

CONFIRMATION AGREEMENT

Date: August 26, 2021

Seller :
Iron Coal Sales, LLC

Buyer :
Duke Energy Kentucky, Inc.

**295 North Hubbards Lane, Suite 302
Louisville, KY 40207**

**526 South Church Street, EC02F
Charlotte NC 28202**

Attn: Monty Jones, Chief Commercial Officer

Attn: Justin Musick, Originator

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Ref.

Ref. #: 34716

This Confirmation Agreement (this "Confirmation") memorializes the agreement between Buyer and Seller for the sale and purchase of coal (the "Transaction") and will be effective as of the date that Buyer has executed this Agreement (as defined below) (such date the "Effective Date"). This Confirmation will be governed by the terms set forth herein and the parties hereby incorporate the provisions of the Terms and Conditions of Sale and Purchase of Coal dated August 26, 2021 between the parties as the same has been or may be amended and supplemented from time to time (the "Standard Terms") as terms and conditions to this Confirmation. All provisions contained in the Standard Terms govern this Confirmation to the extent not in conflict with the terms hereof. The terms of this Confirmation will prevail in the event of any conflict or inconsistency between the terms of this Confirmation and the Standard Terms. The Confirmation together with the Standard Terms may be referred to herein collectively as the "Agreement". Terms used but not defined herein will have the meanings ascribed to them in the Standard Terms.

Quote Date: August 24, 2021

Commodity: Crushed bituminous coal, containing no synthetic fuels, and free from any extraneous materials, with no intermediate sizes added or removed and otherwise meeting the Quality Specifications of this Confirmation. ("Commodity" or "Coal")

Term: March 1, 2022 through March 31, 2022, inclusive (the "Term")

Contract Quantity: Approximately 10,000 Tons

Contract Price: \$61.15 per Ton delivered at the Delivery Point.

Source: Cumberland mining complex ("Mine")

Delivery Point: F.O.B. barge at the Alicia Dock at MP 81.3 on the Monongahela River ("Delivery Point").

Scheduling: Per the Standard Terms.

Weighing/Sampling and Analysis: Per the Standard Terms.

Billing and Payment: Per the Standard Terms.

Quality

Price Adjustments: Per the Standard Terms.

SO₂ Adjustment: None

Coal Quality (“As-Received” basis):

Characteristic:	Quality Specifications (Monthly Weighted Average)	Rejection Limit (Per Shipment)
Higher Heating Value (BTU/Lb.)	12,900 minimum	<12,600
Ash Content (%)	9.0% maximum	> 9.75%
SO ₂ (Lbs./MMBTU) Content	4.75 Lbs. maximum	>5.3 Lbs.
Moisture Content (%)	7.0% maximum	>9.0%
Volatile Matter (%)	36.0% maximum	< 34.0%
Chlorine (ppm)	900 maximum	>1000
Grindability (HGI)	53 minimum	<50
Top Size	2” maximum	>2.5”
Fines (% By Weight Passing 1/4” Screen)	55.0% maximum	N/A

Other Terms and Conditions:

Seller represents and warrants that, as of the Quote Date and as of the date of this Confirmation, and covenants for the Term of this Transaction that:

- (a) Seller presently owns or otherwise controls, and will continue to own and control, whether directly or through an affiliate, Coal reserves in an amount sufficient to fulfill the terms of this Confirmation, the Coal contained in such reserves is mineable and of the quality called for by this Confirmation and Seller presently has approved governmental mining permits to fulfill the terms of this Confirmation,
- (b) There are no existing contractual commitments with respect to Coal reserves that would prevent delivery of the quantities of Coal specified in this Confirmation and Seller will not enter into contractual commitments during the Term of this Confirmation that will prevent such delivery,
- (c) Seller owns and has in operation, and will continue to own and operate, whether directly or through an affiliate, mining facilities and equipment sufficient to produce the quantities of Coal to be delivered under this Confirmation and has obtained all necessary governmental and other third party permits (excluding unforeseen events as set forth in Section 11 of the Standard Terms), approvals and licenses, and will continue to retain or take all prudent and timely steps necessary for submission and application for renewal of governmental or third party permits, approvals and licenses, required in connection with the execution, delivery and performance of this Confirmation, and
- (d) Seller, directly or through an affiliate, will at all times conduct its mining operations in a prudent manner consistent with good and acceptable practice in the coal mining industry, and Buyer will have the right,

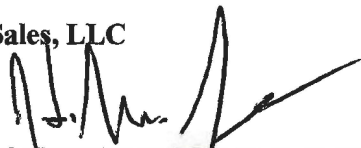
upon reasonable notice, at its own expense and risk, to have its representatives and/or qualified consultants observe and inspect Seller's facilities and operations, provided that such representatives and/or consultants must comply with all applicable safety requirements and check-in procedures and must not interfere with such operations.

No Precedent. The terms and conditions set forth in this Confirmation are for the purposes of this Confirmation and the Transaction contemplated herein only and will not set or be construed or deemed to set a precedent for any future Transaction and/or Confirmation, if any, that may be entered into between Buyer and Seller.

Electronic Signatures. Each party agrees that the Electronic Signatures, whether digital or encrypted, of the parties to this Confirmation are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic Signature" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

Please confirm that the foregoing correctly sets forth the terms of the agreement between Buyer and Seller as to this Transaction by timely returning an executed copy of this letter email at the email address specified on the Confirmation.

Seller :
Iron Coal Sales, LLC


By: 

Name: H.M. JONES

Title: CCO

Date: 8/31/21

Buyer :
Duke Energy Kentucky, Inc.

By: 
Kim Hughes (Sep 1, 2021 14:17 EDT)

Name: Kim Hughes

Title: Manager, Coal Origination and Contract Administration

Date: Sep 1, 2021

DUKE ENERGY KENTUCKY, INC.

**TERMS AND CONDITIONS OF SALE AND PURCHASE OF COAL
(for Barge and/or Rail Delivery)**

Under these Terms and Conditions of Sale and Purchase of Coal ("Standard Terms"), "Buyer" means Duke Energy Kentucky, Inc.; "Seller" means Iron Coal Sales, LLC; "Confirmation" means the Confirmation Agreement dated August 26, 2021 (Ref No. 34716) which is attached hereto or transmitted herewith (as the same may from time to time be modified or amended); "Agreement" means the Confirmation together with these Standard Terms; "Party" means Buyer or Seller, as applicable; "Commodity" or "Coal" has the meaning set forth in the Confirmation; and "Ton" means a net ton of 2,000 pounds avoirdupois weight. Any and all additional or different terms and conditions contained in any of Seller's acceptance, invoices, bills or other commercial documents are hereby expressly rejected and will not become part of the Agreement. Capitalized terms used but not otherwise defined in these Standard Terms have the meaning given to them in the Confirmation. In the event of any conflict or inconsistencies between the Confirmation and these Standard Terms, the terms and conditions set forth in the Confirmation will prevail.

1. **Warranty.** Seller represents and warrants to Buyer that: (a) Seller will deliver directly from Seller to Buyer good, exclusive and marketable title to the Coal free and clear of all liens, security interests, claims, and encumbrances; (b) Seller has sufficient reserves and/or access to a sufficient supply of utility steam coal in the quantity and quality required pursuant to this Agreement; (c) title to all Coal sold to Buyer will pass directly to Buyer from Seller; (d) the shipments of Coal delivered to Buyer shall substantially conform with the specifications of this Agreement including the Quality Specifications set forth in the Confirmation, will be substantially free flowing and must be free from impurities, such as clay, non-carbonaceous rock, wood, trash, or metals, that can be kept out or removed with the exercise of reasonable care during mining, processing, preparation or loading; (e) Seller will deliver the Coal such that it is delivered within the schedule set forth in this Agreement or otherwise mutually agreed to by the Parties; and (f) no federal, state, local or foreign statute, law, rule, regulation or order has been or will be violated in the mining, processing, transporting, selling or delivering of the Coal. Seller will promptly replace or refund, at Buyer's election, all Coal that does not comply fully with this warranty. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the law of its place of incorporation or organization; (ii) this Agreement and the transaction contemplated hereby constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"), (iii) such Party is a "Forward Contract Merchant" within the meaning of the Bankruptcy Code; (iv) such Party is an "Eligible Contract Participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended; and (v) such Party is a producer, processor, commercial user or merchant, and it is entering into this Agreement and the Transaction contemplated hereby for purposes related to its business as such.

2. Shipping; Risk of Loss.

(a) Coal that will be transported by barge as set forth in the Confirmation will be loaded and delivered, as applicable, by Seller into barges at Seller's loading facilities at the Delivery Point specified in the Confirmation, at the loading times established under the agreed upon delivery schedule. Seller must load barge(s) in accordance with the Carrier Specifications (as defined below), including but not limited to minimum loading and maximum loading standards. Seller will be responsible for payment of all charges imposed by Buyer's barge carrier ("Barge Carrier") resulting from Seller's non-compliance with the Carrier Specifications (as defined in (c) below), including but not limited to, demurrage charges incurred at Seller's Loading Facilities and for any under-loading or over-loading charges incurred and charges in connection with any damage to such barge(s) plus other reasonable administrative expenses and costs related to such charges. If Buyer is assessed any demurrage, damage, or other charges by the Barge Carrier caused by Seller or its contractors or other representatives, Buyer will net such charges against outstanding invoices owed to Seller pursuant to Section 9 of these Standard Terms. If there are no

remaining outstanding invoices, Seller will pay Buyer by electronic funds transfer in United States funds to the account specified by Buyer.

- (b) Coal that will be transported by rail as set forth in the Confirmation will be loaded and delivered by Seller into unit trains at Seller's Delivery Point specified in the Confirmation, at the loading times established under the agreed upon delivery schedule. Seller is required to be available to load coal at any time, twenty-four (24) hours a day, seven (7) days a week, at Seller's Loading Facilities. Further, each unit train must be loaded in accordance with the Carrier Specifications, including but not limited to minimum loading and maximum loading standards, such that the lowest available rail rate to Buyer is obtained for the Shipment of coal to the applicable Station(s) or other Buyer destination. In addition to the foregoing, prior to loading any railcar (i) Seller must visually check each railcar to ensure that such railcar is reasonably free of debris and (ii) and must check that the doors on such railcars (with the exception of gondolas) are "locked-over-center" and visually check that the primary and secondary locking mechanisms are secure. For any railcars that (A) are determined to contain debris or (B) for which the doors are not "locked-over-center" or the primary or secondary locking mechanism appears to not be secure, Seller must refuse to load such railcar and mark such car on the waybill as a "bad order". When in reasonable doubt as to the condition of any railcar Seller should "bad order" such railcar as provided above. Seller will be responsible for payment of all charges imposed by Buyer's rail carrier ("Rail Carrier") resulting from Seller's non-compliance with the Carrier Specifications, including but not limited to, demurrage charges incurred at Seller's Loading Facilities and for any under-loading or over-loading charges incurred plus other reasonable administrative expenses related to such charges. If Buyer is assessed any charges by the Rail Carrier caused by Seller or its contractor or other representatives, Buyer will net such charges against outstanding invoices owed to Seller pursuant to Section 9 of these Standard Terms. If there are no remaining outstanding invoices, Seller will pay Buyer by electronic funds transfer in United States funds to the account specified by Buyer.
- (c) Each of the Barge Carrier and the Rail Carrier may be referred to herein individual, as applicable, as "Carrier". "Carrier Specifications" means the provisions of the applicable Carrier tariff or applicable agreement(s) made by Buyer with the Carrier, as amended from time to time, covering the requirements for each Shipment, including the timing and loading requirements thereunder, which are incorporated herein by reference. Upon request by Seller, such Carrier Specifications will be made available for review by Seller; provided that Buyer will not be required to disclose pricing or other confidential or commercially sensitive information.
- (d) For barge delivered Coal, title to and risk of loss to the Coal will pass from Seller to Buyer upon each barge or vessel being fully loaded and trimmed. For rail delivered Coal title to, risk of loss of, and responsibility for the coal will pass from Seller to Buyer upon completion of loading all railcars in the applicable unit train and release of such unit train to the railroad.

3. **Weighing; Sampling; and Analysis.**

- (a) For barge delivered, Coal, each shipment must be weighed at Seller's expense by certified belt scales or a draft survey performed at the loading facilities and reported to Buyer. All such draft surveys at the loading facilities must be conducted by an independent surveyor (certified commercial marine surveyor for vessels) selected by Seller who is experienced in the conduct of draft surveys. If for any reason Seller does not weigh the Coal, Seller must promptly notify Buyer and the weights will be determined by a draft survey at Buyer's specified destination. For rail delivered Coal, each shipment must be weighed at Seller's expense by Seller's scales or certified batch weighing system at the Delivery Point and a net weight for each such shipment determined and reported to Buyer. Seller's scales must have been tested and certified as accurate by a third-party independent testing authority no less frequently than annually. In any case, the cost of weighing will be for Seller's account.

- (b) Seller at Seller's expense must cause a third-party independent laboratory chosen by Seller and approved by Buyer (the "Independent Lab"), to take samples at the applicable loading facilities of each Shipment of Coal delivered hereunder for the purpose of analyzing the conformance of such Coal with the Quality Specifications. Such sampling must be performed in accordance with ASTM D7430 or such other methods as may be mutually agreed upon by the Parties. Prior to air-drying, the samples are to be shipped in airtight containers to the Independent Lab and such laboratory must subdivide each sample into three (3) sample splits, following the standards contained in ASTM D2013. One of the sample splits will be analyzed by the Independent Lab ("Short Proximate Split Sample") at Seller's expense. One of the sample splits will be retained by the Independent Lab for at least sixty (60) days to be sent by the Independent Lab to Buyer upon Buyer's request ("Buyer's Split Sample"). The final sample split will be retained by the Independent Lab for at least sixty (60) days to be used as a referee sample split ("Referee Split Sample"). If Seller is unable to take a representative sample of a shipment in accordance with this Section, Seller must promptly notify Buyer and the Parties will mutually agree upon a method to determine the method of analysis for such Shipment. Seller will pay all expenses incurred by the Independent Lab for services provided under the Agreement. "Shipment" or "shipment" means, (i) with respect to barge delivered Coal, each individual barge and (ii) with respect to rail delivered Coal, a unit train.
- (c) The Independent Lab must analyze the Short Proximate Split Sample in accordance with ASTM standards including without limitation use of ASTM D6721 for all chlorine analysis required under this Agreement, if applicable. Within 24 hours after completion of loading of each shipment of coal, the Independent Laboratory must test the Short Proximate Split Sample to determine the Btu, ash, moisture and SO₂ content of such coal in accordance with ASTM standards ("Short Proximate Analysis") and must provide the results of such analysis to Buyer. In addition, Buyer may, in its sole discretion, provide written notice to Seller (the "Additional Testing Notice") thereby requiring Seller, at Seller's expense, to provide (i) a chlorine analysis for shipments of coal after the date of such notice ("Chlorine Analysis") and/or (ii) an analysis for any other Quality Specification that has a rejection limit in the Confirmation and is not included in the Short Proximate Analysis or the Chlorine Analysis (the "Additional Analysis"). Seller will use its best efforts to provide Buyer the Chlorine Analysis and Additional Analysis, as applicable, as soon as possible, but in no event later than five (5) business days after completion of loading of each shipment. Seller will email the results of the Short Proximate Analysis, Chlorine Analysis, and Additional Analysis to FuelsRegConfirmationsSE@duke-energy.com. If a shipment arrives at the Station or other specified destination without Seller or the Independent Lab, as applicable, having performed and provided the results of the Short Proximate Analysis, Chlorine Analysis, and Additional Analysis, as applicable, to Buyer, Buyer will have the right to hold such shipment in detention until the results of such analysis are properly received. Seller will be responsible for any charges incurred by Buyer as a result of Seller's failure to perform (or require the Independent Lab to perform) and provide the results of (A) the Short Proximate Analysis to Buyer within 24 hours after completion of loading the shipment or (B) the Chlorine Analysis or Additional Analysis, as applicable, no later than five (5) business days after completion of loading the shipment as provided above. The Short Proximate Analysis will be used for payment purposes and the Short Proximate Analysis, Chlorine Analysis, and Additional Analysis, as applicable, will be used for determining Buyer's rights, if any, to reject a shipment. If Buyer disagrees with Seller's Short Proximate Analysis, Chlorine Analysis, or Additional Analysis for any shipment of coal, then Buyer will have the right to have a referee analysis performed on the Referee Split Sample by a mutually agreed upon independent testing laboratory. If the analysis results produced from the referee analysis of the Referee Split Sample fall outside the ASTM tolerances for reproducibility of results (when compared against the Short Proximate Analysis, Chlorine Analysis, or Additional Analysis, as applicable), then the referee analysis results will be used to determine Quality Price Adjustments and rejection rights for the Shipment of Coal,

and the cost of the referee analysis will be borne by Seller. If the analysis results produced from the referee analysis fall within the ASTM tolerances for reproducibility of results (when compared against the Short Proximate Analysis), then the Short Proximate Analysis results will be used to determine quality price adjustments and rejection rights for the shipment of Coal, and the cost of the referee analysis will be borne by Buyer.

4. Inspection; Acceptance/Rejection. Upon reasonable notice to Seller, Buyer will have the right to inspect Seller's mines, preparation and loading facilities, at Buyer's sole expense, during mining and preparation of any Coal subject to this Agreement and to inspect all quality assurance and other records relating to the Coal. In addition, Buyer will have the right to inspect all Coal at Buyer's facility before accepting it.

Buyer will have one (1) business day after Buyer receives notice that any Shipment is above or below, as applicable, any one or more of the Rejection Limit(s) applicable to such Coal or Buyer otherwise discovers a defect in the product or other nonconformity to Quality Specifications or the provisions of this Agreement to reject or to revoke acceptance of the product, in any event prior to unloading the product. If Buyer timely rejects a non-conforming shipment of product, Seller will be responsible for promptly transporting the rejected product to a mutually agreed alternative destination and will reimburse Buyer for all reasonable out-of-pocket costs and expenses incurred by Buyer associated with the transportation, storage, handling, removal, demurrage fees and any re-consignment fees assessed by the Carrier of the non-conforming shipment. Seller will, at Buyer's option, replace the rejected product as soon as possible, provided that Buyer gives notice to Seller of Buyer's desire for replacement Coal within five (5) days after rejection of the non-conforming shipment.

5. Termination; Cancellation. In the event that the; (a) product shipped pursuant to the Agreement is above or below, as applicable, any one or more of the Rejection Limits set forth in the Quality Specifications or (b) Seller otherwise fails to perform as required by the Agreement, Buyer will have the right to; (i) reject or revoke acceptance of such delivery prior to unloading; (ii) suspend further deliveries; (iii) terminate or cancel all or a portion of further deliveries upon ten (10) days advance written notice; or (iv) require Seller to deliver replacement Coal from the Source specified in the Confirmation; or (v) terminate the Agreement, in which Seller's right to make and Buyer's obligation to receive further deliveries terminates immediately upon receipt of such notice of termination from Buyer. If Buyer terminates or cancels all or a portion of the Agreement as set forth herein, unless the Agreement expressly provides otherwise, Buyer will only pay Seller for the quantity of acceptable Coal actually received and accepted (and not rejected or revoked) by Buyer prior to the effective date of such termination, plus or minus any applicable Quality Price Adjustment(s), if any, as set forth in the Confirmation and Section 8 of these Standard Terms. If the sum of Buyer's prior payments and deposits under this Agreement exceed the cancellation and delay charges and other amounts due under this this Agreement, Seller shall promptly refund the balance to Buyer.

6. Contract Price. The Contract Price set forth in the Confirmation is F.O.B. barge (fully loaded and trimmed) or F.O.B. railcar, as applicable, at the Seller's loadout unless otherwise expressly provided in the Confirmation. The Contract Price is inclusive of Seller's costs (a) to mine, process, transport, load and deliver the Coal to Buyer at the Delivery Point specified in the Confirmation (including all harbor, fleeting, moving, switching, trimming and related expenses) and (b) to provide Seller's weights, analysis, and shipping notices as required pursuant to this Agreement. Furthermore, the Contract Price includes, without limitation, all federal, state, and local taxes, fees, or other preparations and activities or levies, which are required to be paid on or in connection with the mining, processing, transporting, loading, and delivering the Coal hereunder. The Contract Price will be fixed and firm and not subject to adjustment during the term of the Confirmation except for applicable Quality Price Adjustment(s), if any.

7. Insurance for Barge Deliveries; Freeze Conditioning for Rail Deliveries.

- (a) For barge delivered Coal Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and

fleets at all Delivery Points utilized by Seller, and Comprehensive Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Jones Act (Maritime Employers Liability), Pollution Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Towers' Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable, covering the docks and fleets at all loading facilities utilized by Seller in an amount not less than \$5,000,000 per occurrence.

- (b) For rail delivered Coal Buyer will have the right to require Seller to apply a freeze conditioning agent ("FCA") to the coal being delivered under the Confirmation and a side release agent ("SRA") to the railcars supplied by Buyer wherever applicable to promote handling of the coal in freezing weather. The FCA and the SRA will be collectively referred to as "Freeze Conditioning". Buyer will give Seller notice of the quantity to be applied and of the types of material that Seller is prohibited from using, if applicable. Buyer will provide Seller with reasonable advance notice of the dates for starting and ending the Freeze Conditioning program. Buyer will pay Seller the actual cost for the Freeze Conditioning which cost will not exceed Seller's total direct cost of materials and application and will be agreed to by the Parties promptly after Buyer's request. The cost of the Freeze Conditioning will be invoiced separately by Seller with such invoice to be received by Buyer within ten (10) days following the end of the month in which Freeze Conditioning was applied. Seller must provide sufficient information to enable Buyer to verify the amounts of Freeze Conditioning applied and the total direct costs associated with such amounts. Buyer will have the right to review and approve the Freeze Conditioning invoices prior to payment. Payment for Freeze Conditioning shall be made in accordance with Section 9 below.

8. Quality Price Adjustment. If product delivered hereunder varies from the Quality Specifications for Btu set forth in the Confirmation, but does not exceed nor is not less than, as the case may be, the Rejection Limits for Btu set forth in the Confirmation, Quality Price Adjustments pursuant to this Section 8 will be made increasing or decreasing the Contract Price of the Coal to compensate for variations in the "As Received" monthly weighted average Btu content of such Coal from the Btu content set forth in the Quality Specifications.

Unless otherwise specified in the Confirmation the Quality Price Adjustment for Btu content will be determined by the following formula:

$$\left[\left(\frac{\text{"As Received" Monthly Weighted Average Actual BTU content per Ton delivered}}{\text{Specification BTU per Ton}} \right) \times \text{Contract Price} \right] - \text{Contract Price} = \text{BTU Contract Price adjustment per Ton of Coal}$$

9. Payment. Buyer will self-invoice and pay Seller the Contract Price, as adjusted pursuant to this Agreement, for the Coal shipments accepted and received at the applicable Delivery Point hereunder as follows:

- (a) for shipments received and accepted at the Delivery Point during the first (1st) through the fifteenth (15th) day of each month, payment for such Coal will be made on or before the last day of the month in which the Coal was received. If the last day of the month is not a business day, then payment will be made on the next available business day;
- (b) for shipments received and accepted at the Delivery Point during the sixteenth (16th) through the last day of the month, payment for such Coal will be made on or before the fifteenth (15th) day of the month following the month in which the Coal was received. If the fifteenth (15th) day of the month is not a business day, then payment will be made on the next available business day; and

(c) Quality Price Adjustments associated with Coal shipments, calculated as set forth in Section 8 hereof, and if applicable the Confirmation, will be paid or netted, as the case may be, by Buyer along with payments for Coal received by Buyer under this Agreement any other transactions or agreements between Buyer and Seller on or before the last day of the month following the month in which the Coal was loaded and

(d) Freeze Conditioning, if applicable, will be paid by Buyer along with payments for coal shipments. If there are no coal payments applicable, then Buyer will pay for Freeze Proofing not later than thirty (30) days following Buyer's receipt of Seller's approved and accepted invoice.

Buyer or Seller, if applicable, will pay, by electronic funds transfer in United States funds, the amount due Seller or Buyer as the case may be. Final payments for Coal and Quality Price Adjustments will be made to the nearest \$0.0001. No claims regarding payments, incorrect invoices, or Quality Price Adjustments may be made after ninety (90) days of the date of the applicable payment or invoice giving rise to the claim unless a Party has been notified of a claim with respect to such payments, invoices or adjustments within such time period.

If Buyer and Seller are required to pay any amounts on the same day or in the same month under any one or more transactions or agreements between the Parties, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. The obligations to make payments under any this Agreement and/or any other agreement or transaction between the Parties may be offset against each other, set off or recouped therefrom.

10. Indemnification. Seller will defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys' and other professionals' fees and expenses to the extent arising out of or relating to: (a) any breach of warranty by Seller; and (b) any act or omission of Seller or its employees, contractors and agents in the performance or nonperformance of Seller's obligations under this Agreement. Buyer must give Seller reasonable notice of any claim Buyer contends falls within this indemnification.

Buyer will defend, indemnify and hold harmless Seller and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys' and other professionals' fees and expenses to the extent arising out of or relating to: (a) any breach of warranty by Buyer; and (b) any act or omission of Buyer or its employees, contractors and agents in the performance or non-performance of Buyer's obligations under this Agreement. Seller must give Buyer reasonable notice of any claim Seller contends falls within this indemnification.

11. Force Majeure. When used herein "Force Majeure" means a cause beyond the reasonable control of and not due to the fault or negligence of Buyer or Seller, as the case may be, or any third-party over whom such party reasonably exercises control, which wholly or partially prevents or delays, mining, processing or loading of Coal, or the receiving, transporting, or delivery of Coal, or the unloading or storing the Coal at Buyer's destination, or burning of Coal at Buyers intended coal-fired steam electric generating station (including with limitation due to unplanned outages of equipment or facilities and conditions which render the intended use of the Coal impossible, impractical or unfeasible). A change in market conditions (including the ability of Seller to sell coal at a higher price or Buyer to buy coal at a lower price) and Buyer's inability to economically resell the coal, whether or not foreseeable will not be considered Force Majeure events. Performance of this Agreement will be suspended and excused to the extent commensurate with such interfering occurrence. The affected Party will make commercially reasonable efforts to eliminate the cause of such Force Majeure and will keep the other Party informed as to the continuance of the Force Majeure. If Seller or Buyer is forced to suspend shipments/performance, in whole or in part, due to Force Majeure, once such Force Majeure event ends, shipments excused by events of Force Majeure will be made up at the sole election of the non-claiming party on a mutually agreed schedule.

12. **Confidentiality.** Seller and Buyer will keep confidential and not disclose to any person or entity other than counsel or as necessary to comply with this Agreement any information that the other party designates as being confidential except to the extent required by law ("Confidential Information"). For the avoidance of doubt, "Confidential Information" with respect to Buyer includes but is not limited to (a) information relating to intellectual property; (b) information relating to security systems that could be used to gain unauthorized access or posed a security threat to Buyer; (c) generation plans and outage schedules; (d) supplier information; (e) technical, financial, administrative and internal activities or any business plans and methods, operating and technical data, reports, drawings, operating documents, project documents, and reports; and (f) all non-public information, financial or otherwise, data specific to Buyer and its business.

Seller must not use Buyer's name or the fact that Seller is selling product to Buyer in any press releases, media statements or public communications or otherwise publicize this Agreement without Buyer's prior written consent. Seller must not use Duke Energy Corporation's (including its subsidiaries and affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way without Buyer's prior written consent, and Buyer will not be deemed to have granted Seller a license of, or granted Seller any rights in, any of the foregoing by entering into this Agreement.

Notwithstanding the foregoing, Buyer may, without notification to or the consent of Seller, disclose the terms and conditions of this Agreement in connection with any administrative or regulatory approval or filing process or other requirement in connection with the conduct of its business.

13. **Compliance with Laws.** Unless and to the extent that Seller or Buyer is exempted by the rules, regulations or orders of the United States Secretary of Labor, both Parties shall comply fully at all times relevant to this Agreement with all applicable laws, rules, regulations and court orders, including: (a) Executive Order 11246 issued by the President of the United States on September 24, 1965; (b) the Vietnam Era Veterans Readjustment Assistance Act of 1974 and applicable sections of 41 CFR relating to the employment of veterans; (c) section 503 of the Rehabilitation Act of 1973; (d) regulations of the United States Occupational Safety and Health Act; (e) 15 U.S.C section 637(d)(3) and 48 CFR section 52.219 relating to small and disadvantaged business concerns; (f) all applicable rules, regulations and orders issued by the United States Secretary of Labor under any of the foregoing; and (g) all amendments of the foregoing that may be made from time to time.

14. **No Assignment.** This Agreement and the rights and obligations hereunder shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign any of its rights, obligations or interest herein without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation or subcontracting without Buyer's prior written consent will be ineffective and void.

15. **Independent Contractor.** Seller is an independent contractor for all purposes, and in no event shall Seller be deemed to be an agent, partner or joint venturer of the Buyer.

16. **Dodd-Frank.** The transaction set forth in this Agreement may contain embedded volumetric optionality. Buyer represents and warrants that: (a) it is a regulated electric load serving utility with an obligation to provide electric service to its customers, and is entering into this Agreement to secure a source of physical supply of coal to operate its electric generating units to meet such load service obligations; and (b) the embedded volumetric optionality is primarily intended to address physical factors or regulatory requirements that reasonably influence demand for the coal.

17. **Remedies.** The remedies in this Agreement are cumulative and in addition to all rights and remedies at law and in equity. The Parties may exercise their rights and remedies in any order or combination they choose. No delay in exercising or failure to exercise a right or remedy will impair that or any other right or remedy or be construed as a waiver of any default.

18. **Notices.** All notices, consents, invoices and other communications required or permitted to be made pursuant to this Agreement must be made in writing and shall be sent by (a) registered or certified

mail, postage prepaid and return receipt requested, (b) reputable overnight courier, or (c) email, and in any case, properly addressed to the address for such Party set forth in the Confirmation.

19. Entire Agreement; Non-Waiver. The terms and conditions of this Agreement together with any applicable Carrier Specifications are intended by Buyer and Seller to constitute a final, complete and exclusive statement of their agreement with respect to the subject matter hereof and all prior proposals, communications, negotiations, understandings and representations, whether oral or written, relating to the subject matter hereof are hereby superseded. This Agreement may only be modified by a written agreement, signed by both parties, expressly modifying this Agreement. The failure or forbearance of either Party to insist on strict performance hereunder will not constitute a waiver unless and to the extent otherwise expressly indicated in a writing signed by the Party against whom such waiver Waiver by either Party of any default of the other Party hereunder shall not be deemed a waiver of any other default. Either Party may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing to the contrary.

20. Liability Limitation. EXCEPT FOR THE OBLIGATIONS OF INDEMNITY SET FORTH IN SECTION 10 OF THESE STANDARD TERMS, EACH PARTY'S LIABILITY HEREUNDER, IF ANY, IS EXPRESSLY LIMITED TO DIRECT ACTUAL DAMAGES ONLY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT UNDER THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH THE SAME MAY OTHERWISE ARISE OR BE ASSERTED, EXCEPT TO THE EXTENT A THIRD-PARTY CLAIM WITH RESPECT TO WHICH A PARTY IS INDEMNIFIED HEREUNDER ARE DEEMED TO CONSTITUTE SUCH DAMAGES.

21. Governing Law. This Agreement and the right, duties, remedies and obligations of the Parties arising hereunder will be governed and interpreted by and construed and enforced in accordance with the laws of the State of North Carolina without giving effect to any of such state's conflict of laws provisions. The Uniform Commercial Code of the State of North Carolina ("UCC") will be applicable to the extent not inconsistent or in conflict with the provisions of this Agreement and the Parties acknowledge and agree that the coal will be deemed to be a "good" for purposes of the UCC.

22. Electronic Signatures. Each Party agrees that the Electronic Signatures, whether digital or encrypted, of the parties to this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic Signature" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.


[Signature page follows.]

Agreed To By:
Duke Energy Kentucky, Inc.

By: 
Kim Hughes (Sep 1, 2021 14:17 EDT)

Title: Manager, Coal Origination

Date: Sep 1, 2021

Iron Coal Sales, LLC
By: 

Title: CCO

Date: 8/31/21