



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

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

## Sales Agreement – Commercial

**Customer:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Address:** \_\_\_\_\_ **Gas Utility (LDC):** \_\_\_\_\_  
 \_\_\_\_\_ **Electric Utility (LDC):** \_\_\_\_\_  
**Contact:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_  
**Last 4 SS#:** \_\_\_\_\_ **Security Question:** \_\_\_\_\_  
**Gas Account #:** \_\_\_\_\_ **Sales Representative:** \_\_\_\_\_  
**Electric Account #:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Term of Agreement: From:** \_\_\_\_\_ **To:** \_\_\_\_\_

### CUSTOMER DISCLOSURE STATEMENT

Product You Wish To Enroll	Natural Gas <input type="checkbox"/>	Electricity <input type="checkbox"/>	Both <input type="checkbox"/>
<b>Price: Fixed or Variable</b>	<b>Fixed:</b> \$ _____ /KWH \$ _____ /Therm	<b>Variable:</b> Variable Plan \$ _____	
<b>Process Customer May Use to Rescind Agreement Without Penalty</b>	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.		
<b>Amount of Early Termination Fee and Method of Calculation</b>	<b>Fixed:</b> No early termination fee for variable service. If fixed service, 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 <b>Variable:</b> None		
<b>Late Payment Fee/ Calculation</b>	South Bay Energy Corp. does not charge any late payment fees. You are billed by your utility		
<b>Renewal</b>	Upon completion of the Initial Term, this Agreement will renew on a month to month basis unless terminated by either party.		
<b>Guaranteed Savings</b>	ESCO does not offer price matching to utilities. ESCO does not offer a guaranteed savings.		

**Variable Pricing:** Price changes each month reflecting the cost of energy, capacity, settlement, ancillaries, related transmission and distribution charges and other market-related factors; plus all applicable taxes, fees, charges, costs, expenses and margins. If a specific index is being used then that index and an agreed upon adder (margin) will be written in the Customer Disclosure Box above.

**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 deliver, and Customer agrees to purchase and accept the quantity of energy, as estimated by ESCO, 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.

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

**IN WITNESS WHEREOF,** Customer and ESCO have caused this Agreement to be executed as of the date first set forth above.

For: \_\_\_\_\_ South Bay Energy Corp.

For: \_\_\_\_\_

ESCO

CUSTOMER'S NAME AND DATE

By: \_\_\_\_\_

By: \_\_\_\_\_

SIGNATURE

CUSTOMER'S SIGNATURE

## Terms and Conditions - Commercial

**Term:** 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 \_\_\_ months thereafter. After the initial term, this agreement will renew on a month to month basis at the same terms unless ESCO obtains customer's authorization (written or verifiable oral) after customer has received 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"). Customer shall retain the right to renew, terminate or renegotiate this Agreement prior to the anniversary date of the renewal period. 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. ESCO may terminate this Agreement by providing 30 days' written notice to the Customer.

**Price:** The price for all energy sold under this Agreement shall include and be subject to all applicable taxes. ESCO will invoice Customer monthly for energy delivered under this Agreement, as measured by the LDC. 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:** 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 LDU: consumption history; billing determinants; utility 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 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 thereof 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.

**Service:** CUSTOMER agrees to purchase and accept the quantity of energy, as estimated by ESCO, necessary to meet CUSTOMER's requirements based upon consumption data obtained by ESCO or the delivery schedule of the CUSTOMER'S local distribution company (LDC).

**Delivery Point, Title and Taxes (Natural Gas):** ESCO will deliver CUSTOMER'S natural gas supply, if purchased under this agreement, 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's 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.

**Title (Electricity):** All electricity, if sold under this Agreement, shall be delivered to a location considered the "Point of Delivery", which shall be at the NY ISO ESCO load bus (located outside of the municipality where Customer resides), and shall constitute the point at which title transfers and the sale occurs. ESCO will indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred before title passes with respect to the electricity provided hereunder.

**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](http://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 true-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, 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 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](http://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.

**Regulatory Changes:** 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.

**Renewable Energy:** Under South Bay's Renewable Electricity Product, a percentage of the electricity sold is matched with renewable energy certificates ("RECS") generated from renewable or alternative energy sources in the United States which have been qualified as such by a regional or state RPS administrator. This renewable percentage is over and above the minimum renewable energy requirements for this state. To view the historical percentage of electricity that is matched with RECs, please visit our website at [www.southbayenergy.com](http://www.southbayenergy.com)

**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:** In the event of a gas leak or other emergency, please use the following toll-free numbers to directly contact your utility: 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.

## **New York State Public Service Commission**

### **Your Rights as an Energy Services Company Consumer**

#### **ESCO Consumers Bill of Rights**

Customers can purchase energy from an Energy Services Company (ESCO) or from a traditional utility. If you choose to purchase energy from an ESCO you are entitled to:

- A clear description of the services offered by the ESCO.
- Receive energy delivery and 24 hour emergency services from your utility company.
- Clear procedures for switching energy suppliers, including information about the enrollment process.
- Disclosure, in simple and clear language, of the terms and conditions of the agreement between you and the ESCO including:
  - price and all variable charges or fees;
  - length of the agreement;
  - terms for renewal of the agreement;
  - cancellation process and any early termination fees, which are limited by law; and
  - conditions, if any, under which the ESCO guarantees cost savings.
- Rescind an agreement with an ESCO within three days of receiving the agreement, if you are a residential customer.
- A description of how pre-payment agreements work, if offered.
- Notice from the ESCO, no less than thirty days prior to the contract renewal date, of the renewal terms and the options you have as a customer.
- A fair and timely complaint resolution process.
- Provision of any written documents (contracts, marketing materials, and this ESCO Consumer Bill of Rights), in the same language used to enroll you as a customer.

If you are a residential customer you are also entitled to the rights and protections of the Home Energy Fair Practices Act (HEFPA) which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. For more information go to <http://www.dps.ny.gov/resright.html>.

ESCOs that do not assure these consumer rights could lose their eligibility to provide service in New York. Please report any complaints to the Department of Public Service at 1-800-342-3377 (8:30 am – 4:00 pm), by mail at Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, or online at <http://www.dps.ny.gov>.

You can find more information about your energy alternatives by visiting: [www.askpsc.com](http://www.askpsc.com)