

**Kentucky Municipal Energy Agency**

**TRUST PARTICIPATION AGREEMENT  
FOR THE  
KENTUCKY LEAGUE OF CITIES INSURANCE SERVICES  
GENERAL INSURANCE TRUST**

This TRUST PARTICIPATION AGREEMENT (the “Trust Agreement”) is made and entered into by and between the KENTUCKY LEAGUE OF CITIES INSURANCE SERVICES (the “KLCIS”), an unincorporated, nonprofit association with its principal place of business located at 100 East Vine Street, Suite 800, Lexington, Kentucky 40507, and such cities, urban-county governments and other public agencies and political subdivisions, members of the KLCIS and signatories hereto.

**W I T N E S S E T H :**

**WHEREAS**, various cities, urban-county governments, and other public agencies and political subdivisions of the Commonwealth of Kentucky have duly established the KLCIS as a legal and administrative entity through the INTERLOCAL AGREEMENT TO ESTABLISH THE KENTUCKY LEAGUE OF CITIES INSURANCE SERVICES (the “Interlocal Agreement”), as authorized by sections 65.210 to 65.300, inclusive, of the Kentucky Revised Statutes (“KRS”); and

**WHEREAS**, the KLCIS has been delegated and may exercise various powers and authorities, including the power to create and administer for the benefit of its members a GENERAL INSURANCE TRUST (the “Trust”), whereby the participating members pool their funds in order to provide self-insurance and/or third-party insurance against various public liability exposures, including, but not limited to, general, professional and auto liability, and related claims; and

**WHEREAS**, the KLCIS Articles of Association and Bylaws, which have been ratified and accepted by each of the members, require each member, as a condition of participation in the Trust, to execute a binding trust participation agreement which sets forth the authorities, rights, duties and liabilities of the participating member and the KLCIS with respect to the operation of the Trust.

**NOW, THEREFORE**, in consideration of the premises stated, the mutual covenants and obligations herein contained, and the mutual benefits to be derived by each party, the parties hereto covenant and agree as follows:

**SECTION 1. MEMBERSHIP.** Only those cities, urban-county governments and other public agencies and political subdivisions of the Commonwealth that are members of the KLCIS shall be eligible to participate in the Trust. The KLCIS Board of Trustees shall be the sole judge as to whether any member of the KLCIS shall be allowed to participate in the Trust. Each participating member agrees that at all times it will abide by the terms of the Interlocal Agreement, the KLCIS Articles of Association and Bylaws, the terms of this Trust Agreement and all rules, regulations, standards and procedures adopted by the Board of Trustees.

**SECTION 2. TERMINATION OF TRUST PARTICIPATION.** The Board of Trustees shall have the authority to terminate member’s participation in the Trust for any failure to abide by the terms of the

Interlocal Agreement, the KLCIS Articles of Association and Bylaws, the terms of this Trust Agreement, or any rules, regulations, standards or procedures adopted by the Board; for failure to timely pay any annual or supplementary contributions established by the Board; or for any other action or omission that is deemed by the Board to be detrimental to the fiscal soundness or efficient operation of the Trust, including, but not limited to, an unfavorable loss experience.

Before terminating any member's participation in the Trust, the Board shall give the member at least thirty (30) days written notice of the termination. In the case of a termination or any reason other than the non-payment of contributions, the notice of termination shall inform the participating member that a hearing may be requested. In the event of a termination for non-payment of contributions, the member shall have no right to a hearing. All terminations shall be effective as of the date and upon the terms and conditions specified by the Board in its notice of termination or as otherwise determined by the Board after a hearing.

The Trust and its remaining participating members shall incur no liability as a result of any act or acts of a former member occurring after the effective date of the termination, except as may be provided in this Trust Agreement.

After termination, the former member shall remain fully liable for its proportionate share of all claims against the Trust which were created or arose during the time the former member was a participating member, and for any costs, including reasonable attorneys fees, incurred by the KLCIS to collect such amounts from the former member.

**SECTION 3. MEMBER WITHDRAWAL.** Any participating member may withdraw from participation in the Trust after sixty (60) days written notice to the Board; provided that the withdrawing member has discharged all of its obligations to the Trust. The Board shall send a written acknowledgment of the withdrawal to the withdrawing member. Upon withdrawal, the former member shall remain fully liable for its proportionate share of all claims against the Trust which were created or arose during the period the former member was a participating member of the Trust, including its proportionate share of any expenses of the Trust assignable to the period the former member was a participating member, and any costs, including reasonable attorneys fees, incurred by the KLCIS to collect such amounts from the former member.

**SECTION 4. FUNDING OF THE TRUST.** The Trust shall be financed through the annual and supplementary contributions established by the Board of Trustees and paid by the participating members, through the income earned from the investment of Trust funds by the Board, and through any other moneys which may be lawfully received by the Board and made a part of the Trust's assets. All annual and supplementary contributions shall be computed and established by the Board based on actuarial evaluations, ratings plans, and other analyses of the amounts necessary for the payment of claims and losses, the payment of premiums for insurance and excess or re-insurance, the payment of the principal of, premium, if any, and interest on any revenue bonds which may be issued and sold or other debt which may be incurred to fund the operations of the Trust as authorized by Section 5 of the Interlocal Agreement, the establishment and maintenance of reasonable reserves and the payment of any and all expenses of the Trust reasonably and lawfully incurred, including any expenses related to the issuance of revenue bonds or the incurrence of other debt to fund the operations of the Trust.

The Board shall certify to each participating member the amount of each annual or supplementary contribution at least thirty (30) days in advance of the due date. Each participating member agrees to timely pay all annual and supplementary contributions established by the Board. Any delinquent

payments shall be paid with interest calculated from the date of delinquency to the date of payment at a rate equal to the highest annual interest rate at which any of the funds of the Trust are invested on the date the payment became past due.

**SECTION 5. ANNUAL AND SUPPLEMENTARY CONTRIBUTIONS.** In order to become and remain a participating member of the Trust, each member shall make and hereby agrees to make an annual contribution to the Trust. The amount of the annual contribution to be paid by each participating member shall be established by the Board based on the criteria set forth in Section 4 above and such other criteria as the Board in its discretion may establish in order to ensure the solvency of the Trust and an equitable distribution of costs, and to promote the purposes and objectives of the KLCIS and the Trust. If, in the opinion of the Board, the assets of the Trust are at any time in any fiscal year insufficient to enable the Trust to discharge its legal liabilities and other obligations and to maintain required reserves, the Board shall have the right to adopt a plan for the elimination of such deficit, which plan may include the establishment of supplementary contributions to be paid by each member which participated in the Trust during any part of the fiscal year to which the deficit is assignable. Supplementary contributions shall be computed and established by the Board in the same proportion that the annual contribution of the individual member bears to the total annual contributions of all members the year in which such deficit occurs. Prior to the beginning of each fiscal year, the Board shall, by resolution, establish the maximum amount of supplementary contributions that members may be required to make for the ensuing fiscal year. All supplementary contributions shall be due and payable by each member when notice of the supplementary contribution is received and shall be delinquent thirty (30) days thereafter.

**SECTION 6. SCOPE OF COVERAGE.** The extent (terms, conditions and exclusions) of the insurance coverage afforded to each participating member by the Trust shall be set forth in an insurance policy document (the "Coverage Certificate"), which shall be approved by the Board and issued to each participating member. The Trust shall pay from Trust assets all claims and losses of the participating members, exclusive of any applicable deductible amounts, which are incurred during the period of membership and which are covered under the terms and conditions of the Coverage Certificate. The Board shall establish the types and monetary levels of coverage for which the Trust shall indemnify its participating members, including provisions for levels of coverage (deductibles) for which the participating members shall be individually responsible. The types and levels of coverage may vary according to population classification, the mutual agreement of the Board and a participating member, or such other criteria as may be established by the Board. The Coverage Certificate may be amended from time to time by the Board to protect the financial solvency of the Trust or to reflect the desires of the participating members; provided that the participating members shall be notified in writing at least thirty (30) days in advance of the effective date of any Coverage Certificate amendment.

**SECTION 7. REINSURANCE OR EXCESS INSURANCE COVERAGE.** The Board is authorized to obtain re-insurance or excess insurance coverage in such specific and aggregate amounts and with such retentions as the Board may deem necessary or as may be required by any law or regulation to protect the financial solvency of the Trust.

The Board is also authorized to obtain other insurance, letters of credit, lines of credit, or other funding facilities from financial institutions, which, in the judgment of the Board, may be necessary or desirable in order to furnish additional security and resources for the payment of claims, losses and expenses covered by the Trust in excess of the contributions paid by the participating members or to establish and maintain necessary reserves.

**SECTION 8. USE OF TRUST ASSETS.** All assets of the Trust shall be the property of the

participating members. No assets of the Trust shall be appropriated for any purpose other than the following: the payment of covered claims and losses; the payment of all reasonable and lawful expenses of the Trust; the establishment and maintenance of reasonable reserves; the payment of the principal of, premium, if any, and interest on any revenue bonds which may be issued or other debt which may be incurred to fund the operations of the Trust; and the distribution of surplus assets to eligible Trust members in accordance with Section 9 of this Trust Agreement.

#### **SECTION 9. CALCULATION AND DISTRIBUTION OF SURPLUS TRUST ASSETS.**

- A. Subject to the limitations imposed in this section and elsewhere in this Trust Agreement, the Board, in its sole discretion, may make periodic distributions of surplus Trust assets. The Board shall have the authority to decide when the distribution of surplus Trust assets is to be made, the fiscal year(s) to which the distribution is applicable, the amount to be distributed, and the basis for the distribution. Participating members shall be eligible to receive distributions of surplus Trust assets, but only in accordance with the provisions of this Trust Agreement and the formula for the distribution of surplus Trust assets adopted by the Board.

No Distribution of surplus Trust assets shall be made sooner than three (3) years from the inception of the Trust. No surplus Trust assets attributable to any fiscal year shall be distributed sooner than twelve (12) months after the end of that fiscal year.

- B. The distributable surplus Trust assets for any fiscal year shall be those Trust assets remaining after:
- (I) payment has been made for all claims, losses and expenses, including principal, interest and premium, if any, on any outstanding revenue bonds or other debt, due and payable in that fiscal year;
  - (II) reasonable reserves have been established for claims previously occurring and reported, and expenses associated therewith;
  - (III) reasonable reserves have been established for claims incurred, but not reported, and expenses associated therewith;
  - (IV) reasonable reserves have been established to secure the payment of the principal of, premium, if any, and interest on any revenue bonds or other debt which may be outstanding;
  - (V) reasonable reserves have been established for future adverse loss deviation and expenses associated therewith; and
  - (VI) reasonable reserves have been established to cover bad debts, unless waived by the Commissioner of the Kentucky Department of Insurance.
- C. The Board shall calculate each participating member's proportionate share of surplus Trust assets in accordance with a formula adopted by the Board. The formula shall be structured so as to support and foster the purposes and objectives for which the trust was created. The formula may include any factors which, in the discretion of the Board, reflect the purposes and objectives of the Trust, including, but not limited to: individual member loss experiences; individual member contributions relative to total contributions; the duration of Trust participation; and the overall loss experience of the Trust. The formula adopted by the Board

may provide that a failure to comply with risk management standards or recommendations, or that the existence of a specified loss-to-contributions ratio, shall disqualify a member from receiving all or a specified portion of the participating member's proportionate share of surplus Trust assets.

- D. No former member shall be entitled to receive any distribution of surplus Trust assets. Surplus Trust assets shall be distributed only to members which are participating members at the time a distribution of surplus Trust assets is declared by the Board.
- E. Any participating member may elect to have the distribution of its proportionate share of surplus Trust assets applied as a credit against future annual or supplementary contributions.

**SECTION 10. PARTICIPATING MEMBER'S DUTIES IN THE EVENT OF AN OCCURRENCE, WRONGFUL ACT, CLAIM OR SUIT.** In the event of an occurrence, incident, wrongful act, error, omission, or other circumstance which could, without regard to any deductible limits, reasonably be expected to result in a claim or claims against the participating member within the scope of the insurance coverage provided by the Trust, the participating member shall report such occurrence, incident, wrongful act, error, omission, or other circumstance to the claims handling agent designated by the Board in the manner and within the time limit set by the Board or as set forth in the Coverage Certificate.

In the event a claim or suit is brought against the participating member, the participating member shall immediately forward to the claims handling agent designated by the Board a copy of every notice, summons or other legal process received by the participating member.

The participating members shall cooperate fully with the claims handling agent designated by the Board in the investigation of any occurrence, incident, wrongful act, error, omission, or other circumstance which may result in a claim or loss within the scope of the insurance coverage provided by the Trust and shall cooperate fully in the settlement or defense of any claim or suit which may result in a loss within the scope of the insurance coverage provided by the Trust.

**SECTION 11. DEFENSE OF CLAIMS.** To the extent of the participating member's coverage limit, as set forth in the Coverage Certificate the Trust shall defend in the name of and on behalf of each participating member any suits or other legal proceedings which may at any time be instituted against the participating member involving claims within the scope of the coverage provided by the Trust, even though such suits, other legal proceedings, allegations or demands are considered to be wholly groundless, false or fraudulent, and shall pay all judgments, all costs reasonably incurred in any suit or other legal proceeding defended by the Trust, all interest accruing after entry of judgment, and all expenses incurred for investigation, negotiation or defense pursuant to the direction of the Board.

Except as provided in Section 12 hereof, the Board shall make all final decisions regarding legal defense of claims, including the selection of legal counsel, and shall have absolute and final authority with regard to defense, settlement, and payment of claims. The settlement or payment of any claim or amount by or on behalf of a participating member without the express approval of the Board or its claims handling agent in accordance with Section 12 hereof shall be at the sole cost of the participating member without any reimbursement from the Trust and may be considered grounds for the termination of the member's participation in the Trust.

Each participating member shall cooperate fully in all settlement negotiations and in the defense of

all claims by supplying such information, assistance and authorizations to obtain reports and documents as may be necessary or helpful, in the opinion of the Board or its claims handling agents, to the defense of any claim or to any settlement negotiations.

**SECTION 12. AUTHORITY OF MEMBERS TO SETTLE CLAIMS WITHIN DEDUCTIBLE LIMITS.** If the claims handling agent designated by the Board agrees in writing that the amount of a claim will not exceed the participating member's deductible limit as set forth in the Coverage Certificate effective for that member, the member may at its option and at its expense, settle the claim and pay the loss and expenses associated with the claim. In such event, the Trust shall bear no part of the cost, fees or any other sums paid or required to be paid as a result of the claim. Prior to settling any claim within the member's deductible limits, the member shall notify the claims handling agent of the claim and all pertinent information relative thereto, including a copy of the proposed final settlement agreement, and shall request authorization in writing from the claims handling agent to settle the claim.

**SECTION 13. PAYMENT OF CLAIMS.** All claims and losses against participating members shall be paid by the Trust as follows:

- (I) For each fiscal year, claims and losses within the coverage limits retained by the Trust as set forth in the Coverage Certificate shall be paid from and to the extent of the Trust assets for that fiscal year, plus any reserves available and authorized by the Board, including any letter of credit, line of credit, or other funding facility, if any, which may have been procured for the purpose of paying claims and losses within the coverage limits retained by the Trust.
- (II) For each fiscal year, claims and losses in excess of the coverage limits retained by the Trust shall be paid from and to the extent of the reinsurance or excess insurance coverage, if any, in effect for the Trust for that fiscal year, or from and to the extent of any line of credit, letter of credit or other funding facility, if any, which may be in effect to pay claims and losses in excess of the coverage limits retained by the Trust.
- (III) All deductible amounts and the amount of any claims and losses in excess of the coverage limits provided by the Trust shall be the sole obligation of and shall be paid by the participating member liable therefor.

**SECTION 14. REIMBURSIBLE DEDUCTIBLE.** In the event the Trust pays any deductible amount on behalf of a participating member, the participating member shall reimburse the Trust therefor within thirty (30) days of receipt of written notice from the Trust that such deductible amount has been paid by the Trust. If the deductible amount for which the participating member is liable is not paid to the Trust within (30) days from the date notice is received, the amount due shall be deemed delinquent and shall bear interest from the date of delinquency until paid at a rate equal to the highest annual rate at which any of the Trust's funds are invested on the date of delinquency.

**SECTION 15. SUBROGATION.** In the event of the payment of any claim or loss by the Trust under this Trust Agreement and the Coverage Certificate issued by the Trust, the Trust shall be subrogated to the extent of such payment to all the rights of the participating or former member against any person or other entity legally responsible for such claim or loss; and in that event, the participating or former member shall render all reasonable assistance, other than monetary contributions, to effect recovery. To the extent the Trust utilizes any line of credit, letter of credit or other funding facility to

secure payment of or to pay any claim or loss, the Trust may assign its rights to subrogation to the financial institution which issued the line of credit, letter of credit or other funding facility.

**SECTION 16. INSPECTION OF MEMBER'S FACILITIES AND RECORDS.** The Board, the Trust Administrator, and any service agent of the Trust and any of their agents or employees shall be permitted at all reasonable times to inspect the real and personal property of the participating members and shall be permitted at all reasonable times and for a period of five (5) years after the termination of a member's participation in the Trust to examine the former member's books, records, vouchers, contracts and other documents of any and every kind which relate to the operation of the Trust and the former member's participation in the Trust.

**SECTION 17. RISK MANAGEMENT.** The Board or its designated service agent shall develop a risk management program and provide risk management services to the participating members designed to minimize liability and property damage risks and control losses. The participating members shall follow the general recommendations of the risk management program developed by the Board and its service agents and adopt the loss reduction and prevention procedures established by the Board. However, the participating members shall remain solely responsible for all decisions concerning their safety programs and practices and may not rely upon evaluations and/or recommendations made by the Board or its service agents in making final decisions concerning safety programs and practices.

**SECTION 18. APPOINTMENT OF BOARD OF TRUSTEES AS AGENT AND ATTORNEY-IN-FACT.** Each member hereby appoints the KLCIS Board of Trustees to act as its agent and attorney-in-fact for the purpose of executing and delivering all contracts, agreements, reports, and other instruments, and for the purpose of taking all other actions necessary for the proper operation and administration of the Trust.

**SECTION 19. LIABILITY OF PARTICIPATING MEMBERS.** No member by reason of its participation in the Trust shall be liable to the Trust or to any other member, except for the payment of the annual and supplementary contributions established by the Board in accordance with this Trust Agreement and other Trust documents.

**SECTION 20. DOCUMENTS INCORPORATED BY REFERENCE.** The KLCIS Articles of Association and Bylaws and any rules and regulations adopted by the Board are hereby incorporated by reference into and made a part of this Trust Agreement. The parties hereto shall be bound by the terms of those documents as well as the terms of this Trust Agreement.

**SECTION 21. BINDING NATURE OF THE AGREEMENT.** This Agreement and the terms of any documents incorporated herein by reference shall constitute a binding contract between the KLCIS of each city, urban-county government, and other public agency and political subdivision of the Commonwealth which may become a party hereto.

**SECTION 22. INTERPRETATION.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

**SECTION 23. SEVERABILITY.** If any provision of this Trust Agreement is held to be in conflict with any applicable statute, rule of law or is otherwise held to be unenforceable, the invalidity of such provision shall not affect any or all of the remaining provisions of this Trust Agreement.

**SECTION 24. AUTHORIZATION OF SIGNATURE PAGES.** This Trust Agreement may be

executed in any number of counterparts, each of which shall be an original.

**IN WITNESS WHEREOF**, the parties hereto have caused this Trust Agreement to be executed by the undersigned proper and duly authorized representatives of the parties as of the date indicated below.

KENTUCKY LEAGUE OF CITIES  
INSURANCE SERVICES

KENTUCKY MUNICIPAL ENERGY  
AGENCY

BY: *James A. Lambey*  
Chairman, KLCIS  
Board of Trustees

BY: \_\_\_\_\_  
Chief Executive Officer

DATE: 3/21/2016

DATE: \_\_\_\_\_



Date