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FORM OF RELIABILITY MUST RUN AGREEMENT

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RELIABILITY MUST RUN AGREEMENT

This RELIABILITY MUST RUN AGREEMENT (“Agreement”) is made as of the ___ day of ___, 20___, among _____ {fill in names and types of legal entity or entities} (collectively, “Owner”), and the New York Independent System Operator, Inc., a New York not-for-profit corporation (“ISO”).

RECITALS

- A. Owner owns and has operational control over _____(PTID No. _____), a _____MW electrical Generator together with appurtenant facilities and structures, located at _____(a/the “RMR Generator”). {If the station is comprised of more than one unit, describe all units at the station, including their MW and PTIDs, and then identify each unit or sets of units that is a distinct “RMR Generator” under this Agreement}.
- B. The ISO is the Independent System Operator for New York and is responsible for the operation of the New York Control Area (“NYCA”) to ensure short-term reliability and for the administration of the ISO Administered Markets.
- C. Owner submitted a Generator Deactivation Notice [to mothball or to retire] each RMR Generator, which the ISO determined was complete on [ISO to fill-in date]. The Notice Period concludes or concluded on [date one year from the date that the ISO determined the Generator Deactivation Notice was complete].
- D. The ISO has concluded that the RMR Generator[s] will be needed for reliability purposes during the Term of this Agreement. Schedule 1 to this Agreement contains a description of the

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Reliability Need that the RMR Generator[s] are being kept in service to address.

E. The Parties have agreed: [ALT. 1, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS, OWNER ACCEPTS THE APR, AND THE PARTIES EXECUTE THE AGREEMENT (i) that the ISO shall submit this executed Agreement, including the proposed Availability and Performance Rate (“APR”), to the Federal Energy Regulatory Commission (“FERC”) in a Federal Power Act (“FPA”) Section 205 filing on the Parties’ behalf;] [ALT. 2, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS, OWNER ACCEPTS THE APR, BUT THERE ARE CAPITAL EXPENDITURES THAT REQUIRE FERC APPROVAL (i) that the ISO shall submit this Agreement to the Federal Energy Regulatory Commission (“FERC”), including the agreed-to components of a proposed Availability and Performance Rate (“APR”), in a Federal Power Act (“FPA”) Section 205 filing on the Parties’ behalf, and that Owner shall submit a separate FPA Section 205 filing that is consistent with the terms and conditions of service proposed in this Agreement, and that tracks the format of this Agreement, proposing the inclusion of the cost of certain Capital Expenditures in the APR;] [ALT. 3, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS BUT OWNER REJECTS THE APR AND SUBMITS AN OWNER DEVELOPED RATE (i) that the ISO shall submit this unexecuted Agreement that sets forth the Parties’ agreed-upon terms and conditions of service to the Federal Energy Regulatory Commission (“FERC”), in a Federal Power Act (“FPA”) Section 205 filing on the Parties’ behalf, and that Owner shall submit a separate FPA Section 205 filing proposing an Owner Developed Rate that is consistent with the terms and conditions of service proposed in this Agreement, and that tracks the format of this Agreement;] and (ii) to enter into this Agreement to establish the terms and conditions under which each RMR Generator shall be obligated to offer and provide Energy, Ancillary Services and Unforced Capacity to the ISO Administered Markets; and (iii) [to set certain components of the Availability and Performance Rate (“APR”) that determines the payments by which Owner shall recover the avoidable and variable costs of each RMR Generator, and makes

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available possible monthly and seasonal incentive payments based on each RMR Generator's availability to operate and its performance when scheduled to operate] OR [to incorporate the Owner Developed Rate that is ultimately accepted by FERC]; and (iv) to indicate how Owner shall cause each RMR Generator to be offered into the ISO Administered Markets, consistent with Sections 23.XX and 23.YY of the Services Tariff. [The citations will be to the Svcs. Att. H Energy Market and Capacity Market participation rules that will apply to RMR Generators.]

NOW THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Agreement as of its Start Date, the Parties covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

1.1. Definitions.

Except for the terms defined below and in the attached schedules, capitalized terms shall be as defined in the ISO Tariffs. The definitions set forth below are only intended for use in this Agreement and shall not be relied upon to interpret the ISO's Tariffs.

1.1.1. **"Affiliate"** has the meaning set forth in Section 2.1 of the Services Tariff.

1.1.2. **"Ancillary Services"** means services necessary to support the transmission of Energy from Generators to Loads, while maintaining reliable operation of the NYS Power System in accordance with Good Utility Practice and Reliability Rules. Ancillary Services that RMR Generators may be able to provide include Voltage Support Service, Regulation Service, Operating Reserve Service (including Spinning Reserve, 10-Minute Non-Synchronized Reserves and 30-Minute Reserves), and Restoration Services (black start).

1.1.3. **"Availability & Performance Rate"** or **"APR"** means the compensation that a RMR Generator is eligible to receive in accordance with Section(s) [XX] of Rate Schedule 8 to the ISO's Services Tariff during the Term of this Agreement. The APR consists of a daily calculation that is developed to permit a RMR Generator to recover its avoidable costs and variable costs, plus the opportunity to periodically earn financial incentives for availability to the markets and for performing consistent with the ISO's dispatch when scheduled.

1.1.4. **"Capital Expenditure"** means the validated and verified items of capital expense that repair, upgrade, improve, replace or otherwise extend the life of an existing capital assets that is machinery or equipment with a useful life of greater than one year that are necessary to permit a Noticing Generator or Viable and Sufficient Gap Solution to provide service to satisfy, in whole or in part, the reliability need identified in the ISO's request for Gap Solutions. Capital Expenditures

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include the cost of procuring, constructing and placing capital asset(s) into service and the financing cost for the period identified in the ISO's request for Gap Solutions. Capital Expenditures do not include costs that are otherwise included in an RMR Generator's RMR Avoidable Costs. [WILL REMOVE DEFINITION FROM *PRO FORMA* AND REVISE TO SAY has the meaning set forth in Section [YY] of the OATT.]

1.1.5. **“Contract”** means any agreement, commitment, policy, document or similar instrument creating mutual obligations among two or more parties.

1.1.6. **“FERC Effective Date”** has the meaning set forth in Section 2.1.

1.1.7. **“Force Majeure Event”** has the meaning set forth in Section 8.1.

1.1.8. **“Forced Outage”** has the meaning set forth in Section 2.6 of the Services Tariff. [“An unscheduled inability of a Market Participant's Generator to produce Energy that does not meet the notification criteria to be classified as a scheduled outage or de-rate as established in ISO Procedures. If the Forced Outage of a Generator starts on or after May 1, 2015, the Forced Outage will expire at the end of the month which contains the 180th day of its Forced Outage but may be extended if the Market Participant has Commenced Repair of its Generator.”]

1.1.9. **“FPA”** means the Federal Power Act (16 U.S.C. § 791a).

1.1.10. **“Generator Deactivation Notice”** has the meaning set forth in Section [YY] of the OATT. [OATT ATT. Y]

1.1.11. **“Governmental Authority”** means the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.

1.1.12. **“ISO Procedures”** has the meaning set forth in Section 2.9 of the Services Tariff.

1.1.13. **“ISO Tariffs”** means the ISO's Market Administration and Control Area Services Tariff (“Services Tariff”) and the ISO's Open Access Transmission Tariff (“OATT”) collectively.

1.1.14. **“Law”** means any law, treaty, code, rule, regulation, or order or determination of an arbitrator, court or other Governmental Authority, or any license, permit, certificate, authorization,

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qualification, or approval granted by a Governmental Authority, each as amended, modified, supplemented or replaced from time to time, to the extent binding on a Party or any of its property.

1.1.15. **“Market Mitigation and Analysis Department”** or **“MMA”** has the meaning set forth in Section 30.2 of the Services Tariff.

1.1.16. **“Market Monitoring Unit”** or **“MMU”** has the meaning set forth in Section 30.2 of the Services Tariff.

1.1.17. **“Month”** means the period beginning at hour beginning zero on the first day of the calendar month and ending at hour beginning zero of the first day of the next succeeding calendar month.

1.1.18. **“Monthly Reports”** has the meaning set forth in Section 4.4.4 of this Agreement.

1.1.19. **“Notice of Forced Outage”** has the meaning set forth in Section 7.2.3.

1.1.20. **“Notice of Proposed Additional Cost”** has the meaning set forth in Section [30.X.5.1(??)] of the OATT.

1.1.21. **“Notice of Shut-down”** has the meaning set forth in Section 7.2.5.

1.1.22. **“Order”** means any determination, command, mandate or similar directive made by a Governmental Authority.

1.1.23. **“Owner”** has the meaning set forth in the preamble of this Agreement and, where applicable and appropriate, includes Owner’s agent, assignee and/or designee.

1.1.24. **“Owner-Developed Rate”** means a rate that Owner filed with the Federal Energy Regulatory Commission (“FERC”) under Section 205 of the Federal Power Act that is different from the ISO-developed Availability & Performance Rate, and that FERC accepted for filing and permitted to become effective during the Term of this Agreement.

1.1.25. **“Party”** means either the ISO or Owner, as the context requires. **“Parties”** means ISO and Owner.

1.1.26. **“Permit”** means any license, certificate, authorization, qualification, or similar approval granted by a Governmental Authority empowering the grantee to do some act.

1.1.27. **“Planned Outage”** means a planned interruption, in whole or in part, to the availability of

a Generator to permit Owner to perform maintenance and repair of the Generator.

1.1.28. **“Reference Level”** means the ISO’s best estimate of a RMR Generator’s incremental marginal costs, and of a RMR Generator’s physical capabilities. The ISO determines Reference Levels in accordance with the requirements of its Market Power Mitigation Measures that are set forth in Section 23 of its Services Tariff. This term does not include UCAP Offer Reference Levels.

1.1.29. **“RMR Generator”** has the meaning set forth in Section [XX] of the OATT.

1.1.30. **“Shut-down Date”** has the meaning set forth in Section 7.2.8.

1.1.31. **“Start Date”** has the meaning set forth in Section 2.1.

1.1.32. **“Substantiated Additional Cost”** mean extraordinary Capital Expenditures or other RMR Avoidable Costs that could not have been reasonably anticipated, and are not included in or scheduled to be recovered as components of an RMR Generators RMR Avoidable Costs or its Variable Costs. [Will change to reference the definition in OATT Att. Y when the cite is known.]

1.1.33. **“Term”** has the meaning set forth in Section 2.1.

1.2. Interpretation.

In this Agreement, unless otherwise indicated or otherwise required by the context, the following rules of interpretation shall apply:

1.2.1. Reference to and the definition of any document (including this Agreement, an ISO Tariff or the ISO Procedures) shall be deemed a reference to such document as it may be amended, supplemented, revised or modified from time to time, and to any document that is a successor thereto but only to the extent the amendment or other modification is not prohibited by this Agreement or the ISO's Tariffs.

1.2.2. The table of contents, article and section headings, and other captions in this Agreement are for the purpose of reference only and do not limit or affect its meaning.

1.2.3. Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

1.2.4. The terms "include," "includes," or "including" when used herein shall not be considered limitations.

1.3. Construction.

This Agreement has been drafted by the Parties hereto and shall not be construed against any Party as the sole drafter.

ARTICLE 2 TERM

2.1. Start Date, FERC Effective Date and Term.

2.1.1 This Agreement shall become effective at the beginning hour beginning zero, on [the first day of a month] (the “Start Date”) and shall terminate at the end of the operating hour beginning 23 as of the date of the termination of the [last] RMR Generator as provided in Section 2.2 (“Term”). The [Parties or filing Party] request[s] that FERC set the date that this Agreement shall become legally effective under the FPA (the “FERC Effective Date”) to be consistent with the Start Date.

2.1.2 Following the ISO’s submission to FERC of an executed or unexecuted Agreement:

(a) commencing on the proposed Start Date the Parties shall comply with the Agreement, subject to any condition or modification directed by FERC and subject to refund, and (b) if the Parties agree, then Owner may begin incurring costs for Capital Expenditures that are included for recovery in the Agreement pending FERC action and subject to refund.

2.2. Termination.

This Agreement may be terminated as follows:

2.2.1. Conclusion of Reliability Need. ISO may unilaterally terminate this Agreement as to [the/a] RMR Generator effective upon ninety (90) days written notice to Owner if ISO determines that [the/a] RMR Generator is no longer or will no longer be needed for reliability. The ninety day notice may be issued by ISO at any time. If two or more RMR Generators are subject to this Agreement, the Agreement may be terminated with respect to one or more individual RMR Generators.

2.2.2. Termination for cause. ISO may unilaterally terminate this Agreement as to [the/a] RMR Generator effective upon thirty (30) days written notice to Owner if a RMR Generator does not satisfy the Minimum Availability Standard set forth in Section 7.3.1 of this Agreement, or if a

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RMR Generator fails to satisfy the Minimum Performance Standard set forth in Section 7.3.2 of this Agreement. If two or more RMR Generators are subject to this Agreement, the Agreement may be terminated with respect to one or more individual RMR Generators that have failed to satisfy a Minimum Performance Standard.

2.2.3. This Agreement may also be terminated for an RMR Generator as provided in Section 7.2.9 (Forced Outages), and Section 9.2 (Termination for Default).

2.2.4. The Agreement terminates as of the date that ISO has terminated the Agreement with respect to all of the RMR Generators that were subject to the Agreement. ISO shall provide timely notice of the termination of this Agreement to the Commission.

2.2.5. If this Agreement is not terminated earlier, except as set forth in Section 2.3 hereof, it shall terminate on [the End Date, which shall be the last day of a month], unless the Parties agree in writing to extend the Term.

2.2.6. Consequence of termination or expiration of this Agreement. The consequences of the termination or expiration of this Agreement include the following: (a) The ISO will cease paying the APR or Owner Developed Rate (however, in some limited circumstances, the ISO may continue paying Owner for Capital Expenditures, *see* Section [XX] below), (b) RMR Generator will be permitted to mothball or retire, consistent with a Generator Deactivation Notice, subject to the requirements of the ISO's Tariffs; and (c) if Owner wants an RMR Generator to continue participating in the ISO Administered Markets following the conclusion of an RMR Agreement, then Owner must provide notice to the ISO in accordance with Section 2.2.8 below.

2.2.7. Consequence of termination of this Agreement (a) by the ISO "for cause" (*see* Section 2.2.2), or (b) due to a default by Owner (*see* Section 9.2). If the ISO terminates this Agreement for cause, or if this Agreement is terminated due to the default of Owner, following the termination date, consistent with Section [YY] of its [Services Tariff or OATT] the ISO shall

not be obligated by this Agreement to, and shall not continue to pay for, any Capital Expenditure that was incurred at or for a terminated RMR Generator. This includes Capital Expenditures and Substantiated Additional Costs that were included in the RMR Avoidable Cost component of a RMR Generator's APR or in an Owner Developed Rate, or that were otherwise reviewed and accepted by FERC.

2.2.8. Notice of Intent to Continue Participating in the ISO Administered Markets at Market-Based Rates following the conclusion of this Agreement. Owner shall provide the ISO with notice at least twenty-one days in advance of the date this Agreement will terminate for an RMR Generator, identifying the RMR Generator(s) that Owner intends will continue participating in the ISO Administered Markets following the conclusion of this Agreement. In accordance with Section [XX] of its [Services Tariff or OATT] the ISO shall not permit Generators that have not repaid all required Capital Expenditures to participate in the ISO Administered Markets following the conclusion of this Agreement. [THE ISO PROPOSES TO IMPLEMENT ITS "CLAW BACK" REQUIREMENTS BY DENYING FORMER RMR GENERATORS THAT WANT TO RETURN TO THE MARKETS THE ABILITY TO PARTICIPATE UNTIL REQUIRED REIMBURSEMENTS HAVE BEEN PAID.]

2.3. Survival.

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement which by their nature are intended to, and shall, survive such termination, including Sections 3.4.7 (Inform Subsequent Purchaser of Repayment Obligations), 4.7 (Penalties), 6.2 (Books and Records, Audit), 9.2.1 and 9.2.2 (Liability), 9.2.3 (Indemnification), and 11.10 (Confidentiality).

ARTICLE 3

RIGHTS AND OBLIGATIONS

3.1. In General.

3.1.1 During the Term, the Owner shall operate, maintain, offer and administer each RMR Generator in accordance with (a) the ISO Tariffs, (b) this Agreement, and (c) the ISO Procedures. If Owner identifies an apparent conflict between the rules it is expected to follow, it should promptly contact the ISO to resolve the concern.

3.1.2 Owner may employ one or more agents to perform its obligations under this Agreement. Actions taken by Owner's agents are considered actions by Owner, and Owner assumes full responsibility for the actions of any agents it elects to employ or use. Owner hereby ratifies and confirms all actions undertaken by its agents on behalf of Owner.

3.1.3 Owner is responsible for performing all billing obligations of a New York Control Area Generator for each RMR Generator. Owner may designate or change the registered billing organization Owner relies on to fulfill this obligations in accordance with ISO Procedures.

3.2. Insurance.

3.2.1. At all times during the Term, Owner shall maintain insurance, written for amounts and by insurance companies acceptable to the ISO. Owner's insurance shall include (a) All Risk Property Insurance against "all risks" of physical loss or damage to the RMR Generator(s), (b) Commercial General Liability Insurance for personal injury, bodily injury, including death and property damage, and (c) Umbrella Liability Insurance.

3.2.2. Owner shall cause its insurance providers to issue endorsements (a) waiving all rights of subrogation in favor of ISO, its directors, officers, agents and employees, and (b) naming ISO as a cancellation notice recipient for all coverages.

3.2.3 Prior to the Start Date, Owner shall provide certificates of insurance for all insurance required in this Agreement. Owner shall also provide ISO with written notice of renewals, or

any material changes in, or cancellation of, any required insurance policy or endorsement, no later than ten (10) days prior to the effective date thereof, including a revised certificate of insurance with evidence providing details sufficient to demonstrate Owner's continuous and uninterrupted coverage.

3.3 [UNDER DEVELOPMENT]

3.4 Contracts, Permits and Orders.

3.4.1 Providing Contracts and Permits affecting each RMR Generator when requested by the ISO. Owner shall promptly provide a complete, up-to-date copy of any Contract, Permit or Order the ISO requests that: (a) addresses the ownership or control of an RMR Generator, (b) is relevant to determining the costs and revenues of an RMR Generator (including the cost of a repair, addition or modification), (c) addresses the operation of an RMR Generator, or (d) could impact the availability, production or sale of Energy, Unforced Capacity, or Ancillary Services from an RMR Generator. If a Contract, Permit or Order that the ISO requests is in the process of being renewed, extended, modified or re-negotiated, Owner shall so inform the ISO when it provides the requested Contract, Permit or Order to the ISO.

3.4.2 Consistent with Section 5.12.4(c) of the Services Tariff, Owner shall not enter into any Contracts during the Term of this Agreement that would impair or otherwise diminish the ability of an RMR Generator to perform the requirements of this Agreement or of the ISO's Tariffs or Procedures, nor will Owner cause or authorize other entities to enter into a Contract that would prevent an RMR Generator from operating consistent with the requirements of this Agreement or of the ISO's Tariffs or Procedures.

3.4.3 Consistent with Sections 5.12.7, 5.12.8 and 23.4.5.8.1 of the Services Tariff, during the Term of this Agreement Owner shall offer all of the Energy and Ancillary Services that each RMR Generator is capable of producing, and shall offer all of each RMR Generator's Unforced Capacity,

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directly to the ISO Administered Markets, unless Owner is precluded from doing so by a Contract that was in effect before Owner executed this Agreement, but only to the extent and for the duration of the obligation under such Contract.

3.4.4 Owner shall submit a summary of the key terms and conditions of all Contracts (1) that were executed prior to the execution of this Agreement, and (2) that prevent all or any portion of the Energy or Ancillary Services that one or more RMR Generator(s) are capable of producing, or prevent all or any portion of one or more RMR Generator(s) Unforced Capacity, from being offered directly to the ISO Administered Markets to FERC, along with this Agreement as part of the Federal Power Act Section 205 filing that includes this Agreement and an APR or an Owner Developed Rate. Owner's submission must list all of the parties to each Contract and specifically identify all Affiliates with which it executed Contracts.

3.4.4.1 The following RMR Generators are subject to Contracts that predate the execution of this Agreement that affect the quantity of Energy, Ancillary Services or Unforced Capacity that will be offered directly to the ISO Administered Markets by each identified RMR Generator:

[OWNER TO ADD/PROVIDE ONE OR MORE TABLES THAT INCLUDE THE INFORMATION REQUIRED IN THE COLUMNS BELOW, SPECIFICALLY IDENTIFYING ANY AFFILIATES.]

RMR Generator Description of Contract Obligation Date Contract was Executed or Last Renewed End Date of Contract Other Parties to Contract

3.4.5 During the Term of this Agreement, Owner shall not enter into, modify, extend or renew any Contract to sell Energy, Ancillary Services or Unforced Capacity from a RMR Generator in a manner that is inconsistent with Owner's obligation to offer all of the Energy, Ancillary Services each RMR Generator is capable of producing, and to offer all of each RMR Generator's Unforced Capacity, directly to the ISO Administered Markets. The prohibition applies to the renewal of Contracts that are temporarily accommodated under Section 3.4.3 of this Agreement.

3.4.6 Transfer of ownership or control during the Term. [The/A] RMR Generator that is the

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subject of this Agreement may not be sold or leased, and control over [the/a] RMR Generator may not be transferred to a different entity during the Term of this Agreement unless: (a) the sale or lease receives any necessary regulatory approvals, including FERC approval under Section 203 of the FPA; (b) Owner and the entity that is purchasing or leasing the RMR Generator fully comply with all ISO procedures that address the transfer of Generators; (c) the purchaser or lessee satisfies the ISO's credit requirements, (d) the purchaser or lessee becomes an ISO Customer, and (e) the purchaser or lessee agrees, in writing, to assume all of Owner's obligations under this Agreement. If the transfer is temporary, or does not include the full capability of the RMR Generator owned or controlled by Owner, then Owner shall retain all of its obligations under this Agreement and the ISO Tariffs, and the purchaser or lessee shall become subject to Owner's obligations under this Agreement and the ISO Tariffs.

3.4.7 Obligation to inform subsequent purchaser of a RMR Generator of obligation to repay cost of Capital Expenditures prior to re-entering ISO Administered Markets. If Owner sells an RMR Generator or an interest in an RMR Generator, during or following the Term of this Agreement, then Owner shall inform any and all purchasers of any Capital Expenditures that must be repaid before the ISO will permit the RMR Generator to participate in or re-enter the ISO Administered Markets following the conclusion of the Term of this Agreement.

3.5 Testing.

3.5.1. RMR Generators shall timely comply with all ISO requirements that are necessary for a RMR Generator to provide a product or service it is capable of providing in the ISO Administered Markets. When necessary, Owner shall arrange in advance with the ISO, in accordance with the ISO's Outage Scheduling Manual, to self-schedule a RMR Generator in order to perform a required test.

3.5.2. If, prior to or during the twelve month Notice Period, an RMR Generator did not perform all testing that would be required to permit the RMR Generator to provide Voltage Support in

the ISO Administered Markets during the Term of this Agreement, then the ISO shall require the RMR Generator to promptly test and shall permit the RMR Generator to provide Voltage Support in the ISO Administered Markets during the Term of this Agreement, consistent with Section [XX] of the [Services Tariff or OATT]. [THE OBLIGATION FOR RMR GENERATORS TO PERFORM VOLTAGE SUPPORT TESTING AND THE ISO'S AUTHORITY TO ALLOW LATE PARTICIPATION BY RMR GENERATORS WILL BE ADDED TO THE TARIFF.]

3.6 Energy Market Participation.

In accordance with Section 23.[YY] of the Services Tariff, Owner shall offer for sale into the Day-Ahead and Real-Time Markets all of the Energy and Ancillary Services each RMR Generator is capable of providing by submitting ISO-committed flexible Bids (offers) that are equal to or less than (equally or less restrictive than for physical parameters) the Reference Levels that are currently on-file with the ISO and approved for use by the ISO's MMA. RMR Generators that are not Installed Capacity Suppliers, or that have not sold all of their Unforced Capacity, must still be offered into the Energy and Ancillary Services markets consistent with this obligation. *See* Services Tariff Sections 5.12.7 and 5.12.8.

Consistent with Section 23.[XX] of the Services Tariff, Owner shall offer Energy, Operating Reserves and Regulation at prices that are equal to or less than each RMR Generator's ISO-approved Reference Levels. Consistent with its Services Tariff, the ISO will mitigate dollar-denominated Bids that exceed a RMR Generator's currently effective Reference Levels and will perform all other Tariff-authorized mitigation.

Consistent with Section 23.[YY] of the Services Tariff, Owner shall timely submit fuel price updates and fuel type updates to the ISO so that they can be incorporated to develop accurate

Reference Levels for each RMR Generator. Submission of an inaccurate fuel price update or fuel type update may require the ISO to assess a financial penalty in accordance with Section 23.4.3.3.3 of the Services Tariff, or may result in the ISO's referral of Owner's failure to submit accurate fuel cost information to its Market Monitoring Unit for possible referral to FERC's Office of Enforcement.

RMR Generators that require more than two hours to Start-Up are not required to submit hourly Bids in the Real-Time Market, however they are required to timely respond to a Supplemental Resource Evaluation ("SRE") or an Out-of-Merit ("OOM") commitment requests issued by the ISO or by a Transmission Owner.

If and to the extent a RMR Generator is not available, or is not fully available, Owner shall timely notify the ISO of the outage or derate in accordance with ISO Procedures and accurately reflect each RMR Generator's availability in its Bids. If a RMR Generator's Variable Costs change as a result of the derate, then Owner must contact the ISO's MMA Department to request changes to the RMR Generator's Reference Levels.

3.7 RMR Generator Reference Levels.

3.7.1 In advance of the execution of this Agreement the ISO, Owner and the ISO's External Market Monitoring Unit performed a thorough review of each RMR Generator's Reference Levels consistent with Section 23 of the Services Tariff. Before it executed this Agreement, Owner reviewed and is aware of the Reference Levels that the ISO determined for each RMR Generator that is subject to this Agreement. During the Term of this Agreement changes to an RMR Generator's Reference Levels shall only be made in accordance with Section 23.[XX] of the Services Tariff.

3.7.2 Changes to an RMR Generator’s variable costs for purposes of providing Energy, Reserves and Regulation shall be addressed via modifications to the RMR Generator’s Reference Levels using the adjustment process set forth in Section 23 of the Services Tariff. Owner is responsible for ensuring that an RMR Generator’s fuel costs and Reference Levels, remain accurate and up-to-date. If Owner fails to provide updated information to the ISO on a timely basis mitigation, including financial penalties, may be applied in accordance with Section 23 of the Services Tariff. Failure to timely update RMR Generator information could also violate FERC’s regulations. *See* 18 CFR § 1c.2(a)(2).

3.8 Capacity Market Participation.

3.8.1 Each RMR Generator shall perform all obligations that an Installed Capacity Supplier of its resource type is required to perform under the Services Tariff and in accordance therewith.

3.8.2 Except as set forth in Section 3.4.3 above, during the Term of this Agreement Owner shall offer all of an RMR Generator’s Unforced Capacity directly into each ICAP Spot Market Auction as follows:

[ISO TO ADD TABLE(S) SPECIFYING THE UNFORCED CAPACITY OFFER PRICE (OR SERIES OF OFFER PRICES FOR SPECIFIED QUANTITIES OF MWs) AT WHICH OWNER MUST OFFER EACH RMR GENERATOR FOR SPECIFIED PERIODS OF TIME DURING THE TERM OF THE RMR AGREEMENT.]

Sample Table

<u>Start Date</u>	<u>End Date</u>	<u>RMR Generator</u>	<u>PTID</u>	<u>UCAP MW</u>	<u>\$/KwMonth</u>
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[ALTERNATE 1 insert \$0.00, unless the unit is needed for resource adequacy. If the unit is needed for resource adequacy, insert \$ amount determined by ISO in accordance with Services Tariff Section 23.4.5.7.[*].]

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[ALTERNATE 2 in the event that there is a cheaper and viable non-generation resource available during the Term that was not identified as a Gap Solution, insert \$ amount determined by ISO in accordance with Services Tariff Section 23.4.5.7.[*].]

[ALTERNATE 3 If the RMR Generator has a pre-existing bilateral contract that satisfies the requirements of Section 3.4.3 of this Agreement, add to Section 3.8.2: For the Auction Month of [] through [] (the “bilateral period”), the RMR Generator shall offer {insert UCAP obligation consistent with the bilateral agreement}, and (a) for any Unforced Capacity in excess of such amount and for any Auction Month beyond the bilateral period, the Unforced Capacity shall be offered at a price of {insert appropriate language from ALTERNATE 1 or ALTERNATE 2}.]

3.9 Restoration Services and Voltage Support Services.

3.9.1 Each RMR Generator that provided Restoration Services (including black start service) at any time during the year prior to the submission of a Generator Deactivation Notice must provide Restoration Services during the Term of this Agreement unless Owner demonstrates to the ISO that an RMR Generator is not presently capable of providing Restoration Services. [State whether each RMR Generator will provide Restoration Services or identify the RMR Generators that will provide Restoration Services.]

3.9.2 Each RMR Generator that provided Voltage Support service at any time during the year prior to the submission of a Generator Deactivation Notice must provide Voltage Support service during the Term of this Agreement unless Owner demonstrates to the ISO that an RMR Generator is not presently capable of providing the service. [State whether each RMR Generator will provide Voltage Support or identify the RMR Generators that will provide Voltage Support.]

3.10 Self-Scheduling.

Owner is expected to offer each RMR Generator into the NYISO's Energy and Ancillary Service markets using the ISO-committed flexible bid mode at its Reference Levels for economic scheduling. However, Owner may request permission to self-schedule a RMR Generator for operational and maintenance considerations, including required testing or for fuel management purposes. The ISO may accept or reject the requested self-schedule in its sole discretion. Variable Costs during ISO-approved self schedules will be the self-scheduled RMR Generator's Reference Levels.

ARTICLE 4

COMPENSATION AND SETTLEMENT

4.1 In General.

In lieu of receiving market compensation Owner shall receive the APR that the ISO developed and FERC accepted for filing, [*or* Owner shall receive an Owner Developed Rate that Owner submitted to FERC under Section 205 of the Federal Power Act and that FERC accepted for filing,] including any modifications required by FERC.

[THE ISO IS ATTEMPTING TO DEVELOP A SINGLE *PRO FORMA* AGREEMENT THAT CAN BE USED FOR BOTH THE APR AND AN OWNER DEVELOPED RATE.]

There are four components to the APR: RMR Avoidable Costs, Variable Costs, the Availability Incentive and the Performance Incentive. Each component of the APR is explained below and a rate is set forth for each component below.

The ISO will pay the APR in accordance with Rate Schedule 8 to its Services Tariff. RMR Avoidable Costs and Variable Costs are calculated daily and paid on a weekly basis. The Performance Incentive (if any) is paid on a monthly basis. The Availability Incentive (if any) is paid on a seasonal basis. When necessary, Penalties are assessed on monthly invoices.

[There are two components to an Owner Developed Rate. The first component is Variable Costs, which is determined in the same manner as Variable Costs are determined under the APR. The second component is the FERC authorized component. The FERC authorized component effectively replaces the RMR Avoidable Cost component of the APR with the costs that FERC authorizes for recovery in an order issued pursuant to Section 205 of the Federal Power Act. Because an Owner Developed Rate is expected to exceed an RMR Generators RMR Avoidable

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Costs, no Availability or Performance Incentives are available.

The ISO will pay an Owner Developed Rate in accordance with Rate Schedule 8 to its Services Tariff. FERC authorized costs and Variable Costs shall be calculated daily and paid on a weekly basis.]

In addition to setting forth the APR for each RMR Generator, this Agreement sets forth the obligation of RMR Generators that are subject to an ISO-developed APR to pay penalties prescribed by the ISO's Tariffs, each RMR Generator's obligation to repay the cost of Capital Expenditures that were paid for under an APR or under an Owner Developed Rate, if and when the RMR Generator returns to the ISO-Administered Markets following the conclusion of this Agreement, and the circumstances under which the ISO will continue to repay Capital Expenditures after an RMR Generator's obligation to provide service under this Agreement ends and the RMR Generator retires or mothballs.

4.2 Recovery of Variable Costs.

Variable Costs are the incremental costs an available RMR Generator incurs to produce Energy or Ancillary Services. Variable Costs may change frequently; for example, when fuel prices change.

4.2.1. Cost of Providing Energy, Reserves and Regulation

Consistent with Rate Schedule 8 to the Services Tariff, Owner shall be compensated on a weekly basis for providing Energy, Operating Reserves and Regulation based on the lesser of (a) the Bids that were submitted for a RMR Generator, or (b) the Reference Levels that are in place for an RMR Generator.

The ISO will not compensate an RMR Generator for unscheduled overproduction that exceeds Compensable Overgeneration, as defined in the Services Tariff.

The ISO develops Reference Levels in accordance with Section 23 of its Services Tariff. The process the ISO used to develop Reference Levels for each RMR Generator is described in Section 3.7 of this Agreement. The rules for changing a Reference Level that applies to a RMR Generator are set forth in Section 23.[XX] of the Services Tariff.

4.2.2 Costs of Providing Voltage Support and Restoration Services

Voltage Support and Restoration Services (black start) are components of a RMR Generator's Variable Costs. Consistent with Rate Schedule 8 to the Services Tariff, Owner shall be compensated on a weekly basis for providing Voltage Support and/or Restoration Services.

When determining the compensation a RMR Generator is eligible to receive for Voltage Support and/or Restoration Services the ISO shall treat each RMR Generator's cost of providing either service as being equal to the Tariff-authorized compensation that the ISO pays Generators for providing the service. RMR Generators that require additional or different compensation to provide Voltage Support or Restoration Services must file at FERC and obtain a different rate from FERC for providing these services.

4.3 Recovery of RMR Avoidable Costs.

RMR Avoidable Costs are the fixed costs that would be avoided if an RMR Generator were to exit the ISO Administered Markets in the manner described in the Generator Deactivation Notice (to mothball or retire), including, but not limited to, mandatory capital expenditures, fixed operating and maintenance costs, and forgone opportunity costs, determined by the ISO in accordance Section 23.4.5.7[*] of the Services Tariff, but not including variable costs and any other cost that may be included in the RMR Generator's Reference Level.

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The RMR Generator-specific rates set forth below identify when each RMR Generator's RMR Avoidable Costs will change, and the amount of each change, or the expected amount of the change for Capital Expenditures. The RMR Avoidable Cost component of RMR Generator's APR may change on specific dates, or when specified milestones are met, such as the entry into service of a Capital Expenditure. In addition to the expected changes in RMR Avoidable Costs specified below, a RMR Generator's RMR Avoidable Costs may change due to the need for unexpected extraordinary maintenance or repairs (Additional Expenses) during the Term of this Agreement.

4.3.1 Generator-Specific RMR Avoidable Costs.

The RMR Avoidable Costs each RMR Generator that is providing service under an APR is authorized to recover are set forth in the table(s) below. However, the Capital Expenditures identified in the table(s) below are only estimates. The ISO will instead use the actual costs incurred for each Capital Expenditure to determine the APR, in accordance with with [Section XX of the OATT or Svcs Att. H], as explained in Section 4.3.2 of this Agreement.

[FOR EACH RESOURCE, ADD A TABLE SPECIFYING (1) THE INITIAL RMR AVOIDABLE COST (IDENTIFYING THE SIGNIFICANT COST COMPONENTS), (2) DATES WHEN, AND/OR SPECIFIC MILESTONES WHEN AVOIDABLE COSTS WILL CHANGE, SPECIFYING HOW MUCH THE COSTS WILL CHANGE (OR ARE EXPECTED TO CHANGE, WHEN THE MILESTONE IS THE IN-SERVICE DATE OF A CAPITAL EXPENDITURE) ON EACH DATE/AT EACH MILESTONE AND BRIEFLY STATING THE REASON FOR EACH CHANGE, (3) IS THERE ANY OTHER INFORMATION WE NEED TO PROVIDE IN THE TABLE?]

[SUBSTANTIATED ADDITIONAL COSTS THAT ARE FILED FOR FERC REVIEW SHOULD BE ADDED TO THESE TABLES.]

4.3.2 Capital Expenditures.

[UNDER DEVELOPMENT]

4.3.3 Substantiated Additional Costs.

During the Term of this Agreement an RMR Generator that is providing service under an APR or an Owner Developed Rate may require additional Capital Expenditures or other RMR Avoidable Costs that could not have been reasonably anticipated, and are not included in or scheduled to be recovered as components of an RMR Generators RMR Avoidable Costs, or its Owner Developed Rate or its Variable Costs (hereafter, “Substantiated Additional Costs”).

Before it may permit recovery of Substantiated Additional Costs, the ISO must first determine that (1) the Substantiated Additional Costs could not have been reasonably anticipated by Owner and included in this RMR Agreement, and (2) the Substantiated Additional Costs are necessary for the RMR Generator to continue to provide reliable service during the Term. The complete set of rules the ISO must follow when administering Proposed Additional Costs and Substantiated Additional Costs are set forth in Sections [XX] of the OATT.

To permit expedient repairs to an RMR Generator that is providing service under an APR, the ISO is authorized by [Section [XX] of its Services Tariff] to allow up to [\$10MM/\$25MM] per year in actual, incurred and verified additional Capital Expenditures to be recovered as Substantiated Additional Costs. As with any Capital Expenditure, the ISO must limit recovery of such Substantiated Additional Costs to the actual, demonstrated costs incurred and may not begin repaying the Substantiated Additional Costs until the necessary addition, maintenance or repair is completed or enters service. The ISO shall submit an informational filing to FERC informing FERC of any Substantiated Additional Costs it includes in an RMR Generator’s APR.

Substantiated Additional Costs (a) that involve RMR Avoidable Costs that are not Capital Expenditures, or (b) that exceed the ISO's authority to authorize, or (c) that the ISO is not prepared to authorize without FERC review, or (d) any Substantiated Additional Costs that an RMR Generator that is subject to an Owner Developed Rate must incur, are not eligible for recovery under this Agreement unless and until they are filed with and accepted by FERC.

4.3.4 Requirement to Repay Capital Expenditures Before the ISO May Permit a Former RMR Generator to Participate in the ISO Administered Markets.

[THE NYISO TARIFF WILL PRECLUDE THE NYISO FROM PERMITTING A GENERATOR THAT RECEIVED MONEY TO FUND CAPITAL EXPENDITURES FROM RE-ENTERING THE MARKET UNTIL THE COSTS, LESS DEPRECIATION, ARE REPAID. THE RULES WILL APPLY TO GENERATORS THAT ARE SUBJECT TO OWNER DEVELOPED RATES.]

4.4 Availability Incentive.

The method of calculating the Availability Incentive each RMR Generator that is being compensated under an APR is eligible to recover is set forth in the table below. The ISO shall use each RMR Generator's actual availability and the table below to determine the incentive (if any) it shall pay for availability over a six-month season.

[ADD TABLE SPECIFYING THE AVAILABILITY BASELINE AND ALL OTHER ASPECTS OF HOW THE AVAILABILITY INCENTIVE WILL BE CALCULATED FOR EACH RMR GENERATOR.]

4.5 Performance Incentive.

The method of calculating the Performance Incentive each RMR Generator that is being compensated under an APR is eligible to recover is set forth in the table below. The ISO shall use

each RMR Generator's actual performance and the table below to determine the incentive (if any) it shall pay for performance each month.

[ADD TABLE SPECIFYING THE PERFORMANCE BASELINE AND ALL OTHER ASPECTS OF HOW THE PERFORMANCE INCENTIVE WILL BE CALCULATED FOR EACH RMR GENERATOR.]

4.6 Owner Developed Rate.

Owner Developed Rates may not exceed an RMR Generator's full cost of service. Owner must separately file its Owner Developed Rate for FERC review and acceptance. If Owner has agreed to and the ISO has separately filed the *pro forma* terms and conditions of service, then the ISO shall incorporate the accepted Owner Developed Rate, including any modifications instructed by FERC, into this Agreement after FERC issues an Order accepting the Owner Developed Rate.

The costs each RMR Generator is authorized to recover under an Owner Developed Rate are explained below (using the explanation(s) provided by Owner) and set forth in the table(s) below. The table(s) below must distinctly identify and set forth the estimated cost of each Capital Expenditure, and the date on which each Capital Expenditure is expected to enter service.

The rules for recovering the cost of Capital Expenditures under an Owner Developed Rate, including the rules that apply if an RMR Generator continues to, or returns to participate in the ISO-Administered Markets following the conclusion of this Agreement, are the same rules that apply to Generators that are compensated pursuant to an APR. *See* Section 4.3.2 of this Agreement.

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RMR Generators that are compensated pursuant to an Owner Developed Rate are not eligible to receive an Availability Incentive or a Performance Incentive. RMR Generators that are compensated pursuant to an Owner Developed Rate must obtain FERC approval to recover Substantiated Additional Costs.

[OWNER TO ADD EXPLANATION OF PROPOSED OWNER-DEVELOPED RATE THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS AGREEMENT AND THE ISO'S TARIFFS, INCLUDING BUT NOT LIMITED TO THE RULES FOR IMPLEMENTING RMR RATES THAT ARE SET FORTH IN RATE SCHEDULE 8 TO THE SERVICES TARIFF AND THE RULES IN (TARIFF SECTION TBD) ADDRESSING THE RECOVERY OF CAPITAL EXPENDITURES. OWNER SHALL INCLUDE ONE OR MORE TABLES THAT SPECIFY THE RATE THAT WILL APPLY TO EACH RMR GENERATOR.]

4.7 Penalties.

Each RMR Generator that is providing service under an APR is subject to all of the potential penalties, sanctions, deficiency charges and any similar charges, except for under-generation penalties (collectively, for purposes of this paragraph, "penalties"), that may apply to Generators under the ISO Tariffs. *Provided, however,* that the total amount of penalties that can be assessed to an RMR Generator that is providing service under an APR shall be capped at the total, cumulative amount of Performance Incentive payments and Availability Incentive payments computed by the ISO to be due to that RMR Generator through the end of the month in which one or more penalties are charged.

RMR Generators that are compensated pursuant to an Owner Developed Rate are subject to all of the potential penalties, sanctions, deficiency charges and any similar charges, including under-generation penalties, that may be assessed to Generators under the ISO Tariffs, without limitation.

ARTICLE 5 MARKET MONITORING

5.1. Energy and Ancillary Services Mitigation.

Although this Agreement requires the submission of Energy and Ancillary Service Bids for the RMR Generator(s) at fuel-adjusted Reference Levels, nothing herein shall preclude the ISO from applying any provision of its Market Power Mitigation Measures (Section 23 of the Services Tariff) to Owner, any Affiliate of Owner, the RMR Generator, or any other resources of Owner or of any Affiliate of Owner, including the mitigation of Bids submitted for RMR Generators that are covered by this Agreement.

The ISO's assessment of financial penalties, sanctions, deficiency charges and the like, for failure to comply with the Market Power Mitigation Measures or other provisions of the ISO's Tariffs, are addressed in Section 4.6 of this Agreement.

ARTICLE 6

REPORTING AND AUDIT

6.1. Information Access.

Owner shall maintain and shall promptly make available to ISO upon request, any books, records, documents or information in its possession or control that are necessary for ISO to: (a) audit, determine, substantiate or verify any of the costs that Owner has incurred, or that Owner is permitted to recover under this Agreement and the ISO Tariffs, and (b) carry out its responsibilities under this Agreement and its Tariffs.

6.2. Books and Records; Audit Rights.

6.2.1 During the Term and for three (3) years thereafter (or for a longer term, if necessary to permit repayment of the cost of a Capital Expenditure), Owner shall keep detailed and accurate books and records, together with any supporting documents, pertaining to (a) the performance of its obligations under this Agreement, (b) the operation of each RMR Generator, including its availability, performance and Variable Costs, and (c) all components that went into developing the APR or the Owner-Developed Rate, including all adjustments thereto, Capital Expenditures and Substantiated Additional Costs.

6.2.2 Subject to the confidentiality requirements in Section 11.10 of this Agreement, Owner shall provide or make such books and records (including copies and extracts) available to ISO for inspection and audit at any time, upon reasonable notice.

ARTICLE 7

RESOURCE OPERATION AND MAINTENANCE

7.1. Planned Outages.

7.1.1 First year of RMR operation. The ISO and Owner have developed a planned outage schedule covering the first year of each RMR Generator's operation under this Agreement. The agreed to schedule is included as Confidential [Schedule 2] to this Agreement. The ISO will accommodate limited, reasonable changes to the agreed planned outage schedule requested by Owner. Planned outage schedules for subsequent years will be developed in accordance with this Article 7.1.

7.1.2 Owner shall be entitled to take the RMR Generator out of operation or reduce the net capability of the RMR Generator during ISO-approved Planned Outages, in accordance with the schedule for Planned Outages as established and implemented pursuant to the ISO's Outage Scheduling Manual. Consistent with Section [XX] of this Agreement and Section [YY] of the [Services Tariff] Planned Outages may reduce the Availability Incentive (if any) paid to a RMR Generator. Performance Incentives can be earned when an RMR Generator is scheduled in real-time.

7.1.3 The ISO and the MMU shall monitor deviations from each RMR Generator's historic planned outage schedules. Owner shall promptly respond to ISO and MMU requests for explanations, information and data regarding or supporting outage schedules.

7.2 Forced Outages.

7.2.1 Generally. Owner shall be entitled to take the RMR Generator out of operation or reduce the net capability of the RMR Generator upon the occurrence of a Forced Outage. Consistent with Section [XX] of this Agreement and Section [YY] of the [Services Tariff] Forced Outages may reduce the Availability Incentive (if any) paid to a RMR Generator. Performance Incentives can be

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earned when an RMR Generator is scheduled in real-time.

7.2.2 The ISO and the MMU shall monitor deviations from each RMR Generator's historic forced outage rate. Owner shall promptly respond to ISO and MMU requests for explanations, information and data regarding or supporting forced outages, including the time required to return from a Forced Outage.

7.2.3 Notice of Forced Outage. In the event of a Forced Outage that is anticipated to last for more than ten (10) days, in addition to any other notification obligation arising under the ISO Tariffs and Procedures, Owner shall promptly notify the ISO, in accordance with the Outage Scheduling Manual, in writing that a Forced Outage has occurred and estimate its duration (a "Notice of Forced Outage").

7.2.4 Notice of Proposed Additional Costs. Owner shall also submit a Notice of Proposed Additional Costs to the ISO if it expects that substantial additional costs will need to be incurred to return the RMR Generator to service, and if it satisfies the other requirements of Section [30.X.5.1(??)] of Attachment Y to the OATT. [These rules do not address cost recovery for RMR Generators that are subject to an Owner Developed Rate. They will have to file with FERC if they require additional cost recovery.]

7.2.5 Notice of Shut-down. As soon as reasonably practicable after the date of a Notice of Forced Outage but in no event greater than thirty (30) days from the start of such Forced Outage, either Party may, after assessing the nature, expected duration, and expected incurrence of Proposed Additional Costs or Substantiated Additional Costs, notify the other in writing of its determination that the RMR Generator shall, subject to the provisions of Section 7.2.9 of this Agreement, be Shut-down (a "Notice of Shut-down") and if such notice applies to the entire RMR Generator that this Agreement should be terminated with regard to the affected RMR Generator.

7.2.6 In the event that an RMR Generator is Shut-down, Owner shall only remain entitled to receive the APR through the Shut-down Date for that RMR Generator; provided that with respect to a Shut-down applying only to some of the units that together comprise a RMR Generator, this

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Agreement shall remain in full force and effect with respect to the remaining unit(s). [In the process of adding rules explaining what happens when Capital Expenditures have not been fully reimbursed before a RMR Generator shuts down due to a Forced Outage.]

7.2.7 Option to agree to pay Substantiated Additional Costs. With respect to a Notice of Shut-down made by Owner, if within thirty (30) days of receipt of Owner's Notice of Shut-down ISO provides written notice to Owner that it is willing to allow recovery of any Substantiated Additional Costs that may be required to recover from such Forced Outage in accordance with Section 4.3.4 of this Agreement and Section [30.X.5.2.1(??)] of Attachment Y to the OATT, Owner agrees that it will, with reasonable dispatch, take the action requested by ISO, *i.e.*, not Shut-down the RMR Generator, obtain any required FERC approval, and incur the costs necessary to return the RMR Generator to service from such Forced Outage, subject to repayment by the ISO in accordance with Section 4.3.4 of this Agreement and Section [30.X.5.2.1(??)] of Attachment Y to the OATT.

7.2.8 Owner is obligated to use its best efforts to minimize any costs it must incur, and the Substantiated Additional Costs that the ISO reimburses Owner for will be subject to offset by any proceeds from any and all third-party sources, including insurance proceeds, paid to Owner to return the RMR Generator from the Forced Outage. If Owner receives insurance proceeds or other compensation after the ISO pays Owner's Substantiated Additional Costs, then Owner shall make a subsequent reconciliation ("true-up") filing with the FERC and refund any payments to ISO for Substantiated Additional Costs that exceed the amount actually expended by the Owner, after offsets.

7.2.9 Shut-down Date. With respect to a Notice of Shut-down issued by ISO pursuant to Section 7.2.5, the "Shut-down Date" shall be that date ten (10) days after the receipt of such Notice of Shut-down by the Owner. With respect to a Notice of Shut-down issued by Owner pursuant to Section 7.2.5, the "Shut-down Date" shall be that date thirty (30) days after the receipt of such Notice of Shutdown by ISO unless ISO has agreed to pay Owner's Substantiated Additional Costs in

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accordance with Section 7.2.7, in which case no Shut-down Date will have occurred with respect to such Notice of Shut-down. As of the Shutdown Date, Owner may place the former RMR Generator in an ICAP Ineligible Forced Outage or convert the former RMR Generator's status to retired.

7.3 Minimum Availability and Minimum Performance Standards.

If an RMR Generator is rarely or never available, or if an RMR Generator repeatedly fails to perform when it is scheduled, then the ISO Customers that are responsible for paying the APR or the Owner Developed Rate for the failing RMR Generator are not getting the reliability benefits that they are paying for. The requirements set forth below specify the minimum availability and minimum performance each RMR Generator is expected to achieve in order to continue to be entitled to compensation under this Agreement, including recovery of the cost of Capital Expenditures and Substantiated Additional Costs.

7.3.1 Minimum Availability Standards

The ISO developed the Minimum Availability Standard(s) set forth below for each RMR Generator based on (a) the RMR Generator's historical performance, (b) any deferred maintenance, repair or capital expenditure costs that are included in RMR Avoidable Costs for an RMR Generator that can reasonably be expected to improve the RMR Generator's availability, and (c) other factors that are specific to the particular RMR Generator for which the Minimum Availability Standard was developed.

[ADD TABLE WITH THE MINIMUM AVAILABILITY STANDARD THAT THE ISO WILL APPLY TO EACH RMR GENERATOR THAT IS SUBJECT TO THE RMR AGREEMENT.]

7.3.2 Minimum Performance Standards

The ISO developed the Minimum Performance Standard(s) set forth below for each RMR Generator based on (a) the RMR Generator's historical performance when scheduled to operate in real-time by the ISO, (b) any deferred maintenance, repair or capital expenditure costs that are

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included in RMR Avoidable Costs for an RMR Generator that can reasonably be expected to improve the RMR Generator's performance, and (c) other factors that are specific to the particular RMR Generator for which the Minimum Performance Standard was developed.

[ADD TABLE WITH THE MINIMUM PERFORMANCE STANDARD THAT THE ISO WILL APPLY TO EACH RMR GENERATOR THAT IS SUBJECT TO THE RMR AGREEMENT.]

ARTICLE 8

FORCE MAJEURE EVENTS

8.1 Definition of Force Majeure Event.

“Force Majeure Event” means, with respect to a Party, any event or circumstance that was not caused by the Party and any consequences of that event or circumstance, which despite the exercise of due diligence, the Party is unable to prevent or overcome. By way of example, a Force Majeure Event may include an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by a Governmental Authority, which in each case the Party’s inability to perform its obligations is not due to its failure to (a) take reasonable measures to prevent or protect itself against events or circumstances of the same type as that Force Majeure Event, or (b) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event. Force Majeure Event, however, specifically excludes economic hardship, the cost or availability of fuel and changes in market conditions that affect the price of energy or transmission.

8.2 Notice of Force Majeure Event.

If any Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party that is unable to perform shall promptly notify the other Party of this occurrence, the effect on its performance, the nature of any corrective action needed, its efforts to remedy its inability to perform, and when it estimates it will be able to resume performance. Thereafter the nonperforming Party shall update that information as reasonably necessary.

8.3 Effect of Force Majeure Event.

If a Force Majeure Event prevents a Party from complying with any one or more obligations under this

Agreement, that inability to comply will not constitute breach if (a) that Party uses reasonable efforts to perform those obligations as soon as practicable, and (b) that Party complies with its obligations under this Article 8. If a Force Majeure event results in a Forced Outage then Sections 7.2.1. through 7.2.9 of this Agreement shall apply.

8.4 Remedial Efforts.

If a Force Majeure Event occurs, the Party unable to perform by reason of that Force Majeure Event shall use reasonable efforts to resume its performance under this Agreement as soon as practicable, to mitigate the consequences of the Force Majeure Event, and to limit damages to the other Party; provided that no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interests.

ARTICLE 9

DISPUTE RESOLUTION AND REMEDIES

9.1 Dispute Resolution.

The Parties shall make reasonable efforts to settle any dispute arising out of or in connection with this Agreement. The Parties shall designate officers or other senior representatives to confer and attempt to resolve a dispute on an informal basis within two (2) calendar days of receiving written notice of a dispute. If the Parties are unable to resolve the dispute by mutual agreement within ten (10) business days after written notice of a dispute was provided (such period may be extended by the mutual, written agreement of the Parties), then the dispute may be referred to FERC's Dispute Resolution Division by either Party.

9.2 Liability and Indemnification.

9.2.1 Liability of ISO. The ISO shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to Owner or any third party or other person for any damages whatsoever arising or resulting from any actions or omissions by ISO in performing its obligations under this Agreement, except to the extent ISO is found liable for gross negligence or willful misconduct, in which case ISO will only be liable for direct damages.

9.2.2 Liability of Owner. Except as set forth in Section 4.6 (Penalties) of this Agreement, or as set forth in the ISO's Tariffs, in no event shall Owner be liable to ISO for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance of this Agreement except to the extent Owner is found liable for gross negligence or willful misconduct.

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9.2.3 Indemnification. Owner shall indemnify, defend and save harmless the ISO and its directors, officers, employees and agents from any and all damages, losses, claims and liabilities by or to third parties arising out of or resulting from the performance by ISO under this Agreement or the actions or omissions of Owner in connection with this Agreement, except in cases of gross negligence or willful misconduct by the ISO or its directors, officers, employees or agents.

9.3 Specific Performance.

The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and that monetary damages alone, even if available, would not be an adequate remedy. It is accordingly agreed that the Parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

9.4 Termination for Default.

If any Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages. Termination of this Agreement pursuant to this Section 9.2 shall be without prejudice to the right of any Party to collect any amounts due to it under this Agreement.

9.5 Waiver.

The failure to exercise any remedy or to enforce any right provided in this Agreement or applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing. A waiver given by a Party will be applicable only to the specific instance for which it is given.

9.6 No Third-Party Beneficiaries.

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

9.7 Remedies Cumulative.

The rights and remedies of the Parties are cumulative and not alternative.

ARTICLE 10

COVENANTS OF THE PARTIES

10.1. ISO represents and warrants to Owner as follows:

10.1.1. The ISO is a validly existing corporation with full authority to enter into this Agreement.

10.1.2. The ISO has full power and authority to enter into this Agreement and perform all of the ISO's obligations, representations, warranties, and covenants under this Agreement.

10.1.3. The ISO has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement, this Agreement shall be a legally binding obligation of the ISO.

10.1.4. The ISO has all regulatory authorizations necessary for it to perform its obligations under this Agreement.

10.1.5. The execution, delivery, and performance of this Agreement are within ISO's powers and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it.

10.2. Owner represents and warrants to ISO as follows:

10.2.1. Owner is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in New York.

10.2.2. Owner has full power and authority to enter into this Agreement and to perform all of Owner's duties, obligations, representations, warranties, and covenants under this Agreement, including the power to offer Energy, Unforced Capacity, and Ancillary Services from each RMR Generator, and to operate, maintain, and administer each RMR Generator, all in accordance with (a) the ISO Tariffs, (b) this Agreement, and (c) the ISO Procedures.

10.2.3. Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement, this Agreement

shall be a legally binding obligation of Owner.

10.2.4. Owner possesses, or has applied for, all regulatory authorizations, necessary for it to perform its obligations under this Agreement.

10.2.5. The execution, delivery, and performance of this Agreement are within the Owner's powers and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it.

10.2.6. Owner is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting the performance of this Agreement.

10.2.7. Owner is not bankrupt, does not contemplate becoming bankrupt nor, to its knowledge, will become bankrupt.

10.2.8. Owner is an ISO Customer [and an ISO Transmission Customer,] and acknowledges that it has reviewed and is familiar with the ISO's Tariffs.

10.2.9. Owner acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Owner's performance of its obligations under this Agreement.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Assignment.

A Party shall not assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this Article 11.1, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Party.

11.2 Notices.

Except as otherwise expressly provided in this Agreement or required by Law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission, electronic mail, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person, by facsimile, or by electronic mail; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section 11.2):

If to Owner:

[OFFICER NAME]
[OFFICER TITLE]
[STREET ADDRESS]
[CITY, STATE, ZIP]

[PHONE NUMBER]
[FAX NUMBER]
[E-MAIL ADDRESS]

If to ISO:

[OFFICER NAME]
[OFFICER TITLE]
10 Krey Boulevard
Rensselaer, New York 12144
[PHONE NUMBER]
[FAX NUMBER]
[E-MAIL ADDRESS]

With a copy to:

[INSERT LEGAL CONTACT]

The persons designated to receive Notice for a Party may be modified by providing Notice to the other Party of a change.

11.3 Parties' Representatives.

Owner and the ISO shall ensure that throughout the term of this Agreement, duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Acts and omissions of representatives shall be deemed to be acts and omissions of the Party. Owner and ISO shall be entitled to assume that the representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party. Owner's representatives shall be identified on Exhibit A. The ISO's representatives shall be identified on Exhibit B. The Parties may at any time replace their representatives by sending the other Party a revision to its respective Exhibit.

11.4 Effect of Invalidation, Modification, or Condition.

Each covenant, condition, restriction, and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition.

11.5 Amendments.

Any amendments or modifications of this Agreement shall be made only by a written instrument duly executed by all Parties. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from FERC. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the ISO Administered Markets that are approved by the Commission from time to time.

11.6 Governing Law.

This Agreement shall be governed by and construed under the Laws of the State of New York without regard to conflicts of laws principles.

11.7 Entire Agreement.

This Agreement, as well as any appendices, schedules, exhibits or other attachments hereto, which are incorporated by reference herein and made a part hereof, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings, agreements and understandings.

11.8 Independent Contractors.

Owner and ISO acknowledge that as between Owner and ISO there is an independent contractor relationship, and that nothing in this Agreement shall create any association, joint venture, partnership, or principal/agent relationship between the Parties. Neither Owner nor ISO shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

11.9 Counterparts.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same agreement.

11.10 Confidentiality.

Confidential Information or Protected Information identified as such by a Party and provided to the other Party pursuant to this Agreement shall be governed by the confidentiality provisions in the Code of Conduct, contained in Attachment F of the OATT, and the confidentiality provisions in the Market Monitoring Plan, contained in Attachment O of the Services Tariff, subject to the following:

11.10.1 Nothing herein or therein shall limit the right of a Party to file a copy of this Agreement with the Commission, without redaction, to the extent that law, regulation, or agency order makes such filing necessary or appropriate.

11.10.2 Notwithstanding anything in this Agreement to the contrary, if during the course of an

investigation or otherwise, the Commission requests that a Party (the “responding Party”) provide to it information that has been designated by the other Party to be treated as confidential under this Agreement, the responding Party shall provide the requested information to the FERC or its staff within the time provided for in the request for information. The responding Party shall promptly notify the other Party upon receipt of any such request and either Party, consistent with 18 CFR § 388.112, may, but shall not be required, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure.

11.11 Further Assurances.

The Parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably necessary to carry out the provisions and purposes of this Agreement.

11.12 Submittal to the Commission.

The Parties acknowledge and agree [ALT. 1, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS AND OWNER ACCEPTS THE APR that the ISO shall submit the executed Agreement to the FERC, including the proposed APR, in a FPA Section 205 filing on the Parties’ behalf;] [ALT. 2, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS, OWNER ACCEPTS THE APR, BUT THERE ARE CAPITAL EXPENDITURES THAT REQUIRE FERC APPROVAL (i) that the ISO shall submit this Agreement to the FERC, including the agreed-to components of the proposed APR, in a FPA Section 205 filing on the Parties’ behalf, and that Owner will submit a separate FPA Section 205 filing that is consistent with the terms and conditions of service proposed in this Agreement, and that tracks the format of this Agreement, proposing the inclusion of the cost of certain Capital Expenditures in the APR;]

[ALT. 3, IF OWNER AND ISO AGREE ON TERMS AND CONDITIONS BUT OWNER

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REJECTS THE APR AND SUBMITS AN OWNER DEVELOPED RATE that the ISO shall submit the Parties' agreed-upon terms and conditions of service to the FERC, in a FPA Section 205 filing on the Parties' behalf, and that Owner will submit a separate FPA Section 205 filing proposing an Owner Developed Rate that is consistent with the terms and conditions of service proposed in this Agreement and that tracks the format of this Agreement.]

Following the ISO's submission to FERC of an executed or unexecuted Agreement, the Parties will comply with this Agreement in accordance with Section 2.1.2 hereof.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

[OWNER NAME]

By: _____
Name:
Title:

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

By: _____
Name:
Title:

DRAFT, FOR DISCUSSION PURPOSES ONLY

EXHIBIT A
OWNER'S REPRESENTATIVES

[OWNER TO PROVIDE]

DRAFT, FOR DISCUSSION PURPOSES ONLY

EXHIBIT B

ISO'S REPRESENTATIVES

[NAME OF NYISO OFFICER WITH AUTHORITY TO EXECUTE AN RMR AGREEMENT]

[Vice President, Market Operations?] New York Independent System Operator, Inc.

10 Krey Boulevard

Rensselaer, New York 12144