdiction over it in the courts of the State of New York and further consents that any and all disputes concerning this agreement shall be exclusively determined in Nassau County Supreme Court.
13. Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document.
14. Amendments. No amendment, modification, or change to this Agreement shall be enforceable, except as specifically provided for in this Agreement, unless reduced to writing and executed by both Parties.
15. No Waiver. Subject to applicable statutes of limitation, no failure or delay, in whole or in part, by the Disclosing Party in exercising any right or power hereunder shall operate as a waiver, full or partial, of such right or power.
16. Continuance of Business. Neither the holding of discussions between the Parties nor the disclosure of Confidential Information will be construed as an obligation on the part of either Party to refrain from engaging at any time in the same business or any business similar or dissimilar to the business in which the other is now engaged.
17. Relationship between the Parties. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be construed as creating a relationship or joint venture, partners, principal and agent, or other business association between the Parties.
18. Publicity. Neither Party shall, without the prior written consent of the other Party, disclose to any person (a) the fact that the Parties have exchanged Confidential Information, or (b) any information regarding the Transaction; provided, however, that a Party may disclose the information specified in (a) and (b) above if such disclosure is required in Section 3 above, in which case the procedures specified therein with respect to such disclosure shall apply.
19. Notices. Any notice required under this Agreement shall be given in writing to the Party entitled to receive such notice at the address listed below or at such other address as the Party may, from time to time, request in writing. Notices under this Section 19 may be sent by U.S. Mail, courier, hand delivery, or by facsimile or email and shall be effective if by U.S. Mail, three days after deposit in the U.S. Mail, postage prepaid, return receipt requested and if by any other permissible method, upon documented receipt.

If to South Bay:

54 State Street Suite 804 #7818
Albany, NY 12207
Attn: Supply Department
Facsimile: (877) 724-9011
Email: supply@southbayenergy.com

If to Counterparty:

Facsimile: _____

Email: _____

[Signature page follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective Date.

South Bay Energy Corp.

[]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____