

CONFIDENTIAL PROPRIETARY TRADE SECRET



SPOT RENEWABLE ENERGY CREDIT PURCHASE AND SALE AGREEMENT

THIS SPOT RENEWABLE ENERGY CREDIT PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of October 25, 2022 (the "Effective Date") and is between Trellis Loop Florence I, LLC, a Kentucky limited liability company with its primary office located at 345 High Street, 7th Floor, Hamilton, Ohio 45011 (the "Buyer") and Duke Energy Kentucky, Inc., a Kentucky corporation (the "Seller" or "Duke Energy") (each a "Party" and collectively the "Parties"). Other terms capitalized herein are defined in Section 3 of this Agreement.

RECITALS

WHEREAS, Buyer desires for Seller to locate and purchase certain Product (as defined herein) for and on behalf of Buyer and to Deliver, or cause the Delivery (as such terms are defined herein) of the Product to Buyer, subject to the terms and conditions set forth herein; and

WHEREAS, Seller is willing to locate and purchase and Deliver the Product to Buyer in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conditions Precedent.

1.1. **Evaluation Period.** It is a condition to the continuing obligations of each Party under this Agreement that no later than ten (10) Business Days (as defined below) after the latter of (i) execution of the Agreement by both Parties and (ii) Buyer's prepayment to Seller as more fully described in Section 4 (the "Evaluation Review Period"), Duke Energy will seek to locate and purchase the Product described in Sections 3.1 through 3.8, inclusive, subject to terms and conditions acceptable to Duke Energy in its sole discretion. If any of the conditions specified herein are not satisfied by the end of Evaluation Review Period, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates within five (5) Business Days after the Evaluation Review Period, then either Party may terminate this Agreement by providing written notice to the other Party and upon any such termination Seller will refund any prepaid payments made by Buyer hereunder for Product that was not delivered and neither Party shall have any further obligation, duty, or liability to the other Party under this Agreement. As used herein the term "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.

1.2. **Commission Filing – Condition Precedent.** Buyer acknowledges that the Agreement must be filed with the KENTUCKY PUBLIC SERVICE COMMISSION (the "Commission") and approved by the Commission prior to it becoming effective. It is a condition to the continuing obligations of each

KENTUCKY PUBLIC SERVICE COMMISSION
Linda C. Bridwell
 Executive Director



EFFECTIVE
1/9/2023
 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

CONFIDENTIAL PROPRIETARY TRADE SECRET

Party under this Agreement that 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. Buyer 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. **Arrangement.** In accordance with the terms and conditions of this Agreement, Seller agrees to obtain, sell, and Deliver, or cause the Delivery of the Product to Buyer, and Buyer agrees to purchase, pay for, and accept Delivery of the Product from Seller, as set forth herein.

3. **Transaction Terms.**

3.1. **Product.** The Product shall consist of U.S. sited RECs derived from Seller’s choice of technology, qualified under the Applicable Program, and of the Vintage specified in this Agreement (individually a “REC” and collectively, the “RECs”).

3.2. **Vintage:** Calendar year 2022

3.3. **Quantity:** [REDACTED] RECs

3.4. **Contract Price:** [REDACTED]/REC

3.5. **Applicable Program:** Seller’s choice of a mandatory or voluntary domestic RPS, renewable energy, or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes.

3.6. **Tracking System:** Seller’s choice

3.7. **Buyer’s Tracking System Account:** Not applicable

3.8. **Special Conditions:** The RECs will be retired on behalf of Trellis Loop Florence I, LLC, a wholly owned subsidiary of 80 Acres Urban Agriculture, Inc., as more fully described in Section 5. Seller will provide documentation of the same to Buyer.

4. **Prepayment.** Upon execution of this Agreement, Seller will issue Buyer an invoice for the Contract Price of the RECs to be Delivered hereunder. Buyer shall remit payment to Seller in advance of Delivery and within thirty-five (35) Business Days after Buyer’s receipt of the invoice relating thereto. Payment shall be made by electronic bank transfer of immediately available funds to the following account:

Account Name: Duke Energy Kentucky, Inc
Bank Name: PNC Bank
Bank Account Number: [REDACTED]
ABA Number: 041000124

The invoice will be sent to Buyer at: [REDACTED]

KENTUCKY PUBLIC SERVICE COMMISSION
Linda C. Bridwell Executive Director

EFFECTIVE 1/9/2023 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

CONFIDENTIAL PROPRIETARY TRADE SECRET

5. **Delivery.** On or before March 31, 2023, and provided that Buyer is in compliance with its obligations under this Agreement, including the pre-payment obligations, Seller will Deliver, or cause to be Delivered the contract Quantity of RECs specified hereunder and Buyer will promptly accept Delivery of such RECs. As used herein “**Deliver,**” “**Delivered,**” or “**Delivery**” means the retirement of the RECs on Buyer’s behalf, of which Seller will promptly provide documentation to Buyer reflecting the same. Seller may Deliver the RECs directly to Buyer or may instruct its supplier to Deliver the RECs to Buyer and each such Delivery shall be deemed to satisfy Seller’s Delivery obligations under this Agreement.

6. **Representations and Warranties.**

6.1. **Mutual Representations and Warranties.** Each Party hereby represents and warrants to the other Party as of the Effective Date and upon each Delivery of the Product hereunder that:

- a. 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 requisite power and authority to execute and enter into this Agreement;
- b. it has all authorizations necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
- c. the execution, delivery, and performance of this Agreement will not conflict with or violate any law, contract, agreement, or arrangement to which it is a party or by which it is otherwise bound; and
- d. 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.

6.2. **Seller Representations and Warranties.** Seller represents and warrants to Buyer as of the date hereof and each Delivery Date that:

- a. Each REC Delivered hereunder meets the specifications set forth in this Agreement;
- b. The RECs Delivered hereunder shall be free and clear of any liens, taxes, claims, security interests, or other encumbrances;
- c. Seller has not sold, retired, or otherwise transferred the RECs to any other person or entity or reported the RECs for its own account, and
- d. Seller has not sold, retired, or otherwise transferred or reported for its own account Environmental Attributes associated with the same electrical output from the RECs Delivered hereunder or Environmental Attributes otherwise associated with the RECs Delivered hereunder result in the loss of certification of the RECs Applicable Standard. As used herein the t

**KENTUCKY
PUBLIC SERVICE COMMISSION**
Linda C. Bridwell
Executive Director



**EFFECTIVE
1/9/2023**
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

CONFIDENTIAL PROPRIETARY TRADE SECRET

means any renewable energy certificates or credits and any other attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or named, resulting from, attributable to, or associated with the generation of energy, other than the electric energy produced, pursuant to any international, federal, state, or local legislation or regulation.

- 7. **Limitation on Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES EXPRESSLY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY TO THIS AGREEMENT OR ANY SERVICES PERFORMED HEREUNDER.
- 8. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TOTAL CUMULATIVE LIABILITY OF A PARTY FOR ANY AND ALL CLAIMS OR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER STATED IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) AT ANY TIME SHALL NOT EXCEED: (i) WITH RESPECT TO SELLER, THE CONTRACT PRICE PAID TO SELLER UNDER THIS AGREEMENT, AND (ii) WITH RESPECT TO BUYER, THE TOTAL CONTRACT PRICE OWED TO SELLER UNDER THIS AGREEMENT.
- 9. **Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT, OR OTHERWISE, AND NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR CONSEQUENTIAL DAMAGES.
- 10. **Notices.** Notices, unless otherwise specified herein, shall be in writing and delivered by hand delivery, United States mail, overnight courier service, or electronic email (e-mail) to the following addresses:

For Seller:

Duke Energy Kentucky, Inc.
 Attn: [REDACTED]
 400 South Tryon Street
 14th Floor
 Charlotte, NC 28202
 Phone: [REDACTED]
 Email: [REDACTED]

For Buyer:

Trellis Loop Florence I, LLC
 345 High Street, 7th Floor
 Hamilton, Ohio 45011
 Attn: [REDACTED]
 Phone: [REDACTED]
 Email: [REDACTED]

KENTUCKY PUBLIC SERVICE COMMISSION
Linda C. Bridwell Executive Director
Linda C. Bridwell
EFFECTIVE 1/9/2023 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

CONFIDENTIAL PROPRIETARY TRADE SECRET

11. General.

- 11.1. Entirety. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject hereof is superseded.
- 11.2. Drafting. This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, organizational membership, submission, or other event of negotiation, drafting, or execution hereof.
- 11.3. Independence. Nothing herein constitutes any Party a partner, agent, or legal representative of the other Party or creates any fiduciary relationship between them.
- 11.4. Waiver. The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach.
- 11.5. Severability. If any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.
- 11.6. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer benefits, rights, or remedies to any person or entity other than the Parties and their permitted successors and assigns.
- 11.7. Confidentiality. Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Confidential Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), for two (2) years after the expiration or early termination of this Agreement. As used herein the term "Confidential Information" means (a) the Contract Price, (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary.
- 11.8. Non-Confidential Information. Confidential Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Confidential Information.
- 11.9. Required Disclosures. Notwithstanding the confidentiality herein, a Party may disclose Confidential Information


KENTUCKY
PUBLIC SERVICE COMMISSION
Linda C. Bridwell
 Executive Director

EFFECTIVE
1/9/2023
 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

CONFIDENTIAL PROPRIETARY TRADE SECRET

any applicable law or regulation, or request of any regulatory agency having colorable jurisdiction over the Party and requesting the confidential information in the ordinary course of business; (b) rule or requirement of any exchange, certification authority, administrator, or governmental authority administering an Applicable Standard; (c) in connection with any court or regulatory proceeding, including, without limitation the Commission filing set forth in Section 1.2 ; and (d) to the extent such information is delivered to a third party for the sole purpose of calculating a published index or other published price source; provided, however, each Party will, to the extent practicable, use reasonable efforts to prevent or limit the disclosure.

11.10. Governing Law. This Agreement is governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

[SIGNATURE PAGE FOLLOWS]



CONFIDENTIAL PROPRIETARY TRADE SECRET

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

TRELLIS LOOP FLORENCE I, LLC

By: 
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Name: Boris Zelkind

Title: Secretary

Date: November 4, 2022

DUKE ENERGY KENTUCKY, INC.

By: 

Name: Lon Huber

Title: SVP, Pricing & Customer Solutions

Date: November 10 2022

