

AGREEMENT

[BKW] ~~September~~ ^{OCTOBER} THIS AGREEMENT ("Agreement") is made and entered into as of this 1st day of ~~September~~, 2019, but effective as provided herein, by and between KENTUCKY POWER COMPANY ("Kentucky Power"), a corporation organized and existing under the laws of the Commonwealth of Kentucky, and COMMUNITY ACTION KENTUCKY, INC. ("CAK"), a nonprofit corporation organized and existing under the laws of the Commonwealth of Kentucky (each a "Party" and collectively "Parties").

WITNESSETH:

WHEREAS, by Order dated March 14, 2006 in Case No. 2005-00341, *In the Matter of: A General Adjustment In The Rates of Kentucky Power Company*, the Public Service Commission of Kentucky ("KPSC" or the "Commission") approved the parameters of a low-income home energy assistance program to assist low-income households in the Kentucky Power service territory, conditioned upon Commission approval of an agreement between Kentucky Association for Community Action, Inc. ("KACA") (the former name of CAK), and Kentucky Power for the implementation of the program;

WHEREAS, by Order dated October 30, 2018 in Case No. 2018-00311, *In The Matter Of: The Electronic Application Of Kentucky Power Company To: (1) Expand And Modify Kentucky Power Company's Home Energy Assistance Program; (2) Approve The Amended Operating Agreement; (3) Approve Kentucky Power's Voluntary Energy Assistance Fund; (4) Approve Revised Tariff Sheets; and (5) Grant All Other Relief To Which It May Be Entitled*, the Commission approved modifications to Kentucky Power's low-income residential energy assistance program (the Home Energy Assistance in Reduced Temperatures Program, or "HEART Program," a subpart of which is funded by voluntary donations from customers ("Donations") and which is subject to KRS 278.287 (the "Donation HEART Program" and with the HEART Program the "HEART Programs"); and the creation of a second winter heating assistance program (the Temporary Heating Assistance in Winter Program, or "THAW Program") (the HEART Programs and the THAW Program are collectively referred to as the "Programs");

WHEREAS, Kentucky Power's HEART Programs will help low-income families afford and maintain utility service with Kentucky Power during peak heating months;

WHEREAS, Kentucky Power's THAW Program will provide payment assistance during peak heating months to residential Kentucky Power customers not participating in the HEART Program;

WHEREAS, CAK is willing to provide the services described herein to assist Kentucky Power in implementing the Programs for eligible residential customers of Kentucky Power; and

WHEREAS, based on their experience in implementing the Programs following the Commission's October 30, 2018 order, CAK and Kentucky Power have entered into this amended Agreement to implement the Programs;

NOW, THEREFORE, in consideration of the mutual obligations of the Parties hereto, each of them does hereby covenant and agree as follows:

I. Term of Agreement

A. This Agreement shall be for consecutive Program Years for an indefinite term beginning on the Effective Date. As used in this Agreement, the term "Program Year" shall mean the calendar months from October 1 to September 30 of the following year, except that the first Program Year under this Agreement shall run from the Effective Date to September 30, 2020.

B. Either Party may terminate this Agreement without cause by giving the other Party notice of its intention to terminate this Agreement no fewer than ninety (90) days prior to the end of any Program Year. In such case, this Agreement will terminate at the end of such Program Year, *provided however* if funds collected for either the HEART Programs or the THAW Program remain unexpended at the termination of this Agreement, the Parties agree that the Program(s) and this Agreement will continue for an additional period necessary to expend the funds (an "Extension"). To the extent applicable, a reference to a Program Year hereafter will include any relevant Extension. Notwithstanding the foregoing, the Parties recognize that the continuation of the Programs and of this Agreement are subject to the Orders of the Commission. Termination of this Agreement shall not relieve either Party of its obligation to continue to perform its duties under this Agreement applicable to the final Program Year, including without limitation, CAK's submission of the audit required by Paragraph III below to Kentucky Power, and compensation by Kentucky Power to CAK pursuant to the terms of this Agreement for services performed in connection with the final Program Year.

C. Nothing in this Paragraph I shall authorize Kentucky Power to collect charges from residential customers to fund the Programs beyond the date of its authority to do so under the Orders of the Commission and the expiration of Kentucky Power's duly-filed tariffs applicable to the Programs.

II. Administrative Expenses

A. With regard to the HEART Programs, CAK shall be entitled to recover the actual reasonable costs of providing the services applicable to the HEART Programs pursuant to this Agreement, including all new or increased information technology costs CAK or its member community action agencies may incur to comply with the terms of this Agreement with regard to the HEART Programs ("HEART IT Costs") (all collectively "HEART Costs"). The total amount of HEART Costs payable to CAK under this Agreement for all Program Years to which this Agreement may apply will not exceed in total seven percent (7%) of the total funds collected during all of such Program Years (the "HEART Cost Ceiling"); *notwithstanding the foregoing*, Kentucky Power agrees to fully compensate CAK for the HEART IT Costs in any Program Year that exceed the HEART Cost Ceiling, provided that i) such costs are reasonable and necessary to implement changes for compliance with applicable law or with new data exchange requirements not set forth in this Agreement; and ii) CAK provides Kentucky Power a good faith estimate of such costs before they are incurred. CAK shall be responsible for distribution of payments due to the participating local community action agencies for HEART Slots filled.

B. With regard to the THAW Program, CAK shall be entitled to recover the actual reasonable costs of providing the services applicable to the THAW Programs pursuant to this Agreement, including all new or increased information technology costs CAK or its member community action agencies may incur to comply with the terms of this Agreement ("THAW IT Costs") (all collectively "THAW Costs"). The total amount of THAW Costs payable to CAK under this Agreement for all Program Years to which this Agreement may apply will not exceed in total ten percent (10%) of the total funds collected during all of such Program Years (the "THAW Cost Ceiling"); *notwithstanding the foregoing*, Kentucky Power agrees to fully compensate CAK for the THAW IT Costs in any Program Year that exceed the THAW Cost Ceiling, provided that i) such costs are reasonable and necessary to implement changes for compliance with applicable law or with new data exchange requirements not set forth in this Agreement; and ii) CAK provides Kentucky Power a good faith estimate of such costs before they are incurred. CAK shall be responsible for distribution of payments due to the participating local community action agencies for THAW applications accepted for benefits. Notice of such acceptance will be provided to CAK as provided herein.

C. The Parties acknowledge that the above limitations on the HEART Costs and THAW Costs payable to CAK (in each case the "Cost Ceiling") shall be calculated based upon total funds collected for that Program during all Program Years to which this Agreement is applicable, and that all funds collected for either or both Programs, if unused in any Program Year will "roll-over" and be available for use in subsequent Program Years of the relevant Program. If the Costs of either the HEART Programs or the THAW Program for any Program Year should exceed the Cost Ceiling for that Program in that Program Year ("Excess Costs"), CAK may be paid those Excess Costs from such "roll-over" funds. If no "roll-over" funds are available to fund reasonably incurred or anticipated Excess Costs, the remaining THAW program funds will be transferred to the HEART Program to be allocated to additional slots as calculated by Kentucky Power.

III. Budget/Audits/Quarterly Meetings

A. At least 60 days prior to the beginning of a Program Year, Kentucky Power will estimate and inform CAK of the funds it anticipates will be collected for application to each of the Programs (the "Funding Estimates").

B. Using the Funding Estimates and such other information as it may deem appropriate, CAK will prepare and present to Kentucky Power an annual budget for CAK's provision of its services under this Agreement for the upcoming Program Year of each of the Programs (the "Proposed Budgets"). Kentucky Power shall promptly provide CAK such information as it may reasonably request for the preparation of the Proposed Budgets. CAK will provide the Proposed Budgets to Kentucky Power in sufficient time for Kentucky Power to file for any necessary approval by the KPSC, and in no event no later than 30 days after the Effective Date of this Agreement and thereafter at least 30 days before the beginning of each Program Year. Based on the Proposed Budgets, Kentucky Power and CAK will cooperate in the preparation of a mutually-agreeable final budget for the upcoming Program Year for each of the Programs.

C. CAK's financial records will be audited annually at CAK's expense by an independent certified public accountant in accordance with existing federal audit requirements. The audit will include a detailed accounting of all expenses of CAK associated with the Programs. CAK shall provide the audit to Kentucky Power, which may file it with the KPSC if necessary or desired.

D. The Parties agree to meet quarterly, or more often if needed, to review the status of the Programs, including the amount of funds then collected for the Programs and CAK's Costs to date. CAK will prepare and provide to Kentucky Power on a monthly and quarterly basis reports of its Costs compared to budget. CAK shall provide Kentucky Power with a written explanation for any variance in Costs for either Program of 10% or greater from budget.

IV. Kentucky Power Responsibilities

A. Kentucky Power will continue to include a \$0.30 charge to fund the HEART Program and the THAW Program on each residential customer's monthly bill for service ("Customer Charge"). The Customer Charge shall be recovered pursuant to Commission's Order in Case No. 2017-00179 and shall be set forth as a separate line item on each bill. The amount of the Customer Charge is subject to change pursuant to future Orders of the Commission.

B. Kentucky Power will continue to contribute monthly to the HEART Program and the THAW Program a sum equal to the Customer Charge collected from residential customers.

C. Additionally, Kentucky Power will contribute up to a total of \$20,000 per year in additional funds to match voluntary customer Donations to the Donation HEART Program. Kentucky Power's contributions shall be made in the month following the calendar month in which a charge is collected or a Donation is received.

D. Kentucky Power will respond to general billing questions from Program participants, including inquiries regarding the details of the application of credits to their Kentucky Power bills pursuant to the Programs.

E. Kentucky Power will provide CAK with information regarding the amount of funds collected for the Programs and the amount of funds credited to the participants in the Programs on their Kentucky Power bills on a monthly and Program Year basis, including a list of customers participating in each of the Programs and the amount credited to them each month.

F. CAK shall submit invoices to Kentucky Power for CAK's Costs at such intervals and in such manner as the Parties may agree throughout the Program Year, but in no event more frequently than on a monthly basis. Kentucky Power shall pay such invoices within 30 days after its receipt of same. CAK will provide such documentation of its Costs reflected in an invoice as Kentucky Power may reasonably request.

G. Kentucky Power shall provide the following reports electronically to CAK using an agreed-upon data transfer method that would be expected to provide adequate security for such data:

i. Billing File. Sent daily as a Program participant is billed by Kentucky Power and provides:

- (a) Kentucky Power indicative data for Program participant such as customer name and Kentucky Power account number;
- (b) CAK indicative data such as the Program participant's request identification and Program;
- (c) Billed month kWh usage;
- (d) Billed month billing data including billed month charges and arrears amounts);
- (e) HEART Programs or THAW Program benefit amount credited to the current bill and the date of such credit.

ii. History File. In response to receipt of CAK's data file which identifies a Kentucky Power customer as being eligible for one of the HEART Programs (the "HEART Eligibility File"), Kentucky Power will transmit a history file containing the following additional information necessary for CAK to determine whether the identified customer will be accepted into the applicable HEART Program. It provides:

- (a) Kentucky Power indicative data, including customer name and Kentucky Power account number;

- (b) CAK indicative data, including the Program applicant's request identification;
- (c) Customer electric consumption – 12 months of the customer's kWh usage; and
- (d) History of the customer's disconnection for nonpayment ("DNP"), including the number of times service was DNP in the previous 12 months and whether the customer is currently subject to a disconnection notice.

iii. **Ineligibility File.** Sent to CAK in response to CAK's HEART Enrollment File or information regarding THAW Program participants to notify CAK that a customer is not eligible for one of the Programs due to the customer's participation in the other Program in the same Program Year.

iv. **Discontinuation File.** Sent to CAK when electric service to a customer enrolled in the HEART Program has been discontinued. Service may be discontinued at customer request or at the end of five working days after service has been DNP and all past due amounts plus all associated charges have not been received by Kentucky Power. The Discontinuation File will provide:

- (a) Kentucky Power indicative data – customer name, Kentucky Power account number; and
- (b) Service discontinuation code (customer request / DNP).

V. CAK RESPONSIBILITIES

A. CAK, itself and through arrangements with its member community action agencies, shall (i) take applications from Kentucky Power customers seeking to participate in the Programs, (ii) evaluate that information to make a preliminary determination whether an applicant qualifies for the requested Program, (iii) review information regarding eligible applicants from Kentucky Power, (iv) in the case of the HEART Programs, using reasonable applicable criteria, determine whether an eligible applicant will be submitted to Kentucky Power for enrollment in one of the Slots available to that applicant so as to receive benefits under one of the HEART Programs during a Program Year, (v) with regard to the THAW Program evaluate the information available regarding the applicant, and using criteria to be developed by CAK, and agreed upon with Kentucky Power, determine whether such applicant will receive THAW benefits and in what amount. If CAK learns that a Program participant is no longer eligible to participate in the applicable Program, it will immediately notify Kentucky Power so that the participant's benefits can be discontinued.

B. CAK will encourage its member community action agencies to display at their locations mutually-agreeable informational materials provided by Kentucky Power regarding the Programs.

C. CAK will provide oversight for the Programs, monitor both the implementation and ongoing operation of the Programs, monitor the data collected with regard to the Programs, review and analyze reports regarding the Programs and make such reports as are required herein or by order of the KPSC.

D. CAK will track its Costs associated with the HEART Programs and the THAW Program against the budget for the applicable period through the monthly and quarterly financial reports referred to in paragraph III(B) above and shall ensure that the audit referenced in paragraph III(C) above is performed and delivered as required therein.

E. The Donation HEART Program will be funded through voluntary energy cost assistance Donations provided by customers in accordance with KRS 278.287. The Donation HEART Program funds shall be segregated from other HEART Program funds and disbursed in accordance with the requirements of KRS 278.287(7) as reflected in this Agreement.

F. CAK will develop eligibility criteria for the THAW Program, including the bases for determining whether an applicant demonstrates hardship and other characteristics so as to be eligible for benefits under the THAW Program (the "THAW Criteria") and the amount of the benefit applicable to a particular THAW participant who is determined to be eligible for such benefits. CAK will provide its proposed THAW Criteria to Kentucky Power, and CAK and Kentucky Power will cooperate to agree upon the THAW Criteria to be used.

G. CAK shall manage and expend all monies paid to CAK as Costs in a diligent manner that utilizes sound business practices.

H. CAK agrees to maintain, during the term of this Agreement and for two years following its termination, complete and accurate records of all receipts and disbursements related to its Costs. From the information available to it, CAK will provide Kentucky Power with monthly updates related to the Programs, including the number of Kentucky Power customers participating in the Programs, attrition of participants, new customers starting participation in the Programs, and county distribution of Program participants.

I. Kentucky Power shall have the right, at any reasonable time, to inspect and audit the records maintained by CAK relating to the Programs for the current Program Year and the two preceding Program Years at Kentucky Power's sole cost either through Kentucky Power's own authorized representatives or through any public accounting firm selected by Kentucky Power.

J. CAK agrees to provide Kentucky Power with any and all information available to CAK which may be necessary for Kentucky Power to meet KPSC requirements.

K. As part of its screening and qualification procedures CAK or its member community action agencies shall obtain from all Program applicants a written release permitting Kentucky Power, CAK and the applicable member community action agency to exchange information regarding an applicant/participant/customer as necessary for the administration of the Programs. CAK or its member community action agencies also shall obtain a signed release from the Program applicant waiving any claims against Kentucky Power, CAK and the member community action agency in connection with the Programs and/or their administration. The Parties will cooperate to develop a mutually-agreeable form to be used for such releases.

L. As part of its screening and qualification process CAK or its member community action agencies shall require Program applicants to read, agree to and initial the following statement, or such other similar statement as the Parties may agree to have used:

The energy assistance program for which you are applying ("Program"), including benefit amounts and eligibility requirements, may be changed from time-to-time, which changes in some cases may require the approval by the Kentucky Public Service Commission. Benefits will be paid only so long as funding is available and you remain eligible for the benefits. Participation in a Program during any Program Year does not make you eligible to participate in any Program during a subsequent Program Year, and you will be required to reapply, and your eligibility for benefits from any Program will be reassessed for each Program Year.

No part of any Program benefit will be refunded or paid to you in cash. If a final bill otherwise shows a credit balance, part or all of which is the result of the application of a Program benefit, a refund will be made of only that portion, if any, of the final credit balance that exceeds the total Program benefits applied during the current Program Year.

M. When identifying to Kentucky Power the applicants who have been designated to receive benefits from the HEART Program, CAK will provide Kentucky Power with a HEART Enrollment File containing the following information using an agreed-upon data transfer method that would be expected to provide adequate security for such data:

- i. Name of the Kentucky Power customer to be enrolled;
- ii. Account number of the Kentucky Power customer to be enrolled;
- iii. Type and level of benefit to be credited to the Kentucky Power customer to be enrolled;
- iv. Applicant request identification; and
- v. Agency code.

N. CAK shall procure and maintain, and shall require that its member community action agencies taking applications for the Programs procure and maintain, the following insurance coverage throughout the term of this Agreement:

i. Commercial general liability insurance covering claims of bodily injury, property damage and professional liability insurance and/or Errors and Omissions insurance in an amount not less than \$500,000 per claim or per occurrence.

ii. The commercial general liability policy shall include Kentucky Power as an additional named insured with respect to Kentucky Power's liability arising out of CAK's operations.

iii. The insurance required by this paragraph V(N)(i) is in addition to and separate from any other obligations contained in the Agreement. If any of the policies indicated above are placed on a "claims-made" basis, such coverage shall be maintained for a period of not less than five years following the termination of this Agreement and CAK shall have the right to recover a portion of the premiums as part of the Costs. The above-referenced limit requirements may be met by any combination of umbrella or excess and primary policies so long as the total limit of insurance requirement is met. The required coverages referred to herein shall in no way affect, nor are they intended as a limitation of, CAK's liability with respect to its performance under this Agreement; notwithstanding the foregoing, CAK shall not be liable to Kentucky Power for any claim or occurrence covered by insurance but for Kentucky Power's failure to provide timely notification of such claim or occurrence.

VI. OPERATION OF THE HEART PROGRAMS

A. The HEART Programs are intended to provide assistance with residential electric bills to low income individuals who are customers of Kentucky Power. Benefits under the HEART Programs will be generally available for Kentucky Power bills received by customers during the months of January, February, March, and April during a HEART Program Year.

B. With regard to the HEART Program (not the Donation HEART Program which is addressed below) a participant must, at the time their eligibility is determined:

i. Be an individual whose household income does not exceed the then-effective maximum income level for participation in the federal Low Income Home Energy Assistance Program ("LIHEAP") (currently 130% percent of the Federal Poverty guidelines for the contiguous 48 states as published in the Federal Register for the applicant's family unit size for the applicable year);

ii. Establish that the HEART benefits will be credited to the account for the benefit of the applicant by: a. providing satisfactory evidence of service in the applicant's name at the service address; b. applying for service from Kentucky Power in applicant's name at the service address; c. providing an acceptable photo ID in applicant's name evidencing residence at the service address; or d. presenting acceptable evidence of current service in applicant's name

by another utility at the Kentucky Power service address. Each account or service address will be eligible for only one HEART benefit during a single Program Year;

iii. Be enrolled in a LIHEAP program, and for those residential customers who use electricity as their primary source of heat ("Heat Customers"), direct their LIHEAP payments to Kentucky Power;

iv. Not reside in a multi-unit single meter building;

v. Not be receiving or have received funds through the THAW Program in the same Program Year;

vi. Be current in their Kentucky Power electric service payments in connection with any residential account in the customer's name or no more than 59 days in arrears in connection with any residential account in the customer's name;

vii. Agree that no part of any HEART benefit will be refunded or paid in cash to the participant. If a final bill otherwise shows a credit balance, part or all of which is the result of the application of a HEART Program benefit, a refund will be made of only that portion, if any, of the final credit balance that exceeds the total HEART Program benefits applied during the current Program Year;

viii. Not have electric service disconnected at the residence for which benefits will be credited; and

ix. Receive information regarding enrollment in Kentucky Power's payments plans.

C. With regard to the Donation HEART Program, at the time their eligibility is determined a participant must meet the eligibility requirements below and the requirements set forth in Paragraph VI(B) to the extent the application of Paragraph VI(B) requirements is legally permissible and they do not conflict with the requirements below:

i. Use electricity as a principal source of home energy;

ii. Be responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;

iii. Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;

iv. Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

v. Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and

- Power;
- vi. Be a Kentucky Power customer who:
 - (a) Has received a disconnect notice for non-payment from Kentucky
 - (b) Is within four (4) days of running out of fuel oil, propane, kerosene, wood, or coal; or
 - (c) Has received an eviction notice for nonpayment of rent, when heat is included as an undesignated portion of the rent.

D. The HEART Programs, including benefit amounts and eligibility requirements, may be changed from time-to-time upon approval, to the extent necessary, by the KPSC.

E. Allocation of Funding.

i. Seventy-five percent (75%) of the annual funding for the HEART Program and the THAW Program, as described in Paragraphs IV(A) and IV(B) of this Agreement, will be allocated to the HEART Program. Twenty-five percent (25%) of the annual funding for the HEART Program and the THAW Programs, as described in Paragraphs IV(A) and IV(B) of this Agreement will be allocated to the THAW Program.

ii. Initially, 85% of the HEART Program funding referenced in Paragraph VI(E)(i) above shall be made available to Heat Customers. The remaining 15% of such HEART Program funding shall be made available to residential customers who use sources other than electricity for heating ("Non-Heat Customers").

iii. All of the customer Donations and the matching amount contributed by Kentucky Power as described in Paragraph IV(C) of this Agreement will be allocated to the Donation HEART Program.

iv. The monthly HEART Program benefit level for Heat Customers shall be \$115. The monthly benefit for Non-Heat Customers shall be \$58.

v. Within each of the three categories of residential customers eligible for the HEART Programs (Heat Customers and Non-Heat Customers in the HEART Program, and the Donation HEART Program), funding slots for the HEART Programs ("Slots") initially shall be allocated to each of CAK's member community action agencies, based upon the proportion that the number of Kentucky Power residential customers residing within the territory of such community action agency bears to the total number of Kentucky Power residential customers residing in the following Kentucky Counties: Boyd, Carter, Elliott, Greenup, Lawrence, Rowan, Morgan, Floyd, Johnson, Magoffin, Martin, Pike, Breathitt, Owsley, Leslie, Knott, Letcher and Perry Counties. Because of the limited number of Kentucky Power customers in the areas served by Daniel Boone Community Action Agency and Licking Valley Community Action Agency no

Slots will be provided for customers in Lewis and Clay Counties. The initial allocation of funding Slots is attached hereto as EXHIBIT 1.

vi. If insufficient qualified applicants are timely identified within a community action agency's territory to fill the allocated Slots, a Slot may be transferred to another community action agency. CAK shall notify Kentucky Power of each such transfer of a slot within three business days of the transfer.

vii. Kentucky Power and CAK shall annually evaluate and review the formula for allocating Slots and the amount of the monthly benefit available under the HEART Programs.

F. Screening, Eligibility Determination and Participant Identification.

i. CAK, by arrangement with its member community action agencies, shall take an initial screening application from all persons seeking to participate in the HEART Programs. Based on the information collected through that application, CAK will identify those applicants who appear to meet the eligibility requirements for participation in the HEART Program set out in Paragraph VI(B) or in the Donation HEART Program set out in Paragraph VI(C) of this Agreement by sending a HEART Eligibility File which will include the applicant's name and Kentucky Power customer number.

ii. Using the information provided by the applicant, by Kentucky Power in the History File, and other reasonable criteria, CAK will determine whether an applicant is eligible for benefits under the HEART Program or the Donation HEART Program, and whether such eligible applicant will receive one of the available benefit Slots so as to receive benefits under such HEART Program during a Program Year. CAK will identify the recipient of a Heart Program Slot to Kentucky Power by transmitting the HEART Enrollment File referenced above.

iii. The eligibility of any applicant or participant to participate in the HEART Programs will terminate at the end of each Program Year, and they will be required to re-apply and be subject to the eligibility and benefit authorization determination processes anew for any subsequent Program Year.

iv. CAK shall pay the applicable member community action agency \$25.00 for each of its Slots that is filled by a participant in the HEART Programs.

G. Manner of Distribution of Funds.

i. If an applicant is determined to be eligible to participate in one of the HEART Programs but there is no applicable HEART Program Slot available in the applicant's designated area, the eligible applicant shall be placed on a waiting list and admitted to the applicable HEART Program if and when an appropriate slot becomes available based upon the date they were placed on the waiting list.

ii. A participant's benefits under the HEART Programs shall begin with the participant's first Kentucky Power billing cycle following the participant's admission to the HEART Program, provided that such billing cycle falls within a Program month.

H. Participants in the HEART Programs shall receive Program benefits in the form of a credit to their Kentucky Power bill.

I. Termination of Participation.

i. If (1) a Donation HEART Program participant's service is discontinued as provided in paragraph IV(G)(iv) above, or (2) the Donation HEART Program participant no longer meets the eligibility requirements of Paragraph VI(C), then the participant's Donation HEART Program benefit shall be terminated.

ii. If (1) a HEART Program participant's service is discontinued as provided in paragraph IV(G)(iv) above, or (2) the HEART Participant no longer meets the eligibility requirements of Paragraph VI(B), then the participant's HEART Program benefit shall be terminated.

iii. If the benefit of participant in the HEART Programs is terminated, credits to the participant's Kentucky Power account shall terminate the billing month following the date the participant is no longer eligible to participate in the HEART Programs.

VII. THAW PROGRAM OPERATION

A. Scope of THAW Program. The THAW Program is intended to provide payment assistance to residential Kentucky Power customers not participating in the HEART Programs. Assistance shall be provided during the months of January, February, March, and April during the term of the THAW Program, or until benefit or administrative THAW Program funds for a Program Year have been depleted.

B. Eligibility. Participants must:

i. Establish that the THAW benefits will be credited to the account for the benefit of the applicant by: a. providing satisfactory evidence of service in the applicant's name at the service address; b. applying for service from Kentucky Power in applicant's name at the service address; c. providing an acceptable photo ID in applicant's name evidencing residence at the service address; or d. presenting acceptable evidence of current service in applicant's name by another utility at the Kentucky Power service address. Electrical service by Kentucky Power to the service address must not be disconnected for nonpayment at the time of the application to the THAW Program.

ii. Not be receiving or have received funds through the HEART Program in the same Program Year;

iii. Demonstrate proof of hardship and any other necessary attributes to be eligible for THAW benefits pursuant to the THAW Criteria; and

iv. Receive information regarding enrollment in Kentucky Power's payment plans.

C. The THAW Program, including benefit amounts and eligibility requirements, may be changed from time-to-time, subject any necessary approval by the KPSC.

D. A THAW Program participant will receive assistance benefits in an amount to be determined by CAK based on the THAW Criteria, but not to exceed \$175 per Program Year.

E. Screening and Benefit Determination.

i. CAK, by arrangement with its member community action agencies, shall take an initial screening application from all persons seeking to participate in the THAW Program. Based on the information collected through that application, and subject to receipt of information set forth in paragraph VII(B) that is within Kentucky Power's knowledge or possession, such agency will identify those applicants who appear to meet the eligibility requirements for participation in the THAW Program set out in paragraph VII(B) of this Agreement. If the agency determines an applicant should receive THAW benefits, it will follow the same data transfer process as is currently in use for LIHEAP, but in any event using an agreed-upon data transfer method that would be expected to provide adequate security for such data.

ii. The Parties will develop processes for finalizing benefit decisions and exchanging information necessary for determining eligibility for the THAW Program under paragraph VII(B). In the event that a secure, electronic data exchange process similar to HEART is to be implemented for THAW, it will be subject to the compensation provision applicable to excessive THAW IT Costs set forth in the "notwithstanding" provision of paragraph II(B) of this Agreement.

iii. The eligibility of any applicant or participant to participate in the THAW Program will terminate at the end of each Program Year, and they will be required to re-apply and be subject to the eligibility and benefit authorization determination processes anew for any subsequent Program Year.

iv. CAK may transfer some or all of the THAW benefits within a community action agency's territory or among community action agencies upon determining there is insufficient demand for THAW benefits as initially allocated. CAK shall notify Kentucky Power of each such transfer of THAW benefits within three business days of the transfer.

v. CAK shall pay member community action agencies \$16.00 per approved THAW Program application per applicant per calendar year.

F. Manner of Distribution of Funds.

i. Upon a determination that a THAW applicant should receive THAW Program benefits, the participant's actual receipt of such benefits will be based upon availability, on a first come, first serve basis.

ii. A THAW Program applicant shall not be eligible to participate in the THAW Program if the applicant is already receiving benefits through the HEART Program. In no event shall a participant receive payment of any unused THAW Program credit in cash or receive benefits through both the HEART Program and the THAW Program.

iii. THAW Program benefits will be applied to an applicant's account in the month in which the applicant is approved for THAW Program funding.

VIII. REGULATORY APPROVALS

Approval by the KPSC of this Agreement and the details of the Programs is required. As a result, the Parties' rights and obligations under this Agreement, and the effectiveness of this Agreement, are expressly contingent upon obtaining and maintaining such approval. The date on which the KPSC approves this Agreement will be the "Effective Date." To the extent that there may be, or later arise, a conflict between this Agreement and any requirement or Order of the KPSC, the KPSC's requirement or Order shall be controlling. CAK and Kentucky Power agree to cooperate in obtaining and maintaining all necessary KPSC approvals for the Programs.

IX. DEFAULT AND REMEDIES

A. Each of the following events or occurrences shall constitute an "Event of Default" under this Agreement:

- i. A Party's insolvency or declaration of bankruptcy;
- ii. A failure by a Party to comply with any substantive obligation attributed to it pursuant to this Agreement, including without limitation:
 1. Failure by CAK to provide in a timely manner any financial or progress reports required of it by this Agreement; or
 2. Failure by CAK to provide a reasonable explanation for any substantial variance in the Costs as compared to the applicable budget;
 3. Failure by Kentucky Power to timely provide the information required from it pursuant to this Agreement; and
 4. Failure by Kentucky Power to pay CAK's invoices for Costs as provided herein.

iii. Disclosure or discovery that the covenants and representations made by CAK or Kentucky Power requiring the fulfillment of any requirement covered under this Agreement or any other document submitted in support of this Agreement is, was, or shall be false or misleading in any material respect.

B. Notwithstanding the provisions contained in Paragraph IX(A) above, no Event of Default shall be the basis of any claim or action unless and until the non-defaulting Party has provided the alleged defaulting party a written notice detailing the specific claimed Event(s) of Default, and the alleged defaulting party has not cured, or undertaken significant and continuing efforts to cure the alleged default within twenty (20) days of its receipt of such notice, provided that the alleged default is cured within sixty (60) days following such notice. In the absence of such cure or a legitimate dispute as to the existence of the alleged the default, the non-defaulting Party shall have the right, at its election, to suspend its performance under this Agreement until such cure is completed or the dispute is resolved, or to terminate this Agreement and pursue any other remedies available to it.

C. Neither Party shall be liable to the other for any incidental, indirect, special, punitive, or consequential damages.

X. CONFIDENTIALITY

A. As used in this Agreement, "Confidential Information" means any information obtained or developed by the Parties about individual applicants and participants under the HEART Program or THAW Program (collectively, "Program Applicants") and that is disclosed by one Party to the other Party, whether before or during the term of this Agreement, including but not limited to nonpublic, individually identifiable personal information where the privacy or security of such information is subject to a local, state or federal law governing the privacy or security of such information, and information that is derived from the Confidential Information (for example through testing, analysis, processing, nonpublic reporting)..

B. Except as otherwise expressly permitted in writing by a Party's authorized representative, each of the Parties agrees to protect and maintain as confidential all Confidential Information obtained from another party shall not:

- i. use such Confidential Information received from another Party for any purpose other than in connection with the implementation, operation, evaluation, and oversight of the HEART Program and THAW Program;
- ii. disseminate or use Confidential Information for any purpose beyond the limited purpose in subparagraph i) above;
- iii. disclose, reveal or otherwise provide access to Confidential Information to any person or entity other than a Party's employees, directors, officers, agents and consultants who (i) have a need to know to further the purpose of this Agreement; (ii) have been advised of the

information's confidential status; and (iii) are subject to legally binding obligations of confidentiality as to such information no less restrictive than those contained in this Agreement; provided, however, that the Party who received it shall at all times be fully responsible to the Party who disclosed it for the compliance by such persons and entities with this Agreement; or

- iv. give, sell, or otherwise provide or make available Confidential Information to any other individual, firm, partnership, corporation, or agency not a party to this Agreement.

C. The Parties understand and agree that to the extent Confidential Information must be used or reflected in Kentucky Power's billing or accounting systems for purposes of the Programs or Kentucky Power's routine operations, Kentucky Power's usual restrictions on dissemination and availability of customer information shall be sufficient for purposes of satisfying its obligations under this Agreement with respect to Confidential Information.

D. All anecdotal reports containing or using Confidential Information shall use fictitious names, addresses, employers, and other identifiers.

E. Nothing herein shall limit the use of Confidential Information as necessary to implement, document, evaluate, or monitor the Programs or to comply with any court or regulatory agency proceeding or filing to which they may be subject. To the extent Confidential Information is included in any such proceeding or filing, however, the Parties agree to make reasonable efforts to protect its confidentiality.

XI. INDEMNIFICATION

To the extent permitted by law, each Party shall indemnify, and save the other harmless from and against any liabilities, costs, and claims, including judgments rendered against, and fines and penalties imposed upon, such Party, with reasonable attorney's fees and all other costs of litigation (collectively, "Liabilities"), to the extent, and only to the extent, such Liabilities result from the gross negligence or willful misconduct of the indemnifying Party, its employees, agents, or subcontractors, in connection with the performance of this Agreement, and provided the claim for indemnification for Liabilities is asserted during the term of this Agreement or during the twelve (12) months following the termination of this Agreement. Any indemnification of a Party shall to the same extent apply to such Party's directors, officers, employees, agents, and affiliated companies (including any joint ventures of which the indemnified Party or any of its affiliates are a member and the other members of such joint ventures), and the directors, officers, employees and agents thereof.

XII. GOVERNING LAW AND CONSTRUCTION OF AGREEMENT

The Parties' rights and obligations under this Agreement and the validity and construction of the Agreement shall be interpreted and enforced in accordance with the laws of the

Commonwealth of Kentucky without regard to any conflicts of laws or other doctrines that could result in the application of the law of another jurisdiction. The initial draft of this Agreement was prepared by Kentucky Power for convenience purposes only. This Agreement has been negotiated by both Parties, and it shall not be interpreted or construed for or against Kentucky Power or CAK. The words "includes" or "including" shall be understood as though they were followed in each case by the words "without limitation."

XIII. ENTIRE AGREEMENT

This Agreement, its Exhibits, and any documents referred to herein as being incorporated prepared pursuant to the terms so this Agreement contain all the terms, conditions and promises applicable to the Agreement. No modification or waiver of this Agreement, or any provision thereof, shall be valid or binding unless it is in writing and executed by both of the Parties. No waiver by either Party of any default or breach of any term or provision of this Agreement shall be construed as a waiver of any succeeding default or breach of the same or another term or provision of the Agreement.

XIV. NO OTHER BENEFICIARIES

This Agreement is solely between CAK and Kentucky Power, and nothing in this Agreement, the HEART Programs, or the THAW Program shall be construed as creating any rights or claims in any third party.

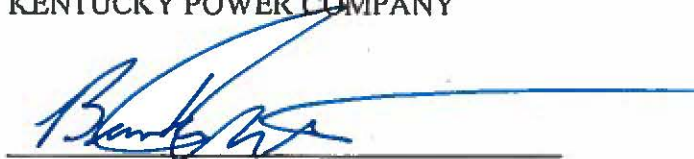
XV. MISCELLANEOUS

All of the provisions of this Agreement which expressly extend beyond the expiration or termination of this Agreement, including insurance obligations, indemnification obligations, confidentiality obligations, and limitations of liability, shall survive expiration or termination of this Agreement and remain in full force and effect in accordance with the terms of such provisions. If any provision of the Agreement is held to be invalid, such invalidity shall not affect the remaining provisions of the Agreement. Headings are provided for the convenience of the Parties and shall not affect the interpretation of any provision of this Agreement. This Agreement may be executed in counterparts, which counterparts taken together shall constitute the executed Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above, but effective as provided herein.

KENTUCKY POWER COMPANY

BY:



Brian K. West

Its: Director of Regulatory Services

COMMUNITY ACTION KENTUCKY, INC.

BY:



Roger McCann

Its: Executive Director

