

**INDUSTRIAL POWER AGREEMENT
WITH ECONOMIC DEVELOPMENT RIDER
AND
RENEWABLE ENERGY PURCHASES**

THIS AGREEMENT, made and entered into this 28th day of May, 2020, by and between **East Kentucky Power Cooperative, Inc.**, a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, Kentucky 40391 (“EKPC”), **Inter-County Energy Cooperative Corporation**, a Kentucky corporation with its principal offices at 1009 Hustonville Road, Danville, Kentucky 40422 (“Cooperative”); and **Diageo Americas Supply, Inc.**, a Delaware corporation with its principal offices at 3 World Trade Center, 175 Greenwich Street, New York, New York 10007 (“Customer”).

W I T N E S S E T H:

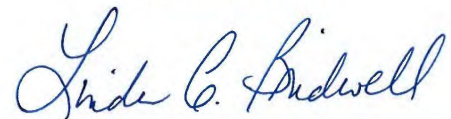
WHEREAS, Cooperative is a rural electric cooperative corporation providing retail electric service in Marion County, Kentucky; and

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

WHEREAS, Customer 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 Marion County, Kentucky distillery, warehouses and associated structures and appurtenances (hereinafter referred to as its “Facility”); and

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WHEREAS, as part of the Customer's commitment to protecting and preserving the environment, the Customer desires and agrees to purchase, and EKPC and Cooperative are both willing and agree to sell, energy from renewable resources and renewable energy credits ("RECs") in an amount equal to one hundred percent (100%) of the energy consumed by the Customer at the Facility; and

WHEREAS, it is the purpose and intent of the Customer, Cooperative and EKPC to assure that all incremental costs associated with the renewable energy and REC purchases contemplated herein are assumed by the Customer so that no other customer of Cooperative, and no other Owner-Member of EKPC, are called upon to subsidize or otherwise pay incremental costs arising from, or related to, the Parties' performance of this Agreement; and

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

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

1. **Term.** This Agreement shall become effective upon the date of the Order of the Kentucky Public Service Commission ("Commission") approving this Agreement, subject to the provisions of Paragraph 29 below ("Effective Date"). This Agreement shall continue in effect for an Initial Term of fifteen (15) years from said date. EKPC, Cooperative and Customer shall meet two years prior to the expiration of this contract to determine if this Agreement is to be extended.

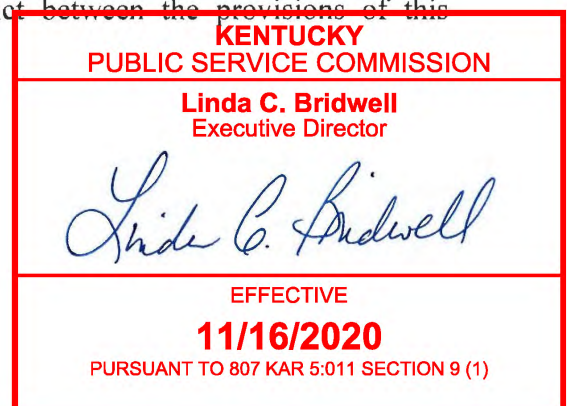
2. **Rates and Charges.**

a. Customer shall pay Cooperative monthly for power and energy made available under this Agreement in accordance with the rates, charges, and provisions defined

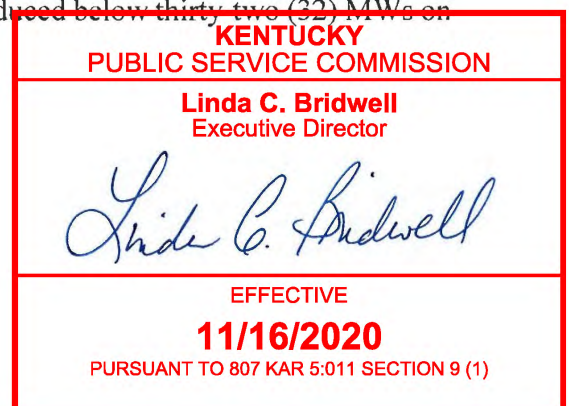


herein and as modified, replaced, or adjusted from time to time and approved by the Commission.

- b. For billing from EKPC to Cooperative, EKPC will provide wholesale electricity to Cooperative for Customer pursuant to the rates, charges, and provisions of EKPC's: (1) Rate G – Special Electric Contract Rate; (2) Rate EDR – Economic Development Rider, where the billing demand shall be the contract demand as defined in EKPC's Rate Section G; (3) Rate H – Wholesale Renewable Energy Program; and (4) Rate CS – Community Solar.
- c. For billing from Cooperative to Customer, Cooperative will provide power and energy to the Customer pursuant to the rates, charges, and provisions of Cooperative's: (1) Rate G – Large Industrial Customer; (2) Rate Economic Development Rider, where billing demand shall be the contract demand as defined in Cooperative's Rate G; (3) Rate Renewable Energy Program; and (4) Rate CS – Community Solar Power Generation.
3. **Availability of Power.** Subject to the other provisions of 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 Facility. 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 the tariffs set forth therein, as modified from time to time by appropriate authority. In the event of any conflict between the provisions of this Agreement and said tariffs, the latter shall control.



- a. **Delivery Point and Voltage.** The Point of Delivery for firm power and energy made available hereunder shall be the point(s) at which Customer's 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 thirteen thousand eight hundred kilovolts (13,800 kV) at the metering point.
- b. **Determination of Contract Demand.** The "Contract Demand" for service under this Agreement shall be:
- (1) The actual demand as measured for the period from the Effective Date of this Agreement through June 30, 2022 and, for purposes of calculating the billing demand under the applicable tariff, no demand ratchet (which is understood by the Parties to mean any rate mechanism set forth in either EKPC's Rate G – Special Electric Contract Rate or Cooperative's Rate G – Large Industrial Customer that would utilize a demand level in excess of actual demand) shall apply;
 - (2) Thirty-two (32) MWs from July 1, 2022 through the Initial Term of this Agreement and any subsequent renewal thereof.
- c. **Changes to Contract Demand.** Customer shall have the right to increase or decrease said levels of Contract Demand in increments not to exceed 1,000 kW by giving written notice one month prior to the date of the desired change, provided, however, the Contract Demand shall not be reduced below thirty-two (32) MWs on or after July 1, 2022.



4. **Use of Renewable Resources and RECs.**

a. **Renewable Energy and REC Purchases.** The calculations and elections necessary to fulfill the obligation to purchase and sell renewable energy are set forth in Appendix A, which is adopted and incorporated by reference as if set forth herein in full. EKPC and Cooperative shall provide 100% of the Customer's energy requirements via renewable energy and REC purchases in accordance with EKPC's Rate H - Wholesale Renewable Energy Program and Cooperative's Rate Renewable Energy Program for all delivery periods within the Initial Term, as follows:

- (1) For the delivery period prior to July 1, 2021, the Customer's renewable energy consumption shall be covered by the purchase and retirement of RECs by EKPC and/or Cooperative on the Customer's behalf;
- (2) For the delivery period July 1, 2021 through June 30, 2022, the Customer's renewable energy consumption shall be covered by the purchase and retirement of RECs by EKPC and Cooperative on the Customer's behalf;
- (3) For the delivery period July 1, 2022 through June 30, 2023, the amount of renewable energy purchased from Cooperative hereunder shall be at least 42,000 MWhrs from power purchase agreements or physical renewable resources.
- (4) For the delivery period July 1, 2023 through the balance of the Initial Term of the Agreement, the amount of renewable energy purchased hereunder shall be at least 105,000 MWhrs from power purchase agreements or physical renewable resources.

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(5) The Customer's renewable energy consumption that exceeds the renewable energy purchased through the Wholesale Renewable Energy Program in any calendar year shall be offset by the purchase and retirement of RECs by EKPC and/or Cooperative on the Customer's behalf. The Parties to this Agreement shall meet on a quarterly basis to review the forecasted need for REC purchases. EKPC will act as agent for the Customer for REC purchases and will provide non-binding estimates of the REC prices at the quarterly meetings. Customer shall direct EKPC on the types of renewable RECs the customer prefers and the price ranges of RECs acceptable to the Customer. As directed by the Customer, EKPC shall engage the market and purchase RECs necessary to offset the Customer's renewable energy consumption not already offset by the Renewable Energy Program. EKPC shall provide Customer with documentation demonstrating that all RECs purchased on Customer's behalf were retired in the name of the Customer. EKPC's administrative fee under Rate H – Wholesale Renewable Energy Program will be waived for REC purchases made on behalf of customer, however, all EKPC's direct costs for RECs will pass directly through to the Customer.

b. **Renewable Resources.** The choices available include: solar, wind, hydro, landfill methane gas or biomass.

(1) **Participation in Cooperative Solar One.** Customer agrees to obtain solar energy from EKPC's Cooperative Solar One facility located near Winchester, Kentucky. Customer's initial participation in Cooperative

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Solar One shall be to license three hundred thirty (330) panels in accordance with EKPC's Rate CS – Community Solar and Cooperative's Rate CS – Community Solar Power Generation tariffs. The Parties agree that EKPC will maintain the panels and that Customer's participation fulfills an appropriate share of Cooperative Solar One.

- (2) **Other Renewable Resources.** EKPC will collaborate with Customer to determine the types of renewable energy and energy volumes desired to satisfy the Customer's load. EKPC will contract for renewable resources through a competitive bid process. EKPC will make bid information available to the Customer to assure Customer that EKPC is acting in the interest of the Customer. EKPC will also assure that the renewable energy resources chosen for the Customer does not adversely impact the balance of Cooperative's members or EKPC Owner Members. EKPC retains the sole and exclusive right to select the resource(s) from which the renewable energy purchases contemplated herein are acquired. The Customer may not request or designate that the renewable energy purchased hereunder be acquired from any particular generation facility. Cooperative agrees to provide Customer with reasonable updates in the event of any changes in the availability of renewable energy purchased pursuant to this Agreement. EKPC and Cooperative agree to provide Customer with reasonable updates during quarterly reviews including but not limited to performance of selected renewable resources (generation trends, analysis, economic impact), forward market values of equivalent renewable energy, REC

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availability and other pertinent information related to the renewable energy purchased pursuant to this Agreement.

(3) **Self-Build Stipulations.** If EKPC participates in bid process with a self-build option, EKPC will screen the staff preparing the bid from the staff evaluating the bids and engage a third party to assist in the bid evaluation to assure the process is fair to all participants.

c. **Wholesale Credits.** The Cooperative shall receive a monthly credit on its wholesale power bill in an amount equal to the lesser of: (1) the avoided cost of: (a) base fuel and fuel adjustment clause per MWh of renewable energy delivered and capacity credits; and (b) variable environmental surcharge equal to the delivered renewable energy monthly; or (2) the zonal EKPC Localized Marginal Cost (LMP). At no time shall EKPC be required to convert any credit accruing hereunder to cash. Any excess credit(s) can be carried forward to offset a later billed amount.

d. **Retail Credits.** The Customer shall receive a monthly credit on its retail power bill in an amount equal to the lesser of: (1) the avoided cost of: (a) base fuel and fuel adjustment clause per MWh of renewable energy delivered and capacity credits; and (b) variable environmental surcharge equal to the demand energy; or (2) the zonal EKPC LMP Cost. At no time shall Cooperative be required to convert any credit accruing hereunder to cash. Any excess credit(s) can be carried forward to offset a later billed amount.



e. **Early Termination of the Wholesale Renewable Energy Program.**

- i. **By Customer.** In the event that the Customer ceases operations at the Facility or otherwise stops taking service at the Facility at any time within the Term of this Agreement, the Customer shall pay EKPC/Cooperative the difference, if positive, of the levelized cost of existing renewable energy contracts less the forward market value of equivalent renewable energy times the prior three years' average production times the shorter of the Agreement Term or the remaining years of the renewable energy contract term(s) (the "Early Renewable Energy Termination Payment") within 30 days from the date the Customer ceases operations at the Facility or stops taking service at the Facility.
- ii. **By EKPC.** In the event that EKPC defaults on its obligation to sell renewable energy to Customer, other than as a result of a Force Majeure, at any time within the Term of this Agreement, EKPC shall pay Customer the difference, if positive, of the forward market value of equivalent renewable energy less the levelized cost of contracted renewable energy times the prior three years' average production times the shorter of the Agreement Term or the remaining years of the renewable energy contract term(s) (the "Supplier Early Termination Payment") within 30 days from the date EKPC defaults on its obligation to sell renewable energy hereunder.

- f. **Regulatory Approval of Renewable Energy Purchases.** Customer understands and acknowledges that EKPC will likely be required to obtain approval from the Commission for any renewable energy purchase(s) exceeding two calendar years

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in duration. In the event the Commission denies such a request for approval, EKPC agrees to use good faith efforts gain approval for renewable energy from an alternative source, however, the Commission's failure to approve such request(s) shall not constitute an event of default by EKPC with regard to its performance under this Agreement.

5. **Economic Development Rider ("EDR")**. The Customer's Facility has a minimum average billing load equal to or in excess of the amount required by EKPC's Rate EDR – Economic Development Rider and Cooperative's Rate Economic Development Rider. The Customer further represents that it plans to hire more than thirty employees and will have an approximate capital investment of \$130 million.

- a. **Discount Period and Discount Rate to Demand Charges**. The Customer has selected a five (5) year discount period option which requires a total minimum contract term of ten (10) years. The discount period shall begin with the first complete billing month beginning on or after July 1, 2022. The discount to the total demand charge under this option will be:

First 12 consecutive monthly billings	50%
Next 12 consecutive monthly billings	40%
Next 12 consecutive monthly billings	30%
Next 12 consecutive monthly billings	20%
Final 12 consecutive monthly billings	10%

The discount shall be applied to the demand charges as stated in EKPC's Rate G Special Electric Contract Rate and the resulting reduction shall be passed through to the Customer without any revision or adjustment by the Cooperative. The

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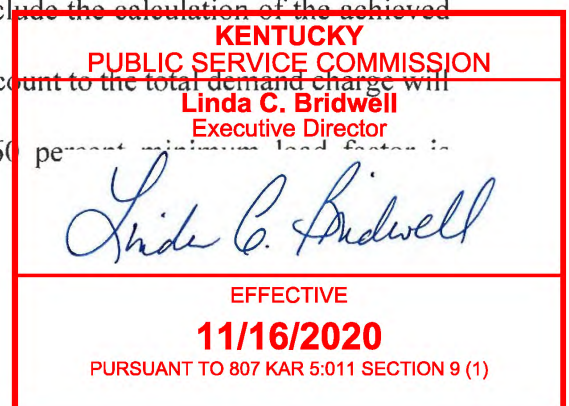
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discount rates shall apply to the demand charge for the contract demand. Any credits provided under any other demand-related rider shall be applied before the discounts as described above are applied. If during the discount period the Customer elects to take service under the terms and conditions of another tariff offered by the Cooperative that does not correspond to EKPC's Rate G – Special Electric Contract Rate, the discount shall be applied to the demand charges of the EKPC rate schedule that corresponds to the Cooperative's tariff offering.

- b. **Load Factor.** The Customer agrees to maintain a minimum load factor of 60 percent during the months of the five (5) year discount period, however, the Customer may fail to achieve the 60 percent minimum load factor for no more than ten (10) months, in total, during the discount period. During those ten (10) months, the Customer will continue to receive the discount to the total demand charge. EKPC shall notify the Cooperative and the Cooperative shall notify the Customer of each month the Customer has failed to achieve the 60 percent minimum load factor yet continued to receive the discount to the total demand charge. The notification will include the calculation of the achieved load factor for the month. Failure to maintain the 60 percent minimum load factor in any month beyond the ten (10) months will result in the suspension of the discount to the total demand charge for that month. EKPC shall notify the Cooperative and the Cooperative shall notify the Customer in a month where the discount to the total demand charge has been suspended. The notification will include the calculation of the achieved load factor for the month in question. The discount to the total demand charge will resume in the next subsequent month the 60 percent minimum load factor is



achieved. However, the discount will resume at the discount rate applicable to the month of the discount period and failure to meet the 60 percent minimum load factor in any month will not extend the discount period. For purposes of this Agreement, load factor is defined by the formula:

$$\text{Load Factor} = \text{billed kWh} / (\text{billed kW} \times 730)$$

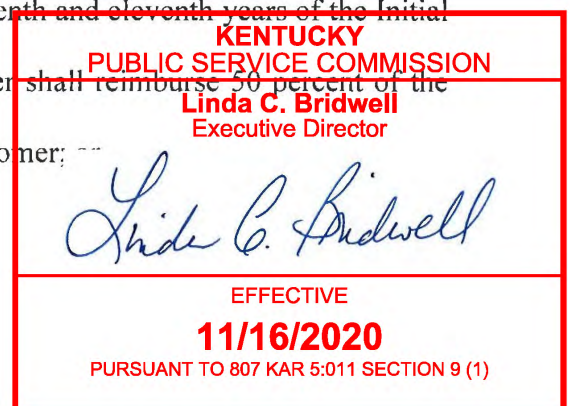
where billed kWh and billed kW shall be the energy usage and demand as billed by EKPC and 730 reflects the average number of hours in a month.

- c. **Capacity Purchases.** The Customer agrees that EKPC and the Cooperative can only offer an EDR during either periods of excess capacity or the additional capacity needs have been secured or are capable of being economically secured through a market purchase agreement. If additional capacity is secured through a market purchase, then the Customer will be responsible for the costs of the market purchase agreement. The costs of the market purchase agreement will be disclosed separately on the Customer's monthly bill. The determination of the cost associated with a market purchase will be based on EKPC's participation in the PJM market and, in light of the Customer's need to rely upon renewable power, will likely be obtained through bilateral power purchase arrangements between EKPC and a renewable energy provider. If the total load requirement for EKPC in any year is not increased with the inclusion of the Customer's load, there will be no purchase or arrangement for additional capacity and consequently no additional capacity charges for that year.

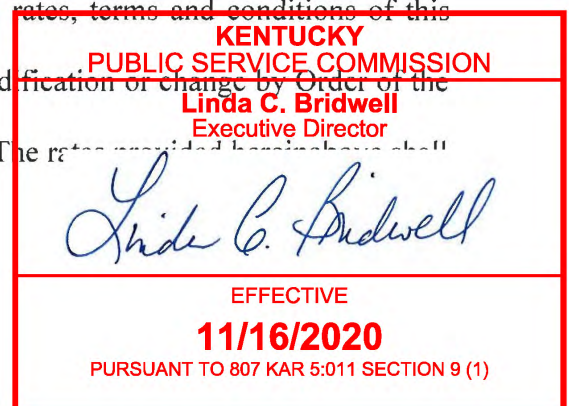
- d. **Other EDR Customer Specific Costs.** Any additional EDR customer-specific fixed costs shall be recovered over the Initial Term of the Agreement.



- e. **Minimum Bill.** The minimum bill will equal the minimum bill as defined in the Cooperative's Rate G – Large Industrial Customer, plus the cost of any applicable capacity purchases and other customer specific costs, as described previously in this Agreement.
- f. **Early Termination Penalties.** In the event that the Customer ceases operations at the Facility or otherwise stops taking service at the Facility within the Initial Term of this Agreement and EKPC and Cooperative have fulfilled all obligations hereunder to provide the renewable resources, the Customer shall reimburse to EKPC and the Cooperative a portion of the EDR credits received by the Customer. The EDR credit reimbursement shall be due within 30 days from the date the Customer ceases operations at the Facility or stops taking service at the Facility. As used in this Agreement, EDR credits refers to the total dollar difference between the demand charges actually paid by the Customer compared to the demand charges that would have been paid without the EDR discount. The Early EDR Termination Payment shall be determined as follows:
- (i) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility during the first six (6) years of the Initial Term of this Agreement, the Customer shall reimburse 75 percent of the total EDR credits received by the Customer;
- (ii) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility between the seventh and eleventh years of the Initial Term of this Agreement, the Customer shall reimburse 50 percent of the total EDR credits received by the Customer;

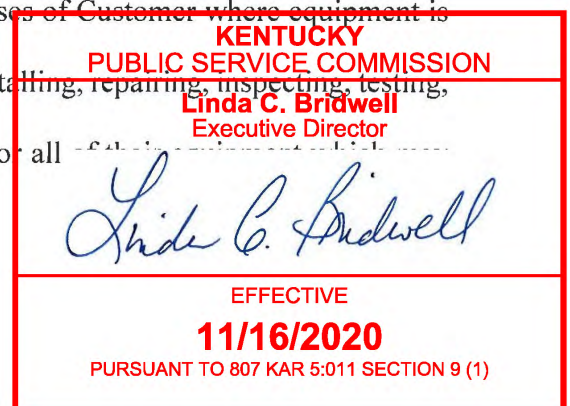


- (iii) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility in the twelfth year of the Initial Term or thereafter, no reimbursement of EDR credits received shall be required.
- g. **Scheduled Maintenance.** The Parties acknowledge that Customer will typically schedule two maintenance periods each calendar year. Customer agrees to schedule one of these maintenance periods in either the month of July or August each year. Should the Customer be unable to schedule a maintenance outage in either of these months in any given year, it shall inform EKPC and Cooperative as soon as advance as is possible and neither EKPC nor Cooperative shall unreasonably withhold consent to a change in the maintenance period for that calendar year.
6. **Transmission.** EKPC shall arrange and be responsible for all transmission service for the renewable energy contemplated to be purchased hereunder and shall deliver or cause to be delivered such renewable energy to the point(s) of delivery of all current and future non-renewable energy sales to the Cooperative and from which the Cooperative's electric distribution system currently delivers energy to the Customer. EKPC shall schedule or arrange for scheduling services with its transmission providers to deliver the renewable energy to said point(s) of delivery.
7. **Distribution.** The Cooperative shall arrange and be responsible for all distribution service for the renewable energy contemplated to be purchased hereunder and shall deliver or cause to be delivered such renewable energy to the Customer's meter(s).
8. **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 Term and thereafter. The rates provided herein shall



be adjusted to reflect any Commission-approved changes in applicable tariff rates, including any changes in the base rates approved for EKPC and/or Cooperative on or after the Effective Date of this Agreement.

9. **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 12 below. Customer agrees to operate its Facility and equipment to reduce voltage fluctuations or harmonic distortions. 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 equipment 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 harmonic distortions shall be corrected within twenty-four (24) hours after written notice from Cooperative to Customer stating the voltage fluctuation or harmonic distortion problems.
10. **Right of Access.** The duly authorized agents and employees of EKPC and/or Cooperative shall have access at all reasonable hours to the premises of Customer where equipment is owned by Cooperative or EKPC for the purpose of installing, repairing, inspecting, testing, operating, maintaining, renewing or exchanging any or all of the equipment which is



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 and any risk taken by any other Party shall accept and insure the risk presented by its own employees, agents, or subcontractors onsite. The employees, agents, and 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.

11. **Right of Removal.** Any and all equipment, apparatus, devices, or facilities placed or installed, or caused to be placed or installed, by any of the Parties hereto on or in the premises of another 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 thereof shall have the right to enter upon the premises of the other upon notice and approval of the other Party and shall within a reasonable time 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

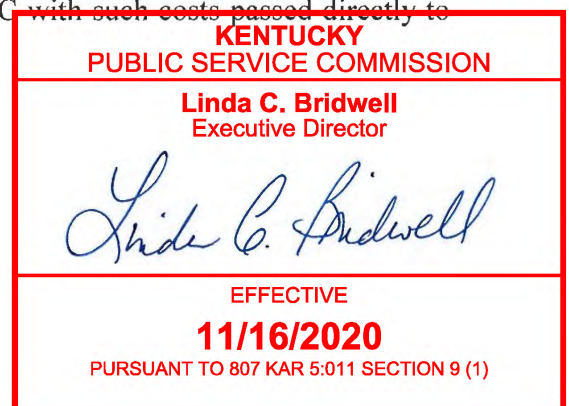


of any such removal, the owner shall perform restoration as required for any damage caused by said removal.

12. **Prudent Utility Practice.** EKPC and Cooperative 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, as adopted by the Commission. The Customer will adhere to, and comply with, all applicable building electric codes, statutes, rules and regulations and maintain their electrical facilities in a prudent and reasonable manner.

13. **Billing and Payment.**

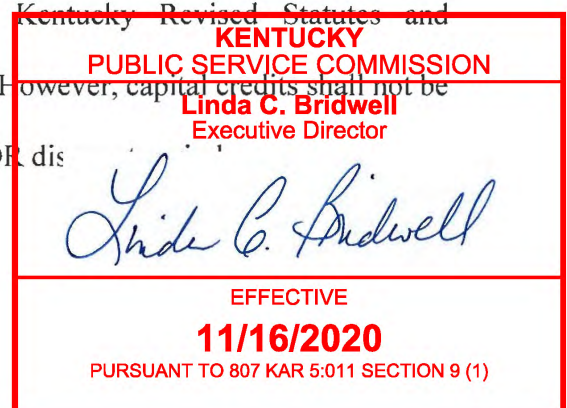
- a. **Regular Monthly Billing.** EKPC shall invoice the Cooperative for all renewable energy delivered to the Cooperative as part of the invoice it sends to the Cooperative for all non-renewable energy purchases by the Cooperative. The Cooperative shall then invoice the Customer for all renewable energy delivered to the Customer as part of the invoice it sends to the Customer for all non-renewable energy purchases by the Customer. In both cases, the invoice shall provide sufficient information to demonstrate the manner in which the charges for renewable energy sales were calculated and to ensure adherence to Customer's prior request in regard to volume and pricing. Any and all RECs purchased by EKPC to offset the purchase of non-renewable energy by Customer from Cooperative, shall be similarly billed to EKPC with such costs passed directly to Customer on a monthly basis.



- b. **Due Date.** Payment for electric power and energy furnished hereunder shall be due and payable at the office of Cooperative monthly. If Customer shall fail to pay any such bill, 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, or any other applicable, tariffs. All amounts unpaid when due shall be subject to a charge for late payment, as provided in EKPC's and Cooperative's approved tariffs, as applicable.
- c. **Failure to Take Delivery.** If Customer fails to accept all or part of the renewable energy acquired or generated by EKPC or Cooperative, or to pay for any RECs acquired and retired by EKPC and 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 renewable 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 renewable energy at the best market price attainable.

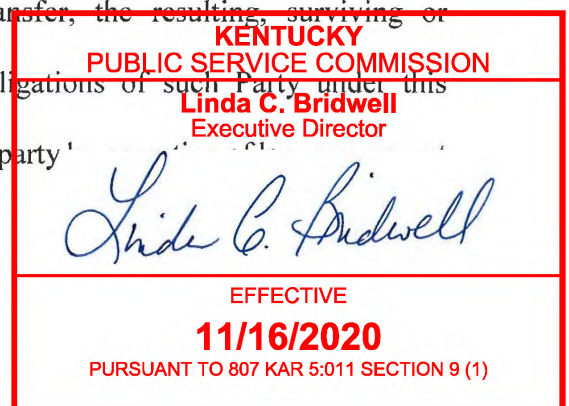


14. **Meter Testing and Billing Adjustment.** EKPC shall test and calibrate meters, or cause them to be tested and calibrated, by comparison with accurate standards at intervals of twenty-four (24) months. EKPC shall also make, or cause to be made, special meter tests at any time during normal business hours at Customer's request. The costs of all tests shall be borne or provided for by EKPC, provided, however, that if any special meter test made by Customer's request shall disclose that the meters are recording accurately Customer shall reimburse EKPC 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 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 MW 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 EKPC upon request from the Customer.
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 the Kentucky Revised Statutes, and by Cooperative's Articles of Incorporation and Bylaws. Customer shall participate in capital credits of Cooperative in accordance with the Kentucky Revised Statutes and Cooperative's Articles of Incorporation and Bylaws. However, capital credits shall not be recorded for the Customer during the five (5) year EDR dis



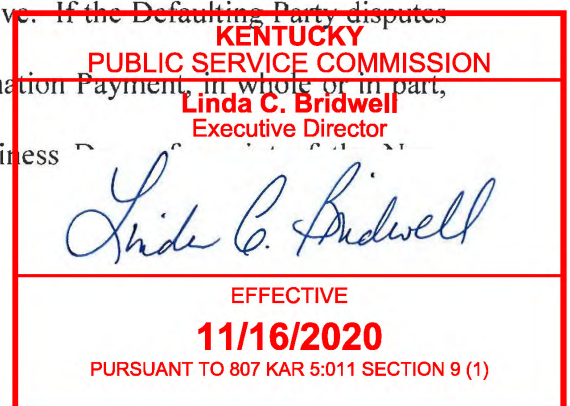
16. **Events of Default.** An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- 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 the renewable energy and/or RECs, 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. a downgrade in the Customer’s Credit Rating that is not remedied by the posting of adequate Performance Assurance, if required, within twenty (20) days of receiving the lower Credit Rating;
- e. such Party becomes bankrupt; or
- f. 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.



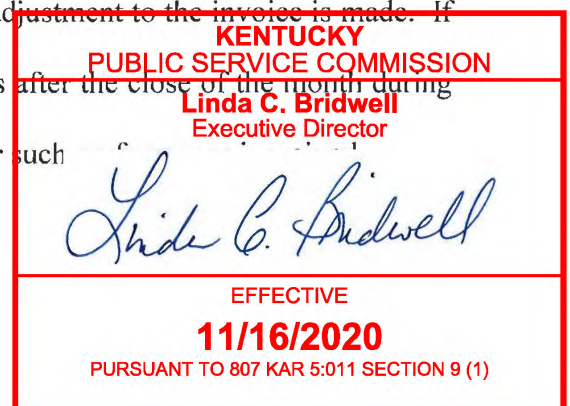
to an agreement reasonably satisfactory to the other Party. Notwithstanding this provision, parties agree that Customer shall not be in default if it is merged or consolidated with or acquired by an entity or entities in which control or majority interest remains in an affiliate, parent, or subsidiary 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 23 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 30 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 Non-Defaulting Party. The 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 after such notice is effective, provide a written statement explaining in reasonable detail the basis for its dispute.



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 two percent (2%) 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 by the Party receiving such 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



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 renewable 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.

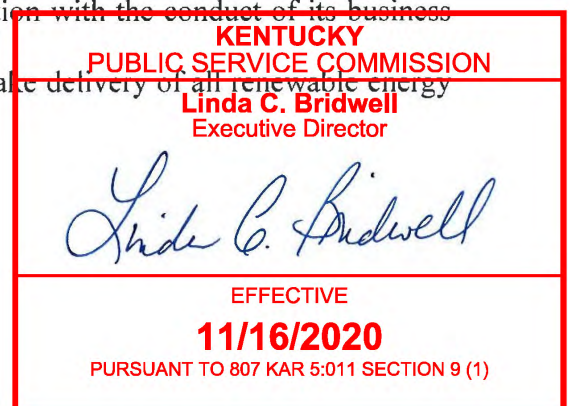
20. **Representations and Warranties.** Each Party represents and warrants to the other Parties that:

- a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- b. it has all 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 the signatories 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 is appropriate or proper for it 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 renewable energy referred to herein; and



j. the material economic terms of this Agreement were and are subject to individual negotiation by the Parties.

21. **Disclaimer and Force Majeure.** Customer understands and acknowledges that the generation of renewable energy and the sale of renewable energy is dependent upon numerous factors, including many which are beyond the control of EKPC and the Cooperative. EKPC and the Cooperative shall not be responsible or liable for any disruption or prevention of the production of renewable energy from any generation resource that is directly attributable to: (a) natural events such as acts of God, landslides, lightning, eclipses, weather patterns, earthquakes, fires, storms or the like; (b) interruption and/or curtailment of transmission facilities of third-parties; (c) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (d) governmental actions such as necessity for compliance with any court or administrative order, law, statute, ordinance, regulation, order, or policy having the effect of law promulgated by a governmental authority having jurisdiction. In the event of any inability by EKPC or the Cooperative to acquire or deliver the renewable energy contemplated to be purchased herein, the Customer agrees to accept non-renewable energy from the Cooperative under the terms and conditions of the Cooperative's tariffs and rate schedules in effect at such time(s). Any such purchases shall be offset by the purchase and retirement of RECs by EKPC on behalf of the Customer.

22. **Limitation of Liability.** EXCEPT AS MAY BE SET FORTH EXPRESSLY HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT EKPC AND THE COOPERATIVE HAVE MADE NO SPECIFIC OR GENERAL REPRESENTATIONS OR WARRANTIES REGARDING THE RENEWABLE

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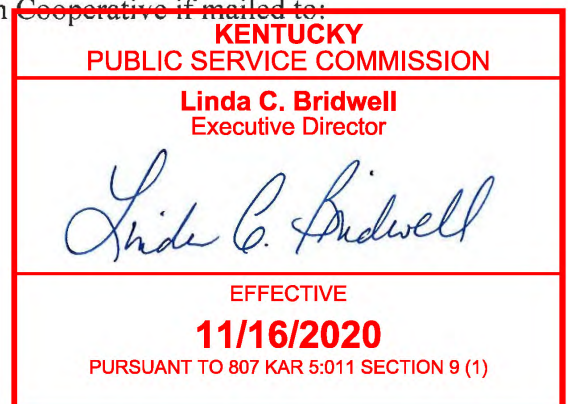
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ENERGY TO BE PURCHASED HEREBY OR ANY FACILITIES ASSOCIATED WITH GENERATING, TRANSMITTING OR DISTRIBUTING SAME, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT ANY REPRESENTATIONS AND WARRANTIES HAVE BEEN 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.

23. **Notices.** All notices, requests, consents, and other communications required under this Agreement shall be in writing and will be mailed to the mailing address for each Party as set forth below. Notices will be deemed delivered upon the earlier of: (a) the date of actual receipt, with a copy thereof being sent concurrently by certified or registered mail, return receipt requested; (b) three (3) Business Days after being deposited in certified or registered mail, return receipt requested, postage prepaid; or (c) the following Business Day after being delivered to a reputable overnight courier service.

a. Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served on Cooperative if mailed to:



Mr. Jerry Carter
President and Chief Executive Officer
Inter-County Energy Cooperative Corporation
1009 Hustonville Road
Danville, KY 40422

- b. Any such notice, demand or request shall be deemed properly given or served on Customer if mailed to acting Director of Whiskey & Energy, currently:

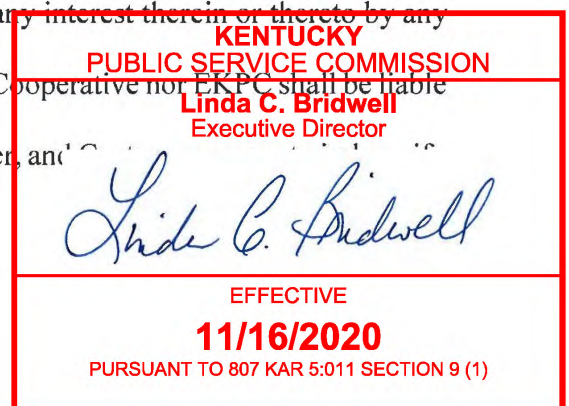
Timothy Wenzel, Director Whiskey & Energy
Diageo Americas Supply, Inc
24440 West 143rd Street
Plainfield, IL 06544

- c. Any such notice, demand or request shall be deemed properly given or served on EKPC if mailed to:

David Smart, General Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
Winchester, KY 40391

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 Parties, in writing, of such change.

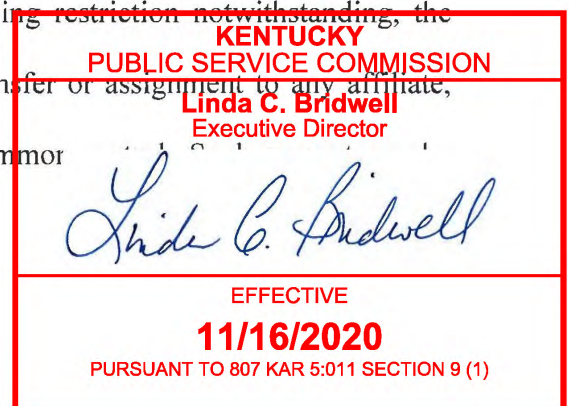
24. **Title and Risk of Loss.** Title to and risk of loss related to the renewable energy acquired herein shall transfer: (a) from EKPC to the Cooperative at the delivery point(s) for all energy delivered to the Cooperative currently and in the future; and (b) from the Cooperative to the Customer at the Customer's meter. EKPC and Cooperative both warrant that they will deliver the renewable energy to the Customer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Customer's meter. Neither Cooperative nor EKPC shall be liable for loss or damage to any person or property whatsoever, and



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.

25. **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, or become defective through acts of God, Governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, or any other cause beyond the reasonable control of Cooperative, it shall not be liable therefor or for damages caused thereby. From time to time, electric supply interruption may be required to perform maintenance on equipment or machinery that cannot be maintained while energized. Cooperative and/or EKPC will endeavor to coordinate with Customer to minimize the impact for such an event.

26. **Successors in Interest – Assignment.** The terms and conditions of this Agreement shall inure to and be binding upon the parties, together with their respective successors in interest. The Customer may not transfer or assign any obligation, right, liability, or credit arising under this Agreement from one account or service address to another account or service address. The Customer may not transfer, assign, convey, sell or donate this Agreement to any other person unless EKPC and the Cooperative have both provided their express written consent to such action. The foregoing restriction notwithstanding, the Parties agree that the Customer may make such transfer or assignment to any affiliate, parent, subsidiary, or other entity or entities under common



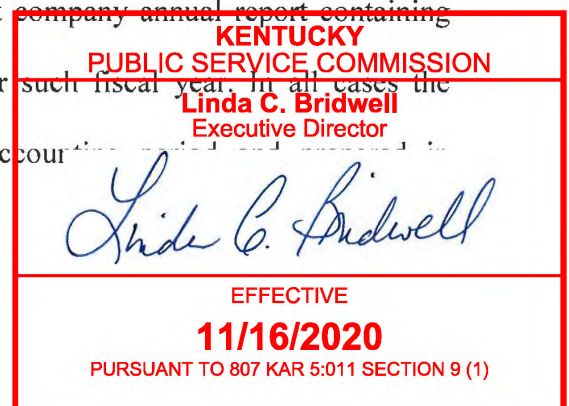
granted or withheld in the sole discretion of EKPC and the Cooperative. EKPC and Cooperative may assign this Agreement to the Rural Utilities Services (“RUS”) and/or any other lenders to EKPC or Cooperative without such consent.

27. **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 Paragraph, 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 provision, no event of force majeure shall relieve Customer of the obligation to pay the minimum monthly charges provided herein or in the attached tariffs

28. **Security and Guaranty.**

- a. **Financial Information.** If requested by any other Party to this Agreement, a Party shall deliver within one hundred twenty (120) days following the end of each fiscal year, a copy of the Party’s or Party’s parent company annual report containing audited consolidated financial statements for such fiscal year. In all cases the statements shall be for the most recent accounting period ended on or before the date of the request.



accordance with generally accepted accounting principles (*i.e.* GAAP, IFRS and the RUS USoA); provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Party providing such information diligently pursues the preparation, certification and delivery of the statements. Each Party shall provide concurrent notice to the other Parties in the event of a material negative change in its financial condition.

b. **Obligation to Provide Performance Assurance.**

i. **By Customer.** The Customer, or its Guarantor, shall provide Performance Assurance acceptable to Cooperative and EKPC in an amount equal to:

- (A) the current sum of the Early Renewable Energy Termination Payment if: (1) the Customer's highest Credit Rating is less than "BBB" from Standard & Poor's ("S&P") or Fitch or "Baa2" from Moody's; (2) an Event of Default on the part of the Customer has occurred; or (3) the Customer has no Credit Rating from S&P, Fitch or Moody's;
- (B) half the current sum of the Early Renewable Energy Termination Payment if the Customer's highest Credit Rating is between "A" from S&P or Fitch or "A2" from Moody's and "BBB" from S&P or Fitch or "Baa2" from Moody's, inclusive; or
- (C) zero if the Customer's highest Credit Rating is better than "A" from S&P or Fitch or "A2" from Moody's.

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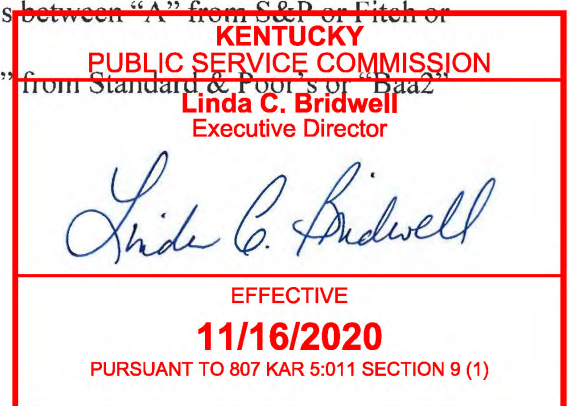
(D) If Performance Assurance is required to be posted pursuant to subparagraphs (A) through (C) herein, the Early Renewable Energy Termination Payment shall be calculated quarterly. If Customer provides Performance Assurance via an irrevocable standby letter of credit, the amount will be adjusted quarterly and EKPC will release the excess Performance Assurance as appropriate.

For purposes of this Agreement, "Credit Rating" means with respect to any entity, on any date of determination, the respective rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody's, or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its issuer rating by S&P, Fitch or Moody's.

ii. **By EKPC.** EKPC shall provide Performance Assurance acceptable to Customer in an amount equal to:

(A) the current sum of the Supplier Early Termination Payment if: (1) EKPC's highest Credit Rating is less than "BBB" from Standard & Poor's ("S&P") or Fitch or "Baa2" from Moody's; or (2) an Event of Default on the part of EKPC has occurred;

(B) half the current sum of the Supplier Early Termination Payment if EKPC's highest Credit Rating is between "A" from S&P or Fitch or "A2" from Moody's and "BBB" from Standard & Poor's or "Baa2" from Moody's, inclusive; or



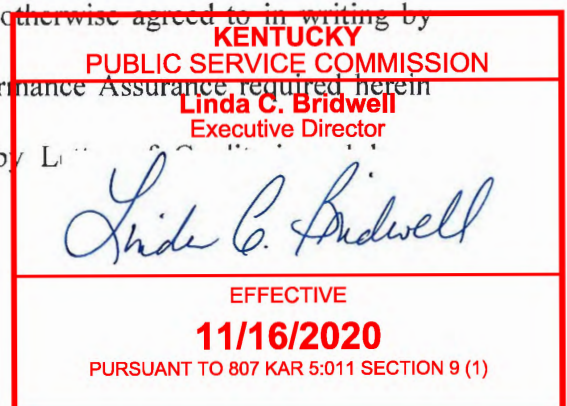
(C) zero if the EKPC's highest Credit Rating is better than "A" with S&P or Fitch or "A2" from Moody's.

(D) If Performance Assurance is required to be posted pursuant to subparagraphs (A) through (C) herein, the Supplier Early Termination Payment shall be calculated quarterly. If EKPC provides Performance Assurance via an irrevocable standby letter of credit, the amount will be adjusted quarterly and Customer will release the excess Performance Assurance as appropriate.

For purposes of this Agreement, "Credit Rating" means with respect to any entity, on any date of determination, the respective rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody's, or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its issuer rating by S&P, Fitch or Moody's.

iii. **Performance Assurance Threshold.** Notwithstanding the provisions of subparagraphs i. and ii. above, no Performance Assurance shall be required to be posted by either Customer or EKPC if the current sum of the Early Renewable Energy Termination Payment or the Supplier Early Termination Payment, as applicable, is equal to or less than \$250,000.

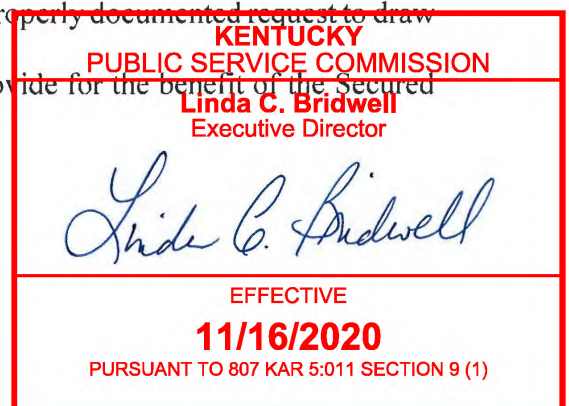
c. **Form of Performance Assurance.** Unless otherwise agreed to in writing by EKPC and Customer, the form of any Performance Assurance required herein shall be an irrevocable, transferable, standby Letter of Credit.



commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with: (i) a Credit Rating of at least (a) "A-" by S&P or "A3" by Moody's; and (ii) having a capitalization of at least \$1,000,000,000. The Letter of Credit must be substantially in a form set forth in Appendix B hereto, with such changes to the terms in that form as the issuing bank may require and as may be reasonably acceptable to the beneficiary thereof. The costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

d. **Administration of Performance Assurance.** Any Letter of Credit shall be subject to the following provisions:

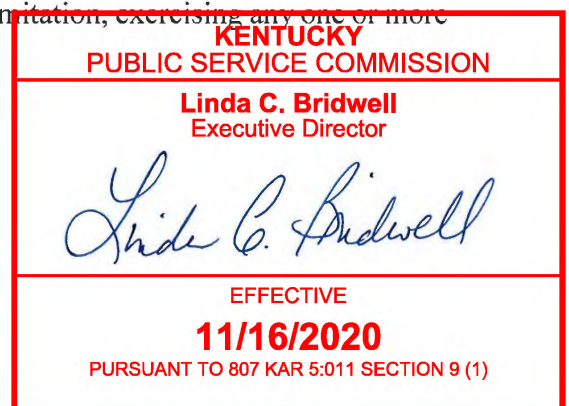
- (i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall: (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit; (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit at least twenty (20) business days prior to the expiration of the outstanding Letter of Credit; and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured



Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party within one (1) business day after such refusal;

- (ii) The Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit; and
- (iii) With respect to each such Letter of Credit, the Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, but only in strict adhere to the terms set forth in the Letter of Credit, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of this Paragraph 28.

- e. **Exercise of Rights Against Performance Assurance.** In the event that: (1) an Event of Default with respect to the Pledging Party has occurred and is continuing, and all required notices have been given and any cure periods set forth in this Agreement have run; or (2) the Agreement is terminated by any Party prior to the expiration of the term, a Secured Party may exercise any one or more of the rights and remedies provided under the Agreement or as otherwise available under applicable Kentucky law, including, without limitation, exercising any one or more of the following rights and remedies:



- (i) all rights and remedies available to a secured party under the Kentucky Uniform Commercial Code and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;
- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against, and in satisfaction of, any amount payable by the Pledging Party in respect of any of its obligations; and
- (iii) the right to draw in strict adherence with the terms on any outstanding Letter of Credit issued for its benefit. A Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

f. **Encumbrance; Grant of Security Interest.** As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Parties, and hereby grants to the other Parties a present and continuing security interest in and to, and a general first lien upon and right of setoff against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Parties and each Party agrees to take such action as the other Parties reasonably request in order to perfect

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the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

g. **Guaranty.** Customer's obligations with regard to payment and the provision of Performance Assurance may be assumed by an affiliated guarantor of the Customer who shall be permitted to use its own Credit Rating from Standard & Poor's, Fitch or Moody's for purposes of calculating any Performance Assurance amounts due hereunder. Any such Guaranty shall be in a form substantially similar to that set forth in Appendix C and that is acceptable to EKPC and Cooperative in their respective sole and exclusive discretion. The Customer may substitute an affiliated entity as its Guarantor after having received the express written consent of EKPC and Cooperative, which shall not be unreasonably withheld, to do so. The existence of a Guarantor shall not relieve or excuse the Customer from any obligations set forth in this Agreement.

h. **Customer Deposit.** In addition to all other payment and Performance Assurance obligations, the Customer shall, prior to December 31, 2020 (and by December 31st of each subsequent year the Agreement is in effect):

(i) Pay to Cooperative a sum equal to the amount necessary to purchase a bond or secondary insurance policy equal to the amount of two times the estimated monthly average Rate G billings once the Customer's facilities have reached their designed production; or

(ii) Provide a surety bond issued by any Certified Company listed on the most recent version of the U.S. Department of the Treasury's Circular 570 naming Cooperative as the beneficiary thereof and in an amount equal to

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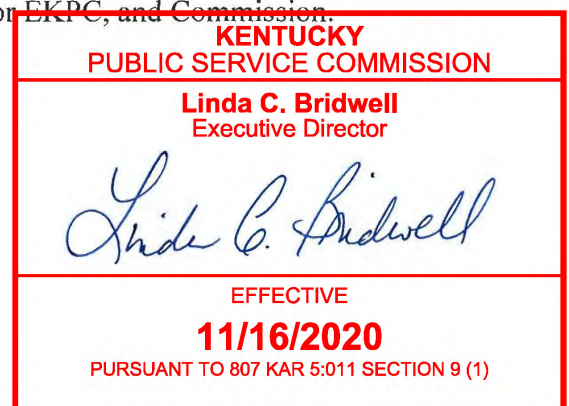
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two times the estimated monthly average Rate G billings once the Customer's facilities have reached their designed production.

29. **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 to secure the same. If such approval shall not be received from the Commission on or before November 30, 2020, any Party may void this Agreement without further liability, except to the extent any liability has already accrued.
30. **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.
31. **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 or EKPC, and Commission.



32. **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. **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 REPRESENTATIVE, AGENT OR 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

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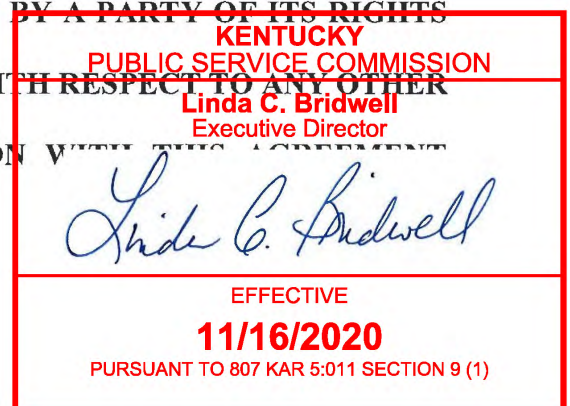
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OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

- d. **Jurisdiction.** Each party agrees that any suit, action, dispute or other proceeding arising out of the Agreement or any transaction contemplated by the Agreement shall be heard in, and hereby irrevocably submits to the exclusive jurisdictions of the Circuit Court of Clark County or Marion County, Kentucky, and the United States District Court for the Eastern District of Kentucky, Lexington Division, and the related appellate courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth in the Agreement shall be effective service of process for any actions, suit, dispute or other proceeding described herein. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in the aforementioned courts and the related appellate courts, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.
- e. **Governing Law.** This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the Commonwealth of Kentucky, without regard to the principles of conflicts of laws thereof.
- 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.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.
- 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



EAST KENTUCKY POWER COMPANY, INC.

BY: *[Signature]*

TITLE: Pres./CEO

DATE: Jun 25, 2020

INTER-COUNTY ENERGY COOPERATIVE CORPORATION

BY: *Jerry W. Carter*

TITLE: President and CEO

DATE: Jun 25, 2020

DIAGEO AMERICAS SUPPLY, INC.

BY: *Marsha McIntosh Hamilton*

TITLE: VP NA Supply Procurement

DATE: Jun 24, 2020



APPENDIX A

RENEWABLE ORDER SUMMARY

Customer's Average Annual Energy Consumption (Estimated) =

July 1, 2021 – June 30, 2022: 105,000 MWhs per year

July 1, 2022 – June 30, 2023: 105,000 MWhs per year

July 1, 2023 – through remainder of initial Term: 175,000 MWhs per year

Amount of Renewable Energy (Renewable Resources Plus RECs) to be Purchased =
100% of Average Annual Energy Consumption estimated above and pursuant to
Paragraph 4.

Types of Renewable Energy to be Purchased (check all that apply):

☒ Solar

Initial: 330 Panels from EKPC's Cooperative Solar One

Additional: _____

☒ Wind

_____ Hydro

_____ Landfill Methane Gas

_____ Biomass



APPENDIX B

FORM OF LETTER OF CREDIT

[ISSUING BANK'S LETTERHEAD]

DATE OF ISSUE:

IRREVOCABLE STANDBY DOCUMENTARY CREDIT NO. [-]

BENEFICIARIES:

EAST KENTUCKY POWER COOPERATIVE, INC.
4775 LEXINGTON ROAD
WINCHESTER, KY 40391

INTER-COUNTY ENERGY COOPERATIVE CORPORATION
1009 HUSTONVILLE ROAD
DANVILLE, KY 40422

APPLICANT; [NAME AND ADDRESS]

AMOUNT: [-]

DATE AND PLACE OF EXPIRY: [-] AT COUNTER OF ISSUING BANK

LADIES AND GENTLEMEN:

WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT, WITH REFERENCE NUMBER [NUMBER] ("**STANDBY LETTER OF CREDIT**"), IN FAVOR OF EAST KENTUCKY POWER COOPERATIVE, INC. AND INTER-COUNTY ENERGY COOPERATIVE CORPORATION (EACH A "**BENEFICIARY**"), AT THE REQUEST AND FOR THE ACCOUNT OF [NAME OF APPLICANT] ("**APPLICANT**"), IN THE MAXIMUM AGGREGATE AMOUNT OF \$[AMOUNT].

WE UNDERTAKE TO EACH BENEFICIARY TO HONOR THE BENEFICIARY'S DEMAND FOR PAYMENT OF AN AMOUNT AVAILABLE UNDER THIS STANDBY LETTER OF CREDIT, UPON PRESENTATION OF A DEMAND FOR PAYMENT IN THE FORM OF THE ANNEXED DEMAND FOR PAYMENT ATTACHED HERETO AS EXHIBIT A, AT THE FOLLOWING PLACE FOR PRESENTATION: **HSBC BANK USA, N.A. GLOBAL TRADE AND RECEIVABLES FINANCE (GTRF) TRANSACTION SERVICES, 452 FIFTH AVENUE, NEW YORK NY, 10018 ON OR BEFORE** **KENTUCKY PUBLIC SERVICE COMMISSION**

THE EXPIRATION DATE OF THIS STANDBY LETTER OF CREDIT IS [DATE].

Linda C. Bridwell
Executive Director



EFFECTIVE

11/16/2020

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

WE UNDERTAKE TO MAKE PAYMENT TO A BENEFICIARY, UNDER THIS STANDBY LETTER OF CREDIT WITHIN THREE BUSINESS DAYS OF RECEIPT BY US OF A PROPERLY PRESENTED DEMAND FOR PAYMENT. THE BENEFICIARY SHALL RECEIVE PAYMENT FROM US BY WIRE TRANSFER TO A BANK ACCOUNT OF THE BENEFICIARY, AS DESCRIBED IN THE DEMAND FOR PAYMENT.

ANY ONE BENEFICIARY OR COMBINATION OF BENEFICIARIES, ACTING INDIVIDUALLY OR COLLECTIVELY, MAY DRAW ON THIS LETTER OF CREDIT IN FULL OR IN PART, AND ANY ACTION TAKEN BY ANY OR ALL BENEFICIARIES HEREUNDER SHALL BIND EACH OF THEM. PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS STANDBY LETTER OF CREDIT. THE AGGREGATE AMOUNT AVAILABLE TO ALL BENEFICIARIES UNDER THIS STANDBY LETTER OF CREDIT AT ANY TIME SHALL BE THE FACE AMOUNT OF THIS STANDBY LETTER OF CREDIT, LESS THE AGGREGATE AMOUNT OF ALL PARTIAL DRAWINGS PREVIOUSLY PAID TO ANY BENEFICIARY AT SUCH TIME.

THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

PLEASE SEND ALL CLAIMS AND CORRESPONDENCE TO THE FOLLOWING ADDRESS:

HSBC BANK USA, N.A.,
GLOBAL TRADE AND RECEIVABLES FINANCE (GTRF)
TRANSACTIONS SERVICES
452 FIFTH AVENUE
NEW YORK, NY 10018

FOR ANY QUERIES, PLEASE CONTACT OUR CLIENT SERVICES TEAM AT:
GTRF.USCS@US.HSBC.COM OR PHONE NO. 1 866 327 0763 OR FAX NO. 1 718 488 4909

HSBC BANK USA, N.A.
NAME AND TITLE

HSBC BANK USA, N.A.
NAME AND TITLE



EXHIBIT A
FORM OF DEMAND FOR PAYMENT

DATE: [DATE OF DRAWING]

LETTER OF CREDIT REFERENCE NUMBER: [NUMBER]

ISSUING BANK:

[NAME AND ADDRESS OF ISSUING BANK]

APPLICANT:

[NAME AND ADDRESS OF APPLICANT]

BENEFICIARY:

[NAME AND ADDRESS OF BENEFICIARY]

THIS DEMAND FOR PAYMENT IS PRESENTED BY [NAME OF BENEFICIARY], THE BENEFICIARY UNDER THE STANDBY LETTER OF CREDIT WITH REFERENCE NUMBER [NUMBER] (THE "**STANDBY LETTER OF CREDIT**"), FOR THE AMOUNT OF \$[AMOUNT], WHICH CONSTITUTES A [FULL/PARTIAL] PAYMENT OF THE FUNDS AVAILABLE TO THE BENEFICIARY UNDER THE STANDBY LETTER OF CREDIT.

UNDER THIS DEMAND FOR PAYMENT, THE BENEFICIARY STATES THAT:

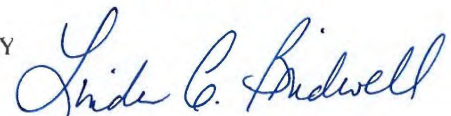
THE APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED, PURSUANT TO OR IN CONNECTION WITH THE INDUSTRIAL POWER AGREEMENT WITH ECONOMIC DEVELOPMENT RIDER AND RENEWABLE ENERGY PURCHASE BETWEEN THE BENEFICIARY AND THE APPLICANT, DATED [DATE OF AGREEMENT] AND AS DETAILED IN THE NOTICE OF DEMAND FOR PAYMENT PROVIDED TO BENEFICIARY BY APPLICANT (A COPY OF WHICH IS ATTACHED HERETO) ("**AGREEMENT**").

THE AMOUNT DEMANDED IS DUE AND UNPAID UNDER THE AGREEMENT AND ALL REQUIRED NOTICES HAVE BEEN GIVEN AND ALL TIME TO CURE PERIODS AS SET FORTH IN THE AGREEMENT HAVE RUN, AND IN ADDITION, BENEFICIARY HAS GIVEN APPLICANT REQUIRED NOTICE OF ITS INTENT TO MAKE DEMAND UNDER THIS STANDBY LETTER OF CREDIT.

THE BENEFICIARY REQUESTS THAT THE AMOUNT DEMANDED ~~BE TRANSFERRED TO THE BENEFICIARY BY WIRE TRANSFER, TO THE FOLLOWING BANK ACCOUNT OF THE BENEFICIARY:~~ **KENTUCKY PUBLIC SERVICE COMMISSION**

[NAME, ADDRESS AND ROUTING NUMBER OF BENEFICIARY]

Linda C. Bridwell
Executive Director



EFFECTIVE

11/16/2020

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

[NAME OF BENEFICIARY'S ACCOUNT]

[NUMBER OF BENEFICIARY'S ACCOUNT]].

[BENEFICIARY'S NAME]

By: _____

Name: _____

Title: _____



APPENDIX C

FORM OF GUARANTY

GUARANTY AGREEMENT

This is a GUARANTY AGREEMENT (the "Guaranty Agreement"), dated and effective as of January __, 2020, by and between: **East Kentucky Power Cooperative, Inc.**, a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, Kentucky 40391 ("EKPC"), **Inter-County Energy Cooperative Corporation**, a Kentucky corporation with its principal offices at 1009 Hustonville Road, Danville, Kentucky 40422 ("Cooperative"); and _____, a _____ corporation with its principal offices at _____ ("Guarantor").

Recitals

WHEREAS Diageo Americas Supply, Inc. ("Diageo Americas Supply, Inc.") has entered into an Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases, dated _____, with EKPC and Cooperative (the "Industrial Power Agreement"), pursuant to which Diageo Americas Supply, Inc. has made certain promises and covenants and has certain payment and performance assurance obligations; and

WHEREAS the Industrial Power Agreement requires Diageo Americas Supply, Inc. to post varying amounts of performance assurance under certain circumstances involving its credit rating from Standard & Poor's or Moody's; and

WHEREAS Diageo Americas Supply, Inc. may use the credit rating of an affiliate who agrees to guaranty its payment and performance assurance obligations under the Industrial Power Agreement; and

WHEREAS, Guarantor, a corporate affiliate, parent, subsidiary or other entity or entities under common control with Diageo Americas Supply, Inc., agrees to be Diageo Americas Supply, Inc.'s guarantor under the Agreement, thereby substituting its credit rating for that of Diageo Americas Supply, Inc. and reducing the amount of performance assurance required under the Industrial Power Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Guaranty of Payment and Performance.** The Guarantor, intending to be bound as an accommodation party for Diageo Americas Supply, Inc., absolutely and unconditionally guarantees to EKPC and Cooperative, their respective successors, endorseees, transferees and assigns, the prompt performance by Diageo Americas Supply, Inc. of all of Diageo Americas Supply, Inc.'s payment and performance assurance obligation under the Industrial Power Agreement (collectively, the "Guaranteed Obligations").

KENTUCKY
PUBLIC SERVICE COMMISSION
Linda C. Bridwell
Executive Director

Linda C. Bridwell

EFFECTIVE

11/16/2020

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

2. **Obligations Unconditional.** This is an unconditional and absolute guaranty of payment and performance. If for any reason Diageo Americas Supply, Inc. fails to observe or perform any obligation, undertaking or condition (whether affirmative or negative) in the Industrial Power Agreement to be performed or observed by Diageo Americas Supply, Inc., or if any event of default occurs thereunder and any required notice has been given and any cure period has run, the Guarantor shall promptly perform or observe or cause to be performed or observed each such obligation, undertaking or condition, or be responsible for the damages occasioned by such default, regardless of any set-off or counterclaim which Diageo Americas Supply, Inc. may have or assert, and regardless of whether or not EKPC or Cooperative, or anyone on their behalf, shall have instituted any suit, action or proceeding or exhausted their remedies or taken any steps to enforce any rights against Diageo Americas Supply, Inc. or any other person to compel such performance or to collect all or any part of such amount pursuant to the provisions of the Industrial Power Agreement, or at law or in equity, or otherwise, and regardless of any other condition or contingency. The liability of the Guarantor shall be for the entire amount of the Guaranteed Obligations, jointly and severally with that of Diageo Americas Supply, Inc.

3. **Waivers and Agreements.** The Guarantor hereby unconditionally:

(a) Waives any requirement that EKPC or Cooperative first seeks to enforce its remedies against Diageo Americas Supply, Inc. or any other person or entity before seeking to enforce this Guaranty Agreement against the Guarantor.

(b) Covenants that the Guarantor's obligations under this Guaranty Agreement will not be discharged except by complete payment and performance of all the Guaranteed Obligations existing under the Industrial Power Agreement.

(c) Agrees that this Guaranty Agreement shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of, the Industrial Power Agreement; or any limitation of the liability of Diageo Americas Supply, Inc. thereunder; or any limitation on the method or terms of payment or performance assurance thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

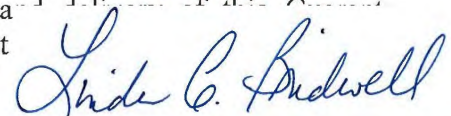
(d) Waives any obligation that EKPC or Cooperative might otherwise have to marshal assets or to proceed against any particular persons or assets in any particular order.

IT IS THE INTENTION OF THE GUARANTOR THAT THIS AGREEMENT CONSTITUTE AN ABSOLUTE AND UNCONDITIONAL GUARANTY IN ANY AND ALL CIRCUMSTANCES, AND THIS GUARANTY AGREEMENT SHALL BE DISCHARGED ONLY BY THE PERFORMANCE IN FULL OF ALL OF THE GUARANTEED OBLIGATIONS.

4. **Waiver of Notice.** The Guarantor waives notice of acceptance of this Guaranty Agreement by EKPC and Cooperative, notice of execution and delivery of this Guaranty Agreement, and any other guaranty agreement, or any instrument

**KENTUCKY
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell
Executive Director**



EFFECTIVE

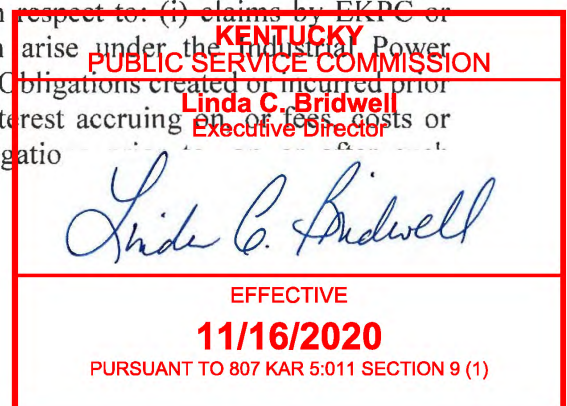
11/16/2020

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

The Guarantor further waives, to the fullest extent permitted by applicable law, each and every notice to which the Guarantor would otherwise be entitled under principles of guaranty or suretyship law. Without limiting the generality of the foregoing, the Guarantor hereby expressly waives all notices and defenses whatsoever with respect to this Guaranty Agreement or with respect to the Guaranteed Obligations, including, but not limited to, notice of EKPC's and Cooperative's acceptance of this Guaranty Agreement or its intention to act, or its action, in reliance upon this Guaranty Agreement; notice of the present existence or future incurring by Diageo Americas Supply, Inc. of any of its Guaranteed Obligations or any other obligations or liability or any terms or amount thereof or any change therein; notice of any default (whether to the Guaranteed Obligations or of any other obligation or liability) by Diageo Americas Supply, Inc. or any accommodation party, co-maker, surety, pledgor, mortgagor, grantor of security, any other guarantor(s) or any other person or entity; notice of the obtaining or release of any guaranty or surety agreement (in addition to this Guaranty Agreement), pledge, mortgage, security interest, assignment, or other security for any of the Guaranteed Obligations; notice of dishonor; notice of nonpayment; notice of acceleration of the Guaranteed Obligations; notice of the making of a demand for payment of the liability or obligations of Diageo Americas Supply, Inc.; presentment and notice of presentment; protest and notice of protest; demand and notice of demand; nonpayment and notice of nonpayment; notice of the disposition of any collateral held to secure the Guaranteed Obligations; and any other notice required by law or otherwise.

5. **Subrogation**. The Guarantor agrees not to exercise any right which may have been acquired by way of subrogation under this Guaranty Agreement, by any payment made hereunder or otherwise, unless and until all of the Guaranteed Obligations, including, but not limited to, all obligations, undertaking or conditions to be performed or observed by Diageo Americas Supply, Inc. pursuant to the Industrial Power Agreement, shall have been performed, observed or paid in full. If any payment shall be made to the Guarantor on account of such subrogation rights at any time when such obligations, undertakings or conditions have not been performed, observed or paid in full, the Guarantor shall pay each and every such amount to EKPC or Cooperative if any amount is outstanding under the Industrial Power Agreement, to be credited and applied upon any of the obligations, undertakings or conditions to be performed, observed or paid pursuant to the Guaranty Agreement.

6. **Maximum Aggregate Liability and Termination**. For purposes of KRS 371.065: (a) the amount of the maximum aggregate liability of the Guarantor hereunder is the sum of all payment and performance assurance obligations of Diageo Americas Supply, Inc. as specified and calculated in the Industrial Power Agreement, plus all interest accruing on the Guaranteed Obligations and fees, charges and costs of collecting the Guaranteed Obligations, including reasonable attorneys' fees; and (b) this Guaranty Agreement shall remain in full force and effect until, and shall terminate on the date which the Industrial Power Agreement also terminates; provided, however, that termination of this Guaranty Agreement on such termination date shall not affect in any manner the liability of the Guarantor with respect to: (i) claims by EKPC or Cooperative against Diageo Americas Supply, Inc. which arise under the Industrial Power Agreement prior to such termination date; or (ii) Guaranteed Obligations created or incurred prior to such termination date, and extensions or renewals of, interest accruing on or less, costs or expenses incurred with respect to, such Guaranteed Obligations prior to such termination date.



7. **Miscellaneous.**

(a) This Guaranty Agreement shall be binding upon the Guarantor and the Guarantor's successors and assigns, and shall inure to the benefit of, and be enforceable by, EKPC and Cooperative and their respective successors, transferees and assigns, including each and every holder of any indebtedness, obligation or liability of Diageo Americas Supply, Inc. constituting all or a portion of the Guaranteed Obligations.

(b) EKPC and Cooperative may enforce this Guaranty Agreement with respect to one or more breaches either separately or cumulatively.

(c) This Guaranty Agreement may not be modified or amended without the prior written consent of each Party hereto, and any attempted modification or amendment without such consent shall be void.

(d) This Guaranty Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws (without regard to the conflicts of laws rules) of the Commonwealth of Kentucky.

(e) If any part, term or provision of this Guaranty Agreement is unenforceable or prohibited by any law applicable to this Guaranty Agreement, the rights and obligations of the Parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this did not contain that particular part, term or provision. A determination in one jurisdiction that any part, term or provision of this Guaranty Agreement is unenforceable or prohibited by law does not affect the validity of such part, term or provision in any other jurisdiction.

(f) The headings in this Guaranty Agreement have been included for ease of reference only and shall not be considered in the construction or interpretation of this Agreement.

(g) This Guaranty Agreement may be signed by each Party hereto upon a separate copy, and in such case, one counterpart of this Guaranty Agreement shall consist of enough of such copies to reflect the signature of each Party.

(h) This Guaranty Agreement may be executed by each party in multiple counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this Guaranty Agreement or its terms to account for more than one such counterpart.

(i) In the event that any of the Guaranteed Obligations arise out of or are evidenced by more than one obligation or liability of Diageo Americas Supply, Inc. to EKPC or Cooperative, this Guaranty Agreement may be enforced as to each separate liability or obligation constituting a Guaranteed Obligation, either separately or cumulatively.

(j) Guarantor acknowledges and agrees that any suit or action arising out of this Guaranty Agreement shall only be



Clark County Kentucky, or Marion County, Kentucky, and the United States District Court for the Eastern District of Kentucky, Lexington Division, and the related appellate court; and Guarantor hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and Guarantor waives any other preferential jurisdiction by reason of domicile. Guarantor hereby irrevocably waives any objection that Guarantor may now or hereafter have to the laying of venue of any suit, action or proceeding brought in any one of the above-described courts or that any such suit, action or proceeding has been brought in an inconvenient forum.

(k) TO THE EXTENT PERMITTED BY APPLICABLE LAW, GUARANTOR HEREBY VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHT GUARANTOR NOW HAS, OR MAY HAVE IN THE FUTURE, TO A TRIAL BY JURY ON ANY CLAIM, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**EAST KENTUCKY POWER
COOPERATIVE, INC.**

By: _____

Title: _____

**INTER-COUNTY ENERGY
COOPERATIVE CORPORATION**

By: _____

Title: _____

[GUARANTOR]

By: _____

Title: _____

