



**NATURAL GAS RESIDENTIAL SALE AND PURCHASE AGREEMENT  
TERMS AND CONDITIONS  
(CHOICE POOL)**

<b>COMPANY</b>		<b>CUSTOMER</b>			
Company: Energy Mark, LLC Address: 6653 Main St. City / State / Zip: Williamsville, NY 14221		Customer: _____ Address: _____ City / State / Zip: _____			
<b>Attn:</b> Customer Service Phone: (716) 632-1800 Fax: (716) 632-1818 Email: customer support@energymarkllc.com		<b>Attn:</b> _____ Phone: _____ Fax: _____ Email: _____			
Account Rep: _____		Phone: _____		Email: _____	
<b>Account Information</b>					
Account / Pod ID #	Utility	Service Address	City	State	Zip
<b>QUANTITY:</b> The Customer's full natural gas requirements for the account(s) listed above.					
<b>Initial Term</b>					
Start Month:	End Month:	Initial Term:			
<b>Pricing</b>					
Product Type		Start Month	End Month	Term	
Guaranteed Rate Plan - @ Current Monthly Market Price.		Next Available Meter Read		24 Months After Start Month	
24 Months					
All fixed prices are based on the trailing 12-month weighted average utility rate and shall not exceed 5% in excess of the trailing 12-month weighted average utility rate at the time of offer.					
<b>Billing Information</b>					
<input checked="" type="checkbox"/> Balanced Billing		<input checked="" type="checkbox"/> Direct Pay			
<b>PROVISIONS FOR RENEWAL OF THE AGREEMENT:</b> This Agreement shall continue for additional one (1) month Periods at a guaranteed savings rate unless terminated by either Party. See page two, section 2 of this Agreement for additional information.					
<b>PROCESS CUSTOMER MAY USE TO RESCIND AGREEMENT WITHOUT PENALTY:</b> Customer may cancel this Contract at any time before midnight of the third business day after the day on which Buyer receives this Contract.					
<b>AMOUNT OF EARLY TERMINATION FEE AND METHOD OF CALCULATION:</b>					
No early termination fee for Variable service. If fixed service, termination fee is :					
(a) \$99.00 for any Contract with a remaining term of less than twelve (12) months;					
(b) \$199.00 for any Contract with a remaining term of twelve (12) months or more.					
<b>AMOUNT OF LATE PAYMENT FEE AND METHOD OF CALCULATION:</b> Late payment fees are determined and collected by the Utility at a rate of 1.5% or the Utility's then applicable rate.					
<b>CONDITIONS UNDER WHICH SAVINGS TO CUSTOMER ARE GUARANTEED:</b> This Contract offers a Guaranteed Savings for the Guaranteed Rate Plan. There are no Guaranteed savings for the Fixed Price.					
<b>DELIVERY POINT:</b> Local Distribution Company, ("Utility") – EnergyMark, LLC Choice Pool.					
<b>BROKER FEE INCLUDED (if applicable):</b> N/A					
<b>THE TERMS AND CONDITIONS ON PAGE 2 ARE PART OF THIS AGREEMENT.</b>					
Company: EnergyMark, LLC		Customer:			
Signature: _____		Authorized Signature: _____			
Name: Gary A. Marchiori		Name: _____			
Title: President		Title: _____			
Date: _____		Date: _____			

## NATURAL GAS RESIDENTIAL AGREEMENT TERMS AND CONDITIONS

**1. Firm Sales:** Company agrees to sell to Customer, and Customer agrees to purchase from Company (each a "Party" or jointly "Parties"), the full natural gas requirements in accordance with the "Quantity" provisions on the face of this Agreement.

**2. Term:** After the Initial Agreement Term, this Agreement shall continue for additional one (1) month periods (each a "Renewal Term") at a guaranteed savings rate versus the utility unless terminated by either Party upon written notice to the other Party at least thirty (30) days prior to the end of the Initial Agreement Term or the then-current Renewal Term as applicable; provided, however, that this Agreement will remain in effect until both Parties have fulfilled all of their obligations agreed to prior to the termination date. When receiving service on a month-to-month basis, the Customer may provide written notice of termination or call Company or call the Utility Company to terminate the Contract. Company may terminate this Agreement by providing 30 days' written notice to the Customer.

**3. Supply Price:** Under a variable Guaranteed Savings program, during the initial term of the agreement and all renewals the Buyer will receive a variable monthly price that will be below the Utility rate during the annual term. This Guaranteed Savings will include the billed rate combined with any tax savings or eliminated Utility charges realized by the Buyer. Currently tax savings include Gross Receipts Tax. During the term of the variable agreement the Buyer is able to convert to a fixed price offer from the Seller upon request. All fixed prices are based on the trailing 12-month weighted average utility rate and shall not exceed 5% in excess of the trailing 12-month weighted average utility rate at the time of offer. Upon completion of the Initial Term, this Contract will automatically renew on a month-to-month basis at a guaranteed savings rate versus the utility unless terminated by either party.

**4. Billings and Payments:** Company shall arrange with the Utility for the monthly invoice to Customer. The invoice will include the Utility charges for delivering the gas from the Delivery Point to the Customer. Customer agrees to pay Utility's invoice within normal Utility payment terms. Company will give Customer notice at least fifteen (15) days before discontinuation of supply services to allow Customer the opportunity to pay the overdue bill or obtain services from another provider. Customer will be entitled to a refund of any substantial overcharges discovered within one (1) year after billing date, if Customer makes a claim within two (2) months of discovery. Company will likewise be entitled to bill and be paid for any substantial undercharges discovered within one (1) year after the original billing date if the corrected billing is made within two (2) months of the discovery. By signing and returning this Agreement, Customer agrees to authorize the Utility to release Customer's consumption and payment information to Company.

**5. Authorized Signature:** By signing this Agreement you affirm that you are an authorized representative vested (explicitly, implicitly, or through conduct) with the powers to commit the authorizing organization to a binding agreement.

**6. Taxes:** Unless Customer's price indicates otherwise, the price does not include any federal, Indian, state, or local sales, use, consumption taxes, import taxes, or similar taxes which may now or hereafter be imposed on the transfer of title or possession of the gas to Customer or on Customer's subsequent use or disposition thereof. Customer shall pay any such taxes directly to the taxing authority unless Company is required by law to collect and remit such taxes, in which case Customer shall reimburse Company for all amounts so paid. If Customer claims exemption from any such taxes, Customer shall provide Company a proper exemption certificate.

**7. Emergency Service:** In the event of a gas leak, service interruption or other emergency, Customer should immediately call their Utility at:

**National Fuel 1-800-444-3130 RG&E 1-800-743-1702**

**National Grid 1-800-892-2345 NYSEG 1-800-572-1121**

**8. Force Majeure:** If either Party is unable to perform its obligations under this Agreement due to force majeure, other than Customer's obligation to pay

for gas delivered hereunder, performance of such obligations shall be suspended until the force majeure is corrected. The Party claiming such inability shall give written notice thereof to the other Party as soon as practicable after the occurrence of the force majeure. Force majeure shall mean acts of God, strikes, lightning, fires, floods, explosions, storms or storm warnings, breakage of machinery or pipelines, freezing of wells or pipelines, sudden failure of gas supply, failure or curtailment of firm transportation, and any other causes not within the control of the Party claiming force majeure. Any suspension of obligations under this paragraph shall not extend the term of this Agreement. During any curtailment caused by force majeure, Company's available supplies at the affected points shall be prorated, based on nominated volumes, among Company's firm customers receiving gas at those points.

**9. Assignment:** Company may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company or other entity without the prior written consent of the Customer. Company shall provide a written notice no later than 30 calendar days prior to the assignment or transfer date to each Customer. Customer may not assign its interests in and obligations under this Agreement without the express written consent of Company. Customer will be subject to the Early Termination Fee terms of this Agreement should a Customer ownership transfer occur, without assignment of this Agreement.

**10. Title and Indemnification:** Title to the gas sold hereunder shall pass to Customer at the Delivery Point(s). Company warrants that it shall have the right to sell the natural gas delivered and that such natural gas shall be free from liens and adverse claims of any kind. Company will save and hold Customer harmless from all loss, damage and expense due to adverse claims against Customer for the gas delivered as related to Company's right to sell the natural gas delivered. In any event, Company will pay or cause to be paid all royalties and other sums due on production and transportation of the natural gas to the Delivery Point(s).

**11. Customer Contact Information:** Should Customer have any questions or require additional information regarding this Agreement, Customer can contact Company at (716) 614-1800 or (888) 885-1955. Customer may also contact the New York State Department of Public Service ("DPS"), Office of Consumer Services at (800) 342-3377, Three Empire State Plaza, Albany, NY 12223-1350, or at [www.dps.state.ny.us](http://www.dps.state.ny.us). In addition, the DPS's toll free retail access number for inquiries and information regarding Energy Services Companies and the competitive retail energy market is (888) 697-7728.

**12. Dispute Resolution:** In the event of a billing dispute or a disagreement involving Company's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact Company 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") by calling the DPS at (800) 342-3377 or by writing to the DPS at: New York State Department of Public Service ("DPS"), Office of Consumer Services, Three Empire State Plaza, Albany, NY 12223-1350, or at [www.dps.state.ny.us](http://www.dps.state.ny.us). Buyer must pay the bill in full, except for the specified disputed amount, during the pendency of the dispute.

**13. Entire Agreement, Modification:** This is the complete Agreement between the Parties and can only be amended in writing signed by both Parties. However, Company may modify any terms that do not adversely affect Customer's price, payment terms, or the length of this Agreement at any time by notifying Customer of the change. In addition, Company may modify this Agreement based on changes to applicable tariffs, rules, regulations, or laws, including changes that adversely affect Company's ability to economically operate the program with 30 days' written notice to the Customer. This Agreement shall be governed by and construed in accordance with laws of the State of New York. The services provided by the Utility will continue to be protected by New York State's Nonresidential Rules.

CUSTOMER'S INITIALS \_\_\_\_\_