



**NATURAL GAS & ELECTRICITY RESIDENTIAL & COMMERCIAL CUSTOMERS  
COMBINED SALES AGREEMENT**

Name: \_\_\_\_\_ Residential \_\_\_\_\_ Commercial \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel. No. \_\_\_\_\_

EIN: \_\_\_\_\_ Date: \_\_\_\_\_

LDC Name: \_\_\_\_\_

Service Address: \_\_\_\_\_ Account Name: \_\_\_\_\_

LDC Account #: \_\_\_\_\_ Service/Rate Class: Commercial \_\_\_\_\_

Gas \_\_\_\_\_ Electric \_\_\_\_\_ Renewable \_\_\_\_\_ Multiple Commodity \_\_\_\_\_

Service Start Date: \_\_\_\_\_

**CUSTOMER DISCLOSURE STATEMENT**

|   |   |  |
|---|---|--|
| <p><b>Price</b></p>   | <p><b>Residential and Small Commercial</b><br/>         Electric Fixed Price with 5% Price Cap ___ per kWh*<br/>         Renewable Electric Fixed Price: ___ per kWh.<br/>         Renewable Electric Variable: ___ per kWh<br/><br/>         Gas Fixed Price with 5% Price Cap ___ per therm*</p>  | <p><b>Large Commercial Customers:</b><br/>         Electric Fixed: ___ per kWh<br/>         Electric Variable: ___ per kWh<br/><br/>         Gas Fixed ___ per therm<br/>         Gas Variable ___ per therm</p> |
| <p>*The above Fixed-rate products are limited to a price no greater than the trailing 12-month average utility supply rate plus a premium of no more than 5%.</p> |   |  |
| <p><b>Fixed or Variable and, if variable, how price is determined</b></p>   | <p><b>Fixed Rate products, see above.</b></p> <p><b>Variable Rates (electric)</b> Price changes each month reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), Renewable Energy Credits ("RECs"), related transmission and distribution charges and other business and market-related factors at ESCO's discretion, 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. This product does not guarantee savings.</p> <p><b>Variable Rates (gas):</b> Price changes each month reflect the cost of energy from all sources, capacity, settlement, ancillaries, related transportation 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. This product does not guarantee savings.</p> <p>Any Fixed Price product may be modified due to a Change in Law or Practice as detailed in the Agreement.</p> |  |
| <p><b>Length of the agreement and end date</b></p>  | <p>Variable Rate service: Term shall begin on the effective date and continue until cancelled by either Party.<br/>         Fixed Rate Service it is ___ months.</p>  |  |
| <p><b>Process customer may use to rescind the agreement without penalty</b></p>   | <p>A residential Customer may rescind by contacting the Company at 1-866-753-3242 within 3 business days after the signing or receipt of this Agreement, whichever comes first.</p>   |  |
| <p><b>Amount of Early Termination Fee ("ETF") and method</b></p>  | <p>Variable Rate Products: There is no early termination fee for a variable rate product.<br/>         Fixed Rate Products:<br/>         For all Residential Customers and any Commercial Customers solicited through door-to-door</p>  |  |

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| <b>of calculation</b>  | <p>marketing, the ETF will be no greater than \$100 if the remaining term is less than 12 months and \$200 if the remaining term is 12 months or more.</p> <p>All other Commercial Customers: If Customer terminates this Agreement prior to the end of the Initial or Renewal Term or if ESCO terminates this Agreement due to Customer's breach, the Customer shall pay ESCO, in addition to any other applicable charges, an ETF equivalent to the multiplication of the (i) difference between the fixed price set forth in this Agreement and the calculation by ESCO of the fixed price at the date of termination; and (ii) the estimated volumes for the remainder of the Initial or Renewal Term, as applicable, using the actual volumes received by Customer for the prior 12-month period as the volumes used in determining damages.</p>  |
| <b>Amount of Late Payment Fee</b>                                    | None   |
| <b>Provisions for renewal of the agreement</b>                       | <p><b>Large Commercial Customers:</b><br/> Variable Rate: After the initial term the agreements will continue on a month to month basis.</p> <p>Fixed Rate: Upon expiration of the Initial Term, Customer will be provided the option to: (i) enter into a new agreement, (ii) renew on a month-to-month basis (each such month, a "Renewal Term") with no change to remaining terms or (iii) be returned to Utility service. If customer does not select one of the above options before the Initial Term expires, at ESCO's discretion, the Customer will be returned to Utility service.</p> <hr/> <p><b>Residential and Small Commercial Customers:</b><br/> Fixed Rate Products: You will receive a written notification 30 to 60 days prior to the expiration date. As applicable, after the Initial Term, unless your affirmative consent is obtained Customer will be returned to utility service.</p> <p>Variable-Rate Products: After Initial Term, if there are no material changes, this Agreement shall automatically renew on a month-to-month basis until terminated by either party with 30 days' advanced written notice.</p> <hr/> <p>Applicable to residential customers and any commercial customers solicited door-to-door: If the renewal involves any material change, such as a change in rate or product type, express consent is required. Without such consent, the customer will be returned to utility service.</p> |
| <b>Conditions under which savings to the customer are guaranteed</b> | None.  |
| <b>Renewable Power</b>   | ___% of Customer's usage during the term of this contract will be offset by the purchase and retirement of renewable energy credits. A full description of the renewable energy credits can be found in section 23 of the Terms and Conditions.  |
| <b>Compensation</b>  | ESCO will compensate broker or consultant a fee of \$ ___/kWh or \$ ___/therm in conjunction with this agreement.  |

Customer and ESCO 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 of the terms herein. In the case of telephonic or electronic enrollment execution shall be deemed provided pursuant to the methods authorized under the New York Uniform Business Practices. By signing below, Customer agrees and initiates the account(s) listed above for enrollment for commodity service with ESCO.

For: Pay Less Energy LLC

For: Customer

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**1. Agreement to Sell and Purchase Energy.** This is an agreement between Pay Less Energy LLC (“Pay Less Energy” “ESCO” or the “Company”) an independent energy services company, and the undersigned customer (“Customer”) under which Customer shall initiate natural gas and/or electricity service 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 natural gas and/or electricity, 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 Utility (the “LDC”). ESCO is not affiliated with and does not represent the LDC. The amount of natural gas and/or electricity supplied under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by ESCO or the LDC’s delivery schedule. The LDC will continue to deliver the natural gas and/or electricity supplied by ESCO.

**2. Term.** For all customers receiving renewable electric variable rate service, the term shall commence as of the date Customer’s notice regarding the change of Customer’s provider to the Company is deemed effective by the LDC, and shall continue for on a month-to-month basis until terminated by either party (with no change to remaining terms. If the Customer is receiving variable rate service, either party may cancel or terminate this Agreement with no cancellation fee by providing 30 days’ advance written notice of termination to the other party.

For all customers receiving products for fixed rate, service shall commence as of the date identified on the Customer’s Customer Disclosure Statement, or if not specifically identified, receipt of the Customer’s notice regarding the change of Customer’s provider to the Company is deemed effective by the LDC, and shall continue for the timeframe specified on the Customer’s Customer Disclosure Statement (the “Initial Term”). At least 30 days and no more than 60 days prior to the renewal date, the Company will notify Customer in writing of the terms of renewal of this Agreement (“Renewal Term”) and of the Customer’s right to renew, reject or renegotiate this Agreement. As required, unless the Company receives affirmative consent from Customer to such terms in advance of the Renewal Date, Customer’s account will be returned to the utility service. While receiving service on a month-to-month basis, such notification will be provided only for the first renewal occurring at the end of the Initial term, and Customer or the Company may cancel or terminate this Agreement by providing 30 days’ advance written notice of termination to the other party. Customer shall have 3 business days from receipt of the first billing statement of the Renewal Term to reject renewal terms and cancel the renewal agreement.

The following is applicable to residential customers and any commercial customers solicited door-to-door: For any renewal of this Agreement (including a change in rate for a variable-rate month-to-month product), the ESCO must obtain the Customer’s express consent if the renewal offer contains any material change to the terms and conditions of this Agreement, including a change in rate structure or product type. If the ESCO does not receive express consent to a renewal with Material Changes, the Customer will be returned to utility service.

**3. Pricing, Billing, and Termination.** The price for products sold under this Agreement is described on the Customer Disclosure Statement. In addition, the following conditions apply to products sold to residential and small commercial customers:

- Fixed Rate Natural Gas: The price for all natural gas sold under this Agreement shall be a fixed-rate product limited to a price no greater than the trailing 12-month average utility supply rate in effect on the date the Customer entered into the Agreement (“Contract Date”) plus a premium of no more than 5% per therm plus, all applicable taxes subject to the terms and conditions of this Agreement.
- Fixed Rate Electricity: The price for all electricity sold under this Agreement shall be a fixed-rate product limited to a price no greater than the trailing 12-month average utility supply rate in effect in effect on the date the Customer entered into the Agreement (“Contract Date”), plus a premium of no more than 5% per kWh plus, all applicable taxes and subject to the terms and conditions of this Agreement.
- Fixed Rate Renewable Electricity: Products for the renewable electric product are not subject to any price cap.
- Variable Rate Renewable Energy Product: This product does not guarantee savings.

If there is a material adverse change in the business or financial condition of Customer (as determined by Company 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, Company may terminate this Agreement upon 15 days' written notice to Customer. Such termination will constitute a Customer breach.

For all residential customers on a variable rate product: ESCO shall first obtain Customer's affirmative consent prior to implementation of any price change; if affirmative consent is not obtained, ESCO shall drop the customer to utility service prior to implementing any price change.

**Commercial Customers on Renewable Fixed Rate Products Only:** If usage in any month exceeds the level of usage in the same month in the previous year ("Base Load") by ten percent or more, 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 by ten percent or more 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 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 or pay or post any required security deposit, then, in addition to any other remedies that it may have, ESCO may terminate this Agreement upon 15 days' written notice to Customer. Notwithstanding the foregoing, for all residential customers and commercial customers solicited through door-to-door marketing, the early termination fee will be no greater than \$100 if the remaining term is less than 12 months and \$200 if the remaining term is 12 months or more. With respect to all other Commercial Customers, if Customer terminates this Agreement prior to the end of the Initial or Renewal Term or if ESCO terminates this Agreement due to Customer's breach, the Customer shall pay ESCO, in addition to any other applicable charges, an ETF equivalent to the multiplication of the (i) difference between the fixed price set forth in this Agreement and the calculation by ESCO of the fixed price at the date of termination; and (ii) the estimated volumes for the remainder of the Initial or Renewal Term, as applicable, using the actual volumes received by Customer for the prior 12 month period as the volumes used in determining damages.

ESCO will invoice Customer monthly for natural gas and/or electricity supplied under this Agreement, as measured by the LDC, and Customer will pay each invoice in full within 20 days of the invoice. 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. 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"). ESCO may assign and sell Customer accounts receivable to the LDC. In the event of failure to remit payment when due by a residential customer, ESCO 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 ESCO charges due on any consolidated bill prepared by the LDC for ESCO 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. A \$30 fee will be charged for all returned payments.

**4. 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, 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.

**5. 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; 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 1-866-753-3242. ESCO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**6. Consumer Protections.** 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 other applicable requirements including the NYS Home Energy Fair Practices Act (HEFPA) for residential customers. ESCO will provide at least 15 days' notice prior to the cancellation of service to Customer. In the event of non-payment of any charges owed to ESCO, 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 ESCO at 1-866-753-3242 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: [www.dps.ny.gov](http://www.dps.ny.gov). You may also contact the Department for inquiries regarding the competitive retail energy market at 1.888.697.7728 (collectively, "DPS Contact information").

**7. Rescission.** A residential Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting ESCO at 1-866-753-3242 or in writing. 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.

**8. Agency-Gas.** Customer hereby designates ESCO as agent to; (a) arrange and administer contracts and service agreements between Customer and ESCO and between the interstate pipeline transporters of Customer natural gas supplies; (b) nominate and schedule with the interstate pipeline the transportation of Customer's natural gas supplies to the Delivery Points, and with the LDC for the transportation of the Customer's natural gas supplies from the Delivery Points to the Customer's end-use premises; and (c) aggregate Customer's natural gas supplies with such supplies of other customers served by ESCO to maintain qualification for LDC transportation service and resolve imbalances that may arise during the term of this Agreement. ESCO as agent for the Customer will schedule the delivery of adequate supplies of natural gas that meet the Customer's city gate requirements as established by the LDC and in response to information provided by the LDC. ESCO agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Delivery Points to the Customer's end-use premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

**Agency-Electric.** Customer hereby designates ESCO as agent to; (a) arrange and administer contracts and service agreements between Customer and ESCO 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 Delivery Point and the Customer's end-use premises. ESCO 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 Delivery Points for the electricity will be a point at the NYISO ESCO 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.

**9. Title.** Customer and ESCO agree that title to, control of, and risk of loss to the electricity and/or natural gas supplied by ESCO under this Agreement will transfer from ESCO to Customer at the Delivery Point(s).

**10. 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, express or implied, including merchantability and fitness for a particular use.

**11. Force Majeure.** ESCO will make commercially reasonable efforts to provide natural gas and/or electricity hereunder but ESCO does not guarantee a continuous supply of natural gas and/or electricity 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, pandemic, fire, flood, 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, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond ESCO's control.

**12. 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.

**13. Contact Information.** Customer may contact ESCO's Customer Service Center at 1-866-753-3242, Monday through Friday 8:00 a.m. - 8:00 p.m. (contact center hours subject to change). Customer may write to ESCO at: ESCO, Pay Less Energy LLC, 19790 W. Dixie Hwy., Suite 1101, Aventura, Florida 33180.

**14. Dispute Resolution (Residential).** 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 other applicable requirements including the NYS Home Energy Fair Practices Act (HEFPA) for residential customers. In the event of a billing dispute or a disagreement involving ESCO, Customer can reach ESCO 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); DPS Helpline at 1-800-342-3377 (M-F 8:30am – 4:00pm); 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.

**Dispute Resolution (Commercial).** In the event of a billing dispute or disagreement involving ESCO's service, Customer should contact ESCO'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 Sales Agreement. However, the DPS will monitor inquiries and contacts from Non-Residential customers regarding energy service companies. DPS Contact Information is provided above.

**15. 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.

**16. 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.

**17. 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 Seller's costs ("Change in Practice"), Seller shall have the right to pass on such additional costs and/ or modify this Agreement to reflect such change.

- Residential & Door-to-Door Small Commercial Customers: Seller shall first obtain affirmative consent from residential and small commercial customers prior to passing on any additional costs and/or modifying this Agreement.
- All other Commercial Customers: The Company shall provide written notice of such modification to the Customer as required by local law.

If at some future date there is a change in any law, rule, regulation, pricing structure or market condition whereby Seller is prevented, prohibited, or frustrated from carrying out the terms of the Agreement, or if Seller is unable to economically continue this Agreement, Seller shall have the right to cancel this Agreement on 15 days' notice to Customer.

**18. Emergency Service.** 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 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 1.800.527.2714; National Fuel at 1.800.444.3130 and emergency personnel. Customer should then call ESCO at: 1-866-753-3242.

**19. Signatory Affirmation.** Signor affirms that he or she is authorized to make decisions regarding the account and voluntarily authorizes Supplier to make the enrollment. Customer agrees to accept all notifications by email to the email address provided at time of enrollment, or subsequently provided to ESCO.

**20. Telephone Communication.** 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.

**21. 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) Seller is not a "Utility" as defined in the Code; (d) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Utility; and (e) the Utility, and not Seller, is responsible for responding to service problems or emergencies should they occur.

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

**23. Renewable Electric Products:** Your electricity usage is matched by the generation of energy from renewable resources at the percentage identified above 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. New York State requires that 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, at least 50% greater than the applicable RES obligation of the RECs must be purchased from eligible renewable generators through NYGATS; by purchasing Tier 1 RECs from NYSERDA; by procuring RECs from eligible renewable generators through bilateral contracts; or by entering into bundled energy and REC purchase agreements with eligible renewable generators.

**24. 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 THE 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 RESOLVED THROUGH FINAL, BINDING ARBITRATION. ARBITRATION WILL BE CONDUCTED BEFORE A SINGLE ARBITRATOR UNDER THE CONSUMER ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND THE VENUE WILL BE NEW YORK COUNTY, NEW YORK. THE FILING FEES, ARBITRATOR FEES, ATTORNEYS' FEES, AND OTHER COSTS SHALL BE SHARED EQUALLY BY BOTH PARTIES UNLESS THE ARBITRATOR DETERMINES OTHERWISE. CUSTOMER AND ESCO MUTUALLY WAIVE THE RIGHT TO BRING AN ACTION IN A COURT OF LAW, THE RIGHT TO A TRIAL BY JURY, AND THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION, REGARDLESS OF WHETHER THE ISSUE INVOLVES TORT, FRAUD, BREACH OF CONTRACT, MISREPRESENTATION, PRODUCT LIABILITY, NEGLIGENCE, OR VIOLATION OF ANY STATUTE OR LEGAL THEORY.

THIS WAIVER APPLIES TO ALL ISSUES, CLAIMS, AND DISPUTES ARISING OUT OF OR RELATING TO THE CUSTOMER'S AUTHORIZATION TO SWITCH NATURAL GAS OR ELECTRICITY SUPPLY SERVICE TO ESCO, AND/OR RECEIPT OF NATURAL GAS OR ELECTRICITY UNDER THIS AGREEMENT. THE ARBITRATION PROVISION SHALL APPLY EVEN AFTER THE CUSTOMER CEASES RECEIVING SERVICES FROM ESCO. ALL ARBITRATIONS SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS, AND AN ARBITRATOR SHALL HAVE NO AUTHORITY TO AWARD CLASS-WIDE RELIEF. CUSTOMER AND ESCO AGREE THAT NEITHER CAN COMMENCE ARBITRATION OR ANY OTHER PROCEEDINGS AS A REPRESENTATIVE OF OTHERS OR JOIN IN ANY ARBITRATION OR OTHER PROCEEDINGS BROUGHT BY ANY OTHER PERSON OR ENTITY. HOWEVER, THIS PARAGRAPH DOES NOT PREVENT THE CUSTOMER FROM FILING A COMPLAINT WITH THE NYSPSC. ANY DEMAND FOR ARBITRATION OR NOTICE OF INTENTION TO ARBITRATE SHALL BE SERVED BY EITHER THE CUSTOMER OR ESCO WITHIN NINETY (90) DAYS OF THE ACCRUAL OF THE CLAIM. FAILURE TO MEET THIS TIMEFRAME SHALL RESULT IN A WAIVER OF ANY RIGHTS TO ARBITRATE, UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW OR AGREED UPON IN WRITING. THIS NINETY (90) DAY REQUIREMENT TAKES PRIORITY OVER ALL OTHER PROVISIONS OF THIS AGREEMENT.