

## **ATTACHMENT 2**

**COST SHARING AND RECOVERY AGREEMENT**

by and among

**CENTRAL HUDSON GAS & ELECTRIC CORPORATION;  
CONSOLIDATED EDISON COMPANY OF NEW YORK;  
NEW YORK STATE ELECTRIC & GAS CORPORATION;  
NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID;  
ORANGE AND ROCKLAND UTILITIES, INC.;  
ROCHESTER GAS AND ELECTRIC CORPORATION;  
LONG ISLAND POWER AUTHORITY; AND POWER  
AUTHORITY OF THE STATE OF NEW YORK**

Dated as of [\_\_\_\_\_], 2022

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## **COST SHARING AND RECOVERY AGREEMENT**

This Cost Sharing and Recovery Agreement (this “**CSRA**” or “**Agreement**”) is entered into as of the [ ] day of [\_\_\_\_\_], 2022, by and among CENTRAL HUDSON GAS & ELECTRIC CORPORATION (“**CENTRAL HUDSON**”); CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (“**CON EDISON**”); NEW YORK STATE ELECTRIC & GAS CORPORATION (“**NYSEG**”); NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID (“**NATIONAL GRID**”); ORANGE AND ROCKLAND UTILITIES, INC. (“**O&R**”); ROCHESTER GAS AND ELECTRIC CORPORATION (“**RG&E**”); LONG ISLAND POWER AUTHORITY (“**LIPA**”); AND THE POWER AUTHORITY OF THE STATE OF NEW YORK (“**NYPA**”) (each of the foregoing individually referred to herein as a “**Party**” and collectively referred to herein as the “**Parties**”).

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

**WHEREAS**, New York’s Accelerated Renewable Energy Growth and Community Benefit Act (“**Act**”), enacted as Chapter 58 (Part JJJ) of the laws of 2020, requires the New York State Public Service Commission (“**NYPSC**”) to identify local transmission upgrades that are necessary or appropriate to meet the clean energy and climate goals set by New York’s Climate Leadership and Community Protection Act (“**CLCPA**”), enacted as Chapter 106 of the laws of 2019, codified in part in New York Public Service Law §§66-p, and to establish capital investment plans for each Party, except LIPA, in whose service territory such upgrades are identified;

**WHEREAS**, the Act requires LIPA to establish a capital program to address local transmission upgrades within its service territory; **WHEREAS**, the Act further requires the Parties to carry out such upgrades in accordance with a schedule approved by the NYPSC or LIPA, as applicable;

**WHEREAS**, in Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (the “**State Transmission Planning Proceeding**”), the Parties proposed several approaches to cost recovery for local transmission upgrades, including the option of a participant funding agreement; **WHEREAS**, in the *Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals*, effective as of September 9, 2021 (“**Order**”), the NYPSC directed Central Hudson, Con Edison, NYSEG, National Grid, O&R and RG&E to consult with LIPA and develop and file a participant funding agreement for recovery of the costs of local transmission upgrades or portions of local transmission upgrades that are included in capital investment plans approved by the NYPSC pursuant to the Act; **WHEREAS**, the Order further directed the Parties to consult with the New York Independent System Operator, Inc. (“**NYISO**”) concerning the possibility of the NYISO administering a cost recovery mechanism for the costs of such local transmission upgrades through its tariffs; **WHEREAS**, in accordance with the Order, the Transmission Owners (as hereinafter defined) and NYPA have held such consultations and desire to enter into this Agreement to set forth their agreement and understanding whereby the Transmission Owners will recover the costs of such local transmission upgrades or portions thereof; and **WHEREAS**, the Parties intend that this Agreement shall constitute a voluntary agreement as contemplated by FERC’s June 17, 2021 Notice of Policy Statement titled “State Voluntary Agreements to Plan and Pay for Transmission Facilities” (175 FERC ¶ 61,225).

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein set forth, 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:

## **ARTICLE 1**

## DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following capitalized terms used herein shall have the respective meanings set forth below:

“**Act**” has the meaning set forth in the recitals to this Agreement.

“**Affiliate**” means, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust, or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

“**Agreement**” means this Cost Sharing and Recovery Agreement, as amended from time to time.

“**Approved Transmission Project**” has the meaning set forth in Section 2.1.1.

“**CLCPA**” has the meaning set forth in the recitals to this Agreement.

“**Conditions Precedent**” has the meaning set forth in Section 5.1.

“**Continuing Approved Transmission Project**” has the meaning set forth in Section 4.2.1.

“**CSRA**” has the meaning set forth in the preamble to this Agreement. “**Dispute Response**” has the meaning set forth in Section 7.2.

“**Disputing Party**” has the meaning set forth in Section 7.2.

“**Federal Power Act**” means the Federal Power Act, 16 U.S.C.A. §§791a-828c, as amended from time to time.

“**FERC**” means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

“**Governmental Authority**” means any state or federal administrative, legal, judicial, or executive agency, commission, department, or other such body, including FERC and the NYPSC.

“**Impasse Notice**” has the meaning set forth in Section 7.4.

“**Law**” means any constitution, act, statute, regulation, order, ruling or rule, standards or objective criteria contained in a permit, license, or other approval by, or other legislative or administrative action of, any Governmental Authority of competent jurisdiction, or a final decree, judgment, or order of a court of competent jurisdiction, including temporary restraining orders.

“**LSE**” has the meaning set forth in Rate Schedule ~~18~~19.

“**Material Adverse Effect**” means, with respect to a Party, any of the following:

(i) an actual or threatened adverse impact to the Party or its Affiliates resulting from an actual or threatened action of a Governmental Authority;

(ii) a material adverse impact to (a) the business, operations or financial condition of such Party or its Affiliates, or (b) the economic or business benefits to such Party with respect to or resulting from the transactions or performance contemplated by this Agreement; or

(iii) any material amendment, waiver, supplement, or modification of this Agreement that is not satisfactory to such Party in its sole and absolute discretion. “**Notice of Dispute**” has the meaning set forth in Section 7.2.

“**NYDPS**” means the New York Department of Public Service.

“**NYISO**” means the New York Independent System Operator, Inc., including any successor in function.

“**NYPSC**” has the meaning set forth in the recitals to this Agreement.

“**Order**” has the meaning set forth in the recitals to this Agreement.

“**Party**” and “**Parties**” have the meaning given such terms in the preamble of this



Agreement.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**Rate Schedule 1819**” means the Rate Schedule [1819](#) to the NYISO Open Access Transmission Tariff, as filed by the NYISO with FERC and as modified and made effective from time to time.

“**Responding Party**” has the meaning set forth in Section 7.2.

“**State Transmission Planning Proceeding**” has the meaning set forth in the recitals to this Agreement.

“**Term**” has the meaning set forth in Section 4.1.

“**Transmission Owners**” means each of Central Hudson; Con Edison; NYSEG; National Grid; O&R; and RG&E; as well as LIPA acting in its role as a governmental authority owning transmission in the state of New York, including each of their respective successors and permitted assigns.

“**Transmission Project**” means a “Local transmission upgrade” as defined under the Act, the costs of which are proposed to be recovered pursuant to the terms hereof and of Rate Schedule [1819](#), including new projects and incremental investments to “business as usual” projects that capture CLCPA benefits.

1.2 Interpretation. In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to

this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including,” “includes,” or “include” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Any reference in this Agreement to “Section,” “Article,” or “Exhibit” shall be references to this Agreement unless otherwise stated, and all such Exhibits shall be incorporated in this Agreement by reference. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices, and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented, and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its successors and permitted assigns, and in the case of any Governmental Authority, any person succeeding to its functions and capacities.

## ARTICLE 2

### SCOPE OF TRANSMISSION PROJECTS UNDER AGREEMENT

#### 2.1 Approved Transmission Projects.

2.1.1 This Agreement shall apply to the recovery of the costs of each Transmission Project included in a Transmission Owner’s capital investment plan pursuant to an order of the NYPSC that determines the identified investment is necessary or appropriate to the achievement of the CLCPA targets (each such Transmission Project being referred to as an **“Approved Transmission Project”**).

2.1.2 The Parties acknowledge that the NYPSC initiated the State Transmission Planning Proceeding pursuant to the requirements of the Act, in furtherance of planning electric transmission infrastructure necessary to meet the clean energy and climate goals set by the CLCPA. The Transmission Owners further acknowledge their obligations under the Act and the

Order relating to planning and identifying Transmission Projects and implementing Approved Transmission Projects. Because the costs of such Approved Transmission Projects will be undertaken to meet the public policy goals of New York State, pursuant to a program directed by the State, the Parties agree that cost recovery hereunder will include a NYPSC-approved return on equity and capital structure applied to each Approved Transmission Project; provided, however, that LIPA's return on equity and capital structure shall be established and approved by the LIPA Board of Trustees pursuant to Article 5, Title 1-A of the New York Public Authorities Law, Sections 1020-f(u) and 1020-s, which shall be consistent with those proposed by LIPA and reviewed by the NYDPS in connection with LIPA's Approved Transmission Projects.

2.2 Transmission Owner Responsibility. Each Transmission Owner shall have the sole right and responsibility to request and obtain an order from the NYPSC for its own Transmission Projects to be Approved Transmission Projects under this Agreement, including approval (for Transmission Owners other than LIPA) of its return on equity and capital structure for such Transmission Projects. Further, each Transmission Owner's decision to proceed with any Approved Transmission Project shall be subject to its receipt of certain approvals, including an order from the NYPSC accepting, adopting, or approving (for Transmission Owners other than LIPA) a just and reasonable return on equity and capital structure applied to Approved Transmission Projects and an order(s) from FERC accepting, adopting, or approving rates consistent with the NYPSC order(s), as necessary to implement the cost allocation and recovery intended under this Agreement; provided, however, that LIPA's formula rate shall be subject only to review, and not approval, by FERC under the same "comparability" standard that is applied to changes in LIPA's Transmission Service Charge under Attachment H of the NYISO Open Access Transmission Tariff.<sup>1</sup>

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<sup>1</sup> LIPA is an unregulated transmitting utility and under Federal Power Act Section 201(f) is exempt from

2.3 Notice of Approved Transmission Projects. Each Transmission Owner shall promptly notify all Parties when an order from the NYPSC has been obtained that makes a Transmission Project an Approved Transmission Project under this Agreement.

### ARTICLE 3

#### RECOVERY OF COSTS

3.1 Rate Schedule 1819. The applicable Transmission Owner of an Approved Transmission Project shall be entitled to recover the revenue requirement for such Approved Transmission Project pursuant to the terms and conditions of Rate Schedule 1819.

3.2 Formula Rates. Rate Schedule 1819 shall incorporate by reference the formula rates of each Transmission Owner to be used for the determination of the revenue requirements that may be recovered by the Transmission Owner for each Approved Transmission Project, including weighted average costs of capital and rates of return. Each Transmission Owner shall be solely responsible for submitting its own initial formula rate under Rate Schedule 1819 (including all rate methodologies and protocols) and each annual formula rate update thereto to the applicable Governmental Authorities and obtaining all requisite approvals or review thereof for its Approved Transmission Projects. In addition, each Transmission Owner agrees that the return on equity and capital structure used to recover Approved Transmission Projects' costs under Rate Schedule 1819 will be those approved by the NYPSC (or reviewed by the ~~NYPSC~~ NYDPS in the case of LIPA) for Approved Transmission Projects (provided they are just and reasonable), subject to any requisite FERC approval or review. To facilitate use of the NYPSC-approved (or in LIPA's case, ~~NYPSC~~ NYDPS- reviewed) rates of return as they may change over time without the need to establish a new return on equity and capital structure through a new filing under Section 205 or 206

of the Federal Power Act, each Transmission Owner shall file for FERC approval or review a return on equity that is a ceiling up to which the Transmission Owner may set the revenue requirements for its Approved Transmission Projects. Each Transmission Owner's formula rate submittals shall reflect the Approved Transmission Project's actual costs and shall be updated consistent with formula rate protocols. If requested by the NYPSC, each Transmission Owner shall file with the NYPSC biannual status reports reflecting the costs incurred for Approved Transmission Projects relative to their cost estimates at the time of the Approved Transmission Project's approval.

Each Transmission Owner acknowledges and agrees that its recovery of the revenue requirements for each Approved Transmission Project will be undertaken pursuant to the terms and conditions set forth in Rate Schedule ~~18~~19 and its applicable formula rate thereunder. Unless the NYPSC (or, in the case of LIPA, the NYPSC and LIPA Board of Trustees) otherwise orders or approves such recovery under Rate Schedule ~~18~~19, no Transmission Owner shall include as an input into its formula rate the net book value of existing transmission facilities retired resulting from [an Approved Transmission Project or the net book value of real property used for](#) an Approved Transmission Project.

3.3 Period of Recovery. Unless another period is approved by the NYPSC or LIPA's Board of Trustees, as appropriate, the period of recovery for an Approved Transmission Project that is completed shall commence on the in-service date of the Approved Transmission Project (provided the Transmission Owner shall recover its cost of financing construction—the Allowance for Funds Used During Construction or “AFUDC”) until the end of the useful life of the Approved Transmission Project. Recovery of Approved Transmission Project costs during construction—referred to as the Construction Work in Progress incentive or “CWIP”—shall be recoverable under this Agreement only if approved by the NYPSC. Costs of Approved Transmission Projects

that are abandoned for reasons beyond the control of the Transmission Owner shall be recovered commencing on the date of abandonment.

3.4 NYPA Load. NYPA’s electric load shall be treated the same as all other LSEs under Rate Schedule ~~48~~19, and NYPA will be allocated costs of Approved Transmission Projects in the same manner as all other LSEs under Rate Schedule ~~48~~19.

## ARTICLE 4 TERM

4.1 Term. Subject to the terms and conditions hereof, the “**Term**” of this Agreement shall be the period beginning on the date this Agreement is fully executed by the Parties and continue until terminated by unanimous written agreement of the Parties.

4.2 Effect of Termination.

4.2.1 Notwithstanding any termination of this Agreement, unless otherwise agreed by all Parties, the terms and conditions of this Agreement shall continue to apply to the recovery of costs and revenue requirements for each Transmission Project that becomes an Approved Transmission Project prior to the effective date of such termination (each a “**Continuing Approved Transmission Project**”). In such event, this Agreement (and corresponding Rate Schedule ~~48~~19 and formula rates thereunder) shall continue to apply to the recovery of costs and revenue requirements for each Continuing Approved Transmission Project until the end of the useful life of such Continuing Approved Transmission Project, or as otherwise approved by the NYPSC and LIPA’s Board of Trustees, as appropriate.

4.2.2 After the end of the Term, this Agreement (and Rate Schedule ~~48~~19) shall not apply to any Transmission Projects that are not Continuing Approved Transmission Projects.

## ARTICLE 5

### CONDITIONS PRECEDENT

5.1 Conditions Precedent. This Agreement shall not be effective unless and until each of the Conditions Precedent has been satisfied or waived by all Parties. For purposes of this Agreement, the “**Conditions Precedent**” mean each of the following conditions:

(i) this Agreement shall have been accepted by FERC pursuant to an order that is in full force and effect either: (a) without condition or modification, or (b) with conditions or modifications acceptable to all Parties in their sole discretion, as evidenced by their written agreement; and

(ii) Rate Schedule ~~18~~19 shall have been approved by an order that is in full force and effect issued by FERC either: (a) without condition or modification, or (b) with conditions or modifications acceptable to all Parties in their sole discretion, as evidenced by their written agreement.

5.2 Diligent Efforts. Each Party shall use all reasonable due diligence and good faith efforts required on its part to cause the Conditions Precedent to be satisfied; provided, however, no Party shall be required to take any action that would result in a Material Adverse Effect with respect to such Party.

5.3 Satisfaction of Conditions Precedent. The Parties shall reasonably coordinate and communicate with one another in good faith to determine and confirm when the Conditions Precedent are satisfied, including to establish the date on which this Agreement shall be effective.

## ARTICLE 6

### REGULATORY

6.1 Modifications ~~and Standard of Review~~.

~~6.1.1~~ Each Party agrees that:

(i) it shall not seek to modify this Agreement under Sections 205 or 206 of the Federal Power Act or any other provision of Law, and will take reasonable steps (including the submission or support of filings) to oppose any such modification, except to the extent such modification is agreed by the Parties;

(ii) it will not make any filings under the Federal Power Act or with FERC, the NYPSC or with any other Governmental Authority that are inconsistent with the terms agreed to in this Agreement; and

(iii) it shall support this Agreement before the NYPSC and FERC, and it shall not oppose or take any position adverse to this Agreement before FERC, the NYPSC or before any other Governmental Authority.

~~6.1.2 The Parties agree and intend that, with respect to any change to a term or condition under this Agreement (including any term or condition to Rate Schedule 18) that is proposed or sought by a third party or FERC (acting sua sponte), the standard of review shall be the “public interest” standard of review set forth in Power Marketing, LLC v. Maine Public Utilities Commission, 130 S. Ct. 693 (2010) and Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008) (construing United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956)).~~

6.2 Preservation of Rights. Subject to the express terms and conditions of this Agreement, this Agreement shall not constitute or be construed as a waiver of rights that any Transmission Owner may have under applicable Law or with respect to any proceeding before the NYPSC or FERC.

6.3 No Precedential Effect. Except as expressly provided for in this Agreement, and for the reasons described in Section 2.1.2, among others, this Agreement and, in particular the rates established in accordance herewith, shall not constitute a precedent in any future proceedings, except to enforce the terms of this Agreement. This Agreement shall not be used as evidence that a particular method is a “long-standing practice” as that term is used in Columbia Gas Transmission Corp. v. FERC, 628 F.2d 578 (D.C. Cir. 1975), or a “settled practice” as that term is used in Public Service Comm. of New York v. FERC, 642 F.2d 1335 (D.C. Cir. 1980).



## ARTICLE 7

### DISPUTE RESOLUTION

7.1 Applicability. Except for matters requiring immediate injunctive relief, any dispute or claim between the Parties arising out of or relating in any way to this Agreement will be resolved in accordance with the dispute resolution process set forth in this Article 7.

7.2 Administrative Representatives. In the event that a Party has a dispute or claim with respect to this Agreement, such Party (the “**Disputing Party**”) must provide the other Parties (“**Responding Party**”) with a notice of each issue in dispute or claim, a proposed means for resolving each such issue in dispute or claim, and support for such position (“**Notice of Dispute**”). Within fifteen (15) days after receiving a Notice of Dispute, the Responding Parties must provide the Disputing Party with a notice of each additional issue (if any) with respect to the disputed issue(s) or claim(s) raised by the Notice of Dispute, a proposed means for resolving each issue in dispute or claim, and support for such position (“**Dispute Response**”). Thereafter, each Party shall designate an administrative representative who shall be authorized to resolve the disputed issues or claims on its behalf. Such administrative representatives shall meet, in person, to discuss the matter and employ good faith efforts to promptly reach a resolution of each such disputed issue or claim.

7.3 Senior Officers. If the designated administrative representatives do not resolve each issue in dispute or claim by mutual agreement within thirty (30) days after receipt of the Dispute Response, or such other time period as the Parties might agree in writing to allow for discussions, any remaining disputed issue(s) or claim(s) will be submitted to a senior officer of each Party for resolution. Such senior officers shall have full authorization to resolve the same and shall meet, in person or by telephone, not later than ten (10) days after the date such dispute or claim was submitted to them.

7.4 Impasse. If the issue or claim is not resolved to the Parties' mutual satisfaction within twenty (20) days from its submission to the senior officers of each Party under Section 7.3, then any Party can provide notice to the other Parties declaring an impasse ("**Impasse Notice**"). If a Party provides an Impasse Notice to the other Parties, then a Party may pursue any right or remedy that may be available to it at law or in equity.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

8.1 Execution. Each Party represents and warrants that, as of the date of this Agreement first set forth above, it has all the necessary entity authority and all legal power and authority and has been duly authorized by all necessary action to enable it to lawfully execute, deliver and perform under this Agreement.

8.2 Binding Obligations. Each Party represents and warrants that, as of the date of this Agreement first set forth above, this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principles are considered in a proceeding at law or in equity.

8.3 Execution and Consummation. Each Party represents and warrants that, as of the date of this Agreement first set forth above, the execution and delivery of this Agreement and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any Law applicable to it, or result in a breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the performance by the Party of

any of its obligations under this Agreement.

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

9.1 Approvals. Upon request of a Party, the other Parties will reasonably cooperate and assist in meetings, telephone conferences or other communications with a relevant Governmental Authority regarding submittals made to such Governmental Authority relating to this Agreement, but absent such request or a direct communication initiated by the Governmental Authority, no Party will have non-public communication with the Governmental Authority concerning another Party's submittals to the Governmental Authority pertaining to this Agreement or any subject that reasonably relates to or bears upon another Party with respect to this Agreement. A Party may participate publicly in a proceeding before a Governmental Authority pertaining to this Agreement that relates to another Party's submittal to such Governmental Authority. This provision is not intended to subject this Agreement or any Party to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement or such Party at the time of execution of this Agreement.

9.2 Assignment. No Party may assign, or collaterally assign, pledge, or grant a security interest in, this Agreement or its rights or obligations hereunder without the prior unanimous written consent of the other Parties and the NYPSC's consent. No assignment by a Party of this Agreement or its rights or obligations hereunder shall relieve the assigning Party of liability for its obligations hereunder without the written release of all the other Parties, and any assignment made without proper consent shall be void and ineffective.

9.3 No Partnership. The Parties do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or

other entity for the conduct of any business for profit as between the Parties.

9.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and permitted assigns of the Parties.

9.5 No Third-Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation, or liability of any Party to any Person or entity not a Party to this Agreement, including any customer of a Party or any LSE.

9.6 No Waiver. No Party's failure to enforce any provision or provisions of this Agreement shall be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing every other provision of this Agreement at such time or at any time thereafter. The waiver by any Party of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

9.7 Counterparts. This Agreement may be executed in multiple counterparts and in electronic form (e.g., pdf format), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9.8 Articles and Sections Headings. The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall not modify or restrict any of the terms or provisions hereof.

9.9 Construction. The Parties acknowledge that each was actively involved in the negotiation and drafting of this Agreement and that no Law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor of or against any Party because of deemed authorship.

9.10 Public Announcement. The Parties shall coordinate among themselves and NYDPS Staff with respect to the contents of any announcement relating to this Agreement prior to

its release and any references to the terms of this Agreement in such announcement must be approved in writing by each Party prior to the announcement's issuance.

9.11 Governing Law. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the Laws of the State of New York (without giving effect to the principles of conflict of Laws which would apply the Laws of another jurisdiction).

9.12 Severability. In the event any provision of this Agreement is declared invalid or unenforceable by a Governmental Authority, such invalid or unenforceable provision shall be stricken and the Parties shall promptly enter into negotiations for the purpose of restoring this Agreement as near as possible to its original intent and effect; provided, however, if the Parties are unable in good faith to agree to restoration provisions within sixty (60) days after negotiations begin, then the provision shall be stricken and no restoration shall be made.

9.13 Further Assurances. The Parties shall reasonably cooperate to execute and deliver all such instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Agreement provided that such instruments or assurances in no way effect such Party's rights under this Agreement.

9.14 Amendments. This Agreement may be amended only by a written instrument, duly executed by each of the Parties, which amendment has received all approvals of the NYPSA and other Governmental Authorities, as appropriate, with competent jurisdiction necessary for the effectiveness thereof.

9.15 Entire Agreement. This Agreement and any Exhibits attached hereto constitute the entire agreement between the Parties as of the time of execution relating to the subject matter hereof and supersedes all prior agreements, whether oral or written, relating to such subject matter.

9.16 Agreement of the New York Public Service Commission. Though not a formal Party to this Agreement, upon the acceptance, adoption, or approval of this Agreement by the

NYPS, the NYPS will support and not oppose this Agreement before FERC, and any rate filings made by the Transmission Owners hereunder consistent with its terms, as authorized by the NYPS Chair under New York Public Service Law §12; provided however, the NYPS reserves the right to protest costs recoverable in any formula rate filings made pursuant to this Agreement.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

**[Party]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Consented to and Agreed for purposes of Section  
9.16:

**NEW YORK PUBLIC SERVICE COMMISSION:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_