

CONFIDENTIAL PROPRIETARY TRADE SECRET

Backup Delivery Point Capacity Agreement
(Reserve Capacity Service Agreement)

This Backup Delivery Point Capacity Agreement ("Agreement") is made and entered into as of the 1st day of May, 2017, by and between Duke Energy Kentucky, Inc. ("Company"), a corporation organized and existing under the laws of the Commonwealth of Kentucky, and ARCP OFC Covington KY, LLC, a Delaware limited liability company owning property located at 333 Scott Street, Covington, Kentucky, 41011 ("Customer") (each a "Party" and collectively the "Parties").

WHEREAS, Customer is currently being provided electric service by Company through an electric service connection to the Customer's location at 333 Scott Street, Covington, Kentucky, 41011, ("Principal Service") Company account number [REDACTED] ("Service Location") pursuant to Company's KY.P.S.C Electric No. 2 on file with the Kentucky Public Service Commission ("Commission") and as amended from time to time ("Electric Tariff"); and

WHEREAS, Customer is leasing building space to the United States of America, Internal Revenue Service (Tenant); and

WHEREAS, Tenant owns and maintains electric switch gear consisting of Automatic Throw-Over Capabilities ("ATO") and/or Tenant-operated manual tie capabilities ("TOMP") capable of automatically switching electric service from the Principal Service to a second service connection when an outage or disruption of service is detected on the Principal Service ("Tenant's Equipment");

WHEREAS, Tenant desires that Company provide Customer with an additional electric service connection of 480 volts ("Additional Service Connection"); and

WHEREAS, the Tenant desires that Company maintain redundant service to Customer, and to reserve capacity on Company's distribution and/or transmission facilities ("Facilities") that will provide backup electric service through the Additional Service Connection in the event of an outage and/or disruption of the Principal Service ("Reserve Capacity Service"); and

WHEREAS, the purpose of this Reserve Capacity Service is to provide an alternate source of electric service, other than Principal Service to Customer's transformers in the event of the failure of the Principal Service; and

WHEREAS, Company is willing to provide such limited Reserve Capacity Service to Customer, subject to the terms and conditions of this Agreement;

NOW THEREFORE, the Parties agree as follows:

1. Reserve Capacity. Company shall reserve on Tenant/Customer's behalf capacity as Reserve Capacity Service on the Company inter-connected to the Customer's Service Location and Tenant Capacity Amount"). Company shall endeavor to develop with Customer Information and Switching Procedure ("Switching

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days of execution of this Agreement. Company and Tenant may agree from time to time to change the Switching Procedure. If Company and Tenant do not timely develop mutually-agreeable Switching Procedures, or cannot agree to modifications of such Switching Agreements, Company may terminate this Agreement notwithstanding Paragraph 9. Customer understands that the development of the Switching Procedure will require an inventory and analysis of the equipment and operations located at the Service Location to develop a safe protocol for switching of equipment with ATO and/or TOMP. In the event Tenant does not provide Company with access to and information regarding the equipment and operations located at the Service Location, Company may terminate this agreement notwithstanding Paragraph 9.

- a. Customer hereby agrees that Company may at its discretion install electric monitoring equipment ("Monitoring Equipment") at Customer's facility necessary to allow Company to perform real time monitoring of current, voltage, real and reactive power on each of Customer's service connections. Installation, operation, and maintenance of the Monitoring Equipment will be at Company's sole cost and responsibility. Customer shall provide reasonable accommodations necessary to permit Company to install, operate and maintain Monitoring Equipment.

2. Fees.

- a. In accordance with Company's Electric Tariff, Rider BDP, Backup Delivery Point Capacity Rider, Customer shall pay a monthly fee ("Reserve Capacity Fee") equivalent to the Backup Delivery Point Capacity Amount times the unbundled distribution and/or transmission demand charges set forth in Company's Electric Tariff, rate schedule DT01 for the term of this Agreement or until such time, if any, that Customer or Company determines that additional Reserve Capacity is required. This Reserve Capacity Fee shall initially be [REDACTED], and shall be subject to change if and when a change in Company's retail electric rates is approved by the Commission. In such event, Company will notify Customer of the new monthly fee thirty (30) days prior to imposing the new fee. The Reserve Capacity Fee shall become effective on the date Reserve Capacity Service(s) becomes available to the Customer.
- b. Pursuant to Rider BDP, the Company reserves the right to charge a connection fee to Customer if an additional metering point is required.

3. Additional Reserve Capacity.

- a. Customer acknowledge that Company must reserve enough capacity on the Reserve Capacity Service to accommodate Customer's ~~load~~ ^{load} automatically switching from the Principal Service to the Reserve Capacity Service in the event of an outage or disruption on the Principal Service. Further, the Parties acknowledge that Customer's load may grow over Capacity Amount. If Company reasonably determines additional Reserve Capacity above the Reserve Cap

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Reserve Capacity”), the Company shall notify Customer and Tenant, and thereafter the Parties shall work in good faith to promptly resolve the variance. Such resolution may include (i) increasing the Reserve Capacity Amount, (ii) revising the Switching Procedures to remove automatic switching capabilities, and (iii) terminating the Agreement. If the Parties agree to increase the Reserve Capacity Amount in consideration of the Additional Reserve Capacity, the Parties shall amend this Agreement accordingly. If the Parties agree to increase the Reserve Capacity Amount and Company determines that it cannot reasonably provide Additional Reserve Capacity to Customer without additional system improvements, the Company shall so notify Customer and Tenant. The Customer shall be responsible for any and all costs necessary to improve the system to provide the Additional Reserve Capacity. The Company shall provide a written estimate of such costs to Customer and Tenant and Customer may decide to either proceed with the Additional Reserve Capacity or terminate this agreement notwithstanding Paragraph 9. If Company cannot, in its sole judgment, provide the Additional Reserve Capacity while the Parties are working to resolve the variance, Company may suspend the Reserve Capacity Service including disconnecting the Additional Service Connection.

- b. If Tenant determines that Customer requires Additional Reserve Capacity, Tenant may request that Company increase the Reserve Capacity Amount by the Additional Reserve Capacity. Company may, in its sole discretion, increase the Reserve Capacity Amount by the Additional Reserve Capacity. In such event, Company shall provide written notice to Customer and the Tenant that it is increasing the Reserve Capacity Amount by the Additional Reserve Capacity, and this Agreement shall be deemed to be thereby amended to give effect thereto. If Company reasonably determines that it cannot provide Additional Reserve Capacity to Customer, Company shall so notify Customer and Tenant. The Tenant shall be responsible for any and all costs necessary to improve the system to provide the Additional Reserve Capacity. The Company shall provide a written estimate of such costs to Customer and Tenant and Customer may decide to either proceed with the Additional Reserve Capacity or terminate this agreement.

4. Limitations on service(s). Company shall make reasonable provisions to supply Reserve Capacity Service, but does not guarantee a constant or uninterrupted supply of electricity from the Principal Service(s) or Reserve Capacity Service sources. During such time as Customer is utilizing Reserve Capacity Service due to an outage on its Primary Service(s), Company shall not be obligated to reserve additional capacity to back up the Reserve Capacity Service. Additionally, Company shall be entitled to perform maintenance of its Facilities during which time Customer may not have access to the Reserve Capacity Service. Moreover, Company shall not be liable for any damage or claim of damage attributable to any interruption or reversal of service caused by accident or casualty, extraordinary action of the elements, governmental authority, or by any other cause which Company could not reasonably foresee and made provisions against, unless intentional misconduct of Company. Nothing in this agree

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prevent Company from operating its system in accordance with its Electric Tariff, applicable Commission and other governmental regulations, and good industry practice. Customer acknowledges that Reserve Capacity Amount may not be available during times of Company system emergencies, whether or not such emergencies directly affect the Reserve Capacity or Primary Services.

5. Excess Demand. Company does not guarantee or warrant that the Reserve Capacity Service will be available beyond the Reserve Capacity Amount level. If Customer's Service Location demand exceeds the Reserve Capacity Amount, Tenant shall immediately implement a curtailment plan to reduce its peak electric demand by curtailing non-essential load or by utilizing some other means to obtain an imposed loading of the Reserve Capacity Amount or less. If Tenant fails to implement such curtailment, Company may terminate this agreement notwithstanding Paragraph 9.
6. Reduction in Demand. If Customer/Tenant experiences a long-term reduction in Service Location demand or otherwise desires to reduce the Reserve Capacity Amount, Customer and Company may agree to reduce the Reserve Capacity Amount consistent with the purpose hereof and subject to all terms and conditions of this Agreement including without limitation Paragraph 4. Where Customer and Company agree to a new Reserve Capacity Amount, they will amend this Agreement accordingly in a signed writing.
7. Limitation of Liability/Indemnification.
 - a. The Company shall not be held responsible by the Customer or Tenant for any interruption or damages attributed to the Customer's failure to conform to the Reserve Capacity Amount demand limit. In the event Company finds that Customer is not complying with the terms of this Agreement, Company will provide Customer and Tenant notice of such non-compliance and whether the non-compliance causes an emergency condition in Company's sole discretion. Such notice shall be by telephone in the event of an emergency condition, and in writing in the event of a non-emergency condition. If the non-compliance is not cured within (i) twenty-four (24) hours of Company's notice in an emergency situation; or (ii) within 30 days of Company's notice in a non-emergency situation; or (iii) the Parties do not agree to a written change in the Reserve Capacity Amount in accordance with Section 3, then in any such case Company may (i) terminate this Agreement notwithstanding Paragraph 9, (ii) terminate the Reserve Capacity Service and/or (iii) disconnect the Additional Service Connection.
 - b. Customer shall not be responsible for claims, liabilities, losses, costs or damages ("Losses") to the extent such Losses arise from or result from (i) Company's installation, maintenance, operation or removal of the Facilities, (ii) the Reserve Capacity Service provided by Company, or (iii) bodily injury or property damage caused by Company or its employees, agents, contract

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8. **Changes in Facilities.** If during the term of this Agreement, Customer or Tenant requests Company to temporarily or permanently relocate, rearrange, or alter any or all of the Facilities required to provide Reserve Capacity Service, and Company agrees to do so, which agreement shall not be unreasonably withheld, the requesting Party shall reimburse Company for all reasonable, necessary, and documented costs actually incurred by Company in connection with such relocation, rearrangement, or alteration.
9. **Term and Termination.** The term of this Agreement shall be for a period of five (5) years and shall remain in force, thereafter, until terminated by either Party giving the other Party sixty (60) days written notice of its intent to terminate the Agreement. Notwithstanding the above, this Agreement may be terminated with sixty (60) days advanced written notice by the Customer and Tenant when the lease arrangement between the Tenant and Customer expires or is otherwise terminated. Upon termination of this Agreement, the Company may, at its sole discretion, remove the Facilities provided that Company shall work in good faith with Customer and any new tenants to minimize disruption of the new tenants' business and/or operations.
10. **Preventative Maintenance and Testing; Compliance.** Company shall, at its sole cost, maintain the Facilities in accordance with industry standards, and applicable laws and regulations. Company shall keep the Facilities in good order, repair, and condition, and shall comply with all federal, state and municipal laws, orders, rules and regulations applicable to the Facilities (and installation thereof) throughout the term of this Agreement.
11. **Insurance.** Company is self-insured for all insurance coverages and obligations under this Agreement and shall provide a Letter of Self-Insurance to Customer upon execution of this Agreement.
12. **Required Rights.** If Company is unable to obtain, without cost, all required permits, rights-of-way and easements or any other documents or approvals necessary for the installation on public or private property of the Facilities or Reserve Capacity Service, this Agreement shall be null and void and neither Party shall, thereafter, have any obligations whatsoever to the other Party.
13. **Grants of Easement.** Customer shall execute and deliver to Company grants of easement requested by the Company in the form reasonably acceptable to Customer and Company, granting Company the right to construct, maintain, operate, and remove the Facilities to be located upon Customer's property.
14. **Billing Determinants.** For billing purposes, the kilowatt hours and kilowatts registered on any and all meters providing Primary Service(s) and Reserve Capacity Service to Customer Service Location shall be bulked together in accordance with Company's standard practice for bulking interval meters.

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15. Tariffed Electric Service. Company shall provide electric service to Customer in accordance with Company's Electric Tariff, except as otherwise set forth in this Agreement.
16. Assignment. Neither Party shall assign any of its rights nor delegate any of its duties under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of any and all successors or assigns of the Parties.
17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the Parties on such subject matter. In the event of any conflict between this Agreement and any other agreements between the Parties, this Agreement shall control. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representation, statements or promises in addition to or in any way different than those contained in this Agreement, and that it is not entering into this Agreement in reliance upon any representation, statements or promises in addition to or in any way different than those contained in this Agreement, and that it is not entering into this Agreement in reliance upon any representation, statement or promise of the other Party except as expressly stated in this Agreement.
18. Governing Law. This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including tort claims), shall be governed by and construed in accordance with the substantive laws of the state of Kentucky without giving any effect to any conflict of law doctrine.
19. Interpretation. Both Parties have had the opportunity to have this Agreement reviewed by counsel; therefore, neither Party hereto shall be construed as the drafter hereof.
20. Amendments. Subject to Section 3, no modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.
21. No Waiver of Rights. A failure or delay of either Party to exercise any right or remedy under this Agreement shall not operate to impair, limit, preclude, cancel, waive or otherwise affect such right or remedy.
22. Severability. If any provision under this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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23. Notices. All notices to be given hereunder, unless expressly provided otherwise herein, shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customer:
ARCP OFC Covington KY, LLC
c/o VEREIT, Inc.
2325 E. Camelback Road, Suite 1100
Phoenix, Arizona 85016
Attn: Property Management
24-Hr: 859-331-4800

To Tenant:
United States Internal Revenue Service
201 W. RiverCenter Blvd - Stop 62
Covington, Kentucky, 41011
Attn: Jay Withrow
O: 859-669-4107
C: 859-409-1295

To Company:
Duke Energy Kentucky, Inc.
Attn. Director, Large Account Management
139 East Fourth Street
Cincinnati, Ohio 45202
O: 513-287-2724
C: 513-520-2210

24. Headings. The headings used in the paragraphs in this Agreement are only for the reference of the Parties and shall have no meaning in the interpretation of any of the provisions herein.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers, thereunto duly authorized.

ARCP OFC COVINGTON KY, LLC,
a Delaware limited liability company

DUKE ENERGY KENTUCKY, INC.

By: Cole REIT Advisors III, LLC,
a Delaware limited liability company,
its Manager

By: William H Fowler

By: 
Name: Daniel T. Haug
Title: Authorized Officer
Date: June 1, 2017

Name: WILLIAM H FOWLER

Title: VP-ENG & TECH CUSTOMER RELATIONS

Date: 06-15-2017

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EXHIBIT A

To

Backup Delivery Point Capacity Agreement

[Attach Multiple Feed Customer Information and Switching Procedure]

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