



**Electric Service Agreement**  
(ABC v.1.1)

This Electric Service Agreement (this "Agreement") is dated \_\_\_\_\_ between BlueStar Energy Services, Inc. d/b/a BlueStar Energy Solutions ("BSE") and \_\_\_\_\_ located at service address(es) with the account number(s) listed in Exhibit A hereto (each, a "Service Location") ("Customer") (each referred to individually as a "Party" and collectively as the "Parties").

**I. ENERGY SERVICES**

During the relevant term, BSE shall supply and deliver to Customer all of the retail energy requirements at each Service Location (the "Retail Energy"). The Retail Energy is delivered to the distribution system's interconnection point (each, a "Delivery Point") of the relevant electric distribution company ("EDC"), and the relevant EDC is responsible for delivery of the Retail Energy to Customer's meter at and from that point. Customer designates BSE as an authorized recipient of Customer's account, billing and usage information. Customer consents to the disclosure by each EDC to BSE of certain basic information about Customer including: account number, meter number, meter read data, rate class, billing and payment information, account name, service address, billing address, and telephone number.

**II. TERM OF AGREEMENT**

BSE shall use commercially reasonable efforts to commence service under this Agreement upon the later of \_\_\_\_\_ or the first available meter read date, as determined by the EDC, after the date hereof, and after BSE receives confirmation that the EDC has completed its processing and has accepted the delivery service request (the "Start Date"). BSE shall not be liable for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of the EDC. The initial term of this Agreement shall continue for \_\_\_\_\_ months from the Start Date, unless sooner terminated hereunder.

**III. PRICING**

BSE shall sell electric supply to Customer at the terms detailed below:

Electric Supply Charge per kWh	\$ _____
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The price listed above is inclusive of generation and transmission charges, energy losses, capacity, Gross Receipts Tax (GRT) (as applicable in the Commonwealth of Pennsylvania) and state sales/use taxes (in the State of New Jersey only) and is applicable 24 hours a day.

**IV. USAGE VARIANCE AND IMBALANCE**

In order to assist BSE in providing accurate expected usage information to the EDC, Customer shall timely, promptly and as soon as practicable, notify BSE in writing if Customer anticipates a material increase or decrease in its usage for any Service Location. BSE may in its sole discretion pass through the resulting cost increases to Customer. If BSE elects to pass through such cost increases, BSE shall calculate the amount of such costs in a commercially reasonable manner and submit an invoice to Customer, which invoice shall be due and payable pursuant to the payment terms of this Agreement.

**V. BILLING and PAYMENT**

**A. General Billing and Payment Terms:** BSE shall provide monthly invoices, either through utility consolidated billing (UCB) or supplier consolidated billing (SCB). BSE may estimate bills in cases where actual billing determinants are unavailable, and estimated bills shall be adjusted as soon as reasonably practicable. In the event Customer is billed by BSE, Customer shall pay all amounts owing within 14 days after issuance of the invoice. In the event Customer is billed by the EDC, payment is due to the EDC by the date specified in its bill. Late payments shall incur interest charges at a rate of interest equal to a per annum rate of eighteen percent (18%) or the maximum allowed under applicable law, whichever is less. In any instance where any payment to BSE is declined by the issuing institution, Customer shall be assessed a charge of \$45 or the maximum allowed under applicable law (whichever is less) per declined payment. Customer shall be liable for all costs incurred by BSE, including attorneys fees, for collections on accounts greater than thirty (30) calendar days past due.

**B. Disputes and Adjustments of Invoices:** Customer may, in good faith, dispute in writing the correctness of any invoice. In the event that an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be made within normal terms, with notice of the dispute given to BSE in writing and stating the amount and basis for the dispute. Upon resolution of the dispute, any required payment shall be made within five (5) business days of such resolution along with interest accrued at the per annum rate of eighteen percent (18%) or the maximum allowed under applicable law, whichever is less.

**VI. RENEWAL OF AGREEMENT**

Not less than thirty (30) calendar days prior to the anticipated expiration date of the then current relevant Term, BSE may provide a Renewal Notice electronically or otherwise in writing containing proposed terms and conditions. Customer's failure to reject any Renewal Notice in writing within five (5) business days shall result in such Renewal Notice being deemed to have been irrevocably and unconditionally agreed to by Customer.

If following termination or expiration of this Agreement, any of Customer's accounts remain designated by any EDC as being served by BSE, BSE may either (a) continue to serve such account(s) on a month-to-month holdover basis (each, a "Holdover Term") or (ii) move such account(s) to the then applicable tariff service, whether default service or otherwise, or to another authorized provider of electricity required to serve as the "provider of last resort" (any of the foregoing, an "Alternative Service"). The price payable during any Holdover Term shall be the applicable EDC LMP Day Ahead Index plus an adder of \$0.01 per kWh. This Agreement shall continue to govern the provision of service during any Holdover Term. During a Holdover Term, BSE may at any time move any account(s) to an Alternative Service without penalty or prejudice.

**VII. CREDIT**

This offer is contingent on credit approval by BSE prior to Retail Energy delivery. Customer represents that there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it or, to its knowledge, threatened against it. Should the creditworthiness or financial responsibility of Customer become unsatisfactory to BSE at any time during the Term, as determined by BSE in its commercially reasonable discretion, BSE may require satisfactory security, including, but not limited to, a parental guaranty, escrow account, deposit, prepayment, or letter of credit, be provided by Customer.

**VIII. CONFIDENTIALITY**

Both Parties agree that the terms and conditions of this Agreement shall remain confidential, except for any required disclosure to any regulatory body, governmental entity or agency having jurisdiction, or disclosure to accountants, attorneys, or other professionals acting on behalf of the disclosing Party.

**IX. NOTICES**

Any notice or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered to any of the address specified below, any Service Location or to which bills are sent to Customer.

	<b>Billing Information:</b>	<b>Contract Notice Information:</b> Same as Billing Information
<b>Address 1:</b>		
<b>Address 2:</b>		
<b>Attn:</b>		
<b>Telephone:</b>		
<b>Facsimile:</b>		
<b>Email:</b>		
<b>How would you like to receive your invoices (if billed by BSE)?</b>  (Please choose at least one):		Email (Recommended) Paper Bill Fax

**X. EVENTS OF DEFAULT**

**A. Definition:** An "Event of Default" shall mean, with respect to the applicable Party to whom the following applies (the "Defaulting Party"), the occurrence of any of the following: (a) the failure of Customer to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) business days after written notice and demand of payment; (b) any representation or warranty made by Customer herein being false or misleading in any material respect when made or ceases to remain true during any term; (c) the failure of Customer to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within five (5) business days after written notice; (d) Customer (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator,

receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets as part of bankruptcy proceeding or reorganization for the benefit of creditors; (e) the failure of Customer to provide security or otherwise satisfy the creditworthiness requirements under the "Credit" section of this Agreement; (f) Customer consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Customer under this Agreement; or (g) Customer's failure to cooperate with BSE as reasonably required in order for BSE to perform its obligations under this Agreement.

**B. Suspension and Early Termination:** If an Event of Default occurs, BSE may, at its option and in its sole discretion, take any one or more of the following actions: (1) suspend its performance under this Agreement; or (2) terminate this Agreement by sending written notice to Customer providing the termination date for this Agreement (the "Early Termination Notice"). In the event of such suspension or an early termination, Customer shall pay to BSE all amounts owed under this Agreement, including amounts owed for delivered performance, whether or not then invoiced. In the event of such an early termination, Customer shall also pay to BSE as liquidated damages a settlement amount (the "Settlement Amount") as follows:

The Settlement Amount shall equal the greater of (1) Retail Margin, plus Supply Termination Costs, plus Enforcement Costs or (2) zero.

As used herein, the following terms shall have the following meanings:

"Enforcement Costs" means any attorneys' fees, expenses, and costs incurred by the Non-Defaulting Party in connection with enforcing its rights under this Agreement.

"Remaining Performance" means the remaining performance, including kWhs, under this Agreement for the remainder of the relevant Term had it not been terminated early, based on historical usage.

"Retail Margin" means the amount of BSE's forecasted retail margin under this Agreement, determined based on the differential between wholesale and retail market prices at the time of this Agreement or any extension hereof, allocable to the Remaining Performance.

"Supply Termination Costs" means any loss or cost that BSE would incur in terminating or liquidating the portion of any supply contracts, hedges, or related trading positions or arrangements held by BSE allocable to the Remaining Performance, whether or not such action is taken.

BSE shall calculate the Settlement Amount in its commercially reasonable discretion, including where applicable BSE estimates of market prices and forward market prices. Such calculation shall be included in any Early Termination Notice provided by BSE or, if the termination date selected by BSE is after the date of the Early Termination Notice or the Early Termination Notice is delivered by Customer, BSE shall provide such calculation to Customer within a reasonable period following the termination date. The Settlement Amount shall be paid by Customer within five (5) business days after such notice is received. The Parties acknowledge and agree that the Settlement Amount constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect. Each Party agrees that it has a duty to mitigate damages and to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

**XI. FORCE MAJEURE**

"Force Majeure" shall mean an event which prevents the claiming party (the "Claiming Party") from performing its obligations and is not within the reasonable control of, or the result of the negligence of, the Claiming Party, such as, but not limited to, acts of God; fire; flood; terrorism; breach by the EDC; electric grid interruption; earthquake; war; riot; or requirements, actions or failure to act on the part of governmental authorities. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party for the period of the Force Majeure. If the Force Majeure continues for a period in excess of thirty (30) calendar days (an "Extended Force Majeure Event"), the performing Party may terminate this Agreement by providing the other Party written notice of the early termination, without the termination for an Extended Force Majeure Event constituting an Event of Default.

**XII. GOVERNING LAW AND WAIVER OF JURY TRIAL**

This Agreement shall be governed by the laws of the state where such Service Location is located, without regard to its choice of law provisions. Any action arising out of this Agreement shall be filed in a state or federal court located in the state where such Service Location is located. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY OF ANY SIZE IS IRREVOCABLY WAIVED.

**XIII. RELATIONSHIP OF PARTIES**

BSE is an independent contractor, and nothing in this Agreement establishes a joint venture, fiduciary relationship, partnership or other joint undertaking. BSE is not acting as Customer's consultant or advisor, and Customer shall not rely on BSE in evaluating the advantages or disadvantages of any specific product or service, predictions about future energy prices or any other matter.

**XIV. CHANGES IN LAW OR REGULATION**

In the event that any change in any statute, rule, regulation, order or other law, or procedure, tariff, rate class or other process or charge, promulgated by any governmental authority or EDC, Independent Service Operator ("ISO"), Regional Transmission Operator ("RTO") or other regulated service provider, alters to the detriment of, BSE its costs to perform or its economic returns under this Agreement (a "Negative Change in Regulation"), BSE may revise the pricing under this Agreement to eliminate the impact of such Negative Change in Regulation. Before any such price revision, BSE shall provide written notice to Customer of the Negative Change in Regulation, the resulting price revisions, and the date upon which such revised pricing shall be effective. Customer shall pay the revised price described in such notice, and all other terms and conditions of this Agreement shall remain in full force and effect. Capacity and transmission charges may be changed based on adjustments by the applicable Regional Transmission Organization (RTO) and/or EDC to Customer's peak load contribution (PLC).

**XV. SEVERABILITY**

The various provisions of this Agreement are severable. Any provision or section of this Agreement declared or rendered void, unlawful, or otherwise unenforceable shall not otherwise affect the lawful obligations that arise under this Agreement.

**XVI. INDEMNITY**

BSE shall defend, indemnify, and hold Customer harmless against all claims and liabilities resulting from BSE's negligence or breach of this Agreement and arising prior to the delivery of the Retail Energy to the relevant Delivery Point, except to the extent such claims and liabilities arise out of Customer's negligence or breach of this Agreement. Customer shall assume full responsibility for any damages or losses relating to the delivery of the Retail Energy at and after its delivery to the relevant Delivery Point and shall defend, indemnify, and hold BSE harmless against all claims and liabilities arising at and after the delivery of the Retail Energy to the relevant Delivery Point, except to the extent such claims and liabilities arise out of BSE's negligence or breach of this Agreement.

**XVII. ASSIGNMENT**

This Agreement shall be binding on and inure to the benefit of each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, either Party may (a) assign its rights and obligations under this Agreement to an affiliate without consent of the other Party, subject to the affiliate's ability to comply with the "Credit" section of this Agreement and such affiliate agrees to be bound by the terms and conditions hereof, (b) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets, subject to the assignee's ability to comply with the "Credit" section of this Agreement; or (c) assign this Agreement for financing purposes; provided, however, that in each such case, other than an assignment for financing purposes, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such enforceability assurances as the non-transferring Party may reasonably request. Creditworthiness under this section is to be reasonably determined by the non-transferring Party.

**XVIII. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY**

BSE warrants title to all Retail Energy delivered hereunder and sells such Retail Energy to Customer free from liens and adverse claims. THIS IS BSE'S ONLY WARRANTY CONCERNING THE SERVICES PROVIDED HEREUNDER AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE. EXCEPT AS PART OF ANY PAYMENT OF THE SETTLEMENT AMOUNT IN ACCORDANCE WITH THE TERMS HEREOF, NEITHER PARTY SHALL BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ADDITION, BSE'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL OF THE FIRST TWO BSE INVOICES REFLECTING THE ENERGY COST SPECIFIC TO CUSTOMER'S METER READS AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. TO THE MAXIMUM EXTENT POSSIBLE UNDER LAW, ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE SHALL APPLY TO THE RETAIL ENERGY SOLD HEREUNDER.

**XIX. ENTIRE AGREEMENT; AMENDMENT**

This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a written instrument executed by both Parties.

**XX. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and each executed counterpart shall be considered an original.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative in duplicate, effective as of the date first written above.

**BlueStar Energy Services, Inc. d/b/a BlueStar Energy Solutions**

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

Name: James C. Petersen

Title: Chief Operating Officer and President, Retail Electricity

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

Company: \_\_\_\_\_

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

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

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

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

**Exhibit A**

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Service Address(es)

Utility(ies)

Account Number(s)

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