

DATA SECURITY AGREEMENT

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This Data Security Agreement (“Agreement”) effective _____, is made and entered into this _____ day of _____, 20____ by and between (“Utility”) and New York Power Authority (“NYPA”), with offices at _____; and together with Utility the (“Parties” and each, individually, a “Party”).

RECITALS

WHEREAS, NYPA desires to have access to Confidential Customer Utility Information, or the New York State Public Commission (“Commission”) has ordered Utility to provide to NYPA customer information; and

WHEREAS, NYPA has obtained consent¹ from all customers from whom the NYPA intends to obtain information from Utility; and

WHEREAS, NYPA may utilize a third party to fulfill its Services (defined herein) obligations; and

WHEREAS, NYPA utilization of a third party provider does not relieve NYPA of their transactional obligation such that it must ensure that the third party provider must comply with all NYPA obligations; and

WHEREAS, Utility and NYPA also desire to enter into this Agreement to establish, among other things, the full scope of NYPA’s obligations of security and confidentiality with respect to the Confidential Customer Utility Information in a manner consistent with the requirements of Utility, as well as the obligations of the Utility under this Agreement; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- a. “Confidential NYPA Information” means: (A) information that: (A) NYPA receives from its customers and provides to Utility to fulfill its Services; (B) Confidential Customer Utility Information in NYPA’s possession; (C) Critical Infrastructure Protection or other Operational System material required to be protected by the North American Electric Reliability Corporation, local, state or federal law, rule or regulation or as determined and marked confidential by NYPA; and (D) any other information provided by NYPA to Utility and marked confidential by the NYPA, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished

¹ Customer consent is not obtained by the NYPA when Green Button Connect (GBC) is utilized as the data sharing mechanism.

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- to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. “Confidential Customer Utility Information” means information that Utility is: (A) required by the UBP at Section 4: Customer information (C)(2), (3) or UBP DERS at Section 2C: Customer Data (C)(2), to provide to NYPA or (B) any other usage data information provided to NYPA by Utility under this Agreement and marked confidential by the Utility at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. “Confidential Information” means, collectively, Confidential Customer Utility Information or Confidential NYPA Information.
- d. “Cybersecurity and Data Privacy Protections” refer to controls addressing the risk to IT systems and data. These cybersecurity requirements are applicable to NYPA or its Third-Party Representative that electronically exchange Confidential Customer Utility Information, not including by email, with Utility. These controls also implement and address the risk of improper access, or misuse, of Confidential Customer Utility Information. The data privacy protections are required of NYPA if it processes Confidential Customer Utility Information.
- e. “Data Protection Requirements” means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to NYPA or its Representative’s Processing of Confidential Customer Utility Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices

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using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry practices and frameworks may evolve over time; (C) The Information Security Requirements for Vendors and External Partner; and (D) NYPA's Cybersecurity Policies and Procedures, Subject to the above, NYPA will determine and implement the necessary Cybersecurity and Data Privacy Protections to be in compliance with the Commission's Order Establishing Minimum Cybersecurity and Data Privacy Protections and Making Other Findings in Cases 18-M-0376, 15-M-0180 and 98-M-1343 at page 49 issued and effective October 17, 2019.

- f. "Data Security Incident" means a situation when Utility or NYPA reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, or Private Information as defined by GBL § 899-aa, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives. An Event is not a Data Security Incident.
- g. "Event" means any observable occurrence in a network or system which requires further investigation. After investigation, an Event may, or may not, be declared a Data Security Incident. "Information Security Requirements for Vendors and External Partners" means NYPA's policy on information security requirements and handling of Confidential Information for NYPA's representatives who provide IT products, services or support to NYPA.
- h. "Information Technology" means the use of computer, telecommunications and electric distribution facilities and software for storing, retrieving, sending and processing information.
- i. "NYPA" means the New York Power Authority.
- j. "Green Button Connect" or "GBC" provides a set of standards for allowing interoperable communications of energy usage and billing information between utilities and NYPA.
- k. "Operational Technology" means the hardware, software and physical facilities dedicated by a Utility to detect or cause changes in physical processes through direct monitoring and/or control of physical devices such as transmission, substation, gas pressure regulators and other electric and gas transmission and distribution facilities.
- l. "PSC" or "Commission" shall have the meaning attributed to it in the Recitals.

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- m. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Utility Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.
 - n. "Third-Party Representatives" or "Representatives" means those agents acting on behalf of NYPA that are contractors or subcontractors and that store, transmit or process Confidential Customer Utility Information. For the avoidance of doubt, Third-Party Representatives do not include NYPA and its members, directors, officers or employees who need to know Confidential Customer Utility Information for the purposes of providing Services.
 - o. "Services" mean any activities that transfer electronically or use Confidential Information, or which utilize a direct electronic connection with a utility other than by email, where the direct electronic connection is made by NYPA or its Third Party Representative.
 - p. The Service Organization Control (SOC) II is an independently produced report that is an industry-standard report on controls at a service organization intended to mitigate risks related to the five trust service principles of security, availability, processing integrity, confidentiality, and privacy.
 - q. "SOC II Equivalent Audit" means an audit conducted by a qualified independent cyber security entity that reviews NYPA's security data processing policies and procedures necessary to comply with this Agreement, including at minimum, strict adherence to information security policies and procedures and encompassing the security, availability, processing, integrity and confidentiality of Confidential Information.
 - r. "Utility Data" means data held by Utility, whether produced in the normal course of business or at the request of NYPA.
- 2. Scope of the Agreement.** This Agreement shall govern NYPA's Cybersecurity and Data Privacy Protections when it electronically receives or exchanges customer information, other than email, from a direct connection with the Utility IT systems and the privacy protections that apply to Confidential Information disclosed to NYPA or to which NYPA is given access by Utility, including all archival or back-up copies of the Confidential Information held or maintained by NYPA (or its Representatives) and Confidential NYPA Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to NYPA or Utility, NYPA or Utility will immediately notify the Utility/NYPA and destroy any such information in the appropriate manner. This Agreement supersedes and replaces prior agreements between the Parties regarding

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the electronic transfer of information between the Parties except to the extent agreed upon by the Parties in writing. Each Party will, within thirty (30) days of the Effective Date of this Agreement, determine and agree in writing, which prior agreements, if any, between the Parties will survive this Agreement.

- 3. Governance of Confidential Customer Utility Information and Transfer of information Electronically Exchanged by NYPA with Utility.** The Parties agree that, except as otherwise permitted in this Agreement, Confidential Customer Utility Information will not be disclosed without the customer's consent. The Parties may agree in writing on a standard to anonymize data and to make public anonymized data. The Parties agree that Data Protection Requirements will govern the electronic interconnection and data transfer between the Parties. The Parties agree that Data Protection Requirements mean that NYPA, at a minimum, will maintain Cybersecurity and Data Privacy Protections that are equivalent or superior to those that NYPA requires of its vendors and external partners through the Information Security Requirements for Vendors and External Partners.
- 4. Customer Consent.** Utility, at NYPA's request will send electronically to NYPA Confidential Customer Utility Information associated with NYPA Transmission Access Charges ("NTAC"), Recharge New York ("RNY"), the Excelsior Jobs Program and other NYPA programs associated with the provision of utility delivery service or negotiated contracts. NYPA agrees to obtain written or recorded informed consent from all customers before NYPA requests from Utility any other Confidential Customer Utility Information.
- 5. Provision of Information.** Utility agrees to provide to NYPA or its Third-Party Representatives, certain Confidential Customer Utility Information, as requested, provided that: (A) if the utility has identified a potential Cybersecurity or Data Privacy Protection issue NYPA (and its Third-Party Representatives with an electronic connection to the utility other than by email) are in compliance with the terms of this Agreement in all material respects; (B) if required by Utility due to the identification of an actual Data Security Incident, NYPA shall undergo an audit, at NYPA's expense²; (C) NYPA (and its Third-Party Representatives with an electronic connection to the utility other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the Self-Assessment to protect utility IT systems, Data Privacy Protections and Confidential Customer Utility Information. Provided the foregoing prerequisites have been satisfied, NYPA shall be permitted access to Confidential Customer Utility Information and/or Utility shall provide such Confidential Customer Utility Information to NYPA. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or

² An audit related to a Data Security Incident is used to verify that the necessary Cybersecurity and Data Privacy Protections are in place for the utility to provide certain Confidential Customer Utility Information to NYPA or its Third-Party Representatives with an electronic connection to the utility, other than by email. The same audit requirements will apply as in Section 9. However, NYPA will be responsible for the cost of the audit in order to be re-authorized to receive data from the utility.

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Confidential Information of the other Party. Utility will comply with the security requirements set forth in this Agreement.

- 6. Confidentiality.** NYPA shall: (A) hold all Confidential Customer Utility Information in strict confidence pursuant to the terms and conditions of this Agreement except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Customer Utility Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Customer Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Customer Utility Information; (E) store Confidential Customer Utility Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Customer Utility Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Customer Utility Information as NYPA employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by the Utility, each Third-Party Representative shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, Utility shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Customer Utility Information are being observed and NYPA shall be obligated to promptly provide Utility with the requested assurances. NYPA may provide Confidential Customer Utility Information to a Third-Party representative without a direct electronic connection with the Utility, to assist the NYPA in providing permitted Services, but an NYPA utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.

Utility shall: (A) hold all Confidential NYPA Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential NYPA Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential NYPA Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential NYPA Information; (E) store Confidential NYPA Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential NYPA Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential NYPA Information as Utility employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by NYPA, each Third Party Representative with a need to know the Confidential NYPA Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, NYPA shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential NYPA Information are being observed and Utility shall be obligated to promptly provide NYPA with the requested assurances.

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7. Exceptions Allowing Disclosure of Confidential Information.

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Customer Utility Information for the purposes of providing Services provided that each such Third-Party Representative first is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information. NYPA shall require its Representatives to comply with NYPA's Information Security Requirements for Vendors and External Partners prior to disclosure of Confidential Customer Utility Information and shall be liable for any act or omission of its Third Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.
- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one(1) business day, notify the other Party, in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall each have the independent right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the disclosing Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the disclosing Party) and the disclosing Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.
- c. **Freedom of Information Law ("FOIL").** Notwithstanding any other provision of this Agreement, Utility acknowledges that NYPA is required to comply with the New York State, Public Officers Law, Article 6 [FOIL]. FOIL generally requires the public disclosure of records in the possession of NYPA, but there are certain exemptions in FOIL that would allow NYPA to deny a request for records. Those exemptions are found in § 87of the Public Officers Law, and exempt records or portions thereof that (a) "are specifically exempted from disclosure by state or federal statute," (b) "if disclosed would constitute an unwarranted invasion of privacy under the provisions of subdivision two of

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section eighty-nine," (c) "if disclosed would impair present or imminent contract awards or collective bargaining negotiations," or (d) "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

- d. Among other things, subdivision two(c)) of Public Officers Law section eighty-nine provides that disclosures shall not be construed to constitute an unwarranted invasion of personal privacy "when identifying details are deleted" and "when the person whom a record pertains consents in writing to disclosure" and so the Parties acknowledge and agree that compliance with FOIL hereunder shall not necessitate any disclosures of Confidential Information without the consent of Utility customer or without such customer information first being anonymized by the deletion of identifying details. NYPA agrees and confirms that it considers the Confidential Customer Utility Information to constitute protectable information under the trade secrets, confidential commercial information, personal privacy information, customer information or critical infrastructure exceptions of the Public Officers Law (FOIL) § 87(2)(d) and that the Confidential Information to be exchanged may be "inter -agency records" under Public Officers Law § 87(2)(e)(g) (See Xerox Corp. v. Town of Webster, 65 N.Y.2d 132 (1985)), and that NYPA will, should such Confidential Information be requested under FOIL, promptly notify Utility and deny disclosure and assert defenses to disclosure, in accordance with NYPA's FOIL regulations. Nothing herein is intended to limit the exceptions to FOIL disclosure listed herein and the Parties recognize that federal, state and local statutes, rule and regulation, and orders made by a court or regulatory agency of competent jurisdiction prohibiting disclosure of protected material also constitute exceptions to FOIL disclosure. In addition, information submitted to NYPA by Utility as the disclosing party shall be identified and labeled "Confidential" or "Proprietary" on each page and accompanied by a written statement (which in all instances may be an electronic transmission) of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501.

- 8. Return/Destruction of Information.** Within thirty (30) days after Utility's written demand, NYPA shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Customer Utility Information and shall at the Utility's option: (A) return such Confidential Customer Utility Information to Utility in such manner, format, and timeframe as reasonably requested by Utility or, if not so directed by Utility, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Customer Utility Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Customer Utility Information) that has come into NYPA's or its Third-Party Representatives' possession, including Destroying Confidential Customer Utility Information from all systems, records, archives, and backups of NYPA and its Third-

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Party Representatives, and all subsequent access, use, and Processing of the Confidential Customer Utility Information by NYPA and its Third-Party Representatives shall cease, provided any items required to be maintained to meet reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives, by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. A Utility making a written demand of an NYPA for the return or destruction of Confidential Customer Utility Information will specify the reason for the demand. NYPA agrees that upon a customer revocation of consent, NYPA warrants that it will no longer access through Utility Confidential Customer Utility Information and that it will Destroy any Confidential Customer Utility Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, NYPA and its Third-Party Representatives shall not be obligated to erase Confidential Customer Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that NYPA and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain Data Security Protections to limit access to or recovery of Confidential Customer Utility Information from such computer backup system and; (3) keep all such Confidential Customer Utility Information confidential in accordance with this Agreement. NYPA shall, upon request, certify to Utility that the destruction by NYPA and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of NYPA complete, execute, and deliver to Utility a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve NYPA from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Customer Utility Information pursuant to this Section may occur if the Utility has been notified of a potential or actual Data Security Incident and Utility has a reasonable belief of potential ongoing harm or the Confidential Customer Utility Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement.

- a. Upon NYPA's written demand and termination of electronic exchange of data with Utility, Utility shall at NYPA's option: (A) return such Confidential NYPA Information to NYPA in such manner, format, and timeframe as reasonably requested by NYPA or, if not so directed by NYPA, (B) Destroy all copies of all Confidential NYPA Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential NYPA Information) that has come into Utility's(ies') or its Third-Party Representatives' possession, including Destroying Confidential NYPA Information from all systems, records, archives, and backups of Utility and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential NYPA Information by Utility and its Third-Party Representatives shall cease, provided any items required to be maintained to meet reporting requirements as set forth by federal, state, and/or local laws,

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regulations, rules, NY state policies, or executive directives, by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Upon request, Utility shall certify to NYPA that the destruction by Utility and/or its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of Utility complete, execute, and deliver to NYPA a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8a shall not relieve Utility from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential NYPA Information pursuant to this Section may occur if NYPA has been notified of a potential or actual Data Security Incident, or has a reasonable belief of potential ongoing harm, or the Confidential NYPA Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement.

- 9. Audit.** Upon thirty (30) days notice to NYPA, NYPA shall permit an auditor selected by the Utility through a competitive solicitation and agreed (“CSA”) to by the NYPA to audit and inspect, at Utility’s sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Utility’s regulators). The audit may include (A) the facilities of NYPA and NYPA’s Third-Party Representatives where Confidential Customer Utility Information is Processed by or on behalf of NYPA; (B) any computerized or paper systems used to Process Confidential Customer Utility Information; and (C) NYPA’s security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Customer Utility Information. Such audit rights shall be limited to verifying NYPA’s compliance with this Agreement, including all applicable Data Protection Requirements. If NYPA provides a SOC II report or its equivalent (current within twelve (12) months of the Utility’s request) to the Utility, or commits to complete an independent third-party audit of NYPA’s compliance with this Agreement acceptable to the Utility at NYPA’s sole expense, within one hundred eighty (180) days, no audit by an auditor selected by the Utility through a CSA and conducted at Utility’s sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. The auditor will audit the NYPA’s compliance with the required Cybersecurity and Data Privacy Protections and provide those results to the utility and NYPA. In the event of a “failed” audit dispute, dispute resolution may proceed through mediation with a third-party mediator agreed to by the Parties. NYPA shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between NYPA and Utility, correct any deficiencies identified in the audit, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor at NYPA expense to the Utility and provide a report regarding the timing and correction of identified deficiencies to the Utility.

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10. Investigation. Upon notice to NYPA, NYPA shall assist and support Utility in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Customer Utility Information Processed by NYPA on behalf of Utility. Such assistance shall be at Utility's sole expense, except where such investigation was required due to the acts or omissions of NYPA or its Representatives, in which case such assistance shall be at NYPA's sole expense.

11. Data Security Incidents. NYPA is responsible for any and all Data Security Incidents involving Confidential Customer Utility Information that is Processed by, or on behalf of, NYPA. NYPA shall investigate all detected Events and shall notify Utility in writing as soon as possible upon declaration of a Data Security Incident and in accordance with the New York State Information Security Breach and Notification Act, and applicable laws, rules, and regulations. NYPA will notify the applicable Utility(s) if NYPA determines that there is a potential or actual unauthorized disclosure of Confidential Customer Utility Information and/or potential or actual harm to Utility(s) Information Technology or Operation Technology systems. NYPA will immediately take all necessary steps to eliminate or contain any exposure of Confidential Customer Utility Information and keep Utility advised of the status of such Data Security Incident and all matters related thereto. NYPA further agrees to provide, at NYPA's sole cost: (1) reasonable assistance and cooperation requested by Utility and/or Utility's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Utility may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Utility deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, NYPA shall develop and execute a plan, subject to Utility's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. NYPA agrees that Utility may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Utility pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the NYPA security has been restored to the reasonable satisfaction of the Utility so that Utility IT systems and Confidential Customer Utility Information are safe and the NYPA is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be subject to dispute resolution and appeal as applicable.

12. No Intellectual Property Rights Granted. Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Utility, and NYPA shall acquire no ownership interest in the Confidential Customer Utility Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

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13. No Intellectual Property Rights Granted. Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Utility, and NYPA shall acquire no ownership interest in the Confidential Customer Utility Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

14. Additional Obligations.

- a. NYPA shall not create or maintain data which are derivative of Confidential Customer Utility Information except for the purpose of performing the Services under this Agreement, or after obtaining customer consent, for meeting reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives, or as expressly authorized by the customer, unless that use violates Federal, State, and local laws, tariffs, rules, and regulations. For purposes of this Agreement, the following shall not be considered Confidential Customer Utility Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by NYPA that reference estimated or actual measured customer usage information, which NYPA needs to maintain for any tax, financial, regulatory reporting, or other legitimate business purposes; and (ii) Data collected by NYPA from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with NYPA or its partners.
- b. NYPA shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Utility in violation of any privacy or security law known by NYPA to be applicable to Utility.
- c. NYPA shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Self-Attestation as reasonably determined by the Utility in its discretion, to protect the security of Confidential Customer Utility Information and protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of NYPA's internal use, Processing, or other transmission of Confidential Customer Utility Information, whether between or among NYPA's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of NYPA, including without limitation Third Party Representatives.
- d. NYPA and Utility shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.
- e. NYPA shall establish policies and procedures to provide reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual who is or may be the

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subject of a Data Security Incident involving Confidential Customer Utility Information Processed by NYPA to the extent such request, complaint or other communication relates to NYPA's Processing of such individual's Confidential Customer Utility Information.

- f. NYPA shall establish policies and procedures to provide all reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Customer Utility Information, data theft, or other unauthorized release of Confidential Customer Utility Information, disclosure of Confidential Customer Utility Information, or misuse of Confidential Customer Utility Information to the extent such request, complaint or other communication relates to NYPA's accessing or Processing of such Confidential Customer Utility Information.
- g. NYPA will not process Confidential Customer Utility Information outside of the United States or Canada absent a written agreement, whereby NYPA shall require its Third Party Representatives to comply with both the Data Protection Requirements and NYPA's Information Security Requirements for Vendors and External Partners. For the avoidance of doubt, Confidential Customer Utility Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.

15. Specific Performance. The Parties acknowledge that disclosure or misuse of Confidential Information in violation of this Agreement may result in irreparable harm to the non-disclosing Party, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore the non-disclosing Party shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. The non-disclosing Party's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Information hereunder. Each Party agrees to waive any requirement for the securing or posting of any bond or other security in connection with Utility obtaining any such injunctive or other equitable relief.

16. Indemnification.

17. To the fullest extent permitted by law, NYPA shall indemnify and hold Utility, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with

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this Agreement by NYPA or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the acts or omissions.

18. Notices. With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to NYPA, to:

NYPA Name:
Name of Contact:
Address:
Phone:
Email:

If to Utility, to:

Utility Name:
Name of Contact:
Address:
Phone:
Email:

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

19. Term and Termination. This Agreement shall be effective as of the date first set forth above and shall remain in effect until the electronic connection, other than by email, used to transfer information between the Parties is severed and cannot be cured as provided for in this Agreement, or until terminated in accordance with the provisions of the service agreement, if any, between the Parties and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, whichever occurs first, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Further, either party may dispense with the required thirty (30) day notice period in the event of a material breach hereof by NYPA or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. The Breaching Party will provide the non-breaching Party with a written description and notice of material breach. Upon the expiration or termination hereof, neither NYPA nor its Third-Party

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Representatives shall have any further right to Process Confidential Customer Utility Information or Customer Information, with the exceptions noted below and unless the customer has given written or electronic consent to do so, and shall immediately comply with its obligations under Section 8 and the Utility shall not have the right to process Confidential NYPA Information and shall immediately comply with its obligations under Section 8. Upon expiration or termination of this Agreement, NYPA shall retain the right to Process all Confidential Information acquired during the term of this Agreement to provide Services and to meet reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives.

20. Consent to Jurisdiction; Selection of Forum. NYPA agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to NYPA at the address for NYPA pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. NYPA agrees that service of process on it may also be made in any manner permitted by law. The Parties agree to submit all disputes to a court of competent jurisdiction within Albany or Dutchess Counties, New York or the federal courts for the Southern District of New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.

21. Governing Law. This Agreement shall be interpreted, and the rights and obligations of the Parties determined in accordance with the laws of the State of New York, without recourse to such state's choice of law rules.

22. Survival. The obligations of NYPA under this Agreement shall continue for up to two years, so long as NYPA and/or NYPA's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Customer Utility Information even if all Agreements between NYPA and Utility have expired or been terminated. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

23. Amendments; Waivers. This Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.

24. Assignment. This Agreement (and the Utility's or NYPA's obligations hereunder) may not be assigned by Utility, NYPA or Third-Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.

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- 25. Severability.** Any provision of this Agreement which is determined by any court or having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 26. Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and This Agreement may not be amended without the written Agreement of the Parties.
- 27. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.
- 28. Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.
- 29. Relationship of the Parties.** Utility and NYPA expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.
- 30. Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.
- 31. Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. The Utility shall execute and deliver a signed original copy of this Agreement to the NYPA within five (5) business days of receiving an executed Agreement with a complete SA, if the NYPA has an electronic interconnection with the utility other than by email, from the NYPA. Prior to such execution and delivery by the Parties, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.

[signature page follows]

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

UTILITY

NYPA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SELF-ATTESTATION OF Cybersecurity Protections

Each Utility, for itself only, represents that for all information received from NYPA, in response or pursuant to this Self-Attestation, that is marked CONFIDENTIAL by NYPA (Confidential Self-Attestation Information) Utility shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of NYPA pursuant to this Self-Attestation and to work with NYPA to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Utility employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Cybersecurity protections listed below are required before NYPA will be allowed access to Utility IT systems or electronically exchange Confidential Customer Utility Information with Utility.

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS (“Attestation”), is made as of this _____ day of _____, 20____ by _____, an NYPA to Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (together, the New York State Joint Utilities or “JU”).

WHEREAS, NYPA desires to obtain or retain access to Utility IT systems and electronically exchange Confidential Customer Utility Information³ (as defined in this Data Security Agreement) with Utility, NYPA must THEREFORE self-attest to NYPA's compliance with the Cybersecurity Protections ("Requirements") as listed herein. NYPA acknowledges that non-compliance with any of the Requirements may result in the termination of utility data access as per the discretion of any of the JU, individually as a Utility or collectively, in whole or part, for its or their system(s).

- _____ An Information Security Policy is implemented across the NYPA's corporation which includes officer level approval.
- _____ An Incident Response Procedure is implemented that includes notification as soon as possible following declaration of an incident alerting utility when Confidential Customer Utility Information is potentially exposed, or of any other potential security breach.
- _____ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- _____ Multi-factor authentication is used for all remote administrative access, including, but not limited to, access to production environments.
- _____ All production systems are properly maintained and updated to include security patches on a periodic basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- _____ Antivirus software is installed on all servers and workstations and is maintained with up-to-date signatures.
- _____ All Confidential Customer Utility Information is encrypted in transit utilizing industry best practice encryption methods, except that Confidential Information does not need to be encrypted during email communications.

³ "Confidential Customer Utility Information" means, collectively, aggregated and customer -specific information that Utility is: (A) required by the Uniform Business Practices ("UBP") at Section 4: Customer information(C)(2), (3) or Distributed Energy Provider ("DER") UBP at Section 2C: Customer data(C)(2), to provide to ESCO, Direct Customer or DER Supplier and or (B) any other Data provided to NYPA by Utility and marked confidential by the Utility at the time of disclosure, or (C) a Utility's operations and/or systems, including but not limited to log-in credentials, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

- _____ All Confidential Customer Utility Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.
- _____ It is prohibited to store Confidential Customer Utility Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.
- _____ All Confidential Customer Utility Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- _____ NYPA monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- _____ Security awareness training is provided to all personnel with access to Confidential Customer Utility Information.
- _____ Employee background screening occurs prior to the granting of access to Confidential Customer Utility Information.
- _____ Replication of Confidential Customer Utility Information to non-company assets, systems, or locations is prohibited.
- _____ Access to Confidential Customer Utility Information is revoked when no longer required, or if employees separate from the Third Party.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- _____ NYPA maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, NYPA has delivered accurate information for this Attestation as of the date first above written.

Signature: _____
Name: _____
Title: _____
Date: _____

