SAMPLE OREGON LOW INCOME ENERGY ASSISTANCE AGREEMENT

This Oregon Low Income Energy Assistance Agreement ("Agreement") is entered into between Agency Name: _____ ("Agency") and Home Energy Supplier: _____ _____ ("HES"). Agency and HES may each be referred to as a "Party," or collectively as the "Parties." The State of Oregon, acting by and through its Housing and Community Services Department ("OHCS") is a third-party beneficiary of this Agreement

WHEREAS, the Parties desire to provide a mechanism by which they can carry out the provisions of the Low Income Home Energy Assistance Program and the Oregon Energy Assistance Program ("LIEAP/OEAP" or "Programs"), and

WHEREAS, the Parties desire to assure that the funds available under these Programs are used in accordance with the requirements of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) and Title VI of the Human Services Reauthorization Act of 1984 (P.L. 98-558) and Title VII of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (P.L. 101-501), and

WHEREAS, no HES shall be paid without signing an agreement for receipt of payments under the Programs ("Agreement").

THEREFORE, in exchange for the mutual promises contained herein, the Parties agree to the terms and conditions set forth below.

1. Definitions

1.1 An "**Eligible Household**" is a household or customer that has applied for and been approved for energy assistance by the Agency by means of an Energy Assistance Authorization.

1.2 "**Account Payments**" or "**Payments**" are payments made by the Agency to the HES on behalf of an Eligible Household and may include pre-payment for fuel prior to its delivery, payment for bills incurred by the Eligible Household prior to the date of the application for LIEAP/OEAP assistance, and a line of credit for future usage.

1.3 "**Energy Assistance Authorization**" is a form that will contain the Eligible Household's utility account number, the name of the person applying for energy assistance, the name appearing on the HES account for the Eligible Household, the address of the Eligible Household, and the amount of the energy assistance for which the household is eligible.

2. Agency Conditions

2.1 The Agency shall notify the HES of Payments to be made on behalf of an Eligible Household with an Agency report or a copy of the Energy Assistance Authorization. This notification may be oral, but must be verified with a follow-up written report or authorization.

2.2 The Agency shall pay all valid Energy Assistance Authorizations promptly and within 45 days (unless otherwise negotiated by the Parties and consented to by OHCS) after notification of commitment for an Eligible Household.

2.3 The Agency shall notify all Eligible Households of the amount of Account Payments made on their behalf to the HES.

2.4 The Agency shall keep the HES informed in a timely manner of any relevant changes in LIEAP/OEAP caused by changes in federal or state law.

2.5 HES has implemented a program to detect, prevent, and mitigate identity theft in accordance with the Red Flag Rules contained in 16 C.F.R Part 681.1. The Agency has established and will maintain reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft related to its administration of the Low Income Home Energy Assistance Program and the Oregon Energy Assistance Program for HES customers. If the Agency provides services to (Utility/Vendor/HES) or its customers through subcontractors, the Agency will be responsible for including reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft within the services provided by those subcontractors.

3. HES Conditions

Conditions Applicable to All HESs

3.1 The HES may refer its customers to the Agency for assistance.

3.2 The HES may charge an Eligible Household, in the normal billing process, the difference, if any, between the actual cost of the home energy used by that Eligible Household and the Account Payment.

3.3 The HES shall not discriminate, either in the cost of goods supplied or the services provided (including service charges, reconnection charges, and payment plan arrangements) against the Eligible Household. If the HES is a Public Utility Commission ("PUC") regulated utility, it shall adhere to the requirements in ORS 757.310, ORS 757.325, PUC administrative rules and the regulated utility's PUC-approved tariffs.

3.4 No Eligible Household receiving assistance under LIEAP/OEAP will be treated adversely because of such assistance under applicable provisions of state law or public regulatory requirements.

3.5 A credit notation shall be promptly applied by the HES to the Eligible Household's account as soon as the HES receives an Energy Assistance Authorization. If possible, a line identifying the Payment as LIEAP/OEAP funds will appear on the billing statement after the Account Payment has been received by the HES and for as long as any portion of the Account Payment is being carried as a credit. Account Payments will be credited to the Eligible Household's account promptly after being received by the HES and in no event later than the next billing cycle. If the Eligible Household's Account billing includes items other than energy charges, Account Payments may only be applied as a credit toward energy charges. If the Account Payment or credit cannot be applied to energy charges, the balance remaining shall be returned to the Eligible Household within 30 days after the HES receives the Account Payment.

3.6 A reconnection charge or security deposit will not be charged to any Eligible Household except where such charges were HES policy prior to October 1, of the then-current year. LIEAP/OEAP Payments can be applied to those charges, if necessary. All deposits and accrued interest become the property of the Eligible Household and shall be returned to the Eligible Household at the time specified in the deposit agreement in a manner consistent with applicable PUC administrative rules, approved tariffs and other law.

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3.7 If the Eligible Household voluntarily closes the account, and an Account Payment results in a credit balance after all final charges have been applied, the credit balance shall be refunded to the Eligible Household.

3.8 In the event the Eligible Household cannot be located within one year after service has been discontinued for any reason, then any unused portion of the Account Payment shall be returned to the Oregon Department of State Lands as unclaimed.

3.9 The HES shall maintain an adequate accounting system to allow verification of the amount of home energy delivered to Eligible Households receiving Account Payments. Auditors and/or investigators of the Oregon Housing and Community Services, the Oregon Secretary of State's Office, or the federal government, shall be allowed access to all HES LIEAP/OEAP records, which auditors or investigators determine are directly pertinent to this Agreement and reasonably needed to monitor and review the HES's compliance with the provisions of this Agreement. The HES shall cooperate in the conduct of such reviews.

3.10 If requested by the Eligible Household, the Agency will request the HES to provide, at no cost to the Agency or the Eligible Household, an annual consumption record of the Eligible Household.

3.11 Agencies shall inform the HES if an Eligible Household is in a crisis or life-threatening situation (as determined by local agency criteria).

3.12 PUC Regulated HES: Upon notification of a commitment for assistance, the PUC regulated HES shall assist the Agency in resolving the energy crisis of an Eligible Household within the timelines established by PUC administrative rules, the regulated utility's PUC-approved tariffs applicable to disconnection and reconnection of service, and emergency medical certificates

3.13 Non-PUC regulated HES: Upon notification of commitment, the non-PUC regulated HES shall assist the Agency in resolving the energy crisis of an Eligible Household within (1) business day.

3.14 If the HES is unable to assist the Agency in resolving the issue within the timeframes described in Sections 3.12 and 3.13 above, the Agency shall be notified immediately. Upon request, a written explanation of the reason(s) for non-compliance will be prepared by the HES and submitted to the Agency for placement in the Eligible Household's file.

Conditions Applicable Only to Bulk Energy Suppliers

3.15 Delivery of bulk fuel shall be made after the HES receives an oral or written Energy Assistance Authorization. Verification of delivery to an Eligible Household may be required by the Agency before an Account Payment is made. If the Eligible Household has an existing account with the HES and a balance is still owed after the Account Payment is applied, the HES should develop a payment plan with the Eligible Household.

3.16 Bulk fuel deliveries will be made in accordance with the normal business practices of the HES.

3.17 The HES shall only charge the Eligible Households up to its posted cash price as of the date of delivery.

3.18 In the event that the HES cannot deliver bulk fuel, the Agency will be notified immediately. If an Account Payment has been made, the full amount of the Account Payment shall be returned within 20 days of the receipt of the funds to the Eligible Household or forwarded to the new HES at the Eligible Household's request.

3.19 In the event that services cannot be delivered by the HES because the Eligible Household has been disconnected for non-payment of service and cannot be reconnected because the Eligible

Household will not enter into a payment agreement under terms acceptable to the HES, the HES will send to the Eligible Household any Account Payment received by the HES on behalf of the Eligible Household within 10 days after the date on which a payment agreement could not be reached. If the HES has not yet received the Account Payment, the HES will notify the Agency to send the payment directly to the Eligible Household.

Termination

4.1 This Agreement shall terminate upon the earliest to occur of the following events:

(a) A change in the requirements of Title VII of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (P.L. 101-501);

(b) A change in the federal or state regulations promulgated under the act;

(c) A change in the state plan for administering LIEAP/OEAP that affects the terms and conditions of this Agreement;

(d) Thirty days' written notice of termination by either Party;

(e) Mutual consent of the Parties;

(f) Any license or certificate required by law or regulation to be held by the HES to provide the services required by this Agreement is for any reason denied, revoked, or not renewed; or

(g) One year from the date of execution of the Agreement, unless the Parties mutually agree, in writing, to renew the Agreement.

4.2 Termination by either Party shall not discharge any obligation owed by either Party to the other or to an Eligible Household or any liability, which has accrued prior to termination.

4.3 The Agency, by written notice of default (including breach of contract) to the HES may terminate the whole or any part of this Agreement if the HES fails to perform any of the provisions of this Agreement in accordance with its terms, and after receipt of written notice from the Agency fails to correct such failures within 10 days or such longer period as the Agency may authorize.

4.4 The rights and remedies of the Agency provided in Section 4.3 above related to defaults (including breach of contract) by the HES shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. Miscellaneous

5.1 **Subcontracts** - The HES shall not enter into any subcontracts for any of the services provided under this Agreement without obtaining prior written approval from the Agency.

5.2 **Amendments** - The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever except by written instrument signed by the Parties.

5.3 **Execution and Counterparts** - This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

5.4 **Severability** - If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

5.5 **Assignment** - The HES shall not assign or transfer its interest in this Agreement without the express written consent of the Agency.

5.6 **Waiver** - The failure of the Agency to enforce any provision of this Agreement shall not constitute a waiver by the Agency of that or any other provision.

5.7 **Independent Contractors/Workers' Compensation Coverage** - The HES and the Agency are independent contractors under this Agreement and both covenant, warrant and affirm that neither they nor any of their agents, representatives or employees are an officer, employee, or agent of the other Party, of OHCS or of the State as those terms are used in ORS 30.265, ORS chapters 456 and 458 or otherwise. The HES and the Agency further covenant, warrant and affirm that they shall provide workers' compensation insurance for their respective Oregon employees and require by contract that their subcontractors shall provide workers' compensation insurance for their respective Oregon employees.

5.8 **Indemnity** - The HES shall save, defend (consistent with ORS chapter 180), indemnify and hold harmless the Agency, OHCS and their officers, agents, employees and members from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of the HES or its subcontractors, agents, or employees under this Agreement. Notwithstanding this Section 5.8, the HES shall not be liable to the Agency (in tort, contract or otherwise) for damages of whatever nature primarily resulting from the negligence, gross negligence or willful misconduct of the Agency or of the Agency's subcontractors, agents or employees.

5.9 **Successors in Interest** - The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and assigns.

5.10 **Attorney's Fees/Enforcement** - The Party prevailing in any lawsuit on this Agreement, shall be entitled to such additional sums as the court may adjudge for reasonable attorney's fees at trial and upon appeal and to all costs and disbursements incurred therein. OHCS may bring legal action to enforce any provision of this Agreement. Should OHCS substantially prevail in any such legal action, it shall be entitled to payment of such sums from the nonprevailing Party or Parties in such action as the court may adjudge for reasonable attorney's fees at trial and upon appeal and to all costs and disbursements incurred therein.

5.11 **Force Majeure** - The HES shall not be held responsible for delay or default caused by fire, riots, acts of God and war, which were beyond the reasonable control of the HES.

5.12 **Choice of Law** - This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to conflicts-of-laws rules or principles.

5.13 **Effective Date** - This Agreement shall be effective upon execution by both Parties.

5.14 **Merger** - This Agreement constitutes the entire Agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The HES, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

5.15 **Mediation** -If the Parties become involved in a dispute regarding any of the terms, conditions, performance, or any obligations under this Agreement, the Parties shall submit to mediation prior to the commencement of litigation to enforce this Agreement. The mediator shall be an individual mutually acceptable to both Parties, but in the absence of agreement, each Party shall select a temporary mediator, and the temporary mediators shall jointly select the permanent mediator. Each Party will pay its own costs for the time and effort involved in mediation and agree to split equally the cost of the mediator. Both Parties agree to exercise best efforts and act in good faith to resolve all disputes in mediation. The Parties shall mutually agree on the schedule and time allowed for mediation. The Parties shall comply with statutes and administrative rules governing the confidentiality of mediation, if any.

5.16 **Headings** -The section headings in this Agreement are for convenience only and shall not be considered part of or used in the interpretation of this Agreement.

_____
Home Energy Supplier

_____ Dated:_____
Signature

_____
Name (Printed)

_____
Title (Printed)

_____
Telephone

_____
Address

_____
City, State, and Zip Code

_____ Dated:_____
Agency Director

_____ Dated:_____
Board Chair