STITES & HARBISON PLLC

ATTORNEYS

421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
(502) 223-3477
(502) 560-5377 FAX

Katie M. Glass
(502) 209-1212
kglass@stites.com

November 16, 2022

**VIA THE COMMISSION'S ELECTRONIC TARIFF FILING SYSTEM**

Linda C. Bridwell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601-0615

RE: **Kentucky Power Company – Contract For Electric Service Under Tariff E.D.R. And Rider D.R.S. With Cyber Innovation Group, LLC**

Dear Ms. Bridwell:

Please accept for electronic filing the Contract for Electric Service ("Contract") between Kentucky Power Company ("Kentucky Power" or the "Company") and Cyber Innovation Group, LLC ("Cyber Innovation") pursuant to Kentucky Power Company's Tariff E.D.R. – Economic Development Rider. The Contract is attached as **<u>Attachment 1</u>** to this letter. Consistent with the Public Service Commission of Kentucky's ("Commission") July 9, 2019 Order in Case No. 2018-00378, Kentucky Power is submitting the Contract via the Commission's electronic tariff filing system.[1]

Pursuant to the Commission's decision in Administrative Case No. 327 and the terms of Tariff E.D.R., Kentucky Power and Cyber Innovation have entered into the Contract, which includes Tariff E.D.R. provisions, to govern service to Cyber Innovation's asset and data center facility in Hatfield, Pike County, Kentucky ("Rockhouse Facility"). Service to the Rockhouse Facility will be billed under the Company's Tariff I.G.S. at the rate of Subtransmission, Code 359. The term of the Contract is ten years, entitling Cyber Innovation to a five-year Incremental Billing Demand Discount ("IBDD") under Tariff E.D.R. A copy of Cyber Innovation's Application for Economic Development Rider Discount ("Tariff E.D.R. Application") is attached as **<u>Attachment 2</u>**.

[1] *In the Matter of: Electronic Application Of Kentucky Power Company For Approval Of A Contract For Electric Service Under Tariff E.D.R.*, Case No. 2018-00378, Order at 9 (July 9, 2019) (confirming that Kentucky Power may submit EDR contracts via the Commission's electronic tariff filing system and that the Commission "will establish a formal proceeding if further investigation is needed to determine the reasonableness of any EDR contract" so submitted).

Cyber Innovation also will participate in the Company's Rider D.R.S. (Demand Response Service). Cyber Innovation has designated 1,000 kW of Firm Capacity that is not subject to interruption under Rider D.R.S., and 6,000 kW as its Interruptible Capacity Reservation, for its asset and data center. The monthly Interruptible Demand Credit to be received by Cyber Innovation beginning in year two of the Contract is equal to the product of the Demand Credit per kW per month established in Rider D.R.S., and Cyber Innovation's Interruptible Capacity Reservation. The initial term of the D.R.S. contract is one year and will renew automatically for one year periods until either Cyber Innovation or the Company provides written notice to discontinue service. The D.R.S. Addendum is attached to the Contract.

The Contract's terms comply with Tariff E.D.R.'s requirements. Cyber Innovation's capacity reservation under the Contract is 7,000 kW.[2] With approval of the Contract, a total of approximately 7 MW of load would be served under Tariff E.D.R. The total load served under the tariff thus will not exceed the 250 MW limit set forth in the tariff.[3]

The Contract also complies with each of the requirements of the Commission's September 24, 1990 Order in Administrative Case No. 327 ("Administrative Case No. 327 Order"),[4] as modified by the Commission's July 9, 2019 Order in Case No 2018-00378, and as explained below.

With regard to Finding Number 5 of the Administrative Case No. 327 Order, Kentucky Power states that it currently has surplus capacity of over 115 MW, and it expects that surplus to remain through December 7, 2022, when the Company's Rockport Unit Power Agreement ("UPA") expires. As set out in Kentucky Power's 2019 Integrated Resource Plan filed in Case No. 2019-00443, the Company will purchase any additional capacity needed to serve all customers after December 7, 2022.

Kentucky Power will make bilateral purchases to meet the needs of E.D.R. customers during times when excess capacity may not exist. Tariff E.D.R includes provisions that reduce the customer's E.D.R. credits when market purchases are required under certain circumstances.[5] The Company does not believe this tariff provision applies in the circumstances presented by the Contract and the expiration of the Rockport UPA.

---

[2] *See* Attachment 1 at paragraph 3.1.

[3] See P.S.C. Ky. No. 11 Original Sheet No. 37-1, Availability of Service. After the addition of Cyber Innovation, the total load served under Tariff E.D.R. will be 46.1 MW.

[4] *In The Matter Of An Investigation Into The Implementation Of Economic Development Rates By Electric And Gas Utilities*, Order, Administrative Case No. 327 (Ky. P.S.C. Sept. 24, 1990).

[5] *See* P.S.C. Ky. No. 12 Original Sheet No. 37-1, Terms and Conditions, Section (1).

First, because of the expiration of the Rockport UPA in December 2022, the Company will be required to purchase excess capacity to serve all customers, not just Cyber Innovation. Thus, the provision of Tariff E.D.R. reducing credits in the event capacity purchases are required to serve the E.D.R. customer are inapplicable because the Company will not be purchasing excess capacity solely to serve Cyber Innovation.[6] Second, Cyber Innovation has designated 1,000 kW of Firm Capacity beginning in year one of the Contract, while the remaining 6,000 kW of Cyber Innovation's load remains interruptible under Rider D.R.S. Thus, only 1,000 kW of the Cyber Innovation load will be counted toward the Company's PJM capacity requirements; little additional capacity would need to be purchased to serve Cyber Innovation.

In the event that the Company incurs incremental costs to purchase additional capacity to serve Cyber Innovation over the course of the Contract term, the Company has discussed the specific provision regarding the reduction of the IBDD with Cyber Innovation.[7]

For these reasons, Kentucky Power believes that Finding 5 is satisfied in all material respects. The Company respectfully requests, given the novel situation presented by the expiration of the Rockport UPA, that the Commission confirm Kentucky Power's interpretation of Finding Number 5 of the Administrative Case No. 327, the provisions of Tariff E.D.R., and the Company's application of the same to the Contract. To the extent the Commission does not confirm the Company's interpretation, the Company respectfully requests a deviation from Finding 5 in order to effectuate the ultimate purpose of Tariff E.D.R. and encourage economic development through such contracts in the Company's service territory.[8]

Kentucky Power's service territory is uniquely positioned in relation to the rest of the Commonwealth. Between 2008 and 2019, the Company lost more than 10,000 customers and saw a population decline of 33,000 individuals.[9] During the same time, the Company saw its total annual weather-normalized sales fall from approximately 7.4 GWh to 5.7 GWh—a loss of 23 percent.[10] While Kentucky Power may be increasing load, the type of load lost over the past

---

[6] Between December 8, 2022 and May 31, 2023 (which is the "stub period" after the Rockport UPA expires where Kentucky Power will continue to purchase needed excess capacity from Kentucky Power's AEP affiliates until the end of the 2022-2023 PJM planning year) it is very likely that capacity purchased will cost less than that provided under the Rockport UPA. Thus, the Company would not incur any additional incremental costs to purchase capacity otherwise provided by Rockport through at least May 31, 2023.

[7] *See* Attachment 1 at paragraph 4.9.

[8] The Commission previously granted any required deviation, or confirmed Kentucky Power's interpretation by approving a similar EDR contracts between the Company and Cyber Innovation Group LLC, effective March 31, 2022 and Discover AI LLC, effective June 10, 2022.

[9] https://www.kentuckypower.com/company/about/rates/ "Economic Situation for Eastern Kentucky and Kentucky Power" (accessed November 8, 2022).

[10] *Id.*

decade is different from the load to be gained today. It is now rare that a 10 MW plant will employ 50 or more people, because while automation increases demand for electricity, it also decreases the number of people required to operate a facility. Thus, economic development in Kentucky Power's service territory remains an uphill battle. However, being able to attract customers with a large demand still benefits the rest of Kentucky Power customers by decreasing costs, regardless of whether Kentucky Power has excess capacity. In addition, because of Tariff E.D.R., communities within the Company's service territory have been able to invest real dollars in preparing sites, marketing those sites, and training economic development professionals. The benefits of Tariff E.D.R. go well beyond adding load to the Company's bottom line.

In compliance with Finding Number 6 of the Administrative Case No. 327 Order, an analysis of marginal costs, and determination that the offered Tariff E.D.R. discount rate exceeds the marginal costs associated with serving Cyber Innovation, is attached as **Attachment 3**. As Attachment 3 demonstrates, the offered discount rate exceeds the marginal costs associated with serving Cyber Innovation by an average of $174,061 annually over the five-year discount period.

With regard to Finding Number 9 of the Administrative Case No. 327 Order, Kentucky Power has not identified any customer specific fixed costs associated exclusively with serving Cyber Innovation. The Company will recover from Cyber Innovation any fixed costs associated with upgrading its distribution or transmission facilities to serve Cyber Innovation over the life of the Contract. These upgrades, the full cost of which the Company will recover from Cyber Innovation, also constitute improvements and upgrades to common facilities that also serve other customers.

Consistent with Finding Number 17 of the Administrative Case No. 327 Order, Kentucky Power is providing the Kentucky Cabinet for Economic Development and the Office of the Attorney General copies of this submission contemporaneously with its filing.

Finding Numbers 13, 15, 16, and 18 are not applicable to this Contract.

Kentucky Power respectfully requests that the Commission accept and approve the Contract based upon the information provided above and transmitted with this letter.

Please contact me should you have any questions

STITES & HARBISON PLLC
ATTORNEYS



Very truly yours,

STITES & HARBISON PLLC

Katie M. Glass

KMG
Enclosures

**Attachment 1**

# CONTRACT FOR ELECTRIC SERVICE
# BETWEEN KENTUCKY POWER COMPANY
# AND CYBER INNOVATION GROUP, LLC

This Contract for Electric Service ("Contract") is entered into by and between Kentucky Power Company, 1645 Winchester Avenue, Ashland, Kentucky (the "Company") and Cyber Innovation Group, LLC, 8 The Green, Suite A, Dover, Delaware (the "Customer) on the date this Contract is last signed.

## RECITALS

1. The Company is a corporation organized and existing under the laws of the Commonwealth of Kentucky that owns and operates facilities for the generation, transmission and distribution of electric power and energy in the Commonwealth of Kentucky and is a member of the integrated American Electric Power ("AEP") system.

2. Customer is a limited liability company organized and existing under the laws of the State of Delaware.

3. Customer currently is constructing an asset and data center facility located at 379 Rockhouse Fork, Hatfield, Kentucky, in Pike County ("Rockhouse Facility"). The anticipated load of the Rockhouse Facility is approximately 7,000 kW. The anticipated operation date of the Rockhouse Facility is June 2022 (ramping up through January 2023).

4. Customer plans to invest approximately $3.5 million in the Customer's Rockhouse Facility during Phase II. Customer projects it will create approximately 10 full-time employee positions when Customer's Rockhouse Facility is placed in operation.

5. Customer anticipates that its monthly maximum billing demand will equal or exceed 7,000 kW by January 2023 when the Rockhouse Facility is placed in operation.

6. The Customer demonstrated to the Company that absent the availability of Tariff E.D.R., the Customer would locate its proposed facility in Wyoming; Customer has an outstanding offer from a Wyoming utility for reduced energy rates. Currently in Wyoming, the Customer can buy term power for $0.04 per kWh and in Texas for $0.047 per kWh. Without the availability of Tariff E.D.R., Customer's new electrical demand would not be placed in-service.

7. The Company's service territory and the entire eastern Kentucky region are struggling economically and in need of jobs for Kentucky's citizens.

8. To facilitate economic development in the Company's service territory through the location of the Customer's facility in eastern Kentucky, including the benefits flowing to all customers through spreading fixed costs over a larger demand, the Company is agreeable to providing energy to Customer under the terms and conditions contained in this Contract, subject to approval by the Kentucky Public Service Commission.

9. The service the Company will provide to the Customer pursuant to this Contract will provide benefits to the Customer, the Company, the Company's other customers, and the Commonwealth of Kentucky.

10. Customer recognizes that the current capacity limit for Tariff E.D.R. is 250 MW and that the Company will not reserve any capacity in excess of 7,000 kW (subject to the Commission approving this Agreement) under Tariff E.D.R. for Customer's future use.

11. The Parties recognize that the Company may be required during the term of this Contract to acquire additional capacity on the Customer's behalf.

**NOW THEREFORE,** in consideration of the promises and the mutual covenants herein contained, and subject to the terms and conditions herein contained, the Company and the Customer agree as set forth below.

## AGREEMENT

### ARTICLE 1
### Definitions

1.1 Whenever used in this Contract, the following terms shall have the meanings set forth below, unless a different meaning is plainly required by the context:

1.1.1 "Commission" shall mean the Public Service Commission of Kentucky, the regulatory agency having jurisdiction over the retail electric service of the Company in Kentucky, including the electric service covered by this Contract, or any successor thereto.

1.1.2 "Contract" shall mean this Contract for electric service between the Company and the Customer, as the same may, from time to time, be amended.

1.1.3 "Kentucky Power System" shall mean the integrated, interconnected electric system operated and owned by Kentucky Power Company.

1.1.4 "Parties" shall mean the Company and the Customer.

1.1.5 "Party" shall mean either the Company or the Customer, individually.

1.1.6 "Tariff I.G.S." shall mean the Company's Industrial General Service Tariff, or any successor or amendment thereto, approved by the Commission.

1.1.7 “Tariff E.D.R.” shall mean the Company's Economic Development Rider, or any successor or amendment thereto, approved by the Commission.

1.1.8 “I.B.D.D.” shall mean the Incremental Billing Demand Discount and shall have the same meaning as set forth in Tariff E.D.R.

1.1.9 “S.B.D.D.” shall mean the Supplemental Billing Demand Discount and shall have the same meaning as set forth in Tariff E.D.R.

1.1.10 “Qualifying Incremental Billing Demand” shall have the same meaning as that set forth in Tariff E.D.R.

1.2 Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as “hereof,” “herein,” “hereunder” and other similar compounds of the word “here” shall mean and refer to the entire Contract rather than any particular part of the same. Certain other definitions, as required appear in subsequent parts of this Contract.

## ARTICLE 2

## Delivery of Electric Power and Energy

2.1 Subject to the terms and conditions specified herein, the Company agrees to furnish to the Customer, during the term of this Contract, and the Customer agrees to take and pay for, all of the electric power and energy that shall be required by the Customer for consumption at the Rockhouse Facility.

2.2 The Delivery Point for electric power and energy delivered hereunder to the Customer’s Rockhouse Facility shall be the Company’s 69 kV Bevins (Sidney Coal) Meter Point.

2.3 The Customer will provide any substation and transformation equipment and any other facilities including real property required to take delivery of the electric service to be provided by the Company under this Contract at the voltage and at the Delivery Point designated herein.

2.4 The electric energy delivered by the Company to the Delivery Point shall be three-wire, three-phase alternating current at approximately 69,000 volts. The said electric energy shall be delivered at reasonably close maintenance to constant potential and frequency. The electric energy delivered to the Rockhouse Facility shall be measured by a meter or meters owned and installed by the Company and located at the Company's metering station served by Company structure # K357-16. No Adjustment Factor shall apply.

## ARTICLE 3

## Capacity Reservation

3.1 The Total Capacity Reservation for the Rockhouse Facility contracted for by the Customer is hereby initially fixed at 7,000 kW. The Customer may request a change to the Total Capacity Reservation for the Rockhouse Facility by providing written notice to the Company 12 months in advance of the date the requested change is proposed to be effective. The Parties may reduce the 12-month written notice requirement by mutual written agreement. Any change to the Total Capacity Reservation for the Rockhouse Facility is subject to conditions as determined by the Company, such as the availability and cost of incremental Capacity from the Company, and receipt of any necessary regulatory approvals.

3.2 The Customer's Metered Demand for the Rockhouse Facility shall not exceed, and the Company shall not be required to supply capacity in excess of, the Total Capacity

Reservation for the Rockhouse Facility as specified in paragraph 3.1 except by mutual written agreement of the Parties.

3.3 The Customer's Metered Demand for the Rockhouse Facility shall be separately determined each month as the highest of either the On-Peak Demand or the Off-Peak Demand. The On-Peak Demand during each month is the single highest 15-minute integrated peak in kW as registered by a demand meter during the On-Peak Period. The Off-Peak Demand during each month is the single highest 15-minute integrated peak in kW as registered by a demand meter during the Off-Peak Period.

## ARTICLE 4
## Billing

4.1 The Customer and the Company agree that the Customer has chosen to receive service under the provisions of the Company's Tariff I.G.S. at the rate of Sub-transmission, Tariff Code 359.

4.2 The Customer agrees to pay the Company monthly for electric energy delivered hereunder at the rates and under the provisions of the Company's Tariff I.G.S., as modified by the Customer's participation in Tariff E.D.R. and described herein.

4.3 The Customer's new qualifying incremental demand will reside in the Customer's Rockhouse Facility, at the Customer's premises. The Customer's new qualifying incremental demand will be metered according to Tariff I.G.S. The Customer's Qualifying Incremental Billing Demand will be calculated based on meter readings for the Rockhouse Facility on the Company's meter.

4.4 The Customer's estimated load factor is 90%.

4.5 Over the term of this Contract, the Customer's Qualifying Incremental Billing Demand charge shall be reduced by the following percentages set forth in Table 1:

**Table 1**

| *Year* | *% Reduction* | *Year* | *% Reduction* |
|---|---|---|---|
| 1 | 50 % | 6 | 0 % |
| 2 | 40 % | 7 | 0 % |
| 3 | 30 % | 8 | 0 % |
| 4 | 20 % | 9 | 0 % |
| 5 | 10 % | 10 | 0 % |

4.6 The Customer's Minimum Demand Charge, as set forth in Tariff I.G.S., shall be waived for the first 36 months of this Contract. However, if during the term of this Contract the Customer's monthly demand falls below the minimum billing demand level under Tariff I.G.S. for 4 consecutive months or 6 months total in a Contract year, then the Customer's minimum demand charge shall not be waived and the appropriate minimum billing demand charge otherwise applicable under Tariff I.G.S. will apply until the Customer achieves the minimum billing demand level.

4.7 This Contract is subject to the "Tariff D.R.S. Tariff Addendum," which is attached hereto and made a part of this Contract, regarding service to Customer under the Company's Optional Rider D.R.S.

4.8 The Parties agree that the charges the Company collects from the Customer during the term of this Contract will recover all of the Company's fixed costs associated with upgrading its distribution facilities to serve the Customer.

4.9 Customer has been provided a copy of the Company's Tariff E.D.R. Customer recognizes that during the term of this Contract that Kentucky Power may be required to acquire additional capacity on behalf of Customer. In the event the Company is required to acquire additional capacity on behalf of Customer, Customer recognizes and agrees that customer's I.B.D.D. may be reduced in accordance with paragraph (1) of the Terms and Conditions of Tariff E.D.R. (Tariff Sheet 37-1).

**ARTICLE 5**

**Effective Date and Term of Contract**

5.1 The Effective Date of this Contract shall be the first day of the first billing month following the later of: (a) approval of this Contract by the Commission, or (b) the date on which the Customer's Rockhouse Facility begins full operations. In no event shall this Contract become effective without the approval of this Contract by the Commission as required by Article 7.2.

5.2 The term of this Contract shall be 10 years. The term shall commence on the Effective Date of this Contract as established under Article 5.1.

**ARTICLE 6**

**Service Conditions**

6.1 Each Party shall exercise reasonable care to maintain and operate, or to cause to be maintained and operated, their respective facilities in accordance with good engineering practices.

6.2 To the extent not expressly modified by this Contract, the Company's Terms and Conditions of Service, as filed with the Commission, including any amendments thereto, are incorporated by reference and made a part of this Contract. The Customer acknowledges receipt of the currently approved Terms and Conditions of Service. In the event of a conflict between explicit provisions of this Contract and the provisions of the Company's Terms and Conditions of Service, the provisions of this Contract shall control.

6.3 Any service being provided to the Customer under this Contract may be interrupted or reduced (a) by operation of equipment installed for power system protection; (b) after notice to and consultation with the Customer for routine installation, maintenance, inspection, repairs, or replacement of equipment; (c) when, in the Company's sole judgment, such action is necessary to (i) preserve the integrity of, or to prevent or limit any instability or material disturbance on, or to avoid a burden on, the Kentucky Power system or an interconnected system, (ii) preserve personal or public safety, (iii) or to protect property; or (d) upon occurrence of an event of Force Majeure as defined by the Company's Terms and Conditions of Service.

6.4 The Company reserves the right to disconnect the Customer's conductors or apparatus without notice from the Kentucky Power System when, in the exercise of reasonable care, the Company determines that it is necessary in the interest of preserving or protecting life and/or property.

6.5 During the term hereof, the Customer shall not receive electric service, as the term "service" is defined in Chapter 278 of the Kentucky Revised Statutes, from any source other than from the Company. This provision does not apply to emergency generation that is not designed to operate in parallel with the Kentucky Power System.

6.6 The Customer shall notify the Company as soon as possible after discovery of any impairment of or defect in the Company's service that significantly disrupts the Customer's operations, and the Customer shall confirm such notice in writing by the close of the next business day. The Company shall not be liable for any loss, injury, or damage that could have been prevented by timely notice of a defect or impairment of service.

6.7 The Customer shall notify the Company in advance of any changes to be made to the Customer's Facility that has the potential of materially affecting the Kentucky Power System or other facilities interconnected to the Kentucky Power System.

6.8 The Customer shall adhere to the addendum to this contract regarding voltage flicker criteria and harmonic distortion criteria ("Flicker/Harmonics Addendum"). The Flicker/Harmonics Addendum is incorporated by reference and made a part of this Contract.

## ARTICLE 7
## Regulatory Authorities

7.1 The Parties recognize that this Contract is subject to the jurisdiction of the Commission, and is also subject to such lawful action, as any regulatory authority having jurisdiction shall take with respect to the provision of services under the Contract. The performance of any obligation of either Party shall be subject to the receipt from time to time as required of such authorizations, approvals, or actions of regulatory authorities having jurisdiction as shall be required by law.

7.2 The Company and the Customer agree that this Contract reflects the steps required to ensure adequate service to the Customer and that the Company will file this Contract with the Commission. This Contract is expressly conditioned upon the Commission's approval of the Contract without change or condition. In the event that the Commission does not approve this Contract without change or condition, then this Contract shall not become effective, unless the Parties agree otherwise in writing. It is the intent of the Parties that the Commission's approval of the Contract without change or condition is a prerequisite to the validity of this

Contract. To the extent a subsequent Commission Order alters the terms of this Contract, this Contract shall terminate unless within thirty days of the Commission Order the Parties agree in writing otherwise. In the event of a termination of the Contract due to subsequent Commission order, the Customer shall take service under the appropriate Company tariff.

## ARTICLE 8
## Assignment

8.1 This Contract shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

8.2 This Contract shall not be assigned by either Party without the written consent of the other Party. Either Party's consent to one or more assignments shall not relieve the other party or its assignees, as the case may be, from the necessity of obtaining the written consent to other and/or additional assignments.

8.3 Any assignment by one Party to this Contract shall not relieve that Party of its financial obligation under this Contract unless the other Party so consents in writing.

## ARTICLE 9
## General

9.1 Any waiver at any time of any rights as to any default or other matter arising under this Contract shall not be deemed a waiver as to any other proceeding or subsequent default or matter. Any delay, excepting the applicable statutory period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

9.2 Except as set forth in Article 7, in the event that any of the provisions, or portions thereof, of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

9.3 All terms and stipulations made or agreed to regarding the subject matter of this Contract are completely expressed and merged in this Contract, and no previous promises, representations or agreements made by the Company's or the Customer's officers or agents shall be binding on either Party unless contained herein.

9.4 All notices permitted or required to be given hereunder shall be in writing and shall be delivered by first-class mail to the Company and to the Customer at their respective addresses set forth below. When a notice is mailed pursuant to this paragraph, the postmark shall be deemed to establish the date on which the notice is given:

| If to Company: | If to Customer: |
|---|---|
| Stevi Cobern<br>Kentucky Power Company<br>1645 Winchester Avenue<br>Ashland, Kentucky 41101 | Warren Rogers<br>Chief Strategy Officer<br>Cyber Innovation Group, LLC<br>8 The Green Suite A<br>Dover, Delaware 19901<br>**Email:** warren@blockwaresolutions.com |

9.5 The rights and remedies granted under this Contract shall not be exclusive rights and remedies but shall be in addition to all other rights and remedies available at law or in equity.

9.6 The validity and meaning of this Contract shall be governed by the laws of the Commonwealth of Kentucky without regard to conflict of law rules.

9.7 This Contract may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same Contract.

**ARTICLE 10**

**Liability and Force Majeure**

10.1 Neither the Company nor the Customer shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy hereunder due to, occasioned by or in consequence of, any of the following causes or contingencies, (hereinafter "events of Force Majeure") including: acts of God, the elements, storms, hurricanes, tornadoes, cyclones, sleet, floods, backwaters caused by floods, lightning, earthquakes, landslides, washouts or other revulsions of nature, epidemics, accidents, fires, failures of facilities, collisions, explosions, strikes, lockouts, differences with workers and other labor disturbances, vandalism, sabotage, riots, inability to secure cars, coal, fuel, or other materials, supplies or equipment from usual sources, breakage or failure of machinery, generating equipment, electrical lines or equipment, wars, insurrections, blockades, terrorism, war, insurrection, cybersecurity attacks, acts of the public enemy, arrests and restraints of rulers and people, civil disturbances, acts or restraints of federal, state or other governmental authorities, and any other causes or contingencies not within the control of the Party whose performance is interfered with, whether of the kind herein enumerated or otherwise. It is expressly understood and agreed that economic conditions, such as a downturn in the market for the product or products produced at any of the Customer's facilities, do not constitute an event of Force Majeure. Settlement of strikes and lockouts shall be wholly within the discretion of the Party having the difficulty. An event or events of Force Majeure shall not relieve the Company or the Customer of liability in the event of its concurring negligence or in the event of failure of either to use reasonable means to remedy the situation and remove the cause in an adequate manner and with reasonable dispatch. An event or events of Force Majeure shall not relieve either the Company or the Customer from its obligation to pay amounts due hereunder.

10.2 The Company assumes no responsibility of any kind with respect to construction, maintenance, or operation of the electric facilities or other property owned or used by the Customer and shall not be liable for any loss, injury (including death), damage to or destruction of property (including loss of use thereof) arising out of such installation, maintenance or operation or out of any use by the Customer or others, of said energy and/or capacity provided by the Company except to the extent such damage or injury shall be caused by the negligence or willful misconduct of the Company, its agents, or employees. The Customer assumes no responsibility of any kind with respect to construction, maintenance or operation of the electric facilities or other property owned or used by the Company and shall not be liable for any loss, injury (including death), damage to or destruction of property (including loss of use thereof) arising out of such installation, maintenance or operation except to the extent such damage or injury shall be caused by the negligence or willful misconduct of the Customer, its agents, or employees.

10.3 To the extent permitted by law, the Customer shall protect, defend, indemnify, and hold harmless the Company from and against any losses, liabilities, costs, expenses, suits, actions, claims, and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against and all fines and penalties imposed upon the Company, arising out of injuries to persons, including death, or damage to third-party property, to the extent caused by, or occurring in connection with any willful or negligent act or omission of the Customer, its employees, agents or contractors, or which are due to or arise out of defective electrical equipment belonging to the Customer. Neither the Company nor the Customer shall be liable for any indirect, special, incidental or consequential damages, including loss of profits due to business interruptions or otherwise, in connection with this Special Contract. To the extent permitted by law, the Company shall protect, defend, indemnify, and hold harmless the Customer from and against any losses, liabilities, costs, expense, suits, actions, claims, and all other obligations whatsoever, including, without limitation, all judgments rendered against and all fines and penalties imposed upon the Customer, arising out of injuries to persons, including death, or damages to third-party property, to the extent caused by or occurring in connection with any willful or negligent act or omission of the Company, its employees, agents or contractors.

10.4 Any indemnification of the Parties or any limitation of the Parties' liability which is made or granted under this Special Contract shall to the same extent apply to the Party's directors, officers, partners, employees and agents, and to the Party's affiliated companies, including any directors, officers, partners, employees and agents thereof.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Contract to be duly executed the day and year last written below.

| KENTUCKY POWER COMPANY | CYBER INNOVATION GROUP, LLC |
|---|---|
| By Kenneth Borders | By WDRogers |
| Name: Kenneth Borders | Name: Warren Rogers |
| Title Mgr., Customer and Dist. Svcs | Title Authorized Signatory |
| Date 11/8/2022 | Date 11/7/2022 |

Account Number: **039-456-969-3**

# ADDENDUM TO CONTRACT FOR ELECTRICAL DISTRIBUTION SERVICE-Flicker/Harmonics

This Addendum is entered into this **9th day of May, 2022,** by and between **Kentucky Power Company**, hereafter called the Company, and **Cyber Innovation Group, LLC**, or its heirs, successors or assigns, hereafter called the Customer.

**WHEREAS**, the Company's terms and conditions of service contained in the applicable tariffs indicate that the Customer shall not use the electrical service provided for under the terms of the Contract for Electric Service dated **5/9/2022** in a manner detrimental to other customers or in such a way as to impose unacceptable voltage fluctuations or harmonic distortions, and

**WHEREAS**, the Customer anticipates utilizing certain equipment at the service location covered by the Contract that could impose an unacceptable level of voltage flicker or harmonic distortion,

**NOW THEREFORE**, the parties hereby agree as follows:

**I. POINT OF COMPLIANCE** – The point where the Customer's electric system connects to Kentucky Power's system will be the point where compliance with the voltage flicker and harmonic distortion requirements are evaluated.

**II. VOLTAGE FLICKER CRITERIA** – The Company's standards require that the voltage flicker occurring at the Point of Compliance shall remain below the Border Line of Visibility curve on the Flicker Limits Curve contained herein.

The Customer shall design and operate its facility in compliance with the voltage flicker criteria contained in IEEE Standard 1453, "IEEE Recommended Practice for Measurement and Limits of Voltage Fluctuations and Associated Light Flicker on AC Power Systems."

Notwithstanding these criteria, the Customer has certain equipment that it anticipates utilizing at the service location covered by the Contract that could impose a level of voltage flicker above the Border Line of Visibility curve The Company agrees to permit the Customer to operate above the Border Line of Visibility curve unless and until the Company receives complaints from other customers or other operating problems arise for the Company, provided that the voltage flicker does not exceed the Border Line of Irritation curve shown on the Flicker Limits Curve, whether or not complaints or operating problems occur. By so agreeing, the Company does not waive any rights it may have to strictly enforce its established voltage flicker criteria as measured/calculated in the future. All measurements shall be determined at the Point of Compliance and compliance with these criteria shall be determined solely by the Company.

If the Customer is operating above the Border Line of Visibility curve and complaints are received by the Company or other operating problems arise, or should the Customer's flicker exceed the Border Line of Irritation curve, the Customer agrees to take action, at the Customer's expense, to comply with the Voltage Flicker Criteria. Corrective measures could include, but are not limited to, modifying production methods/materials or installing voltage flicker mitigation equipment necessary to bring the Customer's operations into compliance with the Voltage Flicker Criteria.

If the Customer fails to take corrective action within a reasonable time, not to exceed 90 days, after notice by the Company, the Company shall have such rights as currently provided for under its tariffs, which may include discontinuing service, until such time as the problem is corrected.

**III. HARMONIC DISTORTION CRITERIA** – The Customer shall design and operate its facility in compliance with the harmonic distortion criteria contained in IEEE Standard 519-1992.

The Customer agrees that if the operation of motors, appliances, devices or apparatus results in harmonic distortions in excess of the Company's Harmonic Distortion Criteria, it will be the Customer's responsibility to take action, at the Customer's expense, to comply with such Criteria. If the Customer fails to take corrective action within a reasonable time, not to exceed 90 days, after notice by the Company, the Company shall have such rights as currently provided for under its tariffs, which may include discontinuing service, until such time as the problem is corrected.

**IV. OTHER REQUIREMENTS**

Compliance Assessment — To achieve compliance, at least 95% of all recordings within each harmonic measure and 99% within each flicker measure must fall below the applicable limit, i.e., Customer will be in material non-compliance with the Company's Power Quality Requirements if more than 5% of the harmonic voltage and harmonic current recordings and 1% of the flicker recordings exceed the specified limits.

Electrical Interactions — If power quality compliance monitoring recordings or analytical studies conducted by the Company indicate likely adverse electrical interactions between the Customer and the Kentucky Power's System, joint efforts will be undertaken by the Parties to determine the nature and extent of the electrical interaction and to resolve, at no expense to the Company, any likely adverse impacts on the performance of Company facilities.

| **Kentucky Power Company** | **Cyber Innovation Group, LLC** |
|---|---|
| By:______________________ | By: WDRogers ______________________ |
| Printed Name: Kenneth Borders | Printed Name: Warren Rogers |
| Title: **Mgr., Customer and Dist. Svcs** | Title: **Authorized Signatory** |
| Date: ____________ | Date: 11/7/2022 |

Account Number: **039-456-969-3**

**ADDENDUM TO THE ELECTRIC SERVICE CONTRACT BETWEEN KENTUCKY POWER COMPANY AND CYBER INNOVATION GROUP, LLC**

This Addendum supplements and amends the Electric Service Contract (the "Contract"), entered into on May 9, 2022, between Kentucky Power Company**,** a Kentucky corporation (the "Company"), and Cyber Innovation Group LLC, a Delaware limited liability company (the "Customer"). The Company and Customer are collectively referred to herein as the "Parties."

WHEREAS, the Company is a corporation organized and existing under the laws of the Commonwealth of Kentucky, and owns and operates facilities for the generation, transmission and distribution of electric power and energy; and

WHEREAS, the Customer is developing an asset and data center facility to be located at 379 Rockhouse Fork, Hatfield KY 41514 within the Company's Kentucky service territory; and

WHEREAS, the Customer will take service under the Company's Tariff I.G.S. at its Rockhouse Facility;

WHEREAS, the Customer will have the ability upon the Rockhouse Facility becoming operational to curtail load under the provisions of the Company's Optional Rider D.R.S ("Rider D.R.S.");

WHEREAS, Customer wishes to take service at its Rockhouse Facility under Rider D.R.S. when the Rockhouse Facility has 12 months of operational history.

NOW THEREFORE, in consideration of the mutual covenants and agreements, and subject to the terms and conditions contained in this Addendum, the Company and the Customer agree as follows:

I. The Effective Date for the Rockhouse Facility shall be the first day of the billing month 30 days after twelve months of operating history is established for the Rockhouse Facility.

II. The Customer's Total Contract Capacity Reservation under this Addendum shall be 7,000 kW for the Rockhouse Facility.

III. The Customer's maximum Metered Demand shall not exceed the Total Contract Capacity Reservation except by mutual agreement of the Parties. The Metered Demand during each month is the single highest 15-minute integrated peak in kW as recorded during the month by the demand meters at the Company's 69 kV Bevins Meter Point for the Rockhouse Facility.

IV. Except as modified herein, the Customer's Total Contract Capacity Reservation shall be served under the terms and conditions of the Company's Tariff I.G.S.

V. The Customer has designated 1,000 kW as its Firm Capacity Reservation for the Rockhouse Facility.

VI. The Customer has designated 6,000 kW as its Interruptible Capacity Reservation.

VII. The Company, in its sole discretion, reserves the right to call for curtailments of Customer's Interruptible Capacity Reservation at any time. Such curtailments shall be designated as Discretionary Interruptions and shall not exceed an aggregate of 60 hours of interruption during any Interruption Year. The Interruption Year shall be defined as the consecutive twelve (12) month period commencing on June 1 and ending on May 31.

VIII. In any Initial Partial Interruption Year, Discretionary Interruptions shall not exceed a number of hours equal to the product of the number of full calendar months during the Initial Partial Interruption Year and the annual interruption hours divided by 12 multiplied by 60.

IX. The Company will endeavor to provide the Customer with as much advance notice as possible of a Discretionary Interruption. The Company shall provide notice at least 90 minutes prior to the commencement of a Discretionary Interruption.

X. The Company will inform the Customer regarding the communication process for notices to curtail. The Customer is ultimately responsible for receiving and acting upon a curtailment notification from the Company.

XI. Discretionary Interruption events shall be at least three (3) consecutive hours and there shall not be more than six (6) hours of Discretionary Interruption per day.

XII. Discretionary Interruptions shall begin and end on the clock hour.

XIII. For any Discretionary Interruption, the Customer can choose not to interrupt their Interruptible Capacity Reservation; if the Customer chooses not to or fails to curtail their interruptible load during a Discretionary Interruption, the Customer shall pay the applicable DRS Event Failure Charge set forth in Rider D.R.S. as may be amended from time-to-time by the Company.

XIV. The net amount of the monthly Interruptible Demand Credit and any DRS Event Failure Charge shall be included in the Customer's bill for service provided under Tariff I.G.S. The net amount of the monthly Interruptible Demand Credit and any DRS Event Failure Charge shall be calculated separately for the Rockhouse Facility.

XV. The monthly Interruptible Demand Credit for the Rockhouse Facility shall be equal to the product of the Demand Credit per kW month established in Rider D.R.S., as may be amended from time-to-time by the Company, and the Interruptible Capacity Reservation set forth in Section VI.

XVI. The Term of this Addendum shall be for an initial period of one (1) year. After the initial one (1) year period, the Addendum shall continue for each subsequent Interruption Year until either party provides written notice no later than April 2 of its intention to discontinue service effective June 1 under the terms of this Schedule.

XVII. Except as otherwise specifically provided herein, all rates, terms and conditions, and the obligations and responsibilities of the Parties as set forth in the Contract shall remain in full force and effect.

XVIII. All terms and stipulations made or agreed to regarding the subject matter of this Addendum are completely expressed and merged in this Addendum, and no previous promises, representations, or agreements made by the Company's or the Customer's officers or agents shall be binding on either Party unless contained herein.

XIX. To the extent not specifically modified by this Addendum, the Company's Terms and Conditions of Service, on file with the Commission are incorporated herein by reference and made a part hereof. The Customer acknowledges receipt of the currently approved Terms and Conditions of Service. In the event of a conflict between the provisions of this Addendum and the provisions of the Company's Terms and Conditions of Service, the provisions of this Addendum shall control.

XX. This Addendum shall not be assigned by either Party without the written consent of the other Party. Such consent shall not be unreasonably withheld.

XXI. The rights and remedies granted under this Addendum shall not be exclusive rights and remedies but shall be in addition to all other rights and remedies available at law or in equity.

XXII. The validity and meaning of this Addendum shall be governed by the laws of the Commonwealth of Kentucky.

XXIII. In the event that any of the provisions, or portions thereof, of this Addendum are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

**XXIV. NO RESPONSIBILITY OR LIABILITY OF ANY KIND SHALL ATTACH TO OR BE INCURRED BY THE COMPANY FOR, OR ON ACCOUNT OF, ANY LOSS, COST, EXPENSE, OR DAMAGE CAUSED BY OR RESULTING FROM, EITHER DIRECTLY OR INDIRECTLY, ANY CURTAILMENT OF SERVICE UNDER THE PROVISIONS OF RIDER D.R.S. OR THIS ADDENDUM.**

**IN WITNESS WHEREOF,** the Parties hereto have caused this Addendum to be duly executed the day and year last written below.

| KENTUCKY POWER COMPANY | CYBER INNOVATION GROUP, LLC |
|---|---|
| By Kenneth Borders | By WDRogers |
| Title Mgr., Customer and Dist. Svces | Title Authorized Signatory |
| Date 11/8/2022 | Date 11/7/2022 |

**Attachment 2**

# Kentucky Power Co.
# Application for Economic Development Rider Discount

The following information requested is necessary to apply for the incremental and/or supplemental billing demand discounts provided under the Economic Development Rider (Tariff E.D.R.). Please email the completed and verified application to klborders@aep.com.

Customer Name: Cyber Innovation Group

Address: 379 Rockhouse Fork, Hatfield KY 41514

Contact Name: Warren Rogers

Phone: (512) 905-5209

Email: Warren@Blockwaresolutions.com

In order for the Company to determine whether the Customer is eligible for service under Tariff E.D.R., please provide the following information required by the Tariff:

1. A description and good faith estimate of the new or increased load to be served during each year of the contract.
    a. The project has three phases to completion
        i. Phase I: 4.5MW.
        ii. Phase II: +3 to 4 MW (7MW total). Start date is approximately January 2023.
        iii. The reasoning for the phased approaches is due to the supply chain issues, it is difficult to purchase power distribution equipment. Our phases match the delivery dates of equipment.
    b. These loads will be the same during the contract periods

2. The number of new employees or jobs that will be added as a result of the new load.
    a. 5 new hires. These will be mining technicians with starting pay of \$23/hr plus benefits. The individuals in this role engage in troubleshooting, minor repairs, site monitoring and a variety of maintenance roles.

3. A description of the anticipated capital investment.
    a. Phase I: \$2,500,000
    b. Phase II: 1,000,000

4. A description of all other federal, state or local economic development tax incentives, grants, or any other incentives / assistance associated with the new or expanded project.
    a. Currently, we are not using any other federal, state, or local incentives or grants to complete the project.
    b. Additionally, we are not using leverage to complete the project

5. A statement that without the EDR discount, the customer would locate elsewhere or choose not to expand within Kentucky Power's service territory.
    a. We would most definitely locate elsewhere if it were not for the savings from the EDR. Currently in Wyoming we can buy term power for \$0.04 and in Texas for \$0.044
    b. The EDR allows us to continue to build our footprint in Eastern Kentucky. Prior to this site ('"Rockhouse'') we applied for and received EDR approval for an adjacent site (''Long Fork''), which is a 20 MW facility.
    c. Our capital plans have us completing a total of 50 additional megawatts by 2023 with Rockhouse being a big part of the effort.

6. Any additional information that the Customer believes is relevant to demonstrate the Customer's eligibility for the requested billing demand discount(s).

a. Cyber Innovation Group arrived in Eastern KY in late 2021 and has since provided more than 10 direct roles and up to 50 indirect roles. To date, we have made total capital investment in the area greater than $7,000,000 prior to this application.
b. Our capital investment plans from 2023-2025 have us investing another $25,000,000 into the local area.
c. By 2025 we can support more than 100 direct roles.

**Attachment 3**

# Summary of EDR Incremental Costs and Revenues

| Ln No. | Marginal Costs - Energy | | |
|---|---|---|---|
| **(1)** | Annual kWh | | 57,456,000 |
| **(2)** | DA LMP $/kWh | | 0.04065 |
| **(3)** =(1)*(2) | Marginal Costs - Energy | | $2,335,746 |
| | **Marginal Costs - Distribution** | | |
| **(4)** | Distribution WO Total | | $0 |
| **(5)** | Levelized Carrying Cost | | 10.55% |
| **(6)** =(4)*(5) | Annual Dist Incremental Cost | | $0 |
| | **Summary of Incremental Costs and Revenues** | | |
| **(7)** | Energy | | $2,335,746 |
| **(8)** | Distribution | | $0 |
| **(9)** | PJM LSE Transmission | | $810,938 |
| **(10)** | Generation Capacity | | $0 |
| **(11)** =(7)+(8)+(9)+(10) | Total Incremental Costs | | $3,146,685 |
| **(12)** | Incremental Revenue | $ | 3,320,745 |
| **(13)** =(12)-(11) | **Net Revenue (Cost)** | | **$174,061** |