

**IMPLEMENTING AGREEMENT**

**FOR**

**NISOURCE MULTI-SPECIES HABITAT CONSERVATION PLAN**

**BY AND AMONG**

**THE UNITED STATES FISH AND WILDLIFE SERVICE**

**AND**

**VARIOUS SUBSIDIARIES OF NISOURCE INC.**

## Agreement

### **1.0 Parties**

This agreement (“Agreement”), which implements the NiSource Multi-Species Habitat Conservation Plan (“MSHCP”) dated December 2012, is entered into among Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC, Crossroads Pipeline Company, Central Kentucky Transmission Company, and NiSource Gas Transmission and Storage Company (referred to collectively as “NiSource”) and the United States Fish and Wildlife Service (“Service”), an agency of the United States Department of the Interior.

In this Agreement, these entities may be referred to collectively as the “Parties” and each individually as a “Party.”

### **2.0 Recitals**

**2.1** The Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to minimize and mitigate the effects on the “Take Species” (as that term is defined in Section 3.21 of this Agreement) from Covered Activities (described in Chapter 2 of the MSHCP) within the Covered Lands (which are described in Section 2.8, below, as well as in Chapter 2 of the MSHCP). The MSHCP also provides measures that NiSource will undertake to avoid adverse effects to certain Non-Take Species (as that term is defined in Section 3.18 of this Agreement).

**2.2** The Service has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

**2.3** The ESA prohibits the “take” of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the Service may issue permits authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit (“ITP”), the applicant must submit a habitat conservation plan (“HCP”) describing, among other things, the measures the applicant will implement to minimize and mitigate the impacts of such take to the maximum extent practicable. NiSource submitted its application for an ITP to the Service, which included its MSHCP, for authorization to take certain species within the Covered Lands incidental to engaging in its Covered Activities.

**2.4** NiSource is engaged in natural gas transmission and storage operations within its operating territory that traverses states ranging from New York to Louisiana. NiSource currently maintains and operates over 15,000 miles of interstate natural gas transmission pipelines and appurtenant facilities. It delivers annually about one trillion cubic feet of gas to seventy-two (72) local distribution companies and several hundred gas end-users in southern, northeastern, Midwestern, and Mid-Atlantic states, which are described in detail in Chapter 2 of the MSHCP.

**2.5** Operation and maintenance (“O&M”) of NiSource’s facilities requires numerous activities conducted on an annual basis. On average, NiSource has approximately four hundred (400) projects annually that require some form of review pursuant to the ESA. These activities can be divided into three main categories: general operation and maintenance; safety-related repairs, replacements, and maintenance; and certain expansion and new construction projects. Some of these projects are anticipated to result in take of the Take Species.

**2.6** NiSource’s overarching priority is to avoid and minimize impacts to MSHCP Species and their habitats to the fullest extent practicable and to provide conservation benefits to such species. Because NiSource’s Covered Activities are necessary to ensure the safe and reliable transmission of natural gas to millions of customers, and because NiSource’s Covered Activities are closely regulated by the Federal Energy Regulatory Commission (“FERC”) and the U.S. Department of Transportation, NiSource cannot completely avoid impacts to Take Species and their habitats; however, pursuant to Section 10 of the ESA, as to Take Species, NiSource will minimize and mitigate impacts from take to the maximum extent practicable as described in Chapters 6 and 7 of the MSHCP.

**2.7** The purpose of the MSHCP is to satisfy the requirements of Section 10(a)(1)(B) of the ESA for the issuance of an ITP for the Take Species. The MSHCP also provides conservation measures for certain Non-Take Species, including, but not limited to, measures to avoid adverse impacts to the species. These measures will be implemented over the next fifty (50) years in accordance with the ITP, MSHCP, and this Agreement.

**2.8** As more specifically described in Chapter 2 of the MSHCP, the Covered Lands extend across three (3) Service regions and fourteen (14) states to cover an area stretching from Louisiana northeastward to New York, including approximately 15,562 miles of onshore pipeline. Lands that fall within a one-mile corridor – i.e., one-half mile (2,640 feet) on either side of the centerline of a NiSource pipeline or existing ancillary company structure or building – are part of the Covered Lands. In addition to the one-mile-wide corridor, the Covered Lands encompass the following counties in which storage fields are located: Hocking, Fairfield, Ashland, Knox, and Richland counties, Ohio; Bedford County, Pennsylvania; Allegany County, Maryland; Kanawha, Jackson, Preston, Marshall, and Wetzel counties, West Virginia. The total area of the Covered Lands is approximately 9,783,200 acres.

**2.9** Although some of the Covered Activities may result in direct and permanent effects to Take Species, many of the potential impacts will be the temporary impairment of the species' habitats. The MSHCP provides a conservation strategy that is intended to avoid, minimize, and mitigate for all direct and indirect "take," as defined in the ESA and the Service's implementing regulations, of Take Species. The Covered Activities will be implemented in accordance with the MSHCP and ITP.

**2.10** Section 7(a)(2) of the ESA requires that the Service determine, through intra-agency consultation for Section 10 permits, that take of a federally listed species will not appreciably reduce the likelihood of the survival and recovery of the species in the wild or destroy or adversely modify critical habitat designated under the ESA. After engaging in such consultation, the Service is required to issue a biological opinion that may include an incidental take statement that exempts take of a listed species that would otherwise be prohibited by Section 9 of the ESA. In addition to intra-agency consultation, the Service engaged in inter-agency consultation on NiSource's ITP application pursuant to section 7 of the ESA and prepared the associated biological opinion prior to issuance of the requested permit and execution of this Agreement.

**2.11** Prior to issuance of the ITP and execution of this Agreement, the Service evaluated the environmental impacts of permit issuance in a Final Environmental Impact Statement prepared in accordance with the National Environmental Policy Act ("NEPA") (42 U.S.C. §§ 4321-4347).

**2.12** The purposes of this Agreement are: (a) to ensure implementation of each of the terms and conditions of the MSHCP and the ITP; (b) to provide assurances to NiSource that, as long as the terms of the MSHCP are properly implemented and as to the Take Species, no additional conservation measures or mitigation will be required in the event of changed or unforeseen circumstances except as provided in the MSHCP, ITP, and this Agreement or as otherwise required by law (see 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5)); and (c) to describe remedies and recourse should either Party fail to perform its obligations as set forth in the MSHCP and this Agreement.

**2.13** Adequate consideration supports this Agreement. NiSource is agreeing to substantial commitments of financial resources, human resources, and other assets to conserve and manage the MSHCP Species and their habitats in accordance with the MSHCP and ITP, in exchange for the Service's issuance of the ITP.

### **3.0 Definitions**

The following terms as used in this Agreement shall have the meanings set forth below; however, terms used herein that are specifically defined in the ESA or in the Service's implementing regulations shall have the same meaning as in the ESA and/or the regulations. Acronyms and terms with initial capital letters are defined the first time they are used in this Agreement and thereafter shall have the same meaning.

**3.1 “Adaptive Management”** means the use of the results of new information gathered through the monitoring program of the MSHCP to adjust management strategies and practices to achieve the goals and objectives stated in the MSHCP and to assist in providing for the conservation of Take Species. Adaptive Management is discussed in detail in Chapter 7 of the MSHCP.

**3.2 “Agreement”** means this document, which incorporates the MSHCP and ITP by reference.

**3.3 “AMM” or “AMMs”** means the avoidance and minimization measures in Chapters 6 and 7 of the MSHCP.

**3.4 “Authorized Take,” “Take Authorization,” or “Permitted Take”** means the amount of incidental take of Take Species authorized by the Service in the ITP issued to NiSource pursuant to Section 10(a)(1)(B) of the ESA.

**3.5 “Changed Circumstances”** means, pursuant to 50 C.F.R. § 17.3, changes in circumstances affecting a Take Species or the Covered Lands that can reasonably be anticipated by NiSource and the Service and that can be planned for. Changed Circumstances and planned responses to Changed Circumstances are identified in Section 11.2 of this Agreement and Chapter 10 of the MSHCP.

**3.6 “Conservation Strategy”** means the conservation and management measures provided in the MSHCP to minimize and mitigate the impacts of Authorized Take of the Take Species, as described in Chapters 5 and 6 of the MSHCP, as well as those measures described in Chapters 7 (Adaptive Management) and 10 (Changed Circumstances) of the MSHCP.

**3.7 “Covered Activities”** means those activities identified in Chapter 2 of the MSHCP to be carried out by NiSource and its agents in the Covered Lands that may result in Authorized Take of Take Species during the term of the MSHCP and ITP.

**3.8 “Covered Lands”** means the geographic area described in Section 2.8 of this Agreement and in Chapter 2 of the MSHCP in which Covered Activities will occur.

**3.9 “Effective Date”** means the date on which the Service issues and NiSource accepts an ITP. The effective date of the ITP will appear on the face of the permit.

**3.10 “EIS”** means the environmental impact statement prepared pursuant to the National Environmental Policy Act (“NEPA”) to analyze the environmental impacts that may result from the issuance of the ITP to NiSource.

**3.11 “ITP”** means the incidental take permit, attached hereto as Exhibit “A,” issued by the Service to NiSource pursuant to Section 10(a)(1)(B) of the ESA and any future amendments thereto.

**3.12 “Listed Species”** means a species of wildlife or plant (including a subspecies or distinct population segment of a vertebrate species) that is listed as “threatened” or “endangered” under the ESA.

**3.13 “MSHCP”** means the Multi-Species Habitat Conservation Plan prepared by NiSource to address the requirements of Section 10(a)(1)(B) of the ESA for issuance of the associated ITP and which is incorporated by reference in this document, including any future amendments thereto.

**3.14 “MSHCP Fund”** means the account created by the agreement between the National Fish and Wildlife Foundation and the NiSource, Inc. subsidiaries listed in Section 1.0, above, to fund implementation of the MSHCP.

**3.15 “MSHCP Species”** means all species that were analyzed in the MSHCP, including Take Species and Non-Take Species, as defined herein. The names of MSHCP Species are provided in Table 4-1 of the MSHCP.

**3.16 “NFWF Agreement”** means the agreement between the National Fish and Wildlife Foundation and the NiSource, Inc. subsidiaries listed in Section 1.0, above.

**3.17 “NiSource”** means Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC, Crossroads Pipeline Company, Central Kentucky Transmission Company, and NiSource Gas Transmission and Storage Company, subsidiaries of NiSource, Inc.

**3.18 “Non-Take Species”** means species that are addressed in the MSHCP but for which take authorization was neither requested nor granted. Non-Take Species consists of two groups, i.e., those species for which NiSource will implement appropriate minimization measures to avoid take and those species upon which the Covered Activities will have “no effect.” As of the Effective Date, the following species are deemed to be Non-Take Species:

Common Name	Scientific Name	Federal Status
<b>Mammals</b>		
Delmarva Peninsula fox squirrel	<i>Sciurus niger cinereus</i>	E
Gray bat*	<i>Myotis grisescens</i>	E
Louisiana black bear*	<i>Ursus americanus luteolus</i>	T
Virginia big-eared bat*	<i>Corynorhinus townsendii virginianus</i>	E
West Indian manatee	<i>Trichechus manatus</i>	E
<b>Birds</b>		
Interior least tern*	<i>Sterna antillarum</i>	E
<b>Amphibians</b>		
Shenandoah salamander	<i>Plethodon Shenandoah</i>	T
Cheat Mountain salamander*	<i>Plethodon nettingi</i>	T
<b>Fish</b>		

<b>Common Name</b>	<b>Scientific Name</b>	<b>Federal Status</b>
Blackside dace	<i>Phoxinus cumberlandensis</i>	T
Cumberland snubnose darter	<i>Etheostoma susanae</i>	C
Gulf sturgeon	<i>Acipenser oxyrinchus desotoi</i>	T
Maryland darter	<i>Etheostoma sellare</i>	E
Scioto madtom	<i>Noturus trautmani</i>	E
Slackwater darter	<i>Etheostoma boschungii</i>	T
<b>Mollusks</b>		
Birdwing pearlymussel*	<i>Lemiox rimosus</i>	E
Cracking pearlymussel*	<i>Hemistena lata</i>	E
Cumberland bean pearlymussel	<i>Villosa trabalis</i>	E, XN
Cumberland monkeyface pearlymussel*	<i>Quadrula intermedia</i>	E
Dromedary pearlymussel	<i>Dromus dromas</i>	E, XN
Louisiana pearlshell	<i>Margaritifera hembeli</i>	E
Oyster mussel*	<i>Epioblasma capsaeformis</i>	E
Pale Lilliput pearlymussel	<i>Toxolasma cylindrellus</i>	E
Purple cat's paw pearlymussel	<i>Epioblasma obliquata obliquata</i>	E
Tan riffleshell	<i>Epioblasma florentina walkeri</i>	E
White cat's paw pearlymussel	<i>Epioblasma obliquata perobliqua</i>	E
White wartyback pearlymussel	<i>Plethobasus cicatricosus</i>	E
<b>Insects</b>		
Karner blue butterfly	<i>Lycaeides melissa samuelis</i>	E
Mitchell's satyr butterfly	<i>Neonympha mitchellii mitchellii</i>	E
Puritan tiger beetle	<i>Cicindela puritana</i>	T
<b>Plants</b>		
Braun's rock-cress	<i>Arabis perstellata</i>	E
Pitcher's (sand dune) thistle	<i>Cirsium pitcheri</i>	T
Mead's milkweed	<i>Asclepias meadii</i>	T

**Notes:**

E=Endangered

T=Threatened

C=Candidate

XN=Experimental, Non-essential

\*=Species for which NiSource will implement measures to avoid take

**3.19 “Proposed Species”** means a species that is not listed as “endangered” or “threatened” under the ESA but which has been proposed for such listing in accordance with Section 4 of the ESA.

**3.20 “Service”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior, and its agents.

**3.21 “Take Species”** means species for which Incidental Take is authorized by the ITP as well as those species that may be included by future amendments thereto. As of the Effective Date, the following are deemed to be “Take Species”:

Common Name	Scientific Name	Federal Status
<b>Mammals</b>		
Indiana bat	<i>Myotis sodalis</i>	E
<b>Reptiles</b>		
Bog turtle	<i>Glyptemys muhlenbergii</i>	T
<b>Crustaceans</b>		
Madison Cave isopod	<i>Antrolana lira</i>	T
Nashville crayfish	<i>Orconectes shoupi</i>	E
<b>Mollusks</b>		
Clubshell	<i>Pleurobema clava</i>	E
Fanshell	<i>Cyprogenia stegaria</i>	E
James spinymussel	<i>Pleurobema collina</i>	E
Northern riffleshell	<i>Epioblasma torulosa rangiana</i>	E
Sheepnose	<i>Plethobasus cyphus</i>	E
<b>Insects</b>		
American burying beetle	<i>Nicrophorus americanus</i>	E

**Notes:**

E=Endangered

T=Threatened

**3.22 “Unforeseen Circumstances”** means, pursuant to 50 C.F.R. § 17.3, changes in circumstances affecting a Take Species or Covered Lands that could not reasonably have been anticipated by the Service and NiSource at the time of negotiation and development of the MSHCP and that result in a substantial and adverse change in the status of a Take Species.

**3.23 “Unlisted Species”** means a species of wildlife or plant (including a subspecies or distinct population segment of a vertebrate species) that is not listed as “endangered” or “threatened” under the ESA.

**4.0 Relationship between the MSHCP and the Implementing Agreement**

The MSHCP and each of its provisions are intended to be and, by this reference, are incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the MSHCP, the terms of the MSHCP shall control except for the purposes of interpreting this Agreement.



The provisions of the MSHCP, ITP, and this Agreement are intended to be consistent with and complementary to each other. This Agreement is not intended to negate or nullify any provision of the ITP and/or the MSHCP.

#### **5.0 Obligations of the U.S. Fish and Wildlife Service**

The Service will fully and faithfully perform all obligations required under this Agreement, the MSHCP and the ITP. In particular, upon execution of this Agreement by the Parties, and satisfaction of all other applicable legal requirements, the Service will issue an ITP to NiSource authorizing incidental take of the Take Species within the Covered Lands incidental to the Covered Activities. The Service agrees to make a good faith effort to:

- A. Promptly notify NiSource if, for any reason (including court decisions or lack of appropriated funds), the Service is unable to fulfill any obligation associated with the MSHCP, the ITP, or this Agreement;
- B. Promptly respond to all notices and inquiries received from NiSource in accordance with the MSHCP, the ITP, or this Agreement; and
- C. If requested by NiSource and subject to Section 14.9, below, use its best efforts to help resolve any disputes that may arise among the Service, NiSource, any state or local agency or officials, or private parties with respect to the implementation and interpretation of the MSHCP, the ITP, or this Agreement using, where authorized by the MSHCP, the dispute resolution processes specified in Section 12.3 of this Agreement or other dispute resolution processes that may be agreed to with respect to a particular dispute.

#### **6.0 Rights and Obligations of NiSource**

NiSource will fully and faithfully perform all obligations assigned to it under this Agreement, the MSHCP, and the ITP. NiSource will implement all of the conservation, management, and monitoring measures set forth in the MSHCP and the ITP as well as any such measures that may be required for Adaptive Management as further described in the MSHCP and the ITP. NiSource agrees to:

- A. Promptly notify the Service if, for any reason (including, but not limited to, court decisions or lack of sufficient funds), NiSource has or is likely to become unable to fulfill any obligation required by the MSHCP, the ITP, or this Agreement;
- B. Promptly respond to all notices and inquiries from the Service in accordance with the MSHCP, the ITP or this Agreement;
- C. Use its best efforts to resolve any disputes that may arise among the Service, NiSource, any state or local agency, local government entity, state or local officials, or private parties with respect to the implementation and interpretation of the MSHCP, the ITP, or this Agreement using, where authorized by the MSHCP, the dispute resolution processes specified in Section 12.3 of this Agreement or other

dispute resolution processes that may be agreed to with respect to a particular dispute;  
and

D. Promptly notify the Service of any lawsuits filed against NiSource or written notices or letters expressing intent to file suit challenging the Service's issuance of the ITP and/or the processes associated with the Service's issuance the ITP.

## **7.0 Permit Suspension, Surrender, Revocation and Renewal**

### **7.1 Initial Term**

This Agreement shall become operative on the Effective Date. The ITP shall be effective on the date indicated on the permit. The term of the ITP is 50 years, except as provided below.

### **7.2 Permit Suspension or Revocation**

The Service may suspend or revoke the ITP in whole or in part in accordance with the laws and Service's implementing regulations in force at the time. The Service's permit suspension regulation is currently at 50 C.F.R. § 13.27 and the revocation regulations are currently at 50 C.F.R. §§ 13.28, 17.22(b)(8) and 17.32(b)(8). The procedures for requesting reconsideration of the Service's decision to suspend or revoke an ITP are currently at 50 C.F.R. § 13.29.

#### **7.2.1 Permit Suspension**

In deciding whether to suspend the ITP, in whole or in part, the Service shall apply the criteria in 50 C.F.R. § 13.27 and/or in other applicable federal regulations governing ITP suspension then in existence. Such suspension shall remain in effect until the Service determines that NiSource has corrected the deficiencies. The Service agrees to act expeditiously in making such determinations.

When the Service believes that there are valid grounds for suspending the ITP, the Service will notify NiSource in writing of the proposed suspension by certified or registered mail. The notice, which may be amended by the Service at any time, will identify the ITP; the reason(s) for the suspension; if a partial suspension, the Covered Activities and Take Species as to which the suspension applies; and the actions necessary to correct the deficiencies. The notice also will inform NiSource of its right to object to the proposed suspension. 50 C.F.R. § 13.27. Upon receipt of the proposed notice, NiSource may file a written objection to the proposed action within forty-five (45) calendar days of the date of the notice providing NiSource's reasons for objecting to the proposed suspension as well as any supporting documentation. The Service will issue a written decision on the suspension within forty-five (45) days after the end of the objection period. The decision will include the Service's reasons for such as well as information concerning NiSource's right to request reconsideration of the decision under 50 C.F.R. § 13.29 and the procedures for doing so.

Upon notification that the ITP has been suspended and after all appeal procedures have been exhausted, NiSource may be required to surrender the ITP to the Service. Notwithstanding suspension, NiSource shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such minimization and mitigation measures as may be required pursuant to the MSHCP or the ITP.

### **7.2.2 Permit Revocation**

In accordance with 50 C.F.R. § 13.28, the Service may revoke the ITP in whole or in part if NiSource willfully violates any Federal or State statute or regulation, Indian tribal law or regulation, or any law or regulation of a foreign country that involves a violation of the conditions of the ITP or of the laws or regulations governing the Covered Activities. The ITP also may be revoked if NiSource fails within sixty (60) days to correct deficiencies that were the cause of suspension of the ITP unless the Service determines and notifies NiSource in writing that a longer period of time is necessary to correct the deficiencies; becomes disqualified under 50 C.F.R. § 13.21(c); or a change occurs in the statute or regulation authorizing the ITP that prohibits continuation of the ITP. Pursuant to 50 C.F.R. §§17.22(b)(8) and 17.32(b)(8), the ITP also may be revoked if continuation of the Covered Activities would be inconsistent with the criterion set forth in 16 U.S.C. § 1539(a)(2)(B)(iv), and the inconsistency has not been remedied.

When the Service believes there are valid grounds for revoking the ITP, the Service will notify NiSource in writing of the proposed revocation by certified or registered mail. The notice, which may be amended by the Service at any time, will identify the ITP, whether the revocation is as to part or all of the ITP, the Covered Activities and Take Species as to which the revocation applies, the reason(s) for the revocation, the proposed disposition of the wildlife, if any, and inform NiSource of its right to object to the proposed revocation. Upon receipt of the proposed notice, NiSource may file a written objection to the proposed action within forty-five (45) calendar days of the date of the notice providing its reasons for objecting to the proposed revocation as well as any supporting documentation.

The Service will issue a written decision on the revocation within forty-five (45) days after the end of the objection period. The written decision will include the Service's decision and its reasons for such as well as information concerning NiSource's right to request reconsideration of the decision under 50 C.F.R. § 13.29 and the procedures for doing so. Upon notification that the ITP has been revoked and after all appeal procedures have been exhausted, NiSource may be required to surrender the ITP to the Service. Notwithstanding revocation, NiSource shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such minimization and mitigation measures as may be required pursuant to the termination provisions of this Agreement, the MSHCP, or the ITP. The ITP shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been

implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP.

### **7.3 Surrender**

NiSource may surrender the ITP by returning it to the Service along with a written statement notifying the Service of NiSource's intent to surrender and cancel the ITP. The ITP shall be deemed void and canceled upon receipt of the permit and notice by the Service. No refund of any fees paid for issuance of the ITP or of any other fees or costs associated with the Covered Activities shall be made when the ITP is surrendered for cancellation for any reason prior to the expiration date stated on the face of the ITP. Notwithstanding any surrender of the ITP, NiSource shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such minimization and mitigation measures as may be required pursuant to the termination provisions of this Agreement, the MSHCP, or the ITP. The ITP shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP. Surrender of the ITP does not relieve NiSource of its obligation to comply with the ESA.

### **7.4 Obligation to Minimize and Mitigate for Actual Impacts**

Upon any early termination of the ITP, whether through revocation or surrender, NiSource shall have no further obligations under this Agreement, the MSHCP or the ITP, unless the Service determines that NiSource has not performed minimization and mitigation measures ("compensation") in accordance with the MSHCP and the ITP for Take of Take Species that occurred up through the termination of the ITP or any other obligations as may be required pursuant to the termination provisions of this Agreement, the MSHCP, or the ITP. The Service shall notify NiSource of any such deficiencies. NiSource and the Service shall work together to assess the extent of NiSource's remaining compensation with respect to Take Species. The Service may request additional information from NiSource, in accordance with Section 9.6 of this Agreement, in making its assessment and determination, provided, however, that the Service's initial request for additional information shall be made within 180 days of the early termination. NiSource will respond to any request for information within 60 days by certified mail.

Except for obligations that may be required pursuant to the termination provisions of this Agreement, the MSHCP, or the ITP, to determine the amount of outstanding compensation for which NiSource is responsible, the Service shall compare the amount and impact of Authorized Take of the Take Species that occurred prior to termination with the amount and effect of compensation provided up to that time. This analysis will take into consideration, among other things, the duration the ITP was in effect and the location, quantity and quality of lands that have been acquired and/or enhanced. Any determination by the Service that compensation has not been fully performed at the time of termination, revocation or surrender shall have a reasonable,

factual basis and be issued in writing within 180 days after termination or, if the Service has requested additional information as described above, within 180 days of receiving the requested information. The determination shall specify the compensation that NiSource will be obligated to perform and, where possible, how long such compensation shall be performed. The determination also will identify the amount of compensation required and provide a practicable schedule, in consultation with NiSource, within which NiSource must complete the compensation. The Service agrees to make a good faith effort to issue its written determination within 270 days after the termination, revocation or surrender of the ITP. The timeframes identified in the paragraphs of this section may be shortened by mutual agreement of the Parties in the event of an emergency affecting the purpose or values of the intended compensation or the benefits to the Take Species.

In no case shall NiSource be obligated to provide compensation for Authorized Take in excess of what would have been required of NiSource had the ITP not been terminated.

## **7.5 Renewal of the ITP**

Upon agreement of the Parties and compliance with all applicable laws, the ITP may be renewed to extend beyond its initial term in accordance with Service regulations in force on the date of NiSource's submission of its application for renewal and, to the extent applicable, in accordance with Chapter 9 (Amendment Process) of the MSHCP. If NiSource desires to renew the ITP, it will so notify the Service at least 180 days before the expiration date of the ITP. NiSource shall be required, however, to submit a written application for renewal to the Service and satisfy any other requirements within the time period and in the manner set forth in the Service's regulations then in force. Renewal of the ITP shall constitute an extension of the MSHCP, as may be amended, and this Agreement, as may be amended, for the same period of time as the renewed ITP.

## **8.0 Funding**

### **8.1 Primary Funding and Demonstration of Availability**

NiSource warrants that it has, and will, expend such funds as may be necessary to fulfill its obligations under the MSHCP, the ITP, and this Agreement. In accordance with Chapter 8 of the MSHCP, NiSource may directly undertake some mitigation activities through its operating budget. It also will establish an MSHCP Fund, to be administered by the National Fish and Wildlife Foundation, with two separate but related trust sub-accounts, i.e., a Mitigation Account and a Reserve Account, to fund certain MSHCP activities. All other costs of implementing the MSHCP will be assured through NiSource Inc.'s credit facility, or, as necessary, through a letter of credit. NiSource shall prepare annual reports documenting its mitigation obligations in the form described in Section 8.4.1 of the MSHCP.

## **8.2 Material Change in Resources**

NiSource will promptly notify the Service of any material change in NiSource's funding resources. A material change in NiSource's funding resources is any change in the financial condition of NiSource, including in the availability of its funds, that will adversely affect NiSource's ability to implement the MSHCP, the ITP, and this Agreement. Should the available balance in NiSource Inc.'s credit facility ever fall below \$25 million or should the credit facility be allowed to lapse, NiSource will notify the Service in writing within seven (7) days of such occurrence and obtain a \$250,000 letter of credit, in a form acceptable to the Service, within thirty (30) days of such fall or lapse.

## **9.0 Implementation**

### **9.1 Avoidance and Minimization Measures**

NiSource shall implement the mandatory and, where appropriate, the non-mandatory, avoidance and minimization measures specified in Chapters 5, 6, and 7 of the MSHCP.

### **9.2 Mitigation**

NiSource shall implement the mitigation measures described in Chapters 5-8 of the MSHCP as well as the measures for Adaptive Management in Chapter 7 and for Changed Circumstances in Chapter 10 of the MSHCP.

### **9.3 Monitoring**

NiSource shall implement each of the monitoring activities described in Chapter 7 as well as in Chapters 6 and 10 of the MSHCP.

### **9.4 Reporting and Meetings**

NiSource will file an annual report by March 31 of each year that will provide the results of effectiveness and compliance monitoring of the conservation program (avoidance and minimization measures, mitigation, and Adaptive Management) and a description of activities covered under the MSHCP that were implemented in the previous year. The required contents of this report are described with specificity in Section 7.7 of the MSHCP. NiSource's obligation to fund the implementation of the MSHCP, as further specified in Section 8.0 of this Agreement, includes the obligation to fund all monitoring and reporting obligations described in the MSHCP.

In accordance with Section 7.6.5 of the MSHCP, NiSource, the Service, and other stakeholders, as appropriate, will convene as needed during the first year of implementation of the MSHCP as well as at least annually through the fifth year of implementation of the MSHCP and, thereafter, at least once every five years unless the Service determines that more frequent meetings are needed. The purpose of the meetings shall be to review data in the annual reports, address any issues with

implementation of the MSHCP and consider other MSHCP related matters, including, but not limited to, whether implementation could be streamlined, the AMMs have been effective, the effectiveness goals have been achieved, and adaptive management triggers were met. A summary report of each meeting shall be prepared by the NiSource MSHCP Coordinator with opportunity for Service review and concurrence. Thereafter, NiSource shall distribute the summary report to the Service and the other appropriate stakeholders.

#### **9.5 Liability for Actions of Third Parties**

Nothing in this Agreement or the MSHCP shall be construed to make NiSource liable for the actions of third parties except for NiSource officers, directors, employees, agents, contractors, and subcontractors.

#### **9.6 Additional Information**

The Service may request from NiSource information necessary to determine whether NiSource is complying with the ITP, the MSHCP, and this Agreement. The Parties acknowledge the MSHCP and the ITP include compliance and effectiveness monitoring, other reporting obligations, and an adaptive management program that, when taken together, the Parties believe will provide sufficient information for the Service to monitor, assess, and ensure the effectiveness of and NiSource's compliance with the ITP, the MSHCP, and this Agreement. The Parties also acknowledge that, in unusual circumstances, information in addition to that required by the monitoring and reporting program, and the adaptive management program in the MSHCP may be necessary for the Service to evaluate NiSource's compliance with the ITP, the MSHCP, and this Agreement. Where the Service determines such additional information is necessary, any request to NiSource for such information shall have a reasonable basis and, to the extent possible, be drafted by the Service so as to enable NiSource to generate, obtain, and provide the information without undue burden to its operations.

Subject to 50 C.F.R. §§ 13.27 through 13.29, 17.22, and 17.32, NiSource shall be required only to provide reasonably available information in its current state. Nothing in this Agreement shall compel NiSource to disclose communications that are subject to the work product or attorney-client privilege, or any other legally recognized privilege applicable at the time the information request is made. NiSource may, upon written notice to the Service, designate information provided to the Service as a trade secret, commercial, proprietary, or financial information, or data bearing upon national security ("Confidential Information") and as exempted from disclosure under the Freedom of Information Act ("FOIA"). NiSource may cite as the basis for any such designation that the information is (1) confidential, (2) has not been disclosed to the public by NiSource, and (3) to NiSource's knowledge is not routinely available to the public from other sources. Should a third-party seek to obtain the Confidential Information from the Service through a FOIA request, the Service will provide NiSource sufficient notice prior to releasing any such information so as to allow NiSource a reasonable opportunity to seek to protect the disclosure of the Confidential Information. This provision is not intended to limit the applicability of FOIA or to

require that the Service withhold from disclosure information that must be disclosed in accordance with Federal law or court decisions.

## **10.0 Adaptive Management**

### **10.1 NiSource-Initiated Adaptive Management**

The MSHCP includes an adaptive management program designed to gauge the effectiveness and implementation of the conservation measures. NiSource will implement the Adaptive Management provisions in Section 7.6 of the MSHCP, when changes in implementation of the MSHCP are necessary to achieve the MSHCP's biological objectives or to respond to monitoring results or new scientific information. NiSource will notify the Service of all changes to MSHCP implementation in accordance with the Adaptive Management program.

If the Service determines that the adaptive management protocols and measures have not been implemented consistently with the MSHCP and such failure leads to the Service proposing to suspend and/or revoke the ITP, the Service will do so in accordance with the procedures set forth in Section 7.2 of this Agreement provided the procedures are consistent with the Service's implementing regulations then in effect.

### **10.2 Service-Initiated Adaptive Management**

If the Service determines that one or more of the Adaptive Management provisions in the MSHCP have been triggered and that NiSource has failed to implement the required adaptive management measures in accordance with Section 7.6 of the MSHCP, the Service may choose to forego suspending and/or revoking the ITP in accordance with Section 7.2 of this Agreement and to notify and direct NiSource to make the required changes. Within thirty (30) days after receiving such notice, NiSource will make the required changes and report to the Service on its actions. Such changes are provided for in the MSHCP and, hence, would not constitute Unforeseen Circumstances or require amendment of the ITP or MSHCP, except as provided in this section.

Rather than follow the procedure set forth in the preceding paragraph to address NiSource's failure to implement the required adaptive management measures within the thirty (30) day period or at any time after issuance of the notice where the Service determines that such measures are necessary, the Service may choose instead to use the processes set forth in Section 7.2 of this Agreement.

### **10.3 No Increase in Take**

Section 7.6 of the MSHCP does not authorize any changes or measures that would result in an increase in the amount and nature of Authorized Take, in the impacts of take, or in the take of Take Species beyond that associated with the range of changes analyzed under the MSHCP and the associated biological opinion, ITP, and EIS, including any amendments thereto. Any Adaptive Management measures outside the



scope of the MSHCP and amendments thereto must be addressed through the procedures set forth in Section 13.1 of this Agreement and Chapter 9 of the MSHCP.

## **11.0 Mutual Assurances**

### **11.1 Purpose**

Based on and in consideration of this Agreement, the MSHCP, and the ITP and pursuant to its regulatory authority, the Service hereby provides the assurances in Section 11.2 to NiSource.

### **11.2 “No Surprises” Rule and Assurances**

Consistent with the “No Surprises” Rule, 63 Fed. Reg. 8859 (Feb. 23, 1998) (codified at 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5)), or as the regulations are written as of the Effective Date, and provided that NiSource is properly implementing the MSHCP and only as to the Take Species, the Service shall not, without NiSource’s consent, require NiSource to provide additional commitment of land, water, or financial compensation with respect to the Take Species, or additional restrictions on the use of land, water, or other natural resources beyond that specified in the MSHCP, this Agreement, and the ITP. Adaptive Management and Changed Circumstances are provided for under the MSHCP and, therefore, are not subject to the restrictions of the “No Surprises” Rule. The two components to the “No Surprises” Rule, unforeseen circumstances and changed circumstances, are discussed further in this section.

In the event there are changes to the “No Surprises” Rule after the Effective Date that materially affect the assurances provided by this Agreement, NiSource may elect to surrender the ITP and terminate this Agreement pursuant to Section 7.3, above.

#### **11.2.1 Unforeseen Circumstances Determination**

Unforeseen circumstances are addressed in more detail in Chapter 10 of the MSHCP. In the event that the Service or NiSource believes that Unforeseen Circumstances, as defined in Section 3.0 of this Agreement, may exist, it shall immediately notify the other Party. If the Service believes that Unforeseen Circumstances exist, it shall bear the burden of demonstrating such existence using the best available scientific and commercial data, while considering, but not being limited to, the factors set forth in 50 C.F.R. §§ 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C). The Service shall clearly document the basis for its determination.

Within 15 days of receiving notice of Unforeseen Circumstances, the Parties shall meet or confer to consider the Service’s determination and any potential changes to the Conservation Strategy.

##### **11.2.1.1 Effect of Unforeseen Circumstances Determination**

In the event the Service makes a finding of Unforeseen Circumstances, in negotiating such, the Service will not require that NiSource make an additional

commitment of land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the Take Species without the consent of NiSource. If additional conservation and mitigation measures are deemed necessary to respond to such Unforeseen Circumstances, the Service may require additional conservation measures of NiSource if NiSource is properly implementing the MSHCP, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the MSHCP's operating conservation program for the affected species, and maintain the original terms of the MSHCP to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the MSHCP without the consent of NiSource.

Notwithstanding the foregoing assurances, nothing shall limit or constrain the Service, any Federal agency, or a private entity from taking additional actions, at its own expense, to protect or conserve a Take Species.

#### **11.2.1.2 Interim Obligations upon a Finding of Unforeseen Circumstances**

If the Service makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, NiSource will avoid undertaking any action that appreciably reduces the likelihood of the survival and recovery of any Take Species in the Covered Lands.

#### **11.2.1.3 Service's Response to a Finding of Unforeseen Circumstances**

The Service shall utilize its authorities and resources to protect Take Species in the event of Unforeseen Circumstances. The Service may utilize land acquisition and exchange, habitat restoration and enhancement, translocation, and other management techniques beyond those provided in the MSHCP. The Service may work with other federal, state, and local agencies, tribes, environmental groups, and private entities to provide for the continued conservation of the Take Species in the event of a finding of Unforeseen Circumstances.

#### **11.2.2 Changed Circumstances**

Changed Circumstances and the agreed upon responses to those circumstances are described in Chapter 10 of the MSHCP. In the event that the Service or NiSource believes that any of these Changed Circumstances may exist, it shall immediately notify the other Party. If additional conservation and mitigation measures are deemed necessary to respond to Changed Circumstances and such measures are provided for in the MSHCP, NiSource will be required to implement the measures in the MSHCP. Provided the MSHCP is being properly implemented, the Service will not require NiSource to carry out any additional conservation and mitigation measures deemed necessary to respond to Changed Circumstances if such measures were not provided for

in Chapter 10 of the MSHCP, without the consent of NiSource. 50 C.F.R. §§ 17.22(b)(5)(i)-(ii) and 17.32(b)(5)(i)-(ii).

### **11.3 New Listings of Species that are neither Adequately Addressed in the MSHCP nor Take Species**

Upon publication of a proposed rule to list a species as “endangered” or “threatened” under the ESA that is neither “adequately addressed,” as defined in 50 C.F.R. § 17.3, in the MSHCP nor named on the ITP as a species for which take is authorized, the Service will notify NiSource if such species could be affected by NiSource’s activities within the Covered Lands, including, but not limited to, those activities identified as Covered Activities in the MSHCP. If the species is subsequently listed, the Service will notify NiSource of such. Upon receipt of such notice, NiSource may enter into negotiations with the Service regarding amending the MSHCP, ITP, and associated documents, in accordance with Chapter 9 of the MSHCP, to obtain Take Authorization for the newly listed species. In the alternative, the Service may consult under Section 7 of the ESA with another federal permitting agency, including, but not limited to, FERC and the Department of Transportation, on NiSource’s activities that may affect such species.

### **11.4 Critical Habitat**

The Service agrees that it will consider the MSHCP in the preparation of any proposed determination of critical habitat or the revision of existing critical habitat for any MSHCP Species. The Service agrees that if critical habitat is designated for any MSHCP Species and NiSource is properly implementing the terms of the MSHCP, the Service will not require NiSource to commit new, additional or different conservation or mitigation beyond that provided for under the MSHCP and this Agreement.

## **12.0 Remedies, Enforcement, and Dispute Resolution**

### **12.1 Take Authorization**

As of the effective date of the ITP, and provided there are no conditions in the ITP that must be satisfied prior to NiSource engaging in Authorized Take, NiSource may take the Take Species while carrying out Covered Activities in the Covered Lands, as authorized by and subject to the conditions of the ITP and the MSHCP.

Subject to the conditions of the ITP and the MSHCP, the authority to engage in Authorized Take shall apply to all of NiSource’s officers, directors, employees, agents, contractors and subcontractors who engage in any Covered Activity. As provided in Section 5.3 of the MSHCP, NiSource shall conduct an educational program for all personnel who will engage in Covered Activities.

It is further provided that NiSource shall notify the Service in writing within ten (10) days of the occurrence of any of the following to any entity listed in Section 1.0 of this Agreement: (1) any change in the registered name of an entity; (2) the dissolution of an entity; (3) the sale or conveyance of an entity; (4) bankruptcy proceedings by an

entity as well as whether an entity is in receivership; and (5) when an entity will no longer perform the Covered Activities in the Covered Lands. NiSource further agrees to notify the Service in writing of the revocation or suspension of an entity's corporate authorization to do business in the state or states in which it is registered to do business as well as if an entity is disqualified from performing Covered Activities under the ITP for either of the disqualifying factors listed in 50 C.F.R § 13.21(c) and (d), as may be amended, or under any future Service regulation.

## **12.2 Remedies**

Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the ITP, and the MSHCP, and to seek remedies and compensation for any breach or violation thereof.

## **12.3 Dispute Resolution**

The Parties recognize that disputes concerning implementation or interpretation of the MSHCP, the ITP, or this Agreement may arise from time to time. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedures set forth in this section or such other procedures upon which the Parties may later agree. Unless the Parties agree upon another dispute resolution process, or unless a Party initiates administrative proceedings or litigation in federal or state court on the subject of the dispute, subject to Section 14.9 of this Agreement, the Parties agree to use the following procedures to attempt to resolve disputes. Notwithstanding the foregoing, any Party may seek any available remedy, including, but not limited to, those in Sections 7.2, 7.3, and 12.2, if the Party concludes the circumstances so warrant.

Unless otherwise agreed and subject to Section 14.9 of this Agreement, the following informal process shall be used to resolve disputes:

- (a) The aggrieved Party will notify the other Party in writing of an objection to any action or inaction that is inconsistent with the MSHCP, the ITP or this Agreement, including the specific provision, if applicable, the basis for the objection, and the remedies it proposes to correct the matter.
- (b) The Party alleged to be in violation will have thirty (30) days from receipt of the notice, or such other time as may be agreed to by the Parties, to respond. During this time period, the Party may seek clarification of the information provided in the notice. The aggrieved Party will use its best efforts to provide the other Party with any information then available to it that may be responsive to a request for clarification.
- (c) Within thirty (30) days after such response is received by the aggrieved Party, or such other time as maybe agreed to by the Parties, representatives of the Parties having authority to resolve the dispute will

meet and negotiate in good faith to resolve the matter or will establish a specific process and timetable to seek such a resolution.

- (d) If any issues cannot be resolved through such negotiations, either Party may elevate the dispute to senior management of the Parties. For purposes of this provision, for the Service, “senior management” shall mean the Service’s Assistant Regional Director of any Region within the Covered Lands or the Assistant Regional Director’s designee. For NiSource, “senior management” shall mean an employee of NiSource at the Vice President level or above. After written receipt of the elevation request, the Parties’ senior management shall meet, either in person or by teleconference, within forty-five (45) days. Nothing in this paragraph shall preclude more than one member of the Service’s senior management attending the meeting or participating in the teleconference.
- (e) If the steps in this section do not result in the resolution of the dispute, the Parties will consider non-binding arbitration or mediation and other alternative dispute resolution processes. If a dispute resolution process is agreed upon, the Parties will make good faith efforts to resolve any remaining issues through that process.

#### **12.4 Enforcement Authority of the United States**

Nothing in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

### **13.0 Modification and Amendment**

#### **13.1 Amendment or Modification of the ITP**

The ITP may be amended in accordance with Chapter 9 of the MSHCP, 50 C.F.R. § 13.23, the provisions of the ITP, and all applicable authorities, including, but not limited to, the ESA, NEPA, and the Service’s implementing regulations.

#### **13.2 Amendment or Modification of the MSHCP**

Any amendment or modification of the MSHCP shall follow the procedures described in Chapter 9 of the MSHCP.

#### **13.3 Amendment or Modification of Implementation Agreement**

This Agreement may be amended only with the written consent of the Parties. Either Party may object to any amendment proposed by the other upon any reasonable basis.

## **14.0 Miscellaneous**

### **14.1 Force Majeure**

In the event that NiSource is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault of NiSource, including, but not limited to, acts of God, third-party actions, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, NiSource shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach of this Agreement, provided that nothing in this Section shall be deemed to authorize any Party to violate the ESA and that:

- (a) The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;
- (b) Within two weeks after the occurrence of the force majeure, NiSource gives the Service written notice describing the particulars of the occurrence;
- (c) NiSource uses its best efforts to remedy its inability to perform provided, however, that this paragraph shall not require the settlement of any legal action on terms that in the sole judgment of NiSource are contrary to its interest; and
- (d) When NiSource is able to resume performance of its obligations, NiSource shall give the Service written notice to that effect.

### **14.2 No Partnership**

Neither this Agreement nor the MSHCP shall make or be deemed to make either Party to this Agreement the agent for or partner of the other Party.

### **14.3 Severability**

If any provision of this Agreement is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible, and all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of the invalid or unenforceable provision, subject, however, to surrender of the ITP pursuant to Section 7.3 of this Agreement.

### **14.4 Successors and Assigns**

This Agreement and each of its covenants and conditions shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

Assignment or transfer of the ITP shall be governed by the Service’s applicable implementing regulation(s) in force at the time.

**14.5 Notices**

All notices, demands, or communications from one Party to another may be personally delivered, sent by U.S. Mail, or sent by a recognized overnight delivery service to the names and addresses provided in this section. The notice shall be effective at the time of receipt of the personal or overnight delivery, or five days after deposit in the U.S. Mail.

For NiSource:	For the Service:
Farrah Lowe NiSource Gas Transmission and Storage Natural Resource Permitting - Director 5151 San Felipe #2500 Houston, TX 77056 Phone: (713) 267-4737 flowe@nisource.com	Tom Melius Regional Director, Region 3 5600 American Blvd. West, Suite 990 Bloomington, MN 55437-1458 Phone: (612) 713-5301 Tom_Melius@fws.gov

**14.6 Entire Agreement**

Excepting the MSHCP and the ITP, this Agreement supersedes any and all prior agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters. Each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

**14.7 Service’s Authority**

Nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA and the associated implementing regulations. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligation and responsibility of the Service as an agency of the Federal government.

**14.8 Elected Officials**

No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

**14.9 Appropriations**

Implementation of this Agreement by the Service is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to

require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

#### **14.10 Counterparts**

This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of both Parties do not appear on the same page.

#### **14.11 No Third-Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in any member of the public as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

#### **14.12 Reference to Regulations**

Unless otherwise specified, any reference in this Agreement, the MSHCP, or the ITP to any implementing regulation or rule of the Service shall be deemed to be a reference to such implementing regulation or rule in existence at the time an action is taken, except that NiSource may elect to rely on federal laws and regulations in effect at the time this Agreement was executed if necessary to protect its rights under Section 11.2 of this Agreement.

#### **14.13 Due Authorization**

Each Party warrants that its signatory is authorized to execute this Agreement on behalf of that Party.



IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date on which the Service issues and NiSource accepts an ITP from the Service.

By: Thomas O. Melius  
Regional Director  
United States Fish and Wildlife Service

Date: 9/13/13

By: J. D. [Signature]

Date: 9/26/13

For:  
Columbia Gas Transmission, LLC  
Columbia Gulf Transmission, LLC  
Crossroads Pipeline Company  
Central Kentucky Transmission Company  
NiSource Gas Transmission and Storage Company