



RENEWABLE ENERGY CERTIFICATES MASTER AGREEMENT

This Renewable Energy Certificates Master Agreement ("Master Agreement") is entered into this 1st day of August 2016, by and between Duke Energy Kentucky, Inc., ("Duke Energy") and L'Oréal USA, Inc. ("Counterparty"). Duke Energy and Counterparty are sometimes herein referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective unless and until both Parties have executed and delivered this Agreement, the latter of which shall be the "Effective Date" of this Agreement.

WHEREAS, the Parties may, from time to time, enter into one or more transactions for the purchase and sale of Renewable Energy Certificates pursuant to the terms set forth in a Confirmation issued subject to the terms and conditions of this Master Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions.** Capitalized terms not defined in this Section 1 or otherwise in the main body of this Agreement shall have the meaning specified in the Confirmation.
 - 1.1. "Account" shall mean a Party's electronic account with the Tracking System, or as otherwise specified in the applicable Confirmation attached hereto.
 - 1.2. "Affiliate" means, in relation to any person, any entity controlled, directly or indirectly, by such person, any entity that controls, directly or indirectly, such person, or any entity directly or indirectly under common control with such person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.
 - 1.3. "Agreement" shall mean this Master Agreement and any Confirmation issued hereunder.
 - 1.4. "Applicable Standard" means, a mandatory or voluntary domestic, international or foreign RPS, renewable energy, or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes as specified in the Transaction Terms set forth in the Confirmation.
 - 1.5. "Bankrupt" means with respect to a Party/entity, such Party/entity that: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (c) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (d) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (e) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or, (f) otherwise becomes bankrupt or insolvent (howsoever evidenced under any applicable statute and/or regulation, or otherwise).
 - 1.6. "Business Day" means a day on which Federal Reserve member banks in New York City are open for business, starting at 8:00 a.m. and closing at 5:00 p.m. Eastern Prevailing Time ("EPT").
 - 1.7. "Buyer" means the Party so identified in the Confirmation attached hereto that is obligated to buy and receive, or cause to buy and receive the applicable Product.
 - 1.8. "Certificate" means a tradable instrument created and issued by the Tracking System representing the REC created by the generation of Energy by the Renewable Energy Resource.
 - 1.9. "Commission" means the Kentucky Public Service Commission.
 - 1.10. "Condition Precedent" shall have the meaning set forth in Section 2.1.
 - 1.11. "Confirmation" shall mean one or more document in the form of Exhibit A attached hereto, that sets forth the specific terms of a transaction formed under and governed by this Master Agreement.

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- 1.12. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, third party transaction costs, and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements that replace the terminated transaction(s), and all legal costs incurred by the Non-Defaulting Party in connection with the termination of the transaction(s).
- 1.13. "EA Reporting Rights" means the right of the reporting person or entity to report that it owns the Environmental Attributes to any Governmental Authority or other party under any compliance, trading, or reporting program, public or private and to any person, customers, or potential customers for including purposes of compliance, marketing, advertising, and/or otherwise.
- 1.14. "Energy" means physical electric energy, expressed in megawatt hours ("MWh") or kilowatt hours ("kWh"), of the character that passes through transformers and transmission wires, where it eventually becomes alternating current three-phase, sixty (60) hertz electric energy delivered at nominal voltage.
- 1.15. "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Renewable Energy Resource, the use of such Energy, and/or such Energy's displacement of conventional Energy generation, including any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Renewable Energy Resource. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and, (3) the reporting rights to these avoided emissions, including EA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Renewable Energy Resource. Environmental Attributes do not include: (i) any Energy; or, (ii) investment, production, or other tax credits, cash grants in lieu of tax credits, and/or deductions associated with the construction, ownership, and/or operation of the Renewable Energy Resource and other financial incentives granted to the Renewable Energy Resource under local, state or federal tax obligations.
- 1.16. "Firm" means, with respect to a transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure.
- 1.17. "Force Majeure" means an event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance is not reasonably within the control of such claiming Party and which by the exercise of due diligence such Party could not have prevented or avoided. Force Majeure shall not include loss or failure of the Seller's supply, Buyer's inability to use or resell the Product purchased hereunder or Seller's ability to sell the Product to a market at a more advantageous price.
- 1.18. "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of the terminated transaction(s), determined in a commercially reasonable manner.
- 1.19. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which it is published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.20. "Letter(s) of Credit" means one or more irrevocable, non-transferable standby letters of credit substantially in the form attached hereto as Attachment B that: (i) is issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Rating Group) and A3 or higher (as rated by Moody's Investor Services, Inc.) with total assets greater than five billion U.S. dollars (\$5,000,000,000); (ii) continues to be issued by an issuer that continuously meets the foregoing requirements while outstanding; and, (iii) permits presentation at a bank located in Charlotte, NC.
- 1.21. "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of the terminated transaction(s), determined in a commercially reasonable manner.
- 1.22. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or a guaranty from an entity having a credit rating of at least BBB- from Standard & Poor's Rating Agency (or "S&P") (or Baa3 from Moody's Investor Services, Inc. (or "Moody's")), or other security acceptable to the Party requesting such Performance Assurance in its sole commercially reasonable discretion.

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- 1.23. "Product" means the Certificates representing the RECs generated by Renewable Energy Resources that meet the requirements set forth in this Agreement and that meet all of the requirements to qualify for the Applicable Standard. One (1) unit of the Product shall represent the REC associated with one (1) megawatt hour (MWh) of Energy generated by the Renewable Energy Resource, which Energy giving rise to the Product shall be generated and physically metered within the Vintage.
- 1.24. "REC Requirements" means the volume of Product needed to meet Buyer's annual renewable energy objectives at Buyer's facilities located in Florence, Kentucky and Walton, Kentucky, in accordance with guidelines mutually agreed by the Parties in writing from time to time.
- 1.25. "Renewable Energy Certificate(s)" or "REC(s)" shall mean all of the Environmental Attributes and EA Reporting Rights associated with one (1) megawatt hour (MWh) of energy generated by the Renewable Energy Resource in compliance with all of the requirements of the Applicable Standard. The REC(s) shall represent all title to and claim over all of the Environmental Attributes associated with the specified MWh of Energy generated by the Renewable Energy Resource.
- 1.26. "Renewable Energy Resource" means a qualifying electric generator that generates Energy and produces the Product using a renewable energy technology and an energy source that can be regenerated in compliance with all of the applicable requirements of the Applicable Standard.
- 1.27. "Renewable Portfolio Standard or "RPS" means a domestic, international, or foreign state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified entities to be generated from renewable energy.
- 1.28. "Seller" means the Party so identified in the Confirmation that is obligated to sell and deliver, or cause to sell and deliver the applicable Product.
- 1.29. "Tracking System" means the verification system specified in the Confirmation that accounts for the generation, sale, purchase, and/or retirement of RECs.
- 1.30. "Vintage" means the calendar period specified in a Confirmation when the Energy associated with the Product, and therefore the Product, was generated; which for purposes of this Agreement shall be the calendar year period starting January 1 of a calendar year through December 31 of the same calendar year.

2. Arrangement and Term

- 2.1. **Condition Precedent.** Counterparty acknowledges Duke Energy must file the Agreement (and any necessary additional documentation or information that may be required by the Commission from time to time) with the Commission, and potentially receive formal approval prior to it becoming effective. It is a condition to the continuing obligations of each Party under this Agreement that no later than twenty (20) Business Days after the Agreement has been executed by both Parties, Duke Energy will submit the Agreement for filing with the Commission for consideration, and if necessary formal approval. Counterparty agrees that Duke Energy will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the Commission. If the Commission issues an order or any other directive to modify or condition any aspect of this Agreement prior to its acceptance, then this Agreement may be terminated by written notice of either Party, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement.
- 2.2. **REC Services.** In accordance with guidelines mutually agreed by the Parties in writing from time to time, Duke Energy will obtain Product for purchase by Buyer in order to meet the REC Requirements (the "REC Services"). In exchange for the REC Services performed by Duke Energy Under this Agreement, Buyer shall pay Duke Energy an annual service charge (the "REC Service Charge") at the rate of [REDACTED]
- 2.3. **Arrangement.** In accordance with the terms and conditions of this Agreement, Seller agrees to sell and deliver the Product to Buyer, and Buyer agrees to purchase and accept delivery of the Product from Seller, as set forth herein and in the Confirmation. Upon Transfer, title to and interest in such Product shall transfer to Buyer, Seller shall cause Transfer in accordance with the applicable rules and procedures relating to the Tracking System.
- 2.4. **Term.** This Master Agreement shall be effective on the Effective Date and shall continue until (a) date on which both Parties have completed the performance of their respective obligations, or (b) it is otherwise earlier terminated pursuant to the terms of the Agreement, the expressly identified provisions, those foregoing or anything to the contrary in the Agreement, the expressly identified provisions, those intended by the Parties to continue, and the applicable provisions of this Agreement shall continue in

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effect after termination or expiration hereof to the extent necessary to provide for accountings, final billing, billing adjustments, and resolution of any billing dispute. Further, notwithstanding anything in the Agreement to the contrary, expiration or termination of the Agreement for any reason shall not relieve either Party of any right or obligation accrued or accruing hereunder prior to such expiration or termination, and no expiration or termination of this Agreement shall affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any expiration or termination.

3. Billing and Payment

- 3.1. Billing. Following completion of delivery of the Product by Seller, the Seller shall render to Buyer an invoice for an amount equal to the (i) Contract Price (as set forth in the Confirmation) multiplied by (ii) the Contract Quantity (as set forth in the Confirmation). Duke Energy shall invoice Buyer for the REC Service Charge on an annual basis, which shall be due and payable within thirty (30) days after the date of the invoice.
- 3.2. Payment and Netting. Buyer shall pay the invoice within thirty (30) days in accordance with the provisions set forth below. Any amounts not paid when due will be deemed delinquent and will accrue interest at the Interest Rate, calculated from and including the due date to but excluding the date the delinquent amount is paid in full. The Parties agree that if the Parties are required to pay any amount on the same Day or in the same Month under this or any other REC agreement, 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 Parties agree that obligations to make payments under this Agreement and/or any other agreement between the Parties may be netted against each other.
- 3.3. Dispute. If either Party disputes in good faith the accuracy of any invoice under this Agreement, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed is subsequently determined to be due, it shall be paid within two (2) Business Days after resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. The provisions of this Section shall survive any intervening termination of this Confirmation.
- 3.4. Taxes. Seller will pay or cause to be paid all taxes imposed by any governmental authority on or with respect to the Product to be transacted upon hereunder arising prior to delivery. Buyer will pay or cause to be paid all taxes on or with respect to the Product at and after delivery (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay taxes that are Buyer's responsibility hereunder, Buyer promptly will reimburse Seller for such taxes, and vice versa. Nothing herein obligates or causes a party to pay or be liable to pay any taxes for which it is exempt under the law.
- 3.5. Wire Transfer. All funds paid under this Agreement shall be rendered in the form of immediately available United States Dollars. Payment, as applicable, shall be made by wire transfer or in other form reasonably requested, to the following accounts:

Duke Energy:
Bank:
Name:
ABA No.:
Account No.:



4. Credit and Performance Assurances

- 4.1. Credit Assurances. Notwithstanding anything to the contrary herein, Duke Energy (the "Requesting Party") may, from time to time, request, in writing, that the Counterparty (the "Posting Party") provide the Requesting Party with Performance Assurance in an amount determined by the Requesting Party in a commercially reasonable manner if at any time the Requesting Party has reasonable grounds for insecurity concerning the Posting Party's ability to perform any of its obligations under the Agreement. Upon receipt of such notice, the Posting Party shall have three (3) Business Days to provide such Performance Assurance to the Requesting Party. In the event that the Posting Party fails to provide such Performance Assurance to the Requesting Party within three (3) Business Days of receipt of notice, then

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the Requesting Party may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law.

4.2. **Financial Information.** If requested by a Party, the other Party or its guarantor (if applicable) shall deliver (i) within 120 Days following the end of each fiscal year, a copy of guarantor's or Party's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. Provided however, in the event that the aforementioned information is available from a publically-available website, the foregoing requirements will be deemed to be satisfied.

4.3. **Grant of Security Interest.** To secure its obligations to the Requesting Party, to the extent the Posting Party delivers Performance Assurance hereunder, the Posting Party hereby grants to the Requesting Party a present and continuing security interest in, and lien on (and right of netting and set-off against), and assignment of, all Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Requesting Party; and, furthermore the Posting Party agrees to take such action as the Requesting Party reasonably requires to perfect the Requesting Party's first-priority security interest in, and lien on (and right of netting and set-off against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Requesting Party (as the Non-Defaulting Party) may do any one or more of the following with respect to the Posting Party (as the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting and set-off against the Posting Party; (iii) draw on any outstanding applicable forms of Performance Assurance issued for the benefit of the Requesting Party; and, (iv) liquidate all Performance Assurance then held by or for the benefit of the Requesting Party free from any claim or right of any nature whatsoever of the Posting Party, including any equity or right of purchase or redemption by the Posting Party. The Requesting Party (as the Non-Defaulting Party) shall apply the proceeds of the Performance Assurance realized upon the exercise of any such rights or remedies to reduce the Posting Party's (as the Defaulting Party) obligations under the Agreement, with the Posting Party remaining liable for amounts owing to the Requesting Party after such application, subject to the Requesting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

4.4. **Set-off.** The Parties agree that, in addition to any rights of set-off a Party may have as a matter of law, upon the occurrence of an Event of Default with respect to the Defaulting Party, the Non-Defaulting Party shall have the right (but shall not be obliged) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party (to the extent allowable under law or regulation) arising under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent) against any obligations of the Non-Defaulting Party (to the extent allowable under law or regulation) owing to the Defaulting Party arising under this Agreement and any other transaction between the Parties.

4.5. **Suspension of Delivery for Insecurity.** Notwithstanding anything to the contrary in this Agreement, in the event that Seller shall have reasonable grounds for insecurity, Seller will not be obligated to Transfer any Product to Buyer until it has received payment in full for such Product. In the event of any such required prepayment, Seller will transfer the Product for which it has been paid to the Buyer on or before the later of (i) two (2) Business Days after its receipt of payment, and (ii) the Delivery Date.

4.6. **Survival.** This Section shall survive any termination or expiration of this Agreement.

5. **Representations and Warranties**

5.1. **Mutual.** Each Party hereby represents and warrants to the other Party as of the Effective Date and upon each delivery of the Product hereunder that:

5.1.1. It is duly organized, validly existing and in good standing under the requirements of law of the jurisdiction of its organization or formation and has all required governmental filings in such jurisdiction and enter into this Agreement;

5.1.2. Subject to the Condition Precedent, it has all authorizations necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder in such authorizations in a timely manner prior to the time that performance is due;

5.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any

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law, contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

5.1.4. Subject to the Condition Precedent, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

5.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

5.1.6. No Event or Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party 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;

5.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate (if applicable), that could materially adversely affect its ability to perform its obligations under this Agreement;

5.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;

5.1.9. It is an "eligible contract participant" as defined in the Commodity Exchange Act; and,

5.1.10. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

5.2. **Seller.** With respect to the Product delivered pursuant to this Agreement, Seller represents and warrants to Buyer hereunder that on the date of this Agreement and upon each Transfer of the Product:

5.2.1. Each unit of Product delivered hereunder has not otherwise been, nor will be sold, retired, claimed, represented as part of any electricity output or sales, or otherwise used to satisfy any renewable energy or emissions obligation elsewhere under any standard, marketplace, or jurisdiction;

5.2.2. The Product will meet the specifications set forth in the Agreement as of each date on which Seller delivers the Product to Buyer;

5.2.3. Each unit of Product was generated during the applicable calendar period set forth in the Agreement;

5.2.4. Seller has provided and conveyed and will provide and convey to Buyer all Environmental Attributes and EA Reporting Rights associated with all Energy generated by the Renewable Energy Resource as part of the Product being delivered to Buyer;

5.2.5. Seller has the right to sell and shall convey good title to each unit of Product to Buyer free and clear of any liens and encumbrances or title defects;

5.2.6. The Product is separate from the Energy generated by the Renewable Energy resource; and,

5.2.7. Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated.

5.3. **Limitation on Representations.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES EXPRESSLY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER ORAL, AND WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND WITHOUT LIMITING THE GENERALITY THEREOF, MAKE NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY AGENCY OR GOVERNMENTAL ENTITY.

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5.4. Survival. This Section shall survive any termination or expiration of this Agreement.

6. Events of Default.

6.1. Each of the following, one or more individually or collectively, shall constitute an event of default under this Agreement ("Event of Default") with respect to such Party that is in violation of this Agreement as set forth below (such Party, the "Defaulting Party"):

6.1.1. Failure by a Party to make, when due, any payment required under this Agreement, if such failure is not remedied within two (2) Business Days after written notice of such failure is given by the other Party;

6.1.2. Other than events specifically covered as separate Events of Default, failure by a Party to perform any significant or material covenant set forth in this Agreement, (other than the failure to deliver or receive, the exclusive remedy (cover costs) for which is provided for herein) and such failure is not cured within five (5) Business Days after written notice provided by the other Party to the Defaulting Party;

6.1.3. A Party or its guarantor (if any) repudiates any material obligation under this Agreement;

6.1.4. Any representation or warranty made herein is not true and complete in any material respect, if such failure is not remedied within two (2) Business Days of written notice of failure given by the other Party;

6.1.5. The Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;

6.1.6. Failure of Counterparty to maintain or provide creditworthiness, Performance Assurance, and disclosures to the extent provided for herein, if such failure is not remedied within two (2) Business Days after written notice of such failure is given by Duke Energy;

6.1.7. The Party consolidates, amalgamates with, 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, (i) the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party, or (ii) the creditworthiness of the Party or the resulting, surviving, transferee or successor entity is materially weaker than that of the Party or such guarantor, as the case may be, immediately prior to such action; or (iii) the benefits of any guaranty fail to extend (without the consent of the other Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement;

6.1.8. The occurrence and continuation of a default, event of default or other similar condition or event in respect of a Party (such Party, the Defaulting Party hereunder) under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money which results in such indebtedness becoming immediately due and payable;

6.1.9. Seller delivers or attempts to deliver any Product sold hereunder (or component thereof) to any entity or person other than to the Buyer; and/or,

6.1.10. A Party becomes Bankrupt.

6.2. Early Termination. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to take any one or more of the following actions in response to such default: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date," defined below) to accelerate all amounts owing between the Parties, upon which date this Agreement shall terminate; (ii) withhold any payments due to the Defaulting Party under this Agreement; and/or (iii) suspend its performance hereunder. Where an Event of Default is specified herein and is governed by a system of law which does not permit termination or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, to the extent permissible under applicable law, an Event of Default and Early Termination Date shall be deemed to have occurred immediately prior to any such event as permissible under applicable law and no prior written notice shall be required. Notwithstanding anything to the contrary herein, all of the remedies

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and other provisions set forth in this section shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, Lien, or other right to which any Party is at any time otherwise entitled, whether by operation of law or in equity, under contract, or otherwise.

6.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall in a commercially reasonable manner (including, without limitation, by reference to the Cover Costs as set forth below) calculate its Gains or Losses and Costs resulting from the termination of each terminated transaction as of the Early Termination Date, aggregate such Gains or Losses and Costs with respect to all terminated transactions and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount (the "Net Settlement Amount") and then notify the Defaulting Party of the Net Settlement Amount owed or owing. The Net Settlement Amount shall be a net present value calculation determined in a commercially reasonable manner. The Net Settlement Amount shall be due only to the Non-Defaulting Party from the Defaulting Party. Payment of the Net Settlement Amount shall be due within two (2) Business Days after the later of the Early Termination Date and the Defaulting Party's receipt of notice of the Net Settlement Amount. The Non-Defaulting Party will not be obligated to pay any Net Settlement Amount to, or otherwise compensate for the economic value of a termination, the Defaulting Party under any circumstances. The Non-Defaulting Party shall not be required to pay to the Defaulting Party any disputed amount until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of the Defaulting Party to make payment to the Non-Defaulting Party under this Agreement or otherwise have been fully performed.

7. **Cover Costs**

7.1. **Exclusive Remedies.** The remedies set forth in this Section shall be a Party's exclusive monetary remedies for the other Party's failure to deliver or receive under a transaction prior to the Non-Defaulting Party's early termination of the transaction(s) hereunder due to an Event of Default or other termination event.

7.2. **Seller's Failure to Deliver.** If Seller fails to deliver all or part of the Contract Quantity pursuant to the Confirmation, and such failure is not excused by Force Majeure or Buyer's failure to perform, then Buyer may elect in its sole discretion to: (i) terminate and liquidate this transaction (in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party); or, (ii) require Seller to pay Buyer within thirty (30) days of invoice receipt, cover costs for such deficiency in delivery, which shall be equal to the positive difference, if any, obtained by subtracting the per unit Contract Price from the per unit Replacement Price (defined below). The invoice for such amount shall include a written statement explaining in commercially reasonable detail the calculation of such amount. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute or replacement for the undelivered Product as those that are not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such substitute Product; or, at Buyer's option, the market price for the units of Product not delivered, as determined in a commercially reasonable manner; provided, however, the market price shall not be greater than the product of (x) the undelivered quantity of Product and (y) the Alternative Compliance Payment (ACP), to the extent an ACP is in effect, as defined by the Applicable Standard, for the applicable period of delivery, and that in no event shall such price include any penalties, stranded costs, or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Seller's liability.

7.3. **Buyer's Failure to Accept Delivery.** If Buyer fails to receive all or part of the Contract Quantity pursuant to the Confirmation, and such failure is not excused by Force Majeure or Seller's failure to perform, then Seller may elect in its sole discretion to: (i) terminate and liquidate this transaction (in which case Seller shall calculate the termination payment in accordance with this Agreement as though it were the Non-Defaulting Party); or, (ii) require Buyer to pay Seller within thirty (30) days of invoice receipt, cover costs for such deficiency in receiving delivery, which shall be equal to the positive difference, if any, obtained by subtracting the per unit Sales Price (defined below) from the per unit Contract Price. The invoice for such amount shall include a written statement explaining in commercially reasonable detail the calculation of such amount. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any costs reasonably incurred by Seller in reselling such un-received Product, or at Seller's option, the market price for the Product not received by Buyer, as determined in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, stranded costs, or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability.

7.4. **Applicable Standard Compliance.** To the extent that the Product is used to satisfy any requirements imposed by various governmental bodies or other entities promulgating renewable energy standards, including, without limitation, pursuant to Applicable Standard, Seller (A) consents to the disclosure of

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Jalina R. Matthews
EXECUTIVE DIRECTOR

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this Agreement, any Confirmations hereunder and any documents provided hereunder to the extent reasonably necessary for Buyer to effectuate delivery hereunder or otherwise comply with applicable renewable energy standards, notwithstanding any agreement between the Parties regarding the protection of confidential information; and (B) agrees to use commercially reasonable efforts to promptly provide to Buyer any documentation related to such Product reasonably requested by Buyer in connection with any reports that Buyer is required to make in satisfaction of its renewable energy requirements. Such documentation may include, without limitation, certain affidavits or certifications required by the relevant governmental body or other entity promulgating renewable standards. Any failure to deliver documents under this Section shall not constitute an Event of Default under this Agreement. If, as a result of Seller's failure to provide Buyer with documentation required for compliance with the Applicable Standard (a) any or all of the Contract Quantity (as set forth in the Confirmation) of the Product is disallowed (the "Disallowed RECs"), and (b) Buyer or Buyer's customer is required by the applicable regulatory authority enforcing the Applicable Standard to submit replacement Product or pay an Alternative Compliance Payment under the Applicable Standard, if any, for the Disallowed RECs, the Disallowed RECs shall be deemed to have not been delivered and Seller shall pay to Buyer damages in accordance with Article VII of this Agreement, together with reimbursement to Buyer, if applicable, for any payment of the Contract Price previously made by Buyer with respect to the Disallowed RECs. Buyer's remedy with respect to the Disallowed RECs shall be limited as set forth in the previous sentence.

7.5. **Damages Stipulation.** Each Party stipulates that the payment obligations set forth in this Section for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

7.6. **Survival.** This Section shall survive any termination or expiration of this Agreement.

8. **Limitation of Liabilities and Jury Trial**

8.1. **EXCLUSIVE REMEDY.** THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, PROVIDED FOR IN THIS AGREEMENT ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

8.2. **Waiver of Jury Trial:** EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY PUBLIC SERVICE COMMISSION MATTER WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

8.3. **Survival.** This Section shall survive any termination or expiration of this Agreement.

9. **Confidentiality**

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- 9.1. **Protected Information.** Except as otherwise set forth in this Agreement, neither Party shall publish, disclose, or otherwise divulge any term or condition of this Agreement and, without limitation, any information relating to any transaction or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to a third person (other than the Party's employees, affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), at any time during or for one (1) year after the expiration or early termination of this Agreement, without the other Party's prior written consent. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief) to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.2. **Non-Confidential.** The following shall not be considered Protected Information, and receiving Party shall not be limited in the use or disclosure of the following information: (a) information that is or becomes part of the public domain through no act or omission of receiving Party; (b) information that demonstrably was known or was in the possession of receiving Party without obligation to maintain confidentiality prior to the Effective Date of this Agreement; (c) information that is subsequently rightly received by receiving Party from a third party who is not bound to maintain such information as confidential; (d) information independently developed by the receiving Party without reference to the Protected Information received under this Agreement; and/or, (e) information required to be disclosed to meet compliance obligations to regulatory commissions/authorities.
- 9.3. **Return of Confidential Information.** Upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Parties agree that receiving party may retain one (1) copy of such Protected Information in receiving Party's files for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 9.4. **Required Disclosures.** Notwithstanding the confidentiality requirements set forth herein, a Party may disclose Protected Information to comply with the applicable standard set forth in the confirmation, or any exchange, control area or independent system operator rule, in response to a court order, in connection with any court or regulatory proceeding, or as otherwise required by any requirement of law. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information thereafter falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees, if legally permissible, to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief. If such protective order or other appropriate remedy is not sought and obtained within at least ten (10) days of receiving Party's notice (or such shorter period specified in the notice if required under applicable law), receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 9.5. **Regulatory Disclosures.** Counterparty acknowledges that Duke Energy is regulated by various regulatory and market monitoring entities. Duke Energy is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Duke Energy in its sole discretion) any information (including Protected Information) to any regulatory commission market monitor, office of regulatory/public staff without providing prior notice to or obtaining consent from the Counterparty using Duke Energy's business judgment and the appropriate level of confidentiality Duke Energy seeks for any such disclosures or retentions in its sole discretion. In proceedings before state and federal jurisdictions in which Duke Energy does business, Duke Energy will do its best to be notified to produce Protected Information, and Duke Energy may do so without prior notice to or obtaining consent from Counterparty, using Duke Energy's business judgment, and the appropriate level of confidentiality Duke Energy seeks for such disclosures in its sole discretion, and in accordance with the procedure in any such proceeding.

10. **Regulatory Event**

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10.1. Process. Upon the occurrence of a Regulatory Event (defined below), which occurs prior to the delivery of the affected Product, the Parties will use reasonable efforts to reform this transaction in order to give effect to the original intention of the Parties or transfer the Contract Quantity of the Product pursuant to another program if possible. If the Parties are unable, despite such efforts, to reform this transaction or transfer the Contract Quantity of the Product within fifteen (15) Business Days following notice of the Regulatory Event, either Party may, at its sole option, terminate this Agreement with no further payment or performance obligation; provided that the Parties shall make any payments due in accordance with obligations already performed and Seller shall return to Buyer any prepayment for quantity of Product not delivered hereunder.

10.2. Definition. "Regulatory Event" means one or more of the following events:

10.2.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

10.2.2. Adverse Government Action. After the Effective Date there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

11. Force Majeure

11.1. Force Majeure. In the event any Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder (such Party, the "Claiming Party"), it is agreed that upon the Claiming Party giving written notice and full particulars of such Force Majeure to the other Party as soon as reasonably practicable, that the Claiming Party shall be excused from the performance of its obligations hereunder to the extent such Party is affected by an event of Force Majeure. The Claiming Party shall use commercially reasonable efforts to fulfill its obligations hereunder and remove any disability caused by such Force Majeure event as soon as practicable.

11.2. Termination. If an event of Force Majeure continuously persists for a period of not less than twenty (20) Days, then the Party not claiming Force Majeure shall have the right, in its sole discretion, to terminate this Agreement upon giving two (2) Business Days advance written notice to the Claiming Party. Upon such termination becoming effective, neither Party shall have any further liability nor obligation to the other Party arising under or related to this Agreement, except as otherwise provided for in this Agreement.

12. Notices.

12.1. Process. All notices, requests, or invoices shall be in writing and shall be sent electronically or by mail to the applicable Party as specified below. A Party may change its information related to receiving notices by sending written notice to the other Party. Notices shall be deemed delivered by the close of the Business Day on which it was received by the other Party

Duke. Overnight Mail: 526 S. Church St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1006
Mail Code: EC02F
Charlotte, NC 28201-1006
Attn.: Contract Administrator
Fax: (980) 373-7595

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC48F
Charlotte, North Carolina 28201-1321
Attn.: General Counsel

L'Oréal USA

L'Oréal USA, Inc.
10 Hudson Yards

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EXECUTIVE DIRECTOR**

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New York, NY 10001
Attention: GENERAL COUNSEL
Fax: 212-984-4946

Director, Engineering
7080 New Buffington Road
Florence, KY 41042

Miscellaneous

- 12.2. **Safe Harbor and Waiver of Section 366.** Each Party agrees that It will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility" as such term is used in 11U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding, each Party further waives the right to assert and agrees that It will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 12.3. **Further Assurances/Reasonableness.** Each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements, and to take all other actions necessary in the reasonable discretion of the requesting Party to carry out the purposes of this Agreement. Unless otherwise provided, no consent provided for in this Agreement may be unreasonably withheld or delayed. Each Party agrees that it shall use commercially reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties, including without limitation to minimize any cover costs, damages, and taxes associated with the transactions hereunder.
- 12.4. **Publicity.** Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance of material without the other Party's prior review, approval, and written consent, in each case in such Party's sole discretion. Counterparty agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Duke Energy's name, logo, or likeness. Counterparty further agrees that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Counterparty by Duke Energy is absolutely prohibited. Expressly subject to the foregoing, either Party may disclose to the public and third parties general information in connection with the Party's respective business activities; provided, however, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial by Duke Energy.
- 12.5. **Dispute Resolution.** Unless otherwise mutually agreed by the Parties in writing, and in addition to the dispute resolution procedure relating specifically to billing disputes, all dispute, controversy or claim arising out of, under, or relating to this Agreement shall be resolved by the Parties first attempting to resolve such dispute through good faith negotiations. If the Parties have not resolved the dispute within thirty (30) days of the date that written notice of the dispute was first provided by one Party to the other (or another period agreed upon by the Parties), then any Party may pursue any legal remedies available at law or in equity,
- 12.5. **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KENTUCKY, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
- 12.7. **Venue/Consent to Jurisdiction.** Any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Kentucky.
- 12.8. **Entire Agreement/Amendments/Assignment.** This Agreement, including attachments hereto, constitutes the entire agreement and conditions of the agreement reached by the Parties hereto, and supersedes all prior oral or written agreements with respect to this Agreement. In the event of a conflict between a provision in this Agreement and a provision of any Confirmation, the provisions of this Agreement shall control. This Agreement may not be modified, amended, altered or supplemented by any agreement signed by the Parties hereto. Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

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BY: TALINA R. MATHEWS
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12.9. Drafting/Costs. Each Party agrees that it (its counsel) has completely read, fully understands, and voluntarily accepts every provision hereof. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract. All Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. Unless agreed to otherwise in writing, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement.

12.10. Severability/Waiver/Third Parties. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

12.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which constitute one and the same instrument.

[Signature page follows]

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EXECUTIVE DIRECTOR**

Talina R. Mathews

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IN WITNESS WHEREOF, the Parties have each caused this Agreement to be executed by their duly authorized representatives.

DUKE ENERGY KENTUCKY, INC.

BY: 

NAME: Joseph F. McCallister

TITLE: Director, Gas, Oil and Emissions

DATE: 8/3/2016

L'ORÉAL USA, INC.

BY: 

NAME: ERIC A. WOLFF

TITLE: VP OPERATIONS

DATE: 8/8/2016

BY: 

NAME: T.J. FAUBERT

TITLE: V.P. FINANCE OPERATIONS

DATE: 8/4/2016



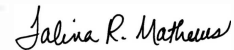
NAME: Bill Kim for Tripartite Contract

TITLE: Mgr, Purchasing

DATE: 8/9/2016

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Talina R. Mathews
EXECUTIVE DIRECTOR

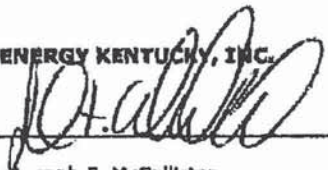



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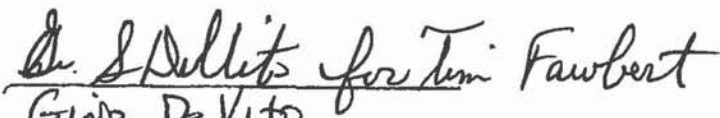
9/18/2016

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IN WITNESS WHEREOF, the Parties have each caused this Agreement to be executed by their duly authorized representatives.

DUKE ENERGY KENTUCKY, INC.
BY: 
NAME: Joseph F. McCallister
TITLE: Director, Gas, Oil and Emissions
DATE: 8/3/2016

L'ORÉAL USA, INC.
BY: 
NAME: ERIC A. WOLFF
TITLE: VP OPERATIONS
DATE: 8/4/2016

BY:  for Tim Fawbert
NAME: Gino DeVito
TITLE: AVP
DATE: 8/9/16

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Talina R. Mathews
EXECUTIVE DIRECTOR
Talina R. Mathews
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**ATTACHMENT A
CONFIRMATION**

This Confirmation shall confirm the transaction agreed to on _____, _____ between Duke Energy Kentucky, Inc. and [L'Oréal] regarding the sale/purchase of the Product under the terms and conditions as follows:

- **Buyer:** L'Oréal USA, Inc.
- **Seller:** Duke Energy Kentucky, Inc.
- **Trade Date:**
- **Product:**
- **Vintage:**
- **Delivery Date:** Immediately upon, but not later than five (5) Business Days after, execution of this Agreement, as more fully described below
- **Contract Price:** \$_____ for each unit of the Product
- **Contract Quantity:** _____ units of the Product for Firm delivery
- **Payment Terms:** 30 days after receipt of invoice, to be issued not later than 3 days after Delivery
- **Duke Energy Reference:** CXL #
- **Applicable Standard:**
- **Tracking System:** PJM Generator Attribute Tracking System ("GATS") that is owned and administered by PJM Environmental Information Services, Inc.
- **Counterparty Reference:** [optional]
- **Special Conditions:**

Delivery Date: Within five (5) Business Days of execution of this Confirmation, Seller shall sell to Buyer, and Buyer shall purchase, the Contract Quantity of the Product, to be performed by initiating an electronic order for transfer of the Product from the Seller's Account to the Buyer's Account.

Within five (5) Business Days of receiving electronic notification from the Tracking System confirming that such a transfer order has been initiated for the benefit of the Buyer by the Seller, Buyer shall receive and purchase the Product by confirming the receipt of the same into its Account.

Delivery shall be deemed to have occurred when the transfer of the Product into Buyer's Account with the Tracking System is complete, at which time title to the Product will transfer from Seller to Buyer. Each Party will provide to the other any reasonably requested information or documentation required to effectuate delivery, cooperate fully to effectuate delivery, and comply with any and all applicable Tracking System procedures and any other applicable requirement relating to the recording and transfer of the Product.

This Confirmation is being provided pursuant to and in accordance with the Renewable Energy Certificates Master Agreement dated _____, _____ (the "Master Agreement") between Buyer and Seller and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Duke Energy Kentucky, Inc.	L'Oréal USA, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

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PUBLIC SERVICE COMMISSION**

**Talina R. Mathews
EXECUTIVE DIRECTOR**

Talina R. Mathews

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ATTACHMENT B

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:
Duke Energy Kentucky, Inc.
139 East Fourth Street, EX309
Cincinnati, Ohio 45202
Attn: Credit Risk Management Director

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable letter of credit No.: _____ for the account of _____ for an amount or amounts not to exceed _____ US Dollars in the aggregate (US\$ _____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect.

Funds under this credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

KENTUCKY
PUBLIC SERVICE COMMISSION
Jalina R. Mathews
EXECUTIVE DIRECTOR
9/18/2016
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Applicant and the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours
[Issuing Bank]

Authorized Signer

Authorized Signer

**KENTUCKY
PUBLIC SERVICE COMMISSION**

**Talina R. Mathews
EXECUTIVE DIRECTOR**

Talina R. Mathews

EFFECTIVE

9/18/2016

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

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ARTICLE I. ANNEX I

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]
[account number]
[name and address of bank at which account is maintained]
[aba number]
[reference]

The following amount:

[insert number of dollars in writing] United States Dollars
(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

[Beneficiary]

By: _____
Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Talina R. Mathews
EFFECTIVE DIRECTOR

Talina R. Mathews

EFFECTIVE

9/18/2016

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

ARTICLE II. ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

[check appropriate draw condition]

[_____] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of _____ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[_____] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

[Beneficiary]

By: _____

Title: _____

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PUBLIC SERVICE COMMISSION**

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EXECUTIVE DIRECTOR**

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9/18/2016

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