

**INDUSTRIAL POWER AGREEMENT
WITH INTERRUPTIBLE SERVICE**

THIS AGREEMENT, made and entered into this 15th day of April, 2024, by and between East Kentucky Power Cooperative, Inc. (a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, KY 40391) (“EKPC”), Jackson Energy Cooperative Corporation, a Kentucky corporation with its principal offices at 115 Jackson Energy Lane, McKee, Kentucky 40447 (“Cooperative”); and Big Sur Group, Inc., a Delaware corporation, registered in the state of Kentucky, with its principal offices at 212 North 2nd Street, Suite 100, Richmond, Kentucky 40475. (“Customer”).


WITNESSETH:

WHEREAS, EKPC is a Generation and Transmission Cooperative which supplies the wholesale energy requirements of 16 Member-owned Distribution Cooperatives located generally in Eastern and South-Central Kentucky, including Cooperative; and

WHEREAS, Cooperative is a rural electric cooperative corporation providing retail electric service in Clay County, Kentucky, and

WHEREAS, Cooperative is a member of EKPC and purchases the majority of its wholesale electric power and energy requirements from EKPC pursuant to a Wholesale Power Contract dated October 1, 1964, and

WHEREAS, Customer has been, and is, a member of Cooperative and purchases, or desires to purchase, retail electric power and energy needs from Cooperative under the terms and conditions contained herein, to serve its Elk Mountain plant (hereinafter referred to as its “Plant”), and

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WHEREAS, EKPC fully integrated into the PJM Interconnection, LLC regional transmission system, on June 1, 2013;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained herein, the parties agree as follows:

- Term.** This Agreement shall become effective upon the approval of the Kentucky Public Service Commission (“Commission”) (the “Effective Date”), subject to the provisions of Paragraph 27 below. The initial term of this Agreement will be a twelve-month term beginning on the Effective Date. During this initial twelve-month term, the Customer cannot terminate the Agreement unless there is an Event of Default on the part of EKPC or the Cooperative. After the initial twelve-month term, the Agreement will continue for additional twelve-month terms thereafter with the ability of either party to terminate by providing notice of termination in writing no later than December 31st of any year, with an effective date of termination of May 31st of the following year.
- Rates and Charges.** For billing from EKPC to Cooperative, EKPC will provide wholesale power and energy to Cooperative for Customer pursuant to the rates, charges, and provisions of EKPC’s Rate C, and as modified, replaced, or adjusted from time to time and approved by the Commission, where the billing demand shall be as defined in EKPC’s Rate C and Rate D – Interruptible Service.

For billing from Cooperative to Customer, Cooperative will provide retail power and energy to the Customer pursuant to the rates, charges, and provisions of Cooperative’s Rate Schedule 46, and the Interruptible Service Rider, as modified, replaced, or adjusted from time to time and approved by the Commission.

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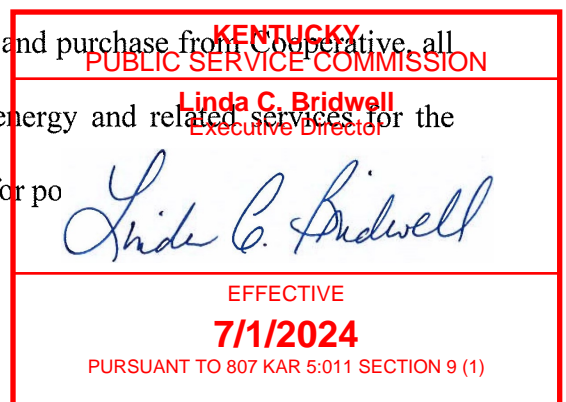
Billing Demand shall be the Contract Demand as defined in Cooperative's Rate Schedule 46. The Demand Credit for interruptible service will be applied to all Billing Demand above the Firm Demand level to determine the effective Interruptible Demand rate.

Any additional demand billed as a result of the application of the power factor adjustment, as described in the applicable EKPC and Cooperative tariffs, shall not be eligible for the interruptible Demand Credit and shall be billed at the appropriate demand rate as provided in the applicable tariff.


As a result of the location of the Customer's Plant relative to the substation, Customer will be charged a fuel adjustment clause ("FAC") based on EKPC's FAC and this charge will not be adjusted for Cooperative's line losses as long as the subject electric meter is located on the adjacent property to the substation.

After the initial term of this Agreement, Customer may choose any existing tariff of Cooperative that is consistent with this Agreement and for which the Customer qualifies. Such change will require two (2) months' advance written notice to Cooperative. Customer agrees that if it chooses to change to an existing tariff it will remain on that tariff for at least one year following the effective date of the change. The Cooperative and Customer may mutually agree to rate changes at any time, subject to any necessary approval of the Commission.

3. **Availability of Power.** Except as otherwise provided in this Agreement, Cooperative shall make available to Customer, and Customer shall take and purchase from Cooperative, all of Customer's requirements for electric power and energy and related services for the operation of Customer's Plant. The Point of Delivery for po



hereunder shall be the point at which Customer's Plant facilities connect to Cooperative's facilities. The power and energy made available hereunder shall be in the form of 3-phase alternating current at a frequency of approximately sixty (60) hertz and at a nominal voltage of 12,470 volts at the metering point. Regulation of voltage shall be within such limits as prescribed by the applicable rules and regulations of the Commission. Maintenance by Cooperative at Point of Delivery of the above-described frequency and voltage within the above stated limits shall constitute availability of power for the purpose of this Agreement. The power and energy taken by Customer hereunder, shall be measured by meters and associated metering equipment to be, or cause to be, installed, operated and maintained by Cooperative or EKPC at its own respective costs. None of such electric power and energy shall be resold by Customer to third parties. The "Contract Demand" for service under this Agreement shall be 500 kW, with a monthly energy usage equal to or greater than 400 hours per kW of Contract Demand per month. The maximum demand for the Customer shall be 8,000 kW. Customer cannot exceed 8,000 kW demand - if there are plans to exceed 8,000 kW demand then customer must give EKPC and Cooperative a minimum of twenty-four (24) months' advance notice as there will be substation and distribution system upgrades that will be required to be made and paid for by Customer prior to commencing work. Customer shall have the right to decrease said levels of Contract Demand in increments not to exceed 1,000 kW, by giving written notice thirty (30) days prior to the date of the desired change, except that Contract Demand shall not be reduced below 500 kW. The power and energy made available to Customer hereunder shall be delivered, taken, and paid for subject to the provisions of Paragraph 2 of this Agreement and Cooperative's Rate Schedule 46, and the Interruptible Service


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in excess of the Firm Demand, as approved by the Commission, and as modified from time to time by appropriate authority, copies of which are attached hereto and made a part hereof. Customer shall comply with all requirements of such tariffs relating to eligibility for interruptible rates. In the event of any conflict between the provisions of this Agreement and said tariffs, the latter shall control.

4. **Interruptible Service.** In accordance with Cooperative’s Rate Schedule 46 and Interruptible Service Rider, service to Customer may be interrupted by approved communication medium from EKPC. Customer chooses 150 kW of Firm Demand with the balance being Interruptible Demand. Interruptible Demand shall not be less than 250 kW and not exceed 20,000 kW.

The Customer shall have the right to request one change in the Firm Demand during a 12-month period. Changes in the Firm Demand will become effective on June 1st of a given year. A request for a change in the Firm Demand shall be made by giving written notice to the Cooperative and EKPC no later than December 31st of the year prior to the year the change is to be effective. The Cooperative and EKPC will review the request, and if agreed, shall provide the Customer with a written acceptance of the requested change in Firm Demand.


- a. **Optional Interruptions.** EKPC may interrupt Customer to avoid purchasing energy from the PJM Market (an “Optional Interruption”). EKPC shall notify Customer that it is calling for an interruption and the notice shall be defined as an Optional Interruption and include the interruption start and stop times. EKPC will endeavor to provide as much advance notice of interruptions as practicable, but the Customer will have thirty (30) minutes to reduce its

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Demand level once notice is sent by EKPC to Customer. Customer shall have the opportunity to buy-through any Optional Interruption and will pay for such buy-through energy. The rate for buy-through energy shall be EKPC's out-of-pocket cost at the PJM EKPC Zone during the interruption hours, plus Cooperative's distribution charge. The amount of buy-through energy billed by the Cooperative to the Customer will be the actual energy consumed by the Customer above the Firm Demand each hour of the Optional Interruption. Interruptible buy-through energy shall not include the base energy charge, a fuel adjustment charge or environmental surcharge.

EKPC may offer Customer the ability to secure buy-through energy utilizing a day-ahead pricing option. When offered, Customer will be provided day-ahead information and must follow the instructions given in order to participate. Any difference between the purchased day-ahead energy and the Customer's consumption during the interruption above the Firm Demand will be balanced at the EKPC zone hourly Locational Marginal Price ("LMP") rate during the interruption. All metered energy above Firm Demand during the day-ahead interruption will have the Cooperative distribution charge applied.


- b. **Mandatory Interruption.** EKPC has the right to call upon a mandatory load-reducing interruption of Customer's Interruptible Demand (a "Mandatory Interruption") to participate in the PJM Capacity Market. EKPC shall notify Customer that it is calling for an interruption and the notice shall be defined as a Mandatory Interruption. Customer must interrupt its Interruptible Demand and the buy-through energy provisions related to an Option:

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for Mandatory Interruptions. For Mandatory Interruptions, the terms and conditions of PJM's Capacity Program then in place shall apply. The Customer will have thirty (30) minutes to reduce its load to the Firm Demand level once notice is sent by EKPC to Customer. In the event that PJM initiates a Mandatory Interruption during an EKPC-designated Optional Interruption, the Customer shall be obligated to curtail their load to the Firm Demand level. Additionally, the Customer shall be liable for all charges associated with energy consumption exceeding the Firm Demand level during hours in which the Mandatory Interruption aligns with the Optional Interruption.

Once per PJM delivery year (June-May) PJM requires Customer to prove its ability to interrupt load by having Customer reduce the load to or below the Firm Demand. The Customer must interrupt load as a result of this requirement. Failure by the Customer to reduce load to the Firm Demand during all hours of a Mandatory Interruption or all hours of a PJM mandatory annual test is considered a failure to interrupt and shall cause the Cooperative to invoke the failure to interrupt penalty provision of the Cooperative's Interruptible Service Rider.

- c. **Interruption Hours and Notice.** Customer is contracting for interruptible service for all demand over the Firm Demand as set forth above, with a total annual interruption of up to 400 hours. The sum of Optional Interruptions and Mandatory Interruptions shall not exceed 400 hours on an annual basis. The annual period shall start on June 1 and end on May 31 of the following year. However, during the initial term of this Agreement, the annual period shall begin with the Effective Date of the Agreement and end on May 31 of t

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interruptible hours during the initial term shall be pro-rated based on actual start date but shall not exceed 400 hours. Interruptions may occur between 6:00 a.m. to 9:00 p.m. EPT during the months of November through April and between 10:00 a.m. to 10:00 p.m. EPT during the months of May through October.

Notification of an interruption will be provided by EKPC to the Customer by phone call or email from EKPC’s MOC to the Customer. The Customer will provide EKPC with Point of Contact (“POC”) information for the communication of the notice of interruption and be responsible for keeping the POC information current. The Customer’s POC to provide the communication of the notice of interruption is as follows:

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| Primary POC | Position | Brant Isaacs |
| | Address | 73 Bundy Lane McKee, KY 40447 |
| | Phone | 859-200-1587 |
| | Email | brantisaacs@yahoo.com |
| | Text | 859-200-1587 |

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| Secondary POC | Position | Dillon Bingham |
| | Address | 73 Bundy Lane McKee, KY 40447 |
| | Phone | 859-200-9126 |
| | Email | dillon@uminellc.com |
| | Text | 859-200-9126 |

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| Third POC | Position | Eugene Tatarchenko |
| | Address | 996 E New Circle Rd |

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Phone 725-207-5371
Email eugene@bigsurinvest.com
Text 725-207-5371

EKPC's POC is the MOC system operator on duty at the time of communication. The phone number for EKPC's POC is (859) 745-9210, and email is generation.operations@ekpc.coop.

5. **Responsibilities of Customer.** It is the responsibility of Customer to be sure its phone is working and that someone is available 24 hours per day, 365 days per year to promptly respond to the EKPC communication. Customer shall acknowledge to EKPC that they received notice of a Mandatory Interruption by either following the instructions in the communication message or directly contacting the EKPC MOC email generation.operations@ekpc.coop prior to the start of the event. If Customer does not acknowledge the notice of a Mandatory Interruption from EKPC for whatever reason, Customer will be considered as failing to interrupt and the failure to interrupt provisions of the Cooperative's Rate Schedule 46 and Interruptible Service Rider will be invoked.

Neither Cooperative nor EKPC shall be obligated to provide, or be responsible for providing, protective equipment for Customer's lines, facilities, and equipment to protect against single phasing, low voltage, short circuits, or any other abnormal system conditions, but Cooperative or EKPC, as the case may be, may provide such protective equipment as is reasonably necessary for the protection of its own property and operations.

The electrical equipment installed by Customer shall be capable of satisfactory coordination with any protective equipment installed by Cooperative or EKPC. Any back-up generator installed by Customer may only be used during

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Cooperative, to power minimum required equipment during a Mandatory Interruption, or to power minimum required equipment during a PJM performance test as noted in Paragraph 4(b). Running of back-up generators for demand peak shaving is prohibited.

6. **Continuing Jurisdiction of the Commission.** The rates, terms and conditions of this Agreement for electric service shall be subject to modification or change by Order of the Commission, during the initial one-year term and thereafter. The rates provided hereinabove shall be adjusted to reflect any Commission approved changes in applicable tariff rates, including any FAC, Environmental Surcharge or changes in the base rates approved for EKPC and/or Cooperative on or after the Effective Date of this Agreement.

7. **Voltage Fluctuations.** Customer and Cooperative shall cooperate to see that Customer's load is operated in accordance with prudent utility practices, as defined in Paragraph 11 below. Customer agrees to operate its Plant and facilities to reduce voltage fluctuations or harmonic distortions. EKPC may install special meters to capture load and harmonics. Cooperative will notify Customer if its operations cause voltage fluctuations or harmonic distortions that result in interference with Cooperative's supply of service to other customers, and will attempt to identify and help Customer correct such problems. Any substantial deviation from prudent utility practices that would cause additional voltage fluctuations or harmonic distortions requires approval from Cooperative. If Customer fails to install and/or to operate the necessary facilities on its premises to correct the voltage fluctuations or harmonic distortions of its load based on applicable industry and IEEE standards, or to prevent such voltage fluctuations or harmonic distortions from interfering with Cooperative's supply of services to other customers, Cooperative shall have the right to deny service to Customer. Any voltage fluctuations or

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corrected within twenty-four (24) hours after written notice from Cooperative to Customer stating the voltage fluctuation or harmonic distortion problems.

Customer acknowledges that the energy-intensive nature of its operations are dissimilar to that of most other members of Cooperative and that any load in excess of the maximum demand could result in damage to Cooperative's distribution system, EKPC's transmission system and/or the distribution substation. In the event that Customer's usage exceeds the maximum demand, Customer shall be liable for any damages caused to EKPC or Cooperative in addition to all tariffed charges for demand exceeding the maximum demand. Furthermore, EKPC and Cooperative each reserve the right to de-energize Customer's Facility in the event that Customer's load presents a threat, in the sole discretion of EKPC or Cooperative, to their respective systems.


8. **Right of Access.** The duly authorized agents and employees of EKPC and/or Cooperative shall have free access at all reasonable hours to the premises of Customer for the purpose of installing, repairing, inspecting, testing, operating, maintaining, renewing or exchanging any or all of their equipment which may be located on the premises of Customer for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Customer shall not unreasonably withhold access from Cooperative and/or EKPC to access equipment or machinery owned by Cooperative or EKPC. The parties agree to take reasonable steps to protect the property of each other party located on its premises, and to permit no one to inspect or tamper with the wiring and apparatus of the other party except such other party's agents or employees, or persons authorized by law. It is agreed, however, that no party assumes the duty of inspecting the wiring or apparatus of any other party and shall not be responsible therefor.

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representatives of EKPC and Cooperative that access the Customer's facilities shall abide by all applicable safety, health and similar rules and requirements provided by the Customer.

9. **Substation Facilities.** Upon request, Customer, without cost to Cooperative or EKPC, shall convey to Cooperative or to EKPC, as appropriate, a suitably agreed upon site on Customer's premises for use as a substation facility. Such conveyance shall be in fee simple with General Warranty or by Substation Easement for so long as the site is used by Cooperative to furnish electrical power and energy. At such time as the site is no longer used by Cooperative for such purposes, it shall revert to Customer automatically, without the necessity of any action being taken or claim being made by Customer. It is agreed, however, that in the event of such reversion, Cooperative, EKPC or any successor in interest to them shall have ninety (90) days to remove any improvements erected by any of them upon such site. Customer shall also provide Cooperative and, as appropriate, EKPC, with such easements for any transmission line as may be required to connect the service to be provided by Cooperative hereunder, and shall take reasonable steps to provide for the safekeeping of such equipment and facilities and to prevent the access thereto by unauthorized persons.

10. **Right of Removal.** Any and all equipment, apparatus, devices, or facilities placed or installed, or caused to be placed or installed, by either of the parties hereto on or in the premises of the other party shall be and remain the property of the party owning and installing such equipment, apparatus, devices, or facilities regardless of the mode or manner of annexation or attachment of real property of the other. Upon the termination of this Agreement, or any extension thereof, the owner there

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upon the premises of the other and shall within a reasonable time upon notice and approval of the other party remove all or any portion of such equipment, apparatus, devices, or facilities, unless otherwise agreed by the parties at the time of such termination. As a part of any such removal, the owner shall perform restoration as required for any damage caused by said removal.


11. **Prudent Utility Practice.** Each party shall design, construct and operate its facilities in accordance with prudent electric utility practice in conformity with generally accepted standards for electric utilities in the Commonwealth of Kentucky, including, but not limited to, the applicable edition of the National Electric Safety Code.

12. **Maintenance of Equipment.** Each party agrees that it will at all times maintain its lines, equipment and other facilities up to the Delivery Points in a safe operating condition in conformity with generally accepted standards for electric utilities in the Commonwealth of Kentucky, including, but not limited to, the applicable edition of the National Electrical Safety Code and applicable IEEE standards.

13. **Billing and Payment.**

a. **Regular Monthly Billing.** EKPC shall invoice the Cooperative for all energy, capacity or other service delivered to the Cooperative in accordance with EKPC's tariffs. Cooperative will bill Customer each month for the cost of electric power and energy delivered to Customer during the preceding month. This bill will clearly state the amount due, the corresponding due date and sufficient information to demonstrate the manner in which the charges were calculated.


b. **Due Date.** Payment for electric power and energy furnished hereunder, including any amounts payable for replacement power or of

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hereinabove, shall be due and payable at the office of Cooperative monthly in accordance with the applicable provisions of Cooperative's Rate Schedule 46 and Interruptible Service Rider. If Customer shall fail to pay any such bill as provided in said tariffs, Cooperative may discontinue delivery of electric power and energy hereunder ten (10) days following written notice to Customer of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligations of Customer to pay the minimum monthly charge provided in the attached Rate Schedules. All amounts unpaid when due may be subject to a charge for late payment, as provided in the applicable Rate Schedules.

c. **Failure to Take Delivery.** If Customer fails to accept all or part of the energy acquired or generated by EKPC or Cooperative when such purchases are made in performance of their respective obligations under this Agreement, and such failure is not excused by EKPC's or the Cooperative's failure to perform, then the Customer shall pay to the Cooperative, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the amount for which the energy is actually sold by EKPC or Cooperative to another buyer from the price set forth herein. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and the efforts made by EKPC and/or Cooperative to market energy at the best market price attainable.

d. **Security/Deposit.** Customer agrees to provide a surety bond or letter of credit payable to Cooperative, for the duration of the Agreement.

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security may be changed at the request of Cooperative to match any changes in load by Customer. Such payment security may be equal to, but shall not exceed two times the amount of Customer's average monthly bill. The payment security shall be promptly payable to Cooperative, upon demand, due to non-payment by Customer and in accordance with the conditions set forth in subsections (a) and (b) above.

14. **Meter Testing and Billing Adjustment.** EKPC or Cooperative shall test and calibrate meters, or cause them to be tested and calibrated, by comparison with accurate standards at intervals of twenty-four (24) months. EKPC or Cooperative shall also make, or cause to be made, special meter tests at any time during normal business hours at Customer's request. The costs of all tests shall be borne or provided for by Cooperative, provided, however, that if any special meter test made by Customer's request shall disclose that the meters are recording accurately Customer shall reimburse Cooperative for the cost of such test. Meters registering not more than two (2) percent above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by test to be inaccurate (as defined above) shall be corrected for the period during which meter error is known to have existed, or if not known, for one-half the elapsed time since the last such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, the parties shall agree as to the amount of kW Demand and energy furnished during such period. Such estimates shall be based on Customer's operating records for the period in question, historical load records and other pertinent data and records, and Cooperative shall render a bill to Customer therefore. Meter calibration records will be provided by the Cooperative upon request f

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15. **Membership/Capital Credits.** Cooperative is a non-profit Kentucky corporation and Customer will benefit from any savings or reductions in cost-of-service in the same manner as any comparable customer as authorized by Kentucky law, and by Cooperative’s Articles of Incorporation and Bylaws; provided, however, Cooperative’s Board of Directors may defer retirement of so much of the capital credited to patrons for any year which reflects capital credited to Cooperative by EKPC until EKPC shall have retired such capital credited to Cooperative. Customer shall participate in capital credits of Cooperative in accordance with Kentucky law and Cooperative’s Articles of Incorporation and Bylaws.
16. **Events of Default.** An “Event of Default” shall mean, with respect to a party (a “Defaulting Party”), the occurrence of any of the following:
- a. the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within twenty (20) Business Days after written notice;
 - b. any representation or warranty made by such party herein is false or misleading in any material respect when made or when deemed made or repeated and written notice is given to that party by another party;
 - c. the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such party’s obligations to receive energy, the exclusive remedy for which is provided in Paragraph 13.c. above) if such failure is either not remedied within twenty (20) business days after written notice or reasonable steps have not been taken, and continue to be taken, to remedy such failure as soon as practical;
 - d. such party becomes bankrupt; or

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e. such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party. Notwithstanding this provision, the parties agree that Customer shall not be in default if it is merged or consolidated with or acquired by an entity or entities in which control or majority interest remains in an affiliate, parent, or subsidiary of Customer.

17. **Termination for an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing and notice has been given in accordance with Paragraph 22 and any cure period(s) required in this Agreement have run, any other party (the “Non-Defaulting Party”) shall have the right to: (i) designate a day, no earlier than the day such notice is effective and no later than ten (10) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the parties; (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner and considering the full period of non-performance from the Early Termination Date through the date of the expiration of the Agreement’s Initial Term, or any subsequent term, a Termination Payment amount as of the Early Termination Date. As soon as practicable after a termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the

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notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the party that owes it within twenty (20) business days after such notice is effective. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within twenty (20) business days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer to the Non-Defaulting Party an amount equal to the Termination Payment to be held in escrow pending the outcome of the dispute.

18. **Disputes and Adjustments of Bills.** A party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the invoice shall be required to be made when due, with notice of the objection given to the other parties. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required refund shall be made within twenty (20) business days of such resolution along with interest accrued at the rate of three percent (3%) over the stated rate for commercial paper as published in the *Wall Street Journal* on the date that notice of the dispute is given, from and including the due date to but excluding the date of the refund. Inadvertent overpayments shall be returned upon request or deducted.

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overpayment from subsequent payments. Any dispute with respect to an invoice is waived unless the other parties are notified in accordance with this paragraph within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

19. **Resolution of Disputes.** Any dispute or need of interpretation between the parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each party. Upon receipt of a notice describing the dispute and designating the notifying party's senior representative and that the dispute is to be resolved by the parties' senior representatives under this Agreement, the other parties shall promptly designate its senior representatives to the notifying party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within thirty (30) days after the notifying party's notice was received by the other parties, or within such other period as the parties may jointly agree, the parties may pursue any remedies available at law or in equity to enforce its rights provided in the Agreement. During this resolution process, EKPC and Cooperative shall continue to supply energy as requested by Customer and Customer shall continue to accept requested renewable energy. Notwithstanding any inconsistent provision herein, any party may be entitled to injunctive or other equitable relief without resort to the settlement or resolution procedures set forth herein.

20. **Representations and Warranties.** Each party represents and warrants to the other parties that:



- a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and that it is authorized to do business within the Commonwealth of Kentucky;
- b. it has all legal and regulatory authorizations necessary for it to legally perform its obligations under this Agreement or is diligently pursuing them;
- c. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, except as set forth herein;
- d. this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- e. it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- f. there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- g. no Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- h. it is acting for its own account, has made its own independent decision to enter into this Agreement and, as to whether this Agreement

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Linda C. Bridwell
Decision to enter

Linda C. Bridwell


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based upon its own judgment, is not relying upon the advice or recommendations of any other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

- i. it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all power and energy referred to herein;
- j. if applicable, it is compliant with all federal laws regarding the regulation and protection of securities, technology, infrastructure and financial data, including, without limitation, the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Company Act of 1940, Investment Advisors Act of 1940, Sarbanes-Oxley Act of 2002, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Jumpstart Our Business Startups Act of 2012, the Foreign Investment Risk Review Modernization Act of 2018 and all rules and regulations promulgated thereunder, whether by the Securities and Exchange Commission, United States Treasury, Committee on Foreign Investment in the United States, Internal Revenue Service or other jurisdiction over Customer's business and operations;
- k. the material economic terms of this Agreement were and are subject to individual negotiation by the parties.

21. **Limitation of Liability.** EXCEPT AS MAY BE SET FORTH EXPRESSLY HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT EKPC AND THE COOPERATIVE HAVE MADE NO SPE

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REPRESENTATIONS OR WARRANTIES REGARDING THE POWER AND ENERGY TO BE PURCHASED HEREBY OR ANY FACILITIES ASSOCIATED WITH GENERATING, TRANSMITTING OR DISTRIBUTING SAME, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT ANY REPRESENTATIONS AND WARRANTIES HAVE BEEN MADE, UNLESS EXPRESSLY SET FORTH HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THEY ARE HEREBY EXPRESSLY DISCLAIMED. CUSTOMER ALSO UNDERSTANDS AND AGREES THAT HIS OR HER SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS AGREEMENT BY EKPC OR THE COOPERATIVE IS EXPRESSLY LIMITED TO PURCHASING REPLACEMENT POWER FROM THE COOPERATIVE AT PREVAILING TARIFFED RATES.

22. **Notices.** Any written notice, demand, or request required or authorized under this Agreement, except for notices of an interruption which shall be given as set forth in Paragraph 4 herein, shall be deemed properly given to or served on Cooperative and EKPC if mailed/emailed to:

Jackson Energy Cooperative
Attn: Ben Jones
115 Jackson Energy Lane
McKee, KY 40447
benjones@jacksonenergy.com

and

East Kentucky Power Cooperative, Inc.
Attn: Senior Vice President of Power
4775 Lexington Road
P. O. Box 707



Winchester, KY 40392-0707

Any such notice, demand, or request shall be deemed properly given or served on Customer if mailed to:


Big Sur Group, Inc.
996 E New Circle Rd, Unit 104
Lexington, KY 40505

Each party shall have the right to change the name of the person to whom, or the location where the notices are to be given or served by notifying the other party, in writing, of such change.

23. **Responsibility for Damages or Loss.** The electric power and energy supplied under this Agreement is supplied upon the express condition that after it passes the Point of Delivery it becomes the responsibility of Customer. Neither Cooperative nor EKPC shall be liable for loss or damage to any person or property whatsoever, and Customer agrees to indemnify and hold EKPC and/or Cooperative harmless for damages suffered by any individual or business entity resulting directly or indirectly from the use, misuse or presence of the said electric power and energy on Customer's premises, or elsewhere, after it passes the Point of Delivery, except where such loss or damage shall be shown to have been occasioned by the gross negligence of EKPC or Cooperative, their agents or employees.

24. **Continuity of Service.** Cooperative shall use reasonable diligence required of a public utility in Kentucky to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail, neither EKPC nor Cooperative shall be liable therefor or for damages caused thereby.

25. **Successors in Interest - Assignment.** The terms and conditions of this Agreement shall inure to and be binding upon the parties, together with

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| Linda C. Bridwell <small>Secretary</small> |
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interest. No party to this Agreement may assign its rights hereunder without the consent of the other, which shall not be unreasonably withheld; except that Cooperative or EKPC may assign this Agreement to the Rural Utilities Service (“RUS”) and/or any other lenders to Cooperative or EKPC without such consent.

26. **Force Majeure**. The obligations of either party to this Agreement shall be suspended during the continuance of any occurrence, beyond the affected party’s control (a “force majeure”), which wholly or partially prevents the affected party from fulfilling such obligations, provided that the affected party gives notice to the other party of the reasons for its inability to perform within a reasonable time from such occurrence, is diligently seeking to cure said force majeure, and gives notice to the other party within a reasonable time of such cure. As used in this Section, the term force majeure shall include, but is not limited to: acts of God; strikes; wars; acts of public enemy; riots; storms; floods; civil disturbances; explosions; failures of machinery or equipment; unavoidable disruptions in power deliveries from EKPC; or actions of federal, state, or local governmental authorities, which are not reasonably within the control of the party claiming relief. Notwithstanding the above provisions, no event of force majeure shall relieve Customer of the obligation to pay the minimum monthly charge provided herein or in the attached rate schedules.

27. **Approvals**. The rates and charges for electrical service established hereunder are subject to approval by the Commission pursuant to Kentucky Revised Statutes Chapter 278, and any necessary approvals by the RUS and the National Rural Utilities Cooperative Finance Corporation. The parties covenant to use their best efforts to forthwith seek and support such approvals for this Agreement by filing such papers, presenting such testimony, and taking such other action as may be necessary or appropriate.


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approval shall not be received from the Commission on or before six months from date of Agreement, any party may void this Agreement without further liability, except to the extent any liability has already accrued.

28. **Effect on other Rates.** Nothing in this Agreement shall be construed to effect, limit, alter, amend or change the terms or conditions of Customer's receipt of service from the Cooperative under any other tariff or rate schedule then in effect or subsequently approved by the Commission which applies to the Customer. Likewise, nothing in this Agreement shall be construed to effect, limit, alter, amend or change the terms or conditions of the Cooperative's receipt of service from EKPC under any other tariff or rate schedule then in effect or subsequently approved by the Commission which applies to the Cooperative.
29. **Modifications.** Any future revisions or modifications of this Agreement shall require the unanimous written approval of EKPC, Cooperative and Customer, and any necessary approvals by RUS, any other lenders to Cooperative, and the Commission.
30. **Indemnification.** Customer agrees to indemnify and hold Cooperative and EKPC, and their respective directors, officers, employees, attorneys, agents, representatives, successors and assigns harmless and to defend them at its sole cost and expense from each, every, any and all liabilities, judgments, claims, causes, actions, costs, expenses, compensation, demands or damages of any kind whatsoever asserted in any judicial or administrative form, whether arising in law, equity or other authority, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to such others and their executors, administrators, heirs, successors and assigns through any act, omission, event or occurrence caused by the actions or operations of the

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Executive Director




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Customer, the violations of any authority identified herein or the performance of this Agreement.


31. **Miscellaneous.**

- a. **Headlines of Articles.** Headings of articles of this Agreement have been inserted for convenience only and shall in no way affect the interpretation of any term or provision hereof.
- b. **Severability.** Except where expressly stated otherwise the duties, obligations and liabilities of the parties are intended to be several and not joint or collective.
- c. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky, notwithstanding any principles of choice of law.
- d. **Venue.** Any actions or claims arising from or relating to this Agreement shall be instituted in the Circuit Court of Jackson County, Kentucky and each party hereto expressly acknowledges that such forum is convenient and acceptable.
- e. **Waiver of Trial by Jury.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REFRE

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ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

- f. **Waivers.** Any waiver at any time by a party of its rights with respect to a default or with respect to any other matters arising on connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.
- g. **Prior Agreements.** The parties hereby acknowledge that this Agreement contains the entire agreement among the parties and supersedes all prior agreements and understandings related to the subject matter hereof.
- h. **No Agency.** In performing their respective obligations hereunder, no party is acting, or is authorized to act, as agent of any other party.
- i. **Forward Contract.** The parties acknowledge and agree that all sales of renewable power hereunder constitute “forward contracts” within the meaning of the United States Bankruptcy Code.
- j. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, in six original counterparts, by their respective officers, thereunto duly authorized, as of the day and year first above written.

ATTEST:

BIG SUR GROUP, INC.

Eugene Tatarchenko
SIGNATURE
President
TITLE

BY Eugene Tatarchenko
PRINTED NAME

ATTEST:

EAST KENTUCKY POWER COOPERATIVE, INC.

Anthony S. Campbell
SIGNATURE
Pres / CEO
TITLE

BY Anthony S. Campbell
PRINTED NAME

ATTEST:

JACKSON ENERGY COOPERATIVE CORPORATION

Carol Wright
SIGNATURE
President + CEO
TITLE

BY Carol Wright
PRINTED NAME

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| Linda C. Bridwell Executive Director |
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