

December 18, 2014

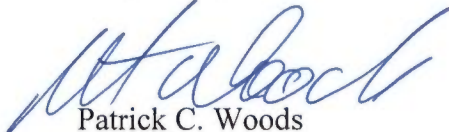
Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

Re: PSC Case No. 2014-00363

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-referenced case a fully executed copy of the General Services Agreement by and between East Kentucky Power Cooperative, Inc. and Appliance Recycling Centers of America, Inc. pursuant to ordering paragraph 2 in the Order dated December 16, 2014.

Very truly yours,



Patrick C. Woods

Enclosures

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PUBLIC SERVICE  
COMMISSION

**GENERAL SERVICES AGREEMENT**  
**EAST KENTUCKY POWER COOPERATIVE, INC.**

This General Services Agreement (this "General Services Agreement") is made this 30<sup>th</sup> day of September, 2014 by and between EAST KENTUCKY POWER COOPERATIVE, INC. ("East Kentucky", "EKPC" or "Company") and Appliance Recycling Centers of America, Inc. ("Contractor"), a Minnesota Corporation.

WHEREAS, Contractor desires the opportunity to provide goods and/or services to East Kentucky from time to time, and East Kentucky desires the opportunity to engage Contractor to provide such goods and/or services; and

WHEREAS, the parties intend that this General Services Agreement sets forth the exclusive set of terms and conditions which shall govern the performance of the "Work" (as defined below) by Contractor for East Kentucky to engage Contractor to provide Work.

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

**ARTICLE 1 DEFINITIONS**

- 1.01 **Agreement:** "Agreement" shall mean this General Services Agreement, along with any "Statements of Work" (as defined below) and/or Purchase Order (as defined below) issued by Company and/or any other documentation as may be executed by the parties in accordance with Article 2, and/or or other agreed collateral document pursuant to which the Work is to be performed.
- 1.02 **Applicable Laws:** "Applicable Laws" shall mean any and all applicable federal, state, or local laws, regulations, codes, ordinances, administrative rules, court orders, permits or executive orders.
- 1.03 **Contract Price:** "Contract Price" shall mean the aggregate of the particular consideration set forth in one or more Purchase Orders or other Statements of Work or as otherwise agreed upon. Contract price excludes taxes, duties, fees, and assessments of any nature, including without limitation all sales and use taxes, due to any governmental authority with respect to the Work.
- 1.04 **Contractor:** "Contractor" shall mean the entity designated as the "Contractor" in the opening paragraph of this Agreement.
- 1.05 **Company:** "Company" shall mean East Kentucky Power Cooperative, Inc.
- 1.06 **EKPC:** "EKPC" shall mean East Kentucky Power Cooperative, Inc.
- 1.07 **East Kentucky Power Cooperative, Inc.** shall mean East Kentucky, a Kentucky corporation.
- 1.08 **Purchase Order:** Company may, at its discretion, issue its own "Purchase Order Standard Terms and Conditions" and/or "Contractor's Purchase Agreement" (collectively referred to as a "Purchase Order") that may supplement, but in no way or manners ever supersede, this Agreement with respect to any conflicting terms and conditions.
- 1.09 **PO Number:** "PO Number" shall mean a multi-digit number specifically issued to Contractor by EKPC.
- 1.10 **Statements of Work:** "Statements of Work" shall mean any specifications, instructions, drawings, schedules, a Purchase Order, contracts, scopes of work, and/or statements of work.
- 1.11 **Work:** "Work" shall include those services and/or goods set forth in this Agreement.
- 1.12 **Tools and Equipment:** "Tools and Equipment" shall mean any tools, equipment, rigging and other general supplies on the Company's premises where the Work is being performed that is either owned and/or leased by Company.

**ARTICLE 2 SCOPE BINDING EFFECT**

Unless otherwise agreed in a writing executed by each of the parties which evidences a clear intention to supersede this Agreement, the parties intend that this Agreement apply to all transactions which may occur between East Kentucky on one hand and Contractor on the other hand during the term of this Agreement



and which are related to the provision of goods and/or services by Contractor for the benefit of East Kentucky. East Kentucky makes no commitment to Contractor as to the exclusiveness of this relationship or as to the volume, if any, of business East Kentucky will do with Contractor. The parties do, however, anticipate that the parties will agree from time to time for the performance of Work by Contractor. Such agreement for the provision of Work shall be reflected by (a) each of the parties executing a mutually acceptable Statement of Work under this Agreement (which is attached hereto as Exhibit A and incorporated by reference) or (b) Company providing a purchase order or other Statement of Work to Contractor and Contractor accepting such purchase order or other Statement of Work (including by commencing performance pursuant to such purchase order or other Statement of Work). In the event Company provides a purchase order or other Statement of Work to Contractor and Contractor commences performance, unless such purchase order or other Statement of Work expressly provides otherwise, Contractor hereby agrees to the formation of a binding agreement as described in the purchase order or other Statement of Work upon Contractor's commencement of performance, waives any argument that it might otherwise have under Applicable Laws that the purchase order should have been executed by each of the parties to be enforceable and further agrees to not contest the enforceability of such purchase order or other Statement of Work on those grounds, and agrees to not contest the admissibility of Company's records related to such Purchase Order or other Statement of Work that are kept in the ordinary course by Company. In addition, in no event shall the terms and conditions of any proposal, purchase order or other Statement of Work, acknowledgement, invoice, or other document unilaterally issued by Contractor be binding upon Company without Company's explicit written acceptance thereof. Any Work performed by Contractor without Company's binding commitment for such Work either via a duly executed or accepted purchase order or other Statement of Work under this Agreement shall be at Contractor's sole risk and expense, and Company shall have no obligation to pay for any such Work. The fee schedule of Contractor is attached hereto as Exhibit B and incorporated by reference.

### **ARTICLE 3 CONDITIONS AND RISKS OF WORK**

Unless the applicable Statement of Work expressly provides otherwise, Contractor agrees that before beginning any Work Contractor shall carefully examine all conditions relevant to such Work and its surroundings, and, unless Contractor notifies Company in writing that it will not perform the Work under such conditions, Contractor shall assume the risk of such conditions and shall, regardless of such conditions, the expense, or difficulty of performing the Work, fully complete the Work for the stated Contract Price applicable to such Work without further recourse to Company. Without limiting the foregoing, Contractor specifically recognizes that Company and other parties may be working concurrently at the site. Information on the site of the Work and local conditions at such site furnished by Company in specifications, drawings, or otherwise is made without representation or warranty of any nature by Company, is not guaranteed by Company, and is furnished solely for the convenience of Contractor. All drawings and other documents, if any, required to be submitted to Company for review shall be submitted in accordance with the mutually agreed to schedule, and, if no schedule applies, such drawings or other documents shall be submitted by Contractor without unreasonable delay. No Work affected by such drawings and other documents shall be started until Contractor is authorized to do so by Company. In case of a conflict between or within instructions, specifications, drawings, schedules, purchase order(s) and/or other Statements of Work, Company shall resolve such conflict; and Company's resolution shall be binding on Contractor. Contractor agrees that all labor employed by Contractor, its agents, or subcontractors for Work on the premises of Company shall be in harmony with all other labor being used by Company or other contractors working on Company's premises. Contractor agrees to give Company immediate notice of any threatened or actual labor dispute and will provide assistance as determined necessary by Company to resolved any such dispute. Contractor, its agents, or subcontractors shall remove from Company's premises any person objected to by Company in association with the Work.

**Local Conditions** Contractor represents that it has taken steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Site and/or the performance of the Work, including (i) conditions bearing upon access, egress, transportation, waste disposal, handling, laydown, parking and storage of materials; (ii) the availability of labor, water, electric power, other utilities and roads; (iii) uncertainties of weather or other observable physical conditions at the Site; and (iv) the character of equipment and facilities needed preliminary to and during the performance of the



Work; and (v) the location of all underground facilities including but not limited to gas, electric, water, sewer lines, and drain tiles. Any failure by Contractor to take the actions described in this section will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner.

**Site Conditions** All conditions, including geotechnical, topographical, geological, seismic, hydrographical, hydrological, or physical conditions related to the Work shall neither be deemed concealed or unknown conditions under this section nor constitute force majeure for purposes of this Agreement; it being expressly acknowledged and agreed by Contractor that the cost and delay risk for any such conditions shall be borne by Contractor, and that Contractor shall have no claim for an adjustment in the Schedule or the Contract Price as a result of such conditions. If, in performance of the Work, Contractor encounters unknown, concealed, man-made, subsurface conditions at the Site, then notice of such conditions shall be promptly given to Owner by Contractor and if Owner and Contractor thereafter mutually determine that such conditions are, in fact, of such nature, then Contractor may be entitled to seek an equitable adjustment in the Contract Price or the Schedule, or both.

#### **ARTICLE 4 COMPANY CHANGES IN WORK**

The scope of and conditions applicable to the Work shall be subject to changes by Company from time to time. Such changes shall only be enforceable if documented in a writing executed by Company. For all circumstances requiring Changes in Work, Contractor shall have prior written approval from of Company before performing said Work. Work completed without a prior approved Change Order will not be processed or paid. If Contractor believes that adjustment of the Contract Price or the Work schedule is justified, whether as a result of a change made pursuant to this Article or as a result of any other circumstance, then Contractor shall (a) give Company an immediate written notice of its claim and (b) shall supply a written statement supporting Contractor's claim, which statement shall include Contractor's detailed estimate of the effect on the Contract Price and/or the Work schedule. Contractor agrees to continue performance of the original Work during the time any claim hereunder is pending unless otherwise mutually agreed to in writing between the parties. Company shall not be bound to any adjustments in the Contract Price or the Work schedule unless expressly agreed to by Company in writing. Company will not be liable for, and Contractor waives, any claims of Contractor that Contractor knew or should have known and that were not reported by Contractor in accordance with the provisions of this Article.

#### **ARTICLE 5 FORCE MAJEURE**

Neither party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, war, acts of terrorism, civil insurrection, acts of the public enemy, or acts or failures to act of civil or military authority, unless the time to perform is expressly guaranteed. Contractor shall advise Company immediately of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require Contractor to within five (5) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. Contractor shall diligently proceed with the Work notwithstanding the occurrence thereof. This Article shall apply only to the part of the Work directly affected by the particular failure, delay, or interruption, and shall not apply to the Work as a whole or any other unaffected part thereof.

#### **ARTICLE 6 CONTRACTOR DELAYS**

Time is an important and material consideration in the performance of this Agreement by Contractor. Contractor agrees to cooperate with Company in scheduling the Work so that the project and other activities at Company's site will progress with a minimum of delays. Company shall not be responsible for compensating Contractor for any costs of overtime or other premium time worked unless Company has provided separate prior written authorization for additional compensation to Contractor, and, if Company provides such written authorization, such additional compensation shall be limited to Contractor's actual

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cost of the premium portion of wages, craft fringe benefits, and payroll burdens. Contractor shall be liable for all failures, delays, and interruptions in performing any of its obligations under this Agreement which are not (a) caused by Company and reported in accordance with Article 4, (b) excused by Article 5, or (c) directed by Company pursuant to Article 7. Contractor shall, without adjustment to completion date or Contract Price, be obligated to make up time lost by such failures, delays, or interruptions. Company may suspend payments under this Agreement during the period of any such failure, delay, or interruption.

#### **ARTICLE 7 DELAY LIQUIDATED DAMAGES**

Not applicable.

#### **ARTICLE 8 COMPANY EXTENSIONS**

Company shall have the right to extend schedules or suspend the Work, in whole or in part, at any time upon written notice to Contractor (except that in an emergency or in the event that Company identifies any safety concerns, Company may require an immediate suspension upon oral or written notice to Contractor). Contractor shall, upon receipt of such notice, immediately suspend or delay the Work. Contractor shall resume any suspended Work when directed by Company. If Contractor follows the requirements of Article 4, a mutually agreed equitable adjustment to the Contract Price or to the schedules for payments and performance of the remaining Work may be made to reflect Company's extension of schedules or suspension of the Work. Contractor shall provide Company all information Company shall request in connection with determining the amount of such equitable adjustment.

#### **ARTICLE 9 INSPECTING, TESTING, AND AUDITING**

**9.01 Right of Inspecting and Testing:** Company reserves the right, but shall not be obligated, to appoint representatives to follow the progress of the Work with authority to suspend any Work not in compliance with this Agreement. The appointment or absence of an appointment, of such representatives by Company shall not have any effect on warranties. Acceptance or approval by Company's representative shall not be deemed to constitute final acceptance by Company, nor shall Company's inspection relieve Contractor of responsibility for proper performance of the Work. Inspection by Company's representative shall not be deemed to be supervision or direction by Company of Contractor, its agents, servants, or employees, but shall be only for the purpose of attempting to ensure that the Work complies with this Agreement. In the event Contractor fails to provide Company with reasonable facilities and access for inspection when advised, and if in the opinion of Company it becomes necessary to dismantle the Work for such inspection, then Contractor shall bear the expenses of such dismantling, testing, and reassembly.

**9.02 Right of Auditing:** Contractor shall maintain complete records relating to any cost-based (i.e., Work not covered by firm prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") for a minimum of five years following the latest of performance of, delivery to Company of, or payment by Company for, such Work or units. All such Records shall be open to inspection and subject to audit and reproduction during normal working hours, by Company or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Company or its authorized representative shall have access to said Records at any time, including any time after final payment by Company to Contractor pursuant to this Agreement. All non-public information obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order. Company or its authorized representative shall have access, during normal working hours, to all necessary Contractor facilities and shall be provided adequate and appropriate work space to conduct audits in compliance with the provisions of this Article. Company shall give Contractor reasonable notice of intended audits. The rights of Company set forth in this paragraph shall survive the termination or expiration of this Agreement.

#### **9.03 Use of Tools and Equipment:**

Not applicable. **ARTICLE 10 COMPLIANCE WITH APPLICABLE LAWS; SAFETY; DRUG AND ALCOHOL TESTING**



**10.01 Applicable Laws and Safety:** Contractor agrees to protect its own and its subcontractors' employees and be responsible for their Work until Company's acceptance of the entire project and to protect Company's facilities, property, employees, and third parties from damage or injury. Contractor shall at all times be solely responsible for complying with all Applicable Laws and facility rules, including without limitation those relating to health and safety, in connection with the Work and for obtaining at Contractor's expense (but only as approved by Company) all permits and approvals necessary to perform the Work. Without limiting the foregoing, Contractor agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Work being performed now or in the future, all of which are incorporated herein by reference. It is the obligation of the Contractor to request and receive any facility rules that may apply. Contractor shall maintain the Work site in a safe and orderly condition at all times. Company shall have the right but not the obligation to review Contractor's compliance with safety and cleanup measures. In the event Contractor fails to keep the work area clean, Company shall have the right to perform such cleanup on behalf of, at the risk of and at the expense of Contractor. In the event Contractor subcontracts any of the Work, Contractor shall notify Company in writing of the identity of the subcontractor before utilizing the subcontractor. Contractor shall conduct, and require its subcontractors to conduct, safety audits and job briefings during performance of the Work. In the event a subcontractor has no procedure for conducting safety audits and job briefings, Contractor shall include the subcontractor in its safety audits and job briefings. All safety audits shall be documented in writing by the Contractor and its subcontractors. Contractor shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly.

**10.02 Hazards and Training:** Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company. Contractor shall accept all equipment, structures, and property of Company as found and acknowledges it has inspected the property, has determined the hazards incident to working thereon or thereabouts, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

**10.03 Drug and Alcohol:** No person will perform any of the Work while under the influence of drugs or alcohol. All persons who will perform any of the Work may be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing at Contractor's sole expense as well as criminal background investigations on all of its employees and/or subcontractors performing the Work and shall so certify in writing if so requested. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.

Should Contractor have actual knowledge of violations of any of the herein stated policies of conduct in this Article 10, or have a reasonable basis to believe that such violations will occur in the future, whether by its own employees, agents, representatives or subcontractors, or by another vendor and/or supplier of the Company and its employees, agents, representatives or subcontractors, or by any employee agent and/or representative of Company, Contractor has an affirmative obligation to immediately report any such known, perceived and/or anticipated violations to the Company in care of EKPC Safety Manager at Headquarter Location.

**10.04 Notice to Owners:** Contractor shall promptly report in writing to Company all near misses, accidents or incidents, including property damage, arising out of or in connection with the Work, giving full details and statements of any witnesses, pictures and providing Company with a full and thorough investigation of the incident. Notice shall be given to EKPC's Safety Manager at Headquarters or to the onsite Safety Coordinator for the specific facility.



#### **ARTICLE 11 STATUS OF CONTRACTOR**

Company does not reserve any right to control the methods or manner of performance of the Work by Contractor. Contractor, in performing the Work, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and shall be free to perform the Work by such methods and in such manner as Contractor may choose, doing everything necessary to perform such Work properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. Contractor's employees and subcontractors shall not be deemed to be employees of Company. Contractor agrees that if any portion of Contractor's Work is subcontracted, all such subcontractors shall be bound by and observe the conditions of this Agreement to the same extent as required of Contractor. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises, and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

#### **ARTICLE 12 EQUAL EMPLOYMENT OPPORTUNITY**

To the extent applicable, Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and prohibit discrimination against qualified individuals on the basis of disability. These regulations also prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals with disabilities, qualified protected veterans, and all individuals without regard to race, color, religion, sex, or national origin.

#### **ARTICLE 13 INDEMNITY BY CONTRACTOR**

Contractor shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents, from any and all damage, loss, claim, demand, suit, liability, penalty, fines, or forfeiture of every kind and nature, including but not limited to attorneys' fees and expenses and other costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) bodily and other personal injuries to or deaths of persons, (b) damages to tools or equipment owned or leased by Company, (c) damages to other property, (d) the release or threatened release of a hazardous substance or any pollution or contamination of or other adverse effects on the environment, (e) violations of any Applicable Laws, or (f) infringement of patent, copyright, trademark, trade secret, or other property right, to the extent resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, subcontractors, or other representatives or otherwise from performance of this Agreement, whether suffered directly by Company or indirectly by reason of third party claims, demands, or suits. This obligation to indemnify, defend, and hold harmless shall survive termination or expiration of this Agreement.

#### **ARTICLE 14 ENVIRONMENTAL**

**14.01 Control:** As required under the OSHA Hazard Communication Standard (29 CFR 1910.1200) and certain other Applicable Laws, Contractor or its subcontractors shall provide Material Safety Data Sheets ("MSDS") covering any hazardous substances and materials furnished under or otherwise associated with the Work under this Agreement. Contractor and its subcontractors shall provide Company with either copies of the applicable MSDS or copies of a document certifying that no MSDS are required under any Applicable Laws in effect at the worksite. **No asbestos or lead containing materials shall be incorporated into any Work performed by Contractor or otherwise left on the Work site without the prior written approval of Company.** Contractor and its subcontractors shall be solely responsible for determining if any chemical or material furnished, used, applied, or stored or Work performed under this Agreement is subject to any Applicable Laws.

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**14.02 Labeling:** Contractor and its subcontractors shall label hazardous substances and materials and train their employees in the safe usage and handling of such substances and materials as required under any Applicable Laws.

**14.03 Releases:** Contractor and its subcontractors shall be solely responsible for the management of any petroleum or hazardous substances and materials brought onto the Work site and shall prevent the release of petroleum or hazardous substances and materials into the environment. All petroleum or hazardous substances and materials shall be handled and stored according to Contractor's written Spill Prevention Control and Countermeasures Plan or Best Management Practices Plan as defined under the provisions of the Clean Water Act, as amended, if either such Plan must be maintained pursuant to Applicable Laws. Contractor shall provide secondary containment for the storage of petroleum or hazardous substances and materials. The prompt and proper clean-up of any spills, leaks, or other releases of petroleum or hazardous substances and materials resulting from the performance of the Work under this Agreement and the proper disposal of any residues shall be Contractor's sole responsibility, but Contractor shall give Company immediate notice of any such spills, leaks, or other releases. Contractor shall be solely responsible for the storage, removal, and disposal of any excess or unused quantities of chemicals and materials that Contractor causes to be brought to the Work site.

**14.04 Generated Wastes:** Unless Company and Contractor expressly agree otherwise in writing, Contractor and its subcontractors shall be solely responsible for any wastes generated in the course of the Work, and Contractor shall handle, store, and dispose of such wastes in accordance with any Applicable Laws.

**14.05 Survival:** The obligations set forth in this Article shall survive termination or expiration of this Agreement.

#### ARTICLE 15 INSURANCE

Refer to EXHIBIT C for minimum insurance requirements.

#### ARTICLE 16 WARRANTIES

Contractor warrants that:

- (a) the Work will conform to any applicable Statement of Work; and any materials supplied in connection therewith shall be new, unused, free from defect, and shall meet the requirements of the latest ASTM, or other applicable standard specifications unless otherwise stipulated.
- (b) the Work will be suitable for the purposes specified by Company and will conform to each statement, representation, and description made by Contractor to Company;
- (c) the Work is not and shall not be subject to any encumbrance, lien, security interest, patent, copyright or trademark claims, infringements, or other defects in title; and
- (d) any labor or services performed pursuant to this Agreement shall be performed in a competent, diligent, and timely manner in accordance with the highest professionally accepted standards.

Contractor shall respond in writing to any warranty claim by Company within five (5) business days of the delivery of notice of such claim to Contractor.

**Correction of Defective Work:** Contractor shall replace any portion of the Work which is unsound or improper and remove from the premises any materials furnished by Contractor whether worked or unworked, which do not comply with the requirements of the contract. No Work shall be enclosed or covered until it has been inspected by Company. Should any Work be covered without having been so inspected, Contractor shall, if so required, uncover at its expense such Work for inspection by Company, unless Company failed to inspect such Work within a reasonable time after receipt of notice of its readiness for inspection.

No payment shall be allowed for any defective Work. Contractor shall replace or correct any defective Work, and, upon proper replacement, or performance, shall be paid for such replacement or performance only for the amount that would have been payable if the Work had been performed properly in the first instance. Contractor shall bear the expense of making good all Work of other contractors destroyed or

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damaged in the replacement or performance of such defective Work. If any of Company's materials have been used in any defective Work, the cost of such materials will be back-billed to Contractor.

If Contractor fails to replace or correct any defective Work, Company may have same replaced or corrected and the cost of such replacement or performance, including any additional cost and expense thereby incurred shall be deducted from the contract price.

#### **ARTICLE 17 OWNERSHIP OF INTELLECTUAL PROPERTY; PATENTS**

**17.01 Ownership:** All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, software, works of authorship and know-how, or the like, whether or not patentable or copyrightable (collectively, "Intellectual Property"), which Contractor conceives, develops, or begins to develop, either alone or in conjunction with Company or others, in connection with the Work, shall be "work made for hire" and the sole and exclusive property of Company. Upon request, Contractor shall promptly execute all applications, assignments, and other documents that Company shall deem necessary to apply for and obtain letters patent of the United States and/or copyright registration for the Intellectual Property and in order to evidence Company's sole ownership thereof.

**17.02 Royalties and License Fees:** Contractor shall pay all royalties and license fees which may be payable on account of the Work or any part thereof. In case any part of the Work is held in any suit to constitute infringement and its use is enjoined, Contractor within a reasonable time shall, at the election of Company and in addition to Contractor's obligations under Article 13, either (a) secure for Company the perpetual right to continue the use of such part of the Work by procuring for Company a royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction, or (b) replace at Contractor's own expense such part of the Work with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

#### **ARTICLE 18 RELEASE OF LIENS**

Contractor hereby releases for itself and its successors in interest, and for all subcontractors and their successors in interest, any and all claim or right of mechanics or any other type lien upon Company's or any other party's property, the Work, or any part thereof as a result of performing the Work. Contractor shall execute and deliver to Company such documents as may be required by Applicable Laws to make this release effective and shall give all required notices to subcontractors with respect to ensuring the effectiveness of the foregoing release against those parties. Contractor shall secure the removal of any lien that Contractor has agreed to release in this Article within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses to Contractor, including without limitation costs of bonding off such lien.

#### **ARTICLE 19 ASSIGNMENT OF AGREEMENT; SUBCONTRACTING**

Contractor plans to subcontract portions of the Work under this Agreement, including, but not limited to, those relating to call center activities and rebate processing.

#### **ARTICLE 20 INVOICES AND EFFECT OF PAYMENTS**

**20.01 Invoices:** Within a reasonable period of time following the end of each calendar month or other agreed period, Contractor shall submit an invoice to Company that complies with this Article. Payments shall be made within forty-five (45) days of Company's Contractor's proper invoice, and, in the event that Company's payment is overdue, Contractor shall promptly provide Company with a notice that such payment is overdue. Such invoices shall reference the applicable PO Number. All invoices shall be submitted with supporting documentation and in acceptable form and quality to Company's authorized representative. Should Company dispute any invoice for any reason, payment on such invoice shall be made within ten (10) days of the dispute resolution. Payment of the invoice shall not release Contractor from any of its obligations hereunder, including but not limited to its warranty and indemnity obligations. Invoices shall not be delivered with goods, but all correspondence and packages related to this Agreement shall reference the applicable PO Number assigned by Company.

**20.02 Taxes:** If Company provides Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, then Contractor shall not withhold or pay Kentucky sales or use taxes to the extent such exemption certificate applies to the Work (such exemption does not and shall not apply to any materials consumed by Contractor in performing the Work). Contractor agrees that it



shall not rely upon Company's direct pay authorization in not withholding or paying Kentucky sales or use taxes. If Company does not provide Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, Company shall be solely responsible for paying all appropriate sales, use, and other taxes and duties (including without limitation sales or use tax with respect to materials purchased and consumed in connection with the Work) to, as well as filing appropriate returns with, the appropriate authorities. To the extent specifically not included in the Contract Price, Contractor shall bill Company for and Company shall pay Contractor all such taxes and duties, but Contractor shall in no event be obligated for taxes and duties not specifically included in the Contract Price or for interest or penalties arising out of Company's failure to comply with its obligations under this Section.

**20.03 Billing of Additional Work:** All claims for payments of additions to the Contract Price shall be shown on separate Contractor's invoices and must refer to the specific change order or written authorization issued by Company as a condition to being considered for payment.

**20.04 Effect of Payments/Offset:** No payments shall be considered as evidence of the performance of or acceptance of the Work, either in whole or in part, and all payments are subject to deduction for loss, damage, costs, or expenses for which Contractor may be liable under any Purchase Order or set-off hereunder. Company, without waiver or limitation of any rights or remedies of Company, shall be entitled from time to time to deduct from any and all amounts owing by Company to Contractor in connection with this Agreement or any other contract with Company any and all amounts owed by Contractor to Company in connection with this Agreement or any other contract with Company.

**20.05 Evidence of Payment to Subcontractors:** Contractor shall, if requested by Company, furnish Company with a certificate showing names of Contractor's suppliers and subcontractors hereunder, and certifying to Company that said suppliers and subcontractors have been paid in full.

#### **ARTICLE 21 ROUTING OF SHIPMENTS**

Company shall have the option of specifying the routing of shipments. If freight is included in the Contract Price, and such specified routing increases Contractor's shipping costs, Contractor shall immediately so notify Company, and should Company still specify the more expensive routing, then Company shall reimburse Contractor for the increase actually incurred thereby.

#### **ARTICLE 22 TERM AND TERMINATION**

**22.01 Term:** This Agreement shall commence on the date set forth above and shall survive in full force and effect until terminated as set forth below. A termination under this Article 22 based on certain Work shall only apply to the Statement of Work that covers such Work. Any Statements of Work that do not relate to such Work shall not be affected by such a termination.

**22.02 Termination for Contractor's Breach:** If the Work to be done under this Agreement shall be abandoned by Contractor, if this Agreement or any portion thereof shall be assigned by operation of law or otherwise, if the Work or any portion thereof is sublet by Contractor without the permission of Company, if Contractor is placed in bankruptcy, or if a receiver be appointed for its properties, if Contractor shall make an assignment for the benefit of creditors, if at any time the necessary progress of Work is not being maintained, or if Contractor is violating any of the conditions or agreements of this Agreement, or has executed this Agreement in bad faith, Company may, without prejudice to any other rights or remedies it may have as a result thereof, notify Contractor to discontinue any or all of the Work and terminate this Agreement in whole or part. In the event that Section 365(a) of the Bankruptcy Code or some successor law gives Contractor as debtor-in-possession the right to either accept or reject this Agreement, then Contractor agrees to file an appropriate motion with the Bankruptcy Court to either accept or reject this Agreement within twenty (20) days of the entry of the Order for Relief in the bankruptcy proceeding. Contractor and Company acknowledge and agree that said twenty (20) day period is reasonable under the circumstances. Contractor and Company also agree that if Company has not received notice that Contractor has filed a motion with the Bankruptcy Court to accept or reject this Agreement within said twenty (20) day period, then Company may file a motion with the Bankruptcy Court asking that this Agreement be accepted or rejected, and Contractor shall not oppose such motion.

**22.03 Effect of Termination for Contractor's Breach:** From the effective date of such termination notice, Contractor shall vacate the site, whereupon Company shall have the right but not the obligation to take possession of the Work wherever located, and Contractor shall cooperate with Company and cause Contractor's subcontractors to cooperate with Company so that Company can effect such possession



**22.04 Termination for Company's Convenience:** Company may terminate this Agreement or one or more Statements of Work in whole or in part for its own convenience by thirty (30) days' written notice at any time. In such event, Company shall pay Contractor all costs incurred on the Work that is subject to such Termination prior to such notice, plus any reasonable unavoidable cancellation costs which Contractor may incur as a result of such termination, plus indirect costs or overhead on the portion of the Work completed, computed in accordance with generally accepted accounting principles less salvage value. As an alternative to salvage value reduction, Company shall have the right in its sole discretion to take possession of all or part of the Work.

**ARTICLE 23 PUBLICITY**

Contractor shall not issue news releases, publicize or issue advertising pertaining to the Work or this Agreement without first obtaining the written approval of Company.

**ARTICLE 24 CONFIDENTIAL INFORMATION**

All information relating to the Work or the business of Company, including, but not limited to, drawings and specifications relating to the Work, and customer information, shall be held in confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of the Work or as authorized in writing by Company. In the event that the Contractor assigns the work to one or more subcontractors, a signed confidentiality agreement between the Contractor and each subcontractor(s) will be provided to the Company prior to the provision of any information described in the immediately preceding sentence or the performance of any Work by the subcontractor. All drawings, specifications, or documents furnished by Company to Contractor or developed in connection with the Work shall either be destroyed or returned to Company (including any copies thereof) upon request at any time.

**ARTICLE 25 MISCELLANEOUS.**

**25.01 Waiver:** No waiver by Company of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

**25.02 Headings:** The headings of Articles, Sections, paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.

**25.03 Drawings:** If applicable and if required by Company in the Statement of Work, Contractor shall prepare and, within thirty (30) days after the completion of the Project, submit a complete and detailed final set of as-built or as-installed drawings/documents to Company. Design and/or construction drawings/documents shall be updated and corrected to represent what was actually provided and installed. These drawings shall become the property of Company, and may be used in any manner and provided to any person at the sole discretion of Company. Drawings/documents may include maps, project cost estimate, design or project calculations, project studies, design drawings, construction drawings, equipment drawings, and bill of materials. When requested, design and/or construction documents to include engineer's stamp and signature. Contractor shall accompany all document submittal with a transmittal letter containing date, project title and number, Contractor's name and address, title and number of each record document, and Contractor's official signature.

**25.04 Severability:** If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.

**25.05 State Law Governing Agreement:** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws.

**25.06 Enforcement of Rights:** Company shall have the right to recover from Contractor all expenses, including but not limited to fees for and expenses of inside or outside counsel hired by Company, arising out of Contractor's breach of this Agreement or any other action by Company to enforce or defend Company's rights hereunder.

**25.07 No Third Party Beneficiaries:** Except for Contractor and Company, there are no intended third party beneficiaries of this Agreement and none may rely on this Agreement in making a claim against Company.

**25.08 Order of Precedence** This Agreement and the Exhibits hereto shall be considered complementary and what is required by one shall be binding as if required by all. The failure to specifically list a requirement in one document, once this requirement is specifically listed in another, shall not imply the

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inapplicability of such requirement and Contractor shall provide as part of this Agreement all items required to conform to the project scope and standards herein contained. In the event of a conflict between the body of this Agreement and the Exhibits, the body of this Agreement shall govern. Later dated Exhibits shall take precedence over earlier dated Exhibits. The latest date of an amendment or Change Order shall take precedence over that part of this Agreement which it supersedes.

**25.09 Notices:** All notices and communications respecting this Agreement shall be in writing, shall be identified by the applicable PO Number, shall be designated for Company, and shall be addressed as follows (which address either party may change upon five (5) days prior notice to the other party):

To EKPC:

East Kentucky Power Cooperative

Attn: Director, Supply Chain

4775 Lexington Road

PO Box 707

Winchester, Kentucky 40392-0707

To Contractor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax No. \_\_\_\_\_

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date set forth in the introductory paragraph of this Agreement.

SB 10/31/14



**EAST KENTUCKY POWER COOPERATIVE**

*[Signature]*  
Signature

GRUO BREWER  
Name (Please Print)

DIRECTOR SC  
Title

10/31/14 Date

**CONTRACTOR**

*[Signature]*  
Signature

Mark Eisenschenk  
Name (Please Print)

President and CEO  
Title

9-30-14

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**EXHIBIT A**

**STATEMENT OF WORK**

**DESCRIPTION OF WORK:**

Manage and operate EKPC's Appliance Recycling Program and assist with the operation of EKPC's Energy Star Appliance Program.

**LIST OF CONTRACT DOCUMENTS:**

The General Services Agreement, including all Exhibits, Schedules, and any written Amendments and Addendums which may be agreed to by the parties; Purchase Order for a specific project, including the Project Schedule, or other Exhibits; Special Terms and Conditions; Drawings; Specifications; EKPC's Request for Proposal (if one is used) and Quote.

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**EXHIBIT B  
FEE SCHEDULE**

<b>ARCA, Inc.</b>		
<b>EKPC Appliance Recycling Program and Energy Star Proposal Pricing Sheet</b>		
<b>ARP</b>		<b>\$ 113,250.00</b>
One-time set up fee	\$ 8,250.00	
Monthly admin fee	\$ 2,000.00	
Per unit ARP fee (based on 1,000 annual units)	\$ 81.00	
Annual Total based on 1,000 units	\$ 113,250.00	
<b>ESAP</b>		<b>\$ 37,125.00</b>
One-time set up fee	\$ 5,125.00	
Monthly admin fee	\$ 1,000.00	
Per unit ESAP fee (based on 2,000 annual units)	\$ 10.00	
Annual Total based on 2,000 units	\$ 37,125.00	
<b>Total Contract Cost for ARP and ESAP (3 years)</b>	<b>\$ 411,000.00</b>	

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