

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION OF HOME )  
ENERGY ASSISTANCE PROGRAMS OFFERED )  
BY INVESTOR-OWNED UTILITIES PURSUANT ) CASE NO: 2019-00366  
TO KRS 278.285(4) )

REQUEST OF COMMUNITY ACTION KENTUCKY, INC. FOR GUIDANCE  
REGARDING REDLINED CONTRACT RECEIVED FROM COLUMBIA GAS OF  
KENTUCKY, INC.

FILED: SEPTEMBER 21, 2020

KY PSC Case No. 2019-00366  
Request of Community Action Agency, Inc. (“CAK”) for Guidance  
Regarding Redlined Contract Received from Columbia Gas of Kentucky, Inc.

On September 14, 2020, CAK filed a status report with the Commission advising that four of the six utilities that are parties to this proceeding had executed the final version of the contract template that CAK had routed to all parties on September 8, 2020. CAK included a copy of such final contract template with its status report to the Commission on September 14, 2020. CAK also notified the Commission in its status report that, on September 14, 2020, Columbia Gas of Kentucky, Inc. (“Columbia”) submitted a further redline of the final contract template, a copy of which is attached hereto as Exhibit A. It is CAK’s understanding that the Commission directed all utility Home Energy Assistant (“HEA”) contracts to be the same, save for Exhibit A setting forth the type of HEA program(s) to be offered. The purpose of having the same contract for all utilities would, among other things, streamline negotiations and reduce the legal fees CAK will necessarily incur to review and negotiate different contracts, the terms of which would necessarily have to flow down to and be negotiated with each associated subcontracting agency. Accordingly, CAK seeks guidance and assistance from the Commission with respect to the redlined agreement tendered by Columbia and otherwise with regard to the HEA contracting process.

Respectfully submitted,



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*Counsel for CAK*

## CERTIFICATE OF COMPLIANCE

This is to certify that Community Action Kentucky, Inc.'s September 21, 2020, electronic filing is a true and accurate copy; that the electronic filing has been transmitted to the Commission on September 21, 2020; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; and that in accordance with the emergency procedures adopted by the Commission, counsel also certifies that the electronically filed document will be the only filing due to the Coronavirus restrictions.

A handwritten signature in black ink, appearing to read "Kristin McClure", with a long horizontal flourish extending to the right.

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Counsel for Community Action Kentucky, Inc.

## AGREEMENT

THIS AGREEMENT (“*Agreement*”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, but effective as provided herein, by and between [ADD UTILITY NAME] (“*Utility*”), 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 May 4, 2020 (as it may be amended or superseded the “*Order*”) by the Kentucky Public Service Commission (the “*Commission*”) in Case No. 2019-00366, *In the Matter of: Electronic Investigation of Home Energy Assistance Programs Offered by Investor-Owned Utilities Pursuant to KRS 278.285(4)*, the Commission set forth certain parameters for low-income home energy assistance (“*HEA*”) programs to assist households with low income offered by jurisdictional utilities in Kentucky and determined that HEA programs should be administered by a single administering agency that provides back-office functions and subcontracts front-office functions to community level nonprofit organizations, and

WHEREAS, CAK represents and supports twenty-three (23) community-level, non-profit community action agencies (collectively, the “*CAAs*”) across the Commonwealth of Kentucky; and

WHEREAS, in the Order, the Commission requested that CAK serve as the single administering agency for all HEA programs under the Commission’s jurisdiction, and, on June 2, 2020, CAK accepted the Commission’s invitation; and

WHEREAS, CAK and Utility are entering into this Agreement to implement the requirements set forth in the Order; and

WHEREAS, CAK, itself and through arrangements with community-level, non-profit organizations, such as the CAAs (collectively, “*Operating Organizations*”), is willing to provide the services described herein to assist Utility in implementing the HEA programs described on **Exhibit A** (as that Exhibit A may be amended from time-to-time) (“*Programs*”) to eligible residential customers of the Utility; and

WHEREAS, CAK itself and through arrangements with Operating Organizations will perform the back-office and front-office functions for the HEA program applications and enrollments services as further described in this Agreement and on and subject to the terms and conditions of this Agreement (collectively, the “*Program Administrative Services*”);

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

**Commented [JMC1]:** Can this be limited to CAAs in our contract?

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## I. DEFINITIONS

Capitalized terms shall have the meaning ascribed to them in the text of this Agreement including as defined in Exhibit B under the heading “*HEA Program Terminology*”.

## II. TERM OF AGREEMENT

A. This Agreement shall commence on the Effective Date and terminate on September 30, 2021; *provided, however*, this Agreement shall automatically continue for successive one-year terms beginning on October 1 of each successive year unless either Party terminates in accordance with the terms of this Agreement.

**Commented [JMC2]:** Effective date is in Section IX, as date of PSC Order approving. Time is needed to terminate existing CAC contract and transition. Perhaps should be November 1 to coincide with when CAK starts LIHEAP enrollments.

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. As used in this Agreement, the term “Program Year” shall mean October 1 of one calendar year to September 30 of the following calendar year, and each of the Programs shall have the same Program Year. Notwithstanding the foregoing, the Parties recognize that the continuation of the Programs and of this Agreement are subject to 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 any audits required by Utility, and compensation by Utility to CAK pursuant to the terms of this Agreement for services performed in connection with the final Program Year.

**Commented [KJ\H3]:** Long enough time?

**Commented [JMC4]:** Is this included in Exhibit B definitions or only here?

C. Nothing in this Agreement shall authorize Utility to collect charges from residential customers to fund the Programs beyond the date of its authority to do so under applicable orders of the Commission and the expiration of Utility’s duly filed tariffs applicable to the Programs.

**Commented [JMC5]:** Columbia must file application to revise its tariff with PSC. Bill credit months must be changed to provide credits only during 3 winter months rather than 5 due to participant enrollments being delayed. Concern that this could result in an increase in disconnects and turnoffs during Nov and Dec, increased past due accounts, late payment fees for customers and bad debt expense.

## III. PROGRAM FUNDING & BUDGET

A. **Exhibit A** (all references in the Agreement to Exhibit A mean Exhibit A as it may be amended or replaced from time-to-time and subject to any necessary approval of the Commission) identifies the Programs of Utility that are subject to this Agreement and, will be incorporated herein by reference.

B. As identified in **Exhibit A** (~~as it may be amended or replaced from time to time and subject to any necessary approval of the Commission~~), Utility will fund certain of the Programs through the per-meter surcharge collected from residential customers (“*Customer Charge*”) as described in **Exhibit A**. **Exhibit A** identifies any energy cost assistance programs funded through voluntary customer donations and implemented pursuant to KRS 278.287 (“*Statutory Program*”) offered by Utility and subject to this Agreement.

C. **Exhibit A** identifies any Programs subject to this Agreement which are wholly funded by the Utility and any contributions by the Utility to a Program funded by Customer Charges or to a Statutory Program.

D. At least ~~60~~ninety (90) days prior to the beginning of a Program Year, Utility will submit to CAK a completed version of Exhibit A for each Program (all of which together shall collectively be **Exhibit A**) with all requested information, including an estimate of the funds Utility anticipates will be collected and allocated to each such Program (the “*Funding Estimates*”). For the Program Year September 1, 2020 to October 1, 2021 (the “*Initial Year*”), Utility shall submit Exhibit A to CAK on or before September 15, 2020.

**Commented [JMC6]:** More time is needed for necessary reviews and programming. To complete all parts of Exhibit A, the CAK Program Costs eligible for recovery under Section IV, Parts A, B, and C must be made known. Are these Proposed Budget items that CAK and Columbia then cooperate to arrive at the mutually-agreeable final budget and then the Benefit Amount can be determined to complete Exhibit A.

**Commented [KJ\H7]:** Note dates. Date is in the past.

E. Using the Funding Estimates and such other information as it may deem appropriate, CAK will prepare and present to Utility a budget for CAK’s provision of Program Administrative Services for the upcoming Program Year (the “*Proposed Budgets*”). Utility shall promptly provide CAK such information as it may reasonably request, and the utility has available, for the preparation of the Proposed Budgets. Based on the Proposed Budgets, Utility and CAK will cooperate in the preparation of a mutually-agreeable final budget, (“*Final Budget*”) for the upcoming Program Year for each of the Programs at least forty-five (45) days in advance of the start of the Program Year.

**Commented [JMC8]:** Needs a special provision for the Initial Year.  
Never mind, special provision is in F.

F. Except in the case of the Initial Year, CAK will provide the Proposed Budgets to Utility in sufficient time for Utility to file applications for any necessary approvals by the Commission, and at least ~~30~~sixty (60) days before the beginning of each Program Year. For the Initial Year, CAK shall provide the Proposed Budgets to Utility on or before                     , 2020.

**Commented [JMC9]:** Check PSC Order for additional filing requirements

G. Utility shall be responsible for obtaining any necessary approval of the Commission for **Exhibit A** and the Proposed Budgets, and in the absence of same, CAK shall have no obligations under this Agreement with regard to the Programs subject to such **Exhibit A** or such Proposed Budget.

#### IV. ADMINISTRATIVE EXPENSES, ALLOWABLE COSTS AND INVOICING

A. CAK shall be entitled to recover the reasonably incurred, actual, verifiable costs of providing the Program Administrative Services, which shall include back-office and front-office services related to the operation of the Programs, Program Oversight, and Reporting Requirements (all as further described in this Agreement and accompanying Exhibits), as well as reasonable legal fees directly related to the Program Administration Services, and all new or increased information technology costs CAK may incur to comply with the terms of this Agreement with regard to the Programs and Program Administration Services (“*Program IT Costs*”) (all collectively “*Program Costs*”).

**Commented [JMC10]:** Definition?

B. The total amount of Program 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 Program funds expended (the “*Program Cost Ceiling*”); *notwithstanding the foregoing*, Utility agrees to fully compensate CAK for the Program IT Costs in any Program Year that exceed the Program 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 directly related to administration of HEA funds, and ii) CAK provides Utility a detailed, good faith estimate of such costs in writing ninety (90) days in advance of the Program Year before they are to be incurred, provides Utility a sufficient amount of time to review such costs, and refrains from incurring such costs until Utility responds in writing. CAK shall be responsible for distribution of payments due to the participating local community action agencies for Program Slots

**Commented [KJ\H11]:** Not limited by 10% cap. PSC said should be separately negotiated by each utility.

**Commented [JMC12]:** Language from PSC Order

**Commented [JMC13]:** Utility needs to have information in Order to complete Exhibit A and provide each year pursuant to Section II B. Program IT Costs and collectively Program Costs should be stated as limited to those related to administration of the Program and not IT maintenance and upkeep of systems used for normal course of business by CAK.

filled.

C. Utility and CAK may agree to special projects, work beyond the Program Administration Activities or to Program Costs that exceed the Program Cost Ceiling, such as HEA program effectiveness studies or data compilations beyond what is required by the Order (“*Special Projects*”), provided that: i) CAK ~~has provided to~~ provides Utility a detailed, good faith estimate of the costs reasonable and necessary to perform Special Projects, in writing at least ninety (90) days before they are to be incurred, provides Utility a sufficient amount of time to review such costs, and refrains from incurring such costs until Utility responds in writing, and ii) Utility has agreed to reimburse CAK for such estimated costs, subject to any necessary regulatory approvals.

~~D. All funds collected for the 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 reasonably incurred Program Costs for any Program Year should exceed the Program Cost Ceiling in that Program Year (“Excess Costs”), CAK may be paid those Excess Costs from such “roll-over” funds.~~

**Commented [JMC14]:** “Roll-over” funds are to be returned to serve customers in the next heating season. The Commission established a 10% ceiling on administrative fees and allowed for separate negotiation by each utility. “Excess Costs” are not allowable. Provisions B and C of this Section provide the mechanisms to address additional costs.

~~E.D.~~ CAK will track its Program Costs and prepare and provide to Utility on a monthly basis reports of Program Costs to date and a comparison of Program Costs to the budget for the applicable period (“*Monthly Costs Report*”). CAK shall provide Utility with a written explanation for any variance in Program Costs that are 10% or greater than budget.

**Commented [JMC15]:** This means variance 10% or greater, whether above or under budget, correct? Will monthly cost reports include year to date and year end estimate to compare to total annual budget?

~~E.E.~~ CAK shall submit invoices to Utility for CAK’s Program 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. Utility shall pay such invoices within 30 days after its receipt of same. CAK will provide such documentation of its Program Costs reflected in an invoice as Utility may reasonably request.

**Commented [KJ\H16]:** Enough time? Questionable, especially at the start.

~~G.F.~~ CAK is responsible for the actions, inactions and the performance and compensation of the Operating Organizations.

~~G.~~ CAK agrees to maintain, during the term of this Agreement and for four years following its termination, complete and accurate records of all receipts and disbursements related to its Program Administrative Services ~~Program Costs~~.

**Commented [JMC17]:** Program Administrative Services includes Program Costs and any mutually agreed upon Special Projects.

H. CAK represents and warrants that it has the requisite competence, skill, physical and financial resources, and the quantity of trained, skilled, and licensed personnel (qualified by education, training and experience to perform its assigned tasks), required hereunder and that it has and shall maintain the capability, experience, registrations, licenses, permits, and government approvals required to perform the work contemplated hereunder. CAK warrants and represents that all Program Administrative Services shall be performed: (i) in accordance with the best practices within the industry and/or profession prevailing at the time of the Agreement; (ii) in compliance with all applicable federal, state or local laws, ordinances, and regulations; and (iii) in conformance with the Agreement and in a diligent manner consistent with sound and ethical business practices.

I. CAK and its Operating Organizations shall perform a thorough background check on any employee that is assigned to provide services pursuant to this Agreement in order to verify fitness

and qualifications to provide such services. The background investigation shall include Social Security Number verification, criminal history, Terrorist Watch Database Search, Education Verification, Employment Verification, Motor Vehicle License and Driving Record, References, and Professional License or Certification and Drug Screening when applicable. Utility may, at its discretion, request access to results of any background check or investigation for the purpose of ensuring compliance with this provision.

## V. OPERATION OF THE PROGRAMS

The Programs identified by the Utility on **Exhibit A** (~~as it may be amended or replaced from time to time and subject to any necessary approval of the Commission~~) shall be operated as set forth in the portions of **Exhibit B** relevant to such Program.

## VI. OUTREACH & PROGRAM REVIEW

The Parties, in coordination with the Operating Organizations, shall develop a mutually-agreeable marketing strategy for each Program (each a “*Marketing Strategy*”). Once agreed-upon by the Parties, Utility shall obtain all necessary Commission review and approval of each Marketing Strategy.

## VII. REPORTING REQUIREMENTS

A. The Parties will compile the following data to be utilized in the monthly and annual reports required by the Commission’s Order:

i. CAK will compile the data for the Program Administration Services data set forth in Appendix A of the Order, and that data set forth in Appendix B related to Program Applications, Enrollments, Denials and utility customer breakout by county (“*CAK HEA Data*”).

ii. Utility will compile the available data set forth in Appendix B of the Order related to credits provided to Program Participants, funded related items and expenditures (“*Utility HEA Data*”).

B. The Parties periodically will reconcile their respective records relating to Program Participants and the benefits received by those Program Participants.

C. CAK shall provide Utility with the CAK HEA Data on the 15<sup>th</sup> of each calendar month reflecting the CAK HEA Data current as of the end of the prior calendar month (“*Monthly HEA Report*”).

D. Appendix B of the Order requires the Parties to jointly file an annual report with the Commission no later than the date for such report established by the Commission (“*Annual HEA Report*”) or as otherwise prescribed by the Commission to ensure report includes all administered

**Commented [JMC18]:** Marketing Costs should be included in the Proposed Budget provided by CAK.

**Commented [KJ\H19]:** Is this aggregated data, or broken out by individual customer? Aggregated - JMC

**Commented [JMC20]:** Columbia reports are all on billing month NOT calendar month. Need to recognize this and acknowledge there will be inconsistencies due to timing.



benefits. Utility shall be responsible for creating the Annual HEA Report by extracting requisite data from the previously supplied Monthly HEA Reports and combining it with Utility HEA Data. CAK agrees to provide in a timely manner all data in its possession which is not reasonably available in the Utility's possession that is needed for the Annual HEA Report, exclusive of any information that would be deemed a Special Project as described above. Utility shall timely file the Annual HEA Report with the Commission on behalf of the Parties.

Commented [KJ\H21]: i.e., at least xx days prior to the Report filing deadline?

### VIII. PROGRAM OVERSIGHT/AUDIT/EVALUATION

A. CAK will provide oversight for the Programs which will include monitoring both the implementation and ongoing operation of the Programs, monitoring the data collected with regard to the Programs, and compiling and preparing such reports as are required herein or by order of the Commission ("*Program Oversight*").

B. Utility shall have the right, at any reasonable time, to inspect and audit the records maintained by CAK and its Operational Organizations relating to Program implementation and Program Oversight for the current Program Year and the four preceding Program Years at Utility's sole cost either through Utility's own authorized representatives or through any public accounting firm selected by Utility.

C. CAK's financial records will be audited annually at CAK's expense by an independent certified public accountant in accordance with then 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 Utility, which may file it with the Commission if necessary or desired.

D. CAK agrees to provide Utility with all information within CAK's possession that is pertinent to the Program Oversight, exclusive of any information that would be deemed a Special Project as described above.

### IX. REGULATORY APPROVALS

Approval by the Commission 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 Commission 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 Commission, the Commission's requirement or order shall be controlling. CAK and Utility agree to comply with and cooperate in obtaining and maintaining all necessary Commission approvals for the Programs.

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Commented [JMC22]: Suggest effective date be November 1, 2020

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### X. DEFAULT AND REMEDIES

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

- i. A Parties' 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 Program Costs as compared to the applicable budget;
  - 3. Failure by Utility to timely provide the information required from it pursuant to this Agreement; and
  - 4. Failure by Utility to pay CAK's undisputed invoices for Program Costs as provided herein.
- iii. Disclosure or discovery that the covenants and representations made by CAK or Utility 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 any provisions in this Agreement to the contrary, no Event of Default shall be the basis of any claim, suit 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.

**XI. FORCE MAJEURE.**

A. Notwithstanding any provision in this Agreement to the contrary, except for any obligation to pay money due for obligations incurred prior to the contract's termination of this Agreement, each Party will be excused from performance under this Agreement during the period and to the extent that such Party is unable to perform by reason of any cause beyond the control of that Party, including, but not limited to, fire, storm, drought, flood, earthquake, war, terrorism, insurrection, power failure, quarantine, fuel shortage, the application or enforcement of any law, government declaration of emergency, or the inability or delay of a Party to acquire, after the exercise of due diligence and commercially reasonable efforts under the circumstances, any necessary

**Commented [KJ\H23]:** What about failure to obtain Authorization/Release form from participants, or failure to follow data security protocol, Utility should not have to wait to suspend?

materials, supplies, permits, permissions and governmental actions (a “*Force Majeure Event*”). In the case of CAK, the failure of an Operating Organization to perform its obligations to CAK related to the Programs, which CAK in the exercise of reasonable diligence could not prevent, will be a Force Majeure Event.

B. The Party asserting an excuse of performance due to the occurrence of Force Majeure Event shall give notice of same to the non-claiming Party, including a description of the Force Majeure Event, a good faith estimate of the anticipated duration of the Force Majeure Event and a description of the claiming Party’s efforts, ~~if any~~, to terminate the Force Majeure Event or to limit its effects on the claiming Party’s performance of this Agreement.

## **XII. CONFIDENTIALITY/DATA SECURITY**

A. As used in this Agreement, “Confidential Information” means any information obtained or developed by the Parties about individual applicants and participants under the Program (“*Program Applicants*”) and that is disclosed by one Party to the other Party, whether in preparation for the Programs, ~~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 and 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 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 or its affiliates’ 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 Utility's billing or accounting systems for purposes of the Programs or Utility's routine operations, Utility'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. If a Party if it is compelled by a court to release Confidential Information, such Party shall provide the other Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.

F. In performing the Services, at a minimum, CAK and its Operational Organizations and subcontractors shall employ administrative, physical, and technical controls to protect the confidentiality, integrity, and accessibility of Confidential Information both in transit and at rest, so as to reasonably ensure that Confidential Information is not lost or stolen, or otherwise used, modified or accessed, attempted to be accessed, or allow access to any third party without Utility's prior express written approval or by any CAK employee or agent who is not authorized to access the Confidential Information. These controls shall be at least consistent with industry standards and with those controls the CAK uses to protect its own confidential information. CAK shall maintain an ongoing system to ensure that employees, Operational Organizations, subcontractors, and agents have only such authorized access to Utility's Confidential Information as is reasonably necessary based on that employee, Operational Organizations, subcontractor, or agent's role. CAK and its Operational Organizations and subcontractors shall upon discovery or reasonable suspicion of any breach of security, unauthorized access, or abuse of authorized access, immediately: (i) notify Utility of any loss or unauthorized disclosure, possession, use or modification of the Confidential Information or any suspected attempt at such activity or breach of CAK's or its Operational Organization's or subcontractors' security measures, by any person or entity; (ii) investigate and take corrective action in response thereto; and (iii) provide assurance to Utility's reasonable satisfaction that such activities or breach or potential breach shall not reoccur.

G. With respect to the protection of and access to Confidential Information and the personal information of Participants, CAK and its Operational Organizations and subcontractors shall comply with all applicable laws regarding the protection of such information. CAK and its Operational Organizations and subcontractors, as applicable, shall employ no less than industry standard systems, procedures, and practices with respect to: (i) intrusion detection systems including actively monitoring such systems for signatures that correspond to attempts at breaking the security of personal information; (ii) backup procedures relating to software, system configurations and personal information; and (iii) other mutually acceptable security measures for data intransit and at rest.

H. Upon termination of this Agreement CAK shall, within thirty (30) days following the effective date of termination or expiration, either return the Confidential Information to Utility or comply with the following minimum standards regarding the proper disposal of Confidential Information: (i) paper documents containing Confidential Information shall be either redacted, burned, pulverized or shredded with a cross-cut shredder so that Confidential Information cannot practicably be read or reconstructed; and (ii) electronic media and other non-paper media containing Confidential Information shall be destroyed or erased so that Confidential Information cannot practicably be read or reconstructed.

E.I. The breach of any of the covenants of confidentiality may result in irreparable harm and continuing damages and Utility's remedy at law for any such breach or threatened breach may be inadequate. Accordingly, in addition to such remedies as may be available to Utility at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including an injunction restraining CAK from disclosing, in whole or in part, any Confidential Information.

### **XIII. INSURANCE**

CAK shall procure and maintain, and CAK shall require that Operating Organizations taking applications for the Programs procure and maintain, the following insurance coverage throughout the term of this Agreement:

A. 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.

B. The commercial general liability policy shall include Utility and its officers, directors, and employees as additional named insureds and shall include a waiver of subrogation in favor of the additional insureds with respect to Utility's liability arising out of CAK's operations.

C. The insurance required by this Paragraph 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 Program 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 Utility for any claim or occurrence covered by insurance but for Utility's failure to provide timely notification of such claim or occurrence.

### **XIV. INDEMNIFICATION**

To the extent permitted by law, each Party shall indemnify, and save the other harmless from

**Commented [KJ\H24]:** Corporate Insurance needs to review. \$500K very low. Crime/Fraud insurance. Cyber coverage?

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, "Claims"), 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 Claims is asserted within the statute of limitations applicable to the Claims. 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.

Commented [KJ\H25]: Need to be held to a higher standard.

## **XV. 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. This Agreement has been negotiated by both Parties, and it shall not be interpreted or construed for or against Utility or CAK. The words "includes" or "including" shall be understood as though they were followed in each case by the words "without limitation."

## **XVI. ENTIRE AGREEMENT**

This Agreement, its Exhibits, and any documents (including the Order) referred to herein are incorporated herein and are a part of this Agreement. This Agreement contains all the terms, conditions and promises applicable to the subject matter of this 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.

## **XVII. NO OTHER BENEFICIARIES**

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

## **XVIII. 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. The recitals set forth in

this Agreement are an integral part hereof and shall have the same contractual significance as any other language contained in this Agreement- This Agreement may be executed in counterparts, which counterparts taken together shall constitute the executed Agreement. Facsimile, electronic and pdf signatures shall be as legally binding and considered in all manner and respects as original signatures.

[Signatures appear on next page. This space is intentionally blank.]

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

**[INSERT NAME OF UTILITY COMPANY]**

**COMMUNITY ACTION KENTUCKY, INC.**

By: \_\_\_\_\_  
[Type/Print Name]

By: \_\_\_\_\_  
Roger McCann

Its: \_\_\_\_\_  
Position

Its: Executive Director

