

**POWER PURCHASE AGREEMENT  
BETWEEN  
EAST KENTUCKY POWER COOPERATIVE, INC.  
AND  
LOCK 14 HYDRO PARTNERS, LLC**

This Power Purchase Agreement (“Agreement”) is entered into on the 15<sup>th</sup> day of February, 2020 between **East Kentucky Power Cooperative, Inc.**, a Kentucky rural electric cooperative corporation whose address is, 4775 Lexington Road, Winchester, Kentucky 40392 (“EKPC”), and **Lock 14 Hydro Partners, LLC**, a Kentucky limited liability company, whose address is 414 South Wenzel Street, Louisville, Kentucky 40204 (“Hydro Partners”). Both EKPC and Hydro Partners may hereafter be referred to as a “Party” and may be referred to collectively as the “Parties.”

**RECITALS:**

WHEREAS, Hydro Partners is developing and installing a new hydroelectric plant and will be producing electrical power at the Heidelberg Hydroelectric Project (FERC Project No. 13213) at Lock 14 on the Kentucky River (the “Plant”); and

WHEREAS, EKPC is a rural electric cooperative that generates and transmits electricity to its sixteen (16) Owner-Member Cooperatives (“owner-members”) that includes Jackson Energy Cooperative, Inc. (“Jackson Energy”); and

WHEREAS, Jackson Energy is an owner-member of EKPC and purchases wholesale power from EKPC under a wholesale power supply contract, as amended; and

WHEREAS, Hydro Partners has entered into a Power Purchase Agreement with Jackson Energy, to sell the output from the Plant to Jackson Energy under Amendment 3 of its wholesale power supply contract with EKPC; and

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WHEREAS, Hydro Partners' Plant will be interconnected to a Jackson Energy distribution line that connects to EKPC's Beattyville Substation, and said Plant will primarily provide power to Jackson Energy members served by the Beattyville Substation; and

WHEREAS, EKPC owns the Beattyville Substation and transmission services for the substation are supplied by EKPC; and

WHEREAS, during certain low loading periods, the output of the Plant is expected to exceed the total load of Jackson Energy's members receiving power from the Beattyville Substation, and surplus electricity will flow from the Jackson Energy system into the EKPC substation; and

WHEREAS, EKPC has agreed to purchase this excess electricity from Hydro Partners at a price equivalent to the PJM Balancing Market at the EKPC Aggregate load node, on the terms and conditions set out herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. PURCHASE AND SALE.

A. Electricity Sale. During the term of this Agreement, Hydro Partners shall deliver to EKPC all Electricity (defined as the actual metered electrical energy (expressed in kilowatt hours) delivered by Hydro Partners to EKPC and purchased by EKPC at the Point of Delivery), which is surplus to the Jackson Energy member load served by EKPC's Beattyville Substation, and EKPC shall purchase same as provided herein. The Plant will have a design capacity of no more than 2.64 MW, which is less than the peak demand of



Jackson Energy members served by the Beattyville Substation during most periods, with an expected output of 1.43 MW. The Parties acknowledge and agree that the EKPC purchases hereunder are expected to be infrequent and will only be for the few periods when the Plant output exceeds use by Jackson Energy members served by the Beattyville Substation. EKPC will purchase only the Electricity, and it will have no right to or interest in any green tags, renewable energy certificates, carbon credits, or any other “green” or environmental attributes associated with the Electricity.

B. Station Power. Hydro Partners shall not have the right to sell Electricity from the Plant to any third party, other than to Jackson Energy or EKPC.

C. Quantity of Electricity. Hydro Partners will sell to EKPC all Electricity produced by the Plant and delivered to Jackson Energy’s distribution system that is not consumed by Jackson Energy members served by the Beattyville Substation. This Agreement does not require the delivery of any minimum amounts of Electricity. The limit of the Electricity sold to EKPC in this Agreement shall be the output of the Plant (net of Plant demands) less that energy consumed by Jackson Energy’s members.

2. CHARACTER OF ELECTRICITY.

All Electricity to be furnished by Hydro Partners to EKPC shall be alternating current, three phases, 12,470 volts, 60 Hertz.

3. POINT OF DELIVERY.

The “Point of Delivery” shall be at the metering point in EKPC’s Beattyville Substation. All Electricity at the metering point moving from the Beattyville Substation into the Jackson Energy system shall be deemed power sold by EKPC to Jackson Energy in accordance with the existing wholesale power supply contract, as amended. All



Electricity at the metering point moving from the Jackson Energy system into the Beattyville Substation shall be deemed a power sold by Hydro Partners to EKPC under this Agreement. Title to, risk of loss and control and possession of the Electricity shall pass from Hydro Partners to EKPC at the Point of Delivery. EKPC shall be solely responsible for the provision and maintenance of the EKPC Facilities (defined below) necessary to receive the Electricity at the Point of Delivery and to transmit the Electricity beyond the Point of Delivery.

4. FACILITIES.

The cost for the construction of the interconnection facilities shall be allocated between the Parties as outlined below.

A. EKPC's Facilities. EKPC's Facilities (the "EKPC Facilities") include all electrical structures required to accept delivery of the Electricity at the Point of Delivery in the Beattyville Substation. Hydro Partners will be responsible for the cost of any modifications necessary to existing metering equipment to implement the Electricity metering required pursuant to Section 5 of this Agreement, but all other costs and expenses related to the EKPC Facilities shall remain the sole responsibility of EKPC.

B. Hydro Partner's Facilities. Hydro Partners' Facilities (the "HP Facilities") include the equipment and structures necessary to generate and transmit the Electricity to EKPC. For avoidance of doubt, the HP Facilities shall be limited to 2.64 MW of capacity. Hydro Partners will not increase the capacity of the HP Facilities without first obtaining the express written consent of EKPC.



C. Laws and Regulations. At all times during the term hereof, each Party's facilities shall be designed, constructed, and operated in compliance with all applicable federal, state and local laws, rules, regulations, agency orders, and permits.

5. METERING.

EKPC shall meter the surplus Electricity flowing from the Jackson Energy system into the Beattyville Substation using one or more Billing Meters. If existing meters need to be modified or changed to accommodate metering power flowing from the Jackson Energy system into the substation, these modifications will be done at Hydro Partners' expense. All Billing Meters shall be tested by EKPC at its usual and customary interval for meter tests. If Hydro Partners has a reasonable basis to believe any Billing Meter may be inaccurate, Hydro Partners will notify EKPC and EKPC will promptly check such Billing Meter for accuracy. Hydro Partners will pay for any meter tests undertaken by EKPC at Hydro Partners request. Hydro Partners may, at its sole cost and expense, install and maintain a check meter to provide a secondary measure of the Electricity.

6. MAINTENANCE AND OPERATION OF FACILITIES.

A. Maintenance and Operation of HP Facilities. Hydro Partners shall be responsible for the construction, operation, maintenance, and repair of the HP Facilities. Hydro Partners shall furnish and maintain, at its sole expense, all of the HP Facilities and any other equipment necessary for the delivery of Electricity to the Point of Delivery.

B. Inspection of Facilities. Neither Party shall have (I) any obligation to inspect the other Party's facilities, or (II) any responsibility with respect to the installation, repair, maintenance, replacement, relocation, removal, or operation of the other Party's facilities.

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7. CONTRACT PRICE.

A. Electricity Sales. The Contract Price in this Section 7 applies to all Electricity sold pursuant to this Agreement. EKPC will pay Hydro Partners each month for all Electricity delivered the prior month based on the hourly volumes and that Electricity shall be priced equivalent to the PJM Balancing Market at the EKPC Aggregate load node (the “Contract Price”).

B. Transmission Charges. Any transmission wheeling, or other related charges associated with the Electricity delivered and sold to EKPC will be borne solely by Hydro Partners.

C. Interconnection Study. Hydro Partners will bear at its sole cost and expense any charges or fees for conducting and obtaining an interconnection study to permit interconnection with the EKPC Beattyville Substation.

8. REPRESENTATIONS AND WARRANTIES.

A. Dedication of Plant. During the term of this Agreement, Hydro Partners dedicates, assigns, and commits to deliver exclusively to EKPC all Electricity delivered from its Plant into the Jackson Energy system that is not consumed by Jackson Energy’s members.

B. Hydroelectric Electricity. Hydro Partners represents and warrants to EKPC that the Electricity delivered to EKPC pursuant to this Agreement shall be energy generated by the waters of the Kentucky River.

C. Hydro Partners’ Formation and Authority. Hydro Partners hereby agrees, warrants, and represents to EKPC that, as of the date of execution of this Agreement, Hydro Partners is a Kentucky limited liability company, duly organized, validly existing



and in good standing under the laws of the Commonwealth of Kentucky. The execution, delivery, and performance by Hydro Partners of this Agreement are within the limited liability company powers of Hydro Partners, have been duly authorized by all necessary company action, and do not violate any law, rule, regulation, agency order, financial covenant or permit, or the terms of the articles of organization or bylaws of Hydro Partners. Hydro Partners represents and warrants that the person signing this Agreement has full authority to execute this Agreement on behalf of Hydro Partners. Hydro Partners further represents and warrants to EKPC that it has obtained any required consents to enter into and perform this Agreement, and entering into and performing this Agreement will not conflict or result in a breach of any other agreement to which Hydro Partners is subject, or to which it is a Party. Upon request of EKPC, Hydro Partners will provide EKPC with a Resolution of Hydro Partners certifying the approval of this Agreement.

D. EKPC's Representations and Warranties. EKPC hereby agrees, warrants, and represents to Hydro Partners that, as of the date of execution of this Agreement, EKPC is a Kentucky rural electric cooperative corporation, duly organized, validly existing and in good standing in the Commonwealth of Kentucky. The execution, delivery, and performance by EKPC of this Agreement are within the corporate powers of EKPC, have been duly authorized by appropriate board action, if needed, and do not violate any law, rule, regulation, agency order, financial covenant, or permit. EKPC represents and warrants that the person signing this Agreement has full authority to execute this Agreement on behalf of EKPC. EKPC further represents and warrants that its execution and performance of this Agreement conforms to all applicable ordinances, rules, regulations, policies and procedures of EKPC. EKPC represents and warrants to Hydro

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Partners that it has obtained any required consents to enter into and perform this Agreement or is seeking such consent, it shall undertake and perform its respective obligations hereunder, and that entering into and performing this Agreement will not conflict or result in a breach of any other agreement to which EKPC is subject, or to which it is a Party.

9. COMPLIANCE WITH LAW.

Hydro Partners represents and warrants that the Plant will be operated in material compliance with all local ordinances, and State and Federal statutes, rules, regulations, agency orders and permits.

10. LIABILITY.

Force Majeure. Neither Party shall be liable to the other for damages to the extent such Party's performance is prevented in whole, or in part, by any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment (unless due to the negligence of the Party seeking to be relieved of liability), or by any other cause, event, condition, occurrence or circumstance beyond such Party's reasonable and without fault or negligence of the claiming Party, control, including without limitation any curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities or by the making of necessary repairs upon the property or equipment of either Party hereto (each and all "Force Majeure Events"). If a Force Majeure Event occurs, the affected Party shall be excused from performance hereunder during the period of such disability, provided that the Party claiming Force Majeure promptly notifies the other of the existence of the Force





Majeure Event, and undertakes commercially reasonable and prudent utility practice measures to mitigate the delay, or effects thereof, occasioned by the Force Majeure Event. The Party claiming Force Majeure shall promptly notify the other Party when the Force Majeure Event has terminated. Should the other Party dispute the existence of the claimed Force Majeure Event, it shall notify the Party claiming the Force Majeure Event within ten (10) business days of receipt of the Force Majeure Event claim.

11. BILLING.

A. Billing Statement and Payment. Each month, EKPC shall deliver to Hydro Partners a statement of Billing Meter readings showing the beginning and ending meter reading for the prior billing month. Within 14 days after the first day of each month, EKPC shall issue a billing statement for Electricity furnished by Hydro Partners during the preceding month (the “Billing Statement”). The Billing Statement shall show the beginning and ending meter reading for the billing month, the Contract Price for the Electricity for that month, and the total amount owed by EKPC for the Electricity to which the Billing Statement is applicable. EKPC will pay the amount shown on the Billing Statement on or before the 14<sup>th</sup> day of the month in which it was issued. EKPC shall pay by wire transfer to Hydro Partners’ account using the routing information shown on **Attachment A**, Wiring Instructions.

B. Interest Charges. Interest charges on any past due amounts due by either Party shall commence starting on the first day of the month following the due date of EKPC’s payment and shall bear interest at the prime rate, as posted on the Wall Street Journal web site (<http://online.wsj.com/public/us>) on the date of the invoice, plus one (1%) percent (the “Interest Rate”).



C. Audit. Each Party has the right, at its sole expense and during normal business hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party documents evidencing the quantity of Electricity delivered at the Point of Delivery, the price paid by EKPC to PJM for Electricity during the applicable month, and any other documents or information reasonably requested. If such examination reveals any inaccuracy in any Billing Statement, the necessary adjustments to such Billing Statement, and the payment thereof, will be made within ten (10) business day and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

D. Offsets. Any Party may at any time offset any amounts owed by it against any and all amounts that may be due and owed to another Party under this Agreement.

12. DEFAULT AND TERMINATION.

A failure of a Party to comply with a material term or condition of this Agreement shall be an event of default. Either Party may notify the other in writing, giving a reasonably detailed description of an event of default by the other Party. The Party providing notice may terminate this Agreement and shall be relieved from further performance of any obligations hereunder, if the other Party fails to cure, or has failed to use commercially reasonable efforts to commence the cure of, such event of default within a sixty (60) day period immediately following receipt of a notice of an event of default and, after that period



passes, fails to use commercially reasonable efforts to diligently pursue the cure to completion after receipt of the notice of the event of default (a "Cure"). If an event of default is not Cured as provided above, then, in addition to its right to terminate this Agreement, the non-defaulting Party may take such other actions and pursue such remedies as may be available to it under this Agreement, at law or equity, subject to the provisions of Section 22 of this agreement.

13. TERM.

The term of this Agreement shall run concurrent with the Power Purchase Agreement between Jackson Energy and Hydro Partners. If the Power Purchase Agreement between Jackson Energy and Hydro Partners is not renewed or is terminated for any reason, this Agreement also terminates on that same date. It shall be a condition precedent to this Agreement becoming effective that EKPC must receive approval from the Kentucky Public Service Commission to perform this Agreement within one hundred fifty (150) days from the date of execution of this Agreement.

14. INSURANCE.

A. Coverage and Amounts. Hydro Partners, and all contractors and subcontractors performing any services in connection with the operation or maintenance of the HP Facilities shall obtain and maintain in force commercial general liability and umbrella or excess liability insurance, public liability coverage and property insurance for injury to persons and property, automobile liability insurance and workman's compensation insurance, all in amounts and under terms which are generally carried by owners or lessees, operators or maintainers of projects similar to the HP Facilities, but in no case less than \$1,000,000.00 for public liability for bodily injury and \$500,000.00 for property damage.

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Hydro Partners' liability under this Agreement is not limited to the amount of insurance coverage required herein.

B. Evidence of Insurance. Upon request made on or after the effective date of this Agreement, Hydro Partners shall provide EKPC with insurance certificates reasonably acceptable to EKPC evidencing that insurance coverages for the HP Facilities are in compliance with the specifications for insurance coverage set forth in this Agreement. Such insurance and certificates shall: (a) include EKPC as an additional insured beneficiary under the commercial general liability and umbrella liability policies; (b) provide a waiver of any rights of subrogation against EKPC, its affiliates and subsidiaries; and (c) indicate that the commercial general liability and umbrella liability policies have been extended as described above. All policies shall be written with insurers with A.M. Best Company ratings of at least A-. All policies shall be written on an occurrence basis, except as provided in Section 14D. The commercial general liability and umbrella liability policies shall: (i) provide that Hydro Partners' policy shall be primary in all instances regardless of like coverages, if any, carried by EKPC; and (ii) provide for claims by one insured against another such that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought.

C. Modification of Insurance. If any insurance required to be maintained by Hydro Partners hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, Hydro Partners shall provide written notice of such fact to EKPC, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for electric generating plants of



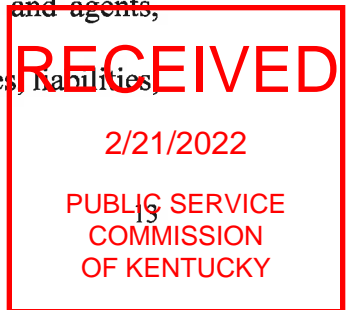
similar type, geographic location and design. Upon delivery of such notice, Hydro Partners shall be relieved of the affected obligation, and Hydro Partners shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

D. Term Insurance. All insurance required under this Agreement shall cover occurrences during the term(s) of this Agreement. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the effective date of this Agreement and such insurance shall be maintained by Hydro Partners, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) years after the expiration of the final term of this Agreement.

15. INDEMNIFICATION.

A. By Hydro Partners. Hydro Partners shall indemnify, defend and hold EKPC and its respective employees, directors, officers, managers, members and agents, harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorneys' fees) including, but not limited to, those arising out of property damage to the property of EKPC or others, environmental claims, and personal injury and bodily injury (including death, sickness and disease) to the extent caused by Hydro Partners': (i) material breach of any obligation, representation or warranty contained in this Agreement; or (ii) negligence or willful misconduct.

B. By EKPC. EKPC shall indemnify, defend and hold Hydro Partners and its respective employees, directors, officers, managers, members, shareholders and agents, harmless from and against any and all third party claims, suits, damages, losses, liabilities,



expenses and costs (including reasonable attorneys' fees) including, but not limited to, those arising out of property damage, environmental claims, and personal injury and bodily injury (including death, sickness and disease) to the extent caused by EKPC's: (i) material breach of any obligation, representation or warranty contained in this Agreement; or (ii) negligence or willful misconduct.

C. Apportionment. If, due to the joint, concurring, comparative or contributory negligence or willful misconduct of the Parties, any Party incurs any cost or expense arising out of any claim, cause or demand, such cost or expense shall be allocated between the Parties in proportion to their respective degrees of negligence or willful misconduct contributing to such claim, cause or demand.

D. Employees. No Party shall be deemed an employee of the other Party. No Party shall bring any claim against another Party with respect to any liability for compensation under any applicable state or federal worker's compensation act, including worker's compensation and/or employer's liability claims of employees. Each Party shall be liable for all claims of the Party's own employees arising out of any provision of any workers' compensation law.

E. Notice and Participation.

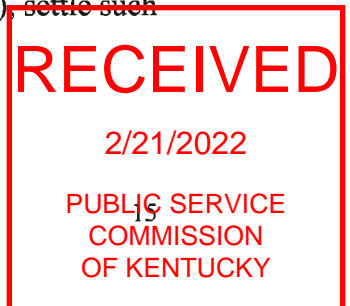
a. If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification from another Party (the "Indemnifying Party") with respect to any claim, cause or demand, the Indemnified Party shall give the Indemnifying Party notice of such claim, cause or demand upon the receipt of actual knowledge or information by the Indemnified Party of any possible claim, cause or demand or of the commencement of such claim, which notice shall in no event be later than the later of: (A)



fifteen (15) business days prior to the last day for responding to such claim, cause or demand; or (B) one-half of the period allowed for responding to such claim, cause or demand. The Indemnifying Party shall have no liability for any claim, cause or demand for which such notice is not provided, but only to the extent that the failure to give such notice materially impairs the ability of the Indemnifying Party to respond to or to defend the claim, cause or demand.

b. The Indemnifying Party shall have the right to assume the defense of any claim, cause or demand, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel, at the Indemnifying Party's expense, to assert such legal defenses and to otherwise participate in the defense of such claim, cause or demand on behalf of such Indemnified Party, and the Indemnifying Party shall be responsible for the reasonable fees and expenses of such separate counsel.

c. Should any Indemnified Party be entitled to indemnification under this Section as a result of a claim, cause or demand by a third party, and should the Indemnifying Party fail to assume the defense of such claim, cause or demand within a reasonable period of time, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party), ~~settle such~~ claim, cause or demand.





d. Except to the extent expressly provided herein, no Indemnified Party shall settle any claim, cause or demand with respect to which it has sought or is entitled to seek indemnification pursuant to this Section unless: (A) it has obtained the prior written consent of the Indemnifying Party; or (B) the Indemnifying Party has failed to provide, within a reasonable period of time, security, in a form reasonably satisfactory to the Indemnified Party, securing the payment of any cost or expense, up to the amount of the proposed settlement.

e. Except to the extent expressly provided otherwise herein, no Indemnifying Party shall settle any claim, cause or demand with respect to which it may be liable to provide indemnification pursuant to this Section without the prior written consent of the Indemnified Party, provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such claim, cause or demand, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's reasonable legal fees and other costs related to the defense of the claim, cause or demand paid or incurred prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the claim, cause or demand, or portion thereof, that is the subject of such settlement agreement.

F. Net Amount. In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless, the amount owing to the Indemnified Party shall





be the amount of such Indemnified Party's actual cost and expense, net of any insurance or other recovery actually received by the Indemnified Party.

G. Assertion of Claims. No claim, cause or demand of any kind shall be asserted against any Party, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, unless it is filed in a court of competent jurisdiction, or a demand for arbitration is made, within the applicable statute of limitations period for such claim, cause or demand.

H. No Release of Insurers. The provisions of this Agreement shall not be deemed or construed to release any insurer from its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

I. Survival of Obligation. The duty to indemnify shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any cost or expense arising out of an event or condition which occurred or existed prior to such expiration or termination.

16. ENVIRONMENTAL CLAIMS.

Hydro Partners assumes liability for any and all claims, demands, actions, violations, notices or causes of action of any kind arising from or relating to the design, construction, installation, operation, maintenance or dismantling of the HP Facilities that arise from or relate to violations of any environmental statutes, regulations, rules or orders whether federal, state or local in nature.

17. LIMITATION OF LIABILITY.

For a breach of any provision of this Agreement for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the



sole and exclusive remedy. Unless expressly herein provided, no Party shall be liable for consequential, incidental, punitive exemplary or indirect damages, lost profits or other business interruption damages, by statute (to the extent permitted by law), in tort or contract or otherwise (except to the extent that an Indemnifying Party is obligated to indemnify against third party claims for consequential, incidental, punitive, exemplary or indirect damages or lost profits or business interruption damages). The limitations herein imposed on remedies and the measure of damages is without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder for a breach are liquidated, the Parties acknowledge that the liquidated damages are reasonable in light of the anticipated harm that would be caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.

18. GOVERNING LAW.

This Agreement shall be deemed to be a Kentucky contract and shall be construed in accordance with, and governed by, the laws of the Commonwealth of Kentucky, without regard to conflicts of laws, doctrines of Kentucky or any other jurisdictions

19. NOTICES.

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person to a



Party or if mailed, by certified mail, return receipt requested, to Hydro Partners, at Hydro Partners' address, given in this Agreement, or to EKPC, at EKPC's address given in this Agreement, or to any other address that a Party shall designate for itself in writing.

20. WAIVER.

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights but the same shall be and remain at all times in full force and effect.

21. HEADINGS.

The paragraph headings used in this Agreement are included solely for convenience.

22. CONSTRUCTION OF AGREEMENT.

Each Party and its respective legal counsel have reviewed and revised this Agreement and have had equal opportunity for input into this Agreement. Neither Party, nor their respective legal counsel, shall be construed to be the drafter or primary drafter of this Agreement. In the event of any dispute regarding the construction of this Agreement or any of its provisions, ambiguities, or questions of interpretation shall not be construed more in favor of one Party than the other; rather, questions of interpretation shall be construed equally as to each Party.

23. AMENDMENT.

This Agreement shall not be amended, altered, or terminated except by a writing executed by each Party.

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24. DISPUTES AND VENUE.

A. General Provisions. Every dispute of any kind or nature between EKPC and Hydro Partners arising out of or in connection with this Agreement (each a "Dispute") shall be resolved in accordance with this Section, to the extent permitted by law.

B. Referral to Senior Management.

a. Upon the occurrence of a Dispute, any Party may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the thirty (30) day period following the date of the notice. Any such notice shall be delivered within a reasonable time after the Dispute arises, but in no event shall it be delivered less than thirty (30) days before the institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.

b. Within seven (7) days after receipt of a notice pursuant to the preceding paragraph, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the thirty (30) day period following the date of the notice.

c. During the remainder of the thirty (30) day period following delivery of the original notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to resolve the Dispute. Unless the Parties agree otherwise in writing prior to the commencement of such thirty (30) day period, neither Party shall be entitled to invoke or rely on any admissions,



settlement offers or other statements made during the course of such discussions in any subsequent arbitration or legal proceedings.

C. Commission Proceeding. Any Dispute that has not been resolved within thirty (30) days of the delivery of a notice shall be resolved by: (i) the filing of an appropriate pleading before the Kentucky Public Service Commission to the extent that the subject matter of the Dispute is within the jurisdiction of the Commission; or (ii) the filing of an appropriate action in the Circuit Court of Clark County, Kentucky.

D. Continued Performance. During the conduct of Dispute resolution procedures pursuant to this Section: (i) the Parties shall continue to perform their respective obligations under this Agreement; and (ii) no Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed: (A) to prevent Hydro Partners from suspending performance in the event that EKPC has not paid undisputed amounts due and owing to Hydro Partners under this Agreement; or (B) to prevent EKPC from suspending performance hereunder (other than payments for power previously provided to EKPC) in the event that Hydro Partners ceases providing power hereunder.

25. COOPERATION AND EXECUTION OF DOCUMENTS.

EKPC and Hydro Partners mutually agree that each shall take all steps reasonably necessary to facilitate the terms in this Agreement and to execute any other documents reasonably necessary to carry out and put into effect the terms of this Agreement.

26. ASSIGNMENT.

This Agreement shall not be transferred or otherwise assigned without the other Party's written consent; provided, however, Hydro Partners may assign this Agreement to



its interests herein) without EKPC's written consent (but with prior notice) (a) to an affiliate of Hydro Partners, (b) to any entity purchasing the Plant or substantially all of the Plant assets or (c) as security to any lender or financing party that is providing financing for the Plant and the HP Facilities.

27. CONFIDENTIALITY.

A. Duty of Confidentiality. Any Proprietary Information of a Party (the "Transferor") which is disclosed to or otherwise received or obtained by another Party (the "Transferee") incident to this Agreement is disclosed, and shall be held, in confidence, and the Transferee shall not (subject to paragraphs (b) and (c) below) publish or otherwise disclose any Proprietary Information of the Transferor to any person for any reason or purpose whatsoever, or use any Proprietary Information for any purpose other than performance under this Agreement, without the prior written approval of the Transferor, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Party shall observe at a minimum the same safeguards and precautions with regard to the Transferor's Proprietary Information which such Party observes with respect to its own information of the same or similar kind.

B. Disclosures to Employees, Contractors and Affiliates. Each Party agrees that it will make available Proprietary Information received from another Party to its employees, contractors and affiliates only on a need-to-know basis, and that all persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to agree to hold such Proprietary Information in confidence under terms substantially identical to the terms hereof.



C. Disclosures to Governmental Authorities. Notwithstanding the foregoing, a Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided that such Governmental Authority orders or requires that such Proprietary Information be provided. Either Party may disclose such Proprietary Information regarding the terms of this Agreement as such Party deems necessary to enable it to comply with the Securities Exchange Act of 1934, or the rules, regulations and forms of the Securities and Exchange Commission, issued thereunder or the applicable rules of any stock exchange.

D. Injunctive Relief. In the event of a breach or threatened breach of the provisions of paragraph (a) above by any Transferee, the Transferor shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Transferor from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

E. Continuing Obligation. The obligation to retain Proprietary Information in confidence shall continue in full force and effect during the term of the Agreement and for a period of two (2) years thereafter, notwithstanding the expiration or termination of this Agreement, with respect to any information obtained by any Party prior to such expiration or termination.

F. Definition of Proprietary Information:

a. The term "Proprietary Information" means all information, written or oral, which has been or is disclosed by the Transferor, or by any person on behalf of the Transferor, or which otherwise becomes known to the Transferee, or to any person associated with such Transferee, or any other person in a confidential relationship with the





Transferee, and which: (A) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, resource data and analysis, generation data and analysis, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time; (B) relates to the existence or the terms, including pricing, of this Agreement; or (C) the Transferor expressly designates in writing to be confidential.

b. Notwithstanding anything to the contrary in the preceding paragraph, Proprietary Information shall exclude information falling into any of the following categories: A) information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement by Transferee; B) information that, after disclosure hereunder, enters the public domain, other than information that enters the public domain by breach of this Agreement by Transferee; C) information, other than that obtained from third parties, that prior to disclosure hereunder, was already in Transferee's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation; D) information obtained by Transferee from a third party having an independent right to disclose the information; or E) information that is available through independent research without use of or access to the Proprietary Information.

28. NO PARTNERSHIP.

Notwithstanding any provision of this Agreement to the contrary, Hydro Partners and EKPC do not intend to create hereby any lease, joint venture, partnership, association





taxable as a corporation, or other entity for the conduct of any business for profit. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party. The Parties agree to take, on a timely basis, all voluntary action as may be necessary to be excluded from treatment as a partnership under the Internal Revenue Code, and, if it should appear that one or more changes to this Agreement would be required in order to prevent the creation of such a business entity, the Parties agree to negotiate promptly in good faith with respect to such changes.

29. NO DUTY TO THIRD PARTIES.

Except as provided in herein, this Agreement is for the sole benefit of the Parties hereto, and nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a party to this Agreement. Except as specifically provided herein, no person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except the Parties hereto. Except as provided herein, the Parties specifically disclaim any intent to create any rights in any person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.

30. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of and be binding upon the Parties and upon any permitted successors and assigns of the respective Parties hereto.



31. SEVERABILITY.

If a court or court appointed arbitrator determines that a provision in this Agreement is invalid or not enforceable, that determination will affect only that provision. The provision will be modified only to the extent needed to make it valid and enforceable.

32. ENTIRE AGREEMENT.

This Agreement (including all attachments) sets forth the entire understanding of the Parties, and this Agreement shall supersede and/or replace any oral or written agreement(s) relating to this subject matter entered into by the Parties before the date of this Agreement.

33. COUNTERPART EXECUTION.

This Agreement may be signed and delivered in counterparts with the same effect as if both Parties had signed and delivered the same copy, and when each Party has executed and delivered a counterpart, all counterparties together constitute one Agreement. Delivery of a copy of this Agreement by facsimile is good and sufficient delivery.

RECEIVED

2/21/2022

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OF KENTUCKY

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

By: *David Crews*  
Name: David Crews  
Title: SVP- Power Supply  
Date: 1/20/20

**LOCK 14 HYDRO PARTNERS, LLC**

By: *David Brown Kinloch*  
Name: David Brown Kinloch  
Title: President  
Date: 1/23/2020

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**ATTACHMENT A**  
**WIRING INSTRUCTIONS**

Wiring Instructions to Lock 14 Hydro Partners, LLC

Bank:

Routing Number:

Account Number:

**RECEIVED**

*2/21/2022*

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COMMISSION  
OF KENTUCKY