

**Kiwi Energy NY LLC 24 month Variable Electric & Gas Terms and Conditions**

111 East 14th Street #105 New York, NY 10003 1-877-208-7636

[www.kiwienergy.us](http://www.kiwienergy.us)

**1. Agreement to Sell and Purchase Natural Gas and/or Electricity.** This is an agreement between Kiwi Energy NY LLC (“Kiwi Energy”) and the undersigned customer (“Customer”) under which Customer shall initiate natural gas and/or electricity service and begin enrollment with Kiwi Energy (the “Agreement”). Subject to the terms and conditions of this Agreement, Kiwi Energy agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of natural gas and/or electricity, as estimated by Kiwi Energy, necessary to meet Customer’s requirements based upon consumption data obtained by Kiwi Energy or the delivery schedule of the Local Distribution Utility (the “LDC”). The amount of natural gas and/or electricity delivered under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by Kiwi Energy or the LDC’s delivery schedule. The LDC will continue to deliver the commodity supplied by Kiwi Energy.

**2. Term.** For Variable Rate service, this Agreement shall commence as of the date Customer’s notice regarding the change of Customer’s provider to Kiwi Energy is deemed effective by the LDC, and shall continue for 24 months (the “Initial Term”). Unless otherwise agreed to in writing, upon completion of the Initial Term, this Agreement will continue at a monthly variable rate methodology until terminated by either party upon providing at least 30 days’ advance written notice to the non-terminating party.

**3. Pricing, Billing, and Termination.** Through our Kiwi Clean program, your electricity is matched with our Green-Energy certified Wind REC (Renewable Energy Certificate) product (see Section 5). The price for Kiwi Clean contains the charges for electricity plus our Wind REC product. The cost of electricity and our Wind REC product is variable. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement shall be a variable price per kilowatt hour, which shall reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), RECs, related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and Kiwi Energy’s costs, expenses and profit margins. Kiwi Energy’s current and historical prices are not an indicator of Kiwi Energy’s future prices. Kiwi Energy does not guarantee any savings. You agree and understand that your price for electricity and RECs can fluctuate month to month. Unless otherwise agreed to in writing, Kiwi Energy’s prices may be higher or lower than the LDC’s supply rate.

For natural gas, under Kiwi Energy’s Zero Gas program, your natural gas is matched with carbon offsets (see Section 6). The cost of natural gas and carbon offsets is variable. Your rate for gas will be variable price per therm. The price for natural gas and carbon offsets can fluctuate from month to month. Unless otherwise agreed to in writing, the price for all natural gas sold under this Agreement shall be a variable price which shall reflect the wholesale cost of natural gas obtained from all sources (including energy, capacity, settlement, ancillaries), offsets, related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and Kiwi Energy’s costs, expenses and profit margins.

Kiwi Energy will invoice Customer monthly for natural gas and/or electricity delivered under this Agreement, as measured by the LDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to an LDC late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either Kiwi Energy or the LDC, or each of the LDC and Kiwi Energy may invoice Customer separately. The price of our Kiwi Clean program includes the cost of electricity and the Wind REC product. For Zero Gas, the price includes natural gas matched with carbon offsets. For customers enrolled in Kiwi Clean and/or Zero Gas, the LDC bill will show a combined price and will not be broken down. 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”). Kiwi Energy may assign and sell Customer accounts receivable to LDC. In the event of failure to remit payment when due, Kiwi Energy may terminate commodity service and seek suspension of distribution service in conformance with the Home Energy Fair Practices Act (“HEFPA”). A \$30 fee will be charged for all returned payments.

**4. Supply Rewards.** Kiwi Energy will provide to Customer EITHER a “7% Ecogold Rewards OR a “5% Cash Back” of the Kiwi Energy natural gas and/or electricity commodity supply charges for active accounts as chosen by the customer as indicated on the front of this application following the commencement of natural gas and/or electric commodity service under this Agreement. Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which Kiwi Energy has not received a request on behalf of the customer to discontinue service.

- (i) The 7% Ecogold Rewards will be 7% of the ESCO natural gas and/or electricity commodity supply charges billed by the LDC on behalf of Kiwi Energy under the consolidated bill, exclusive of sales taxes and LDC delivery, transportation, and transmission charges. The Ecogold Rewards will initially be awarded once the reward is equal to \$25. All subsequent rewards will be awarded once the reward is equal to \$50.
- (ii) The Cash Back will be 5% of the 12 month consecutive ESCO natural gas and/or electricity commodity supply charges billed by the LDC on behalf of Kiwi Energy under the consolidated bill, exclusive of sales taxes and LDC delivery, transportation, and transmission charges. Customer must remain with Kiwi Energy for 12 consecutive billing cycles to receive any Cash Back. The Cash Back must be mailed to the customer within 60 days following each 12 month billing cycle that Customer takes service from Kiwi Energy.

Checks that remain uncashed after one year will incur an administrative fee of \$2.00 per month, allowing us to continue to make the check negotiable and funds available. This fee is non-recoverable and non-refundable.

**5. Renewable Energy Certificates (“RECs”).** The Kiwi Clean program, which qualifies for Ecogold benefits, ensures that the customer’s electricity usage is matched 100% with Renewable Energy Certificates (“RECs”) sourced from national renewable wind resources. Our Wind REC product is a Renewable Energy Certificate product and does not contain electricity. A REC represents the environmental benefits of 1 megawatt (“MWh”) of renewable energy that can be paired with electricity. For more information, see [www.green-e.org/rec](http://www.green-e.org/rec). Kiwi Energy’s Wind REC product is Green-e Energy Certified. Kiwi Energy may take up to 12 months after the end of each calendar year under which this agreement is in effect to address any deficiency that may arise in the renewable content of electricity sold under this agreement in the previous calendar year. Kiwi Energy does not guarantee that this product will be offered in the future or on a continuing basis and will notify customers 3 months in advance via the Kiwi Energy website if Kiwi Energy is no longer able to purchase renewable energy credits.

**6. Carbon Offset Natural Gas.** Kiwi Energy’s Zero Gas is a carbon offset natural gas program that ensures that Kiwi Energy offsets 100% of the carbon dioxide emissions from the customer’s natural gas use by purchasing carbon offsets. The carbon offsets come from forestry projects. The greenhouse gas emissions being offset with Zero Gas are those associated with the combustion of natural gas at the point of consumption only, and do not include lifecycle emissions that occur during extraction, production, or delivery. For information on how to calculate the quantity of carbon offsets, the Customer should refer to the Carbon Offset Content Label. Kiwi Energy may take up to 12 months after the end of each calendar year under which this agreement is in effect to address any deficiency that may arise in the carbon offset content of gas sold under this agreement in the previous calendar year. Kiwi Energy does not guarantee that this product will be offered in the future or on a continuing basis and will notify customers 3 months in advance via the Kiwi Energy website if Kiwi Energy is no longer able to purchase carbon credits.

Green-e® Climate is an independent certification program for greenhouse gas emissions reductions (carbon offsets) sold in the voluntary market. The Green-e Climate logo identifies carbon offsets that meet the program’s high environmental and consumer protection standards. For more information on Green-e Climate certification requirements, visit [www.green-e.org/climate](http://www.green-e.org/climate) or email [climate@green-e.org](mailto:climate@green-e.org).

These carbon offsets represent the reduction of a specific quantity of greenhouse gas (“GHG”) emissions. By purchasing these offsets, you alone have the right to all associated claims about the environmental benefits they embody. Carbon offsets are a real environmental commodity, not a donation or investment in a future emissions reduction project. The verified GHG emissions reductions you purchased are sourced from projects that have been validated and registered under high-quality project standards.

**7. Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of Kiwi Energy. Kiwi Energy 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.

**8. Information Release Authorization.** Customer authorizes Kiwi Energy 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; 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 New York State Public Service Law (“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 Kiwi Energy 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 Kiwi Energy. This authorization will remain in effect during the term of this Agreement. Customer may rescind this authorization at any time by providing written notice thereof to Kiwi Energy or by calling Kiwi Energy at 1-877-208-7636. Kiwi Energy reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**9. Consumer Protections.** The services provided by Kiwi Energy to Customer are governed by the terms and conditions of this Agreement and HEFPA. Kiwi Energy 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 Kiwi Energy, 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 Kiwi Energy at 1-877-208-7636 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 for inquiries regarding the competitive retail energy market at 1-888-697-7728.

**10. Cancellation.** Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting Kiwi Energy at 1-877-208-7636 or in writing. Customer is liable for all Kiwi Energy charges until Customer returns to the LDC or goes to another supplier. A final bill will be rendered within 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 tried-up subsequent to the final meter reading.

**11. Agency (Gas):** Customer hereby designates Kiwi Energy as agent to (a) arrange and administer contracts and service agreements between Customer and Kiwi Energy 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 Kiwi Energy to maintain qualification for LDC transportation service and resolve imbalances that may arise during the term of this Agreement. Kiwi Energy 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. Kiwi Energy 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 Kiwi Energy as agent to (a) arrange and administer contracts and service agreements between Customer and Kiwi Energy 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. Kiwi Energy 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 Kiwi 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.

**12. Title.** Customer and Kiwi Energy agree that title to, control of, and risk of loss to the natural gas and/or electricity supplied by Kiwi Energy under this Agreement will transfer from Kiwi Energy to Customer at the Sales Point(s). Kiwi Energy will indemnify and hold harmless Customer from all taxes, royalties, fees or other charges incurred before title passes with respect to the natural gas and/or electricity provided hereunder.

**13. Warranty.** This Agreement, including applicable attachments, constitutes the entire Agreement between Customer and Kiwi Energy. Kiwi Energy makes no representations or warranties other than those expressly set forth in this Agreement, and Kiwi Energy expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

**14. Force Majeure.** Kiwi Energy will make commercially-reasonable efforts to provide natural gas and/or electricity hereunder but Kiwi Energy does not guarantee a continuous supply of natural gas and/or electricity to Customer. Certain causes and events out of the control of Kiwi Energy ("Force Majeure Events") may result in interruptions in service. Kiwi Energy will not be liable for any such interruptions caused by a Force Majeure Event, and Kiwi Energy 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 natural gas and/or electricity distribution lines), or any other cause beyond Kiwi Energy's control.

**15. Liability.** The remedy in any claim or suit by Customer against Kiwi Energy 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. By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event will either Kiwi Energy 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.

**16. Contact Information.** Customer may contact Kiwi Energy's Customer Service Center at 1-877-208-7636, Monday through Friday 9:00 AM - 6:00 PM EST (contact center hours subject to change). Customer may write to Kiwi Energy at: Kiwi Energy, 111 East 14<sup>th</sup> Street, #105, New York, NY 10003.

**17. Dispute Resolution.** In the event of a billing dispute or a disagreement involving Kiwi Energy's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact Kiwi Energy by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures ("Procedures") or calling the DPS at 1-800-342-3377. 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. 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.

**19. 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 Kiwi Energy's net income, shall be paid by Customer, and Customer agrees to indemnify Kiwi Energy and hold Kiwi Energy 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.

**20. Regulatory Changes.** If at some future date there is a change in any law, rule, regulation, tariff, or regulatory structure ("Regulatory Change") that impacts any term, condition or provision of this Agreement including, but not limited to price, Kiwi Energy shall have the right to modify this Agreement to reflect such Regulatory Change by providing 30 days' written notice of such modification to the Customer.

**21. Emergency Service.** The LDC will respond to leaks and emergencies. In the event of a natural gas leak, electricity service interruption or other emergency, Customer should immediately call their LDC, then Kiwi Energy:

National Grid Upstate: Electric emergency – 1-800-867-5222

National Grid Upstate: Gas emergency – 1-800-892-2345

National Grid Metro: Gas emergency – 1-718-643-4050

Con Edison: Electric emergency – 1-800-752-6633

Con Edison: Gas emergency – 1-800-752-6633

National Fuel: Gas emergency – 1-800-444-3130

Central Hudson: Electric emergency – 1-800-527-2714

Central Hudson: Gas emergency – 1-800-942-8274

RG&E: Electric emergency – 1-800-743-1701

RG&E: Gas emergency – 1-800-743-1702

NYSEG: Electric emergency – 1-800-572-1131

NYSEG: Gas emergency – 1-800-572-1121

Kiwi Energy – 1-877-208-7636

**22. Parties Bound. This Agreement is binding upon the parties hereto and their respective successors and legal assigns.** Customer and Kiwi Energy have caused this Agreement to be executed by individuals authorized to bind each party, and Customer has reviewed all of the terms herein.

**23. Refund Policy.** As the commodity supplied under this Agreement is immediately used and consumed by Customer upon delivery, it is not practical to return the product subject to this Agreement, and therefore refunds with respect to commodity are not provided.

**24. Budget Billing.** For customers who are already enrolled in a budget billing program, your utility company should continue to provide you with a budget bill for the delivery portion of your bill. If you would like to participate in budget billing for your electric or natural gas supply service charges, please contact Kiwi and your utility company for assistance and information.



Our Wind REC product is Green-e Energy certified, and meets the environmental and consumer-protection standards set forth by the nonprofit Center for Resource Solutions. Learn more at [www.green-e.org](http://www.green-e.org).



These carbon offsets are certified by Green-e® Climate, which requires companies to provide their customers with this notice of Price, Terms and Conditions of service.

## 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 enrolment 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 enrol 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.state.ny.us/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.state.ny.us>.

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