

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  
DUKE ENERGY 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 Duke Energy 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, Duke Energy Kentucky, Inc. (“Duke”) submitted a further redline of the final contract template and a completed Exhibit A to CAK, 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 Duke and otherwise with regard to the HEA contracting process.

Respectfully submitted,



Kathie McDonald-McClure

Wyatt, Tarrant & Combs, LLP  
500 West Jefferson Street  
Suite 2800  
Louisville KY 40202-2898  
Direct: (502) 562-7526  
Fax: (502) 589-0309  
Email: [kmccclure@wyattfirm.com](mailto:kmccclure@wyattfirm.com)

Karen J. Greenwell

Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington KY 40507-1746  
Direct: (859) 288-7636  
Fax: (859) 259-0649  
Email: [kgreenwell@wyattfirm.com](mailto:kgreenwell@wyattfirm.com)

*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.

---

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;

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

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:

## 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 \_\_\_\_\_; *provided, however*, this Agreement shall automatically continue for successive one-year terms beginning on \_\_\_\_\_ of each successive year unless either Party terminates in accordance with the terms of this Agreement.

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.

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.

## III. PROGRAM FUNDING & BUDGET

A. **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 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.

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 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 for the upcoming Program Year for each of the Programs.

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 days before the beginning of each Program Year. For the Initial Year, CAK shall provide the Proposed Budgets to Utility on or before \_\_\_\_\_, 2020.

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. Subject to the limitations set forth herein, CAK shall be entitled to recover the 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**”).

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~~ ii) Utility has approved such Program IT Costs in writing, and (iii) CAK provides Utility a detailed, good faith estimate of such costs in writing before they are 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 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 Utility an estimate of the costs reasonable and necessary to perform Special Projects, and ii) Utility has agreed, in writing, 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 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.

E. 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.

F. 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 all such, uncontested 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.

G. CAK shall be solely is-responsible for compensating the Operating Organizations and Utility shall have no obligation or liability to such Operating Organizations under this Agreement.

H. 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 Costs.

## 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 in a manner satisfactory to the Utility in its sole discretion prior to becoming effective.

## 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 related to Program Applications, Enrollments, Denials and utility customer breakout by county (“**CAK HEA Data**”).

ii. Utility will compile the 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 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 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.

## **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 relating to 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 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 "Effective Date" of this Agreement shall be the later of the completion of each of the following: (i) The date on which the Agreement has been fully executed by each of the Parties hereto; and (ii) 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 cooperate in obtaining and maintaining all necessary Commission approvals for the Programs.

## 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 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 or action unless and until the non-defaulting Party has provided the alleged defaulting pParty a written notice detailing the specific claimed Event(s) of Default, and the alleged defaulting pParty 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. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF USE OR LOSS OF DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT LIMIT THE RECOVERY UNDER SECTION XIV BY AN INDEMNIFIED PARTY OF ANY AMOUNT PAID OR PAYABLE TO THIRD PARTIES IN RESPECT OF ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION HEREUNDER IS OTHERWISE REQUIRED. ~~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, 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 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

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 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 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.

E.F. Release of Customer Account Information. Prior to the release to CAK of any customer account information by Utility, CAK hereby agrees that it shall obtain a fully executed "Authorization for Release of General and/or Confidential Information" on the form of Exhibit C attached hereto as

may be updated by the Utility from time to time (“Release”) from each eligible customer and ensure the signed Releases are available to Utility, upon request, for inspection in a reasonably prompt manner.

### **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 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 ClaimsLiabilities 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.

### **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 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. This Agreement may be executed in counterparts, which counterparts taken together shall constitute the executed Agreement.

[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

**Exhibit A – Program Funding, Programs & HEA Program Terminology**

**Utility Program Funding**

**Customer Charge on Residential Bills:**

Customer Charge per meter:	\$ <u>0.30</u>
Estimated Customers:	\$ <u>223,279</u>
Estimated Funding:	\$ <u>\$803,804.40</u>

**A description of current and future shareholder funding levels & other non-residential donations allocated to the HEA Program(s):** Annual Shareholder Contribution - \$50,000

---

---

---

---

---

---

---

---





**Preliminary Funding/Slots based on residential customers**

*(\*slots/funding can be adjusted as needed)*

**Total Funding:**

\$853,804.40 – Total number of slots 1253. 1203 slots at \$693.00 per customer = \$833,679(50 of the 1200 subsidy slots would be allocated to customers at 151-200% POP), Crisis - \$20,000 50 slots (at \$400 per customer at 151-200% POP)

Region/County (if applicable)	Benefit Type	Slots/\$
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## **HEA Program Terminology**

**Account Number-** the unique identifier associated with a utility account that associates it with a particular service or meter.

**All-Electric-** a Household that uses only electricity for heating and cooling, i.e., the Household does not use propane or Natural Gas for either heating or cooling.

**Applicant-** a) an individual who applies for services on behalf of a Household or alternatively b) the Household who has applied for services. Applicant and Household may be used interchangeably unless the context otherwise requires.

**Approved / Approved Application -** an Applicant who is approved after having applied and being determined as *eligible* to participate in an HEA program. To be Approved does not mean that Applicant will receive a benefit. An Approved Applicant is eligible to either be placed into a SLOT when it becomes available, or be provided another available benefit. (See definitions of Enrolled and Enrollment.)

**Base Load-** a Household that uses a fuel source other than electricity for heating. For example, the Household may have a furnace that uses Natural Gas or propane as the heat source.

**Denial / Denied Application-** the process of denying an application because the Applicant is ineligible. For example, an Applicant may be above the income level allowed for the HEA program.

**Enrolled / Enrollee-** a status that indicates a Household's utility account has been assigned to a SLOT, pledge voucher or some other mechanism by which they will receive a benefit.

**Enrollment-** the process of placing Household into a position where they will receive a benefit, i.e., to be enrolled. An example would be an Applicant that has been placed into a SLOT after having been on a waitlist.

**Expired –** an Application that is not carried over from one program year to the next. Example: An application may be approved and placed onto a waitlist, but because no SLOT was available, the application “expires” and is purged from the waitlist prior to the new program year.

**Household-** a individual person or group of people who live together and share a utility service, energy source, water or sewer connection (i.e., utility account). The people in a Household may not necessarily be related.

**Individual-** a person who lives in a Household. This person may or may not be the Applicant.

**Participant-** a Household who a) has been Enrolled and b) is receiving or has received a program benefit. A Household whose utility account has been assigned to a SLOT, pledge voucher or other benefit mechanism. Same as Enrolled or Enrollee.

**Pending Application-** an Application that has started, but has not been completed. This may occur if the Applicant has not provided adequate eligibility documentation, utility account information or similar. Applications will remain in Pending status until either Approved or the Pending Application Period has expired.

**Pending Application Period-** the time period that an Applicant's Application may remain in Pending status before being automatically denied. The default application period is 5 calendar days. An Applicant whose Application is automatically denied during the pending period may re-apply.

**Percent of Poverty-** Percent of Poverty (POP) refers to the U.S. Federal Poverty Guidelines published by the United States Department of Health and Human Services (HHS).

**Priority-** the ranking of Applicants based on a calculation. Applicants who are on a waitlist are selected for SLOTS based on their priority points.

**Removed-** a status that indicates a Household who was Enrolled has been unenrolled. This may occur when a Household closes an account or moves out of a service territory. Typically occurs because of a utility action.

**Recertification-** the process of a) retaining an Enrollee/Participant from one period to the next, b) automatically or semi-automatically re-enrolling a Participant based on prior participation in a program.

**Withdrawn-** A status that indicates a Household has opted to leave an HEA program. This is usually assumed to be voluntary. This may occur when a Household closes an account or moves out of a service territory.

**Waitlist-** A list of Households or utility accounts, who have applied and been determined to be eligible for a "SLOT". Applicants on a waitlist are prioritized. Applicants are selected and placed in a SLOT based on their Priority (see above definition).

**Rejected-** An applicant that was approved based on eligibility and submitted to a utility but was not accepted or rejected for enrollment into a benefit program. This may occur when an Applicant was placed onto a waitlist and then their account closed.

**Void / Voided Application-** The status of an Application. Typically, an Application is Void or Voided because it contains an error and is "voided" so that it can be replaced with another Application.