

**BILLING AND COLLECTIONS SERVICES AGREEMENT**

between

JEA

and

[SERVICE PROVIDER]

dated as of

[•]

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**THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND IS NOT LEGALLY BINDING IN ANY RESPECT. NO BINDING OBLIGATION WILL ARISE (AS A RESULT OF ANY COURSE OF DEALING OR OTHERWISE) UNLESS AND UNTIL A FINAL BILLING AND COLLECTIONS SERVICES AGREEMENT IS DULY EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.**

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## **BILLING AND COLLECTIONS SERVICES AGREEMENT<sup>1</sup>**

This BILLING AND COLLECTIONS SERVICES AGREEMENT (collectively with the Schedules hereto, this “Agreement”) dated as of [•] (the “Effective Date”), is made and entered into by and between JEA, a body politic and corporate (“JEA”), and [•], a [•] (“Service Provider”).

- A. JEA and Service Provider have entered into an Asset Purchase and Sale Agreement (the “Purchase Agreement”), dated [•], pursuant to which Service Provider has agreed to acquire substantially all of the assets and liabilities of JEA’s Business (as defined therein), with the exception of certain excluded assets.
- B. The excluded assets retained by JEA include that certain Amended and Restated Power Purchase Agreement, dated as of December 31, 2014 (as amended, from time to time, the “Vogtle PPA”), between JEA and the Municipal Electric Authority of Georgia (“MEAG”), pursuant to which JEA has agreed to purchase from MEAG a portion of the electrical power generated by certain nuclear plants known as Vogtle (such power purchased by JEA under the Vogtle PPA being referred to as the “Vogtle Energy”).
- C. JEA will remain fully responsible for the exercise and performance of all of rights and obligations of JEA under the Vogtle PPA, including the purchase and acceptance of, and payment for, Vogtle Energy thereunder.
- D. JEA intends to sell Vogtle Energy to end user customers (“Customers”) in the “Service Territory,” as defined in the Territorial Agreement of even date herewith between JEA and Service Provider, as such Territorial Agreement may be amended from time to time, on an as available basis, after the Vogtle nuclear plants come online.
- E. Service Provider also intends to sell electrical power and related services to Customers in the Service Territory following the closing of the Purchase Agreement (such power and related services furnished by Service Provider being referred to as the “Service Provider Energy”), as permitted under the Franchise Agreement of even date herewith (the “Service Provider Franchise Agreement”) between Service Provider and the City of Jacksonville, Florida (“COJ”).
- F. The Parties intend to bill Customers in the Service Territory for the Vogtle Energy and Service Provider Energy in the form of a consolidated bill setting forth each Party’s charges to the Customer.
- G. The Parties desire for Service Provider to provide to JEA the billing and collections services described in this Agreement with respect to JEA’s sale of Vogtle Energy to Customers and, in connection therewith, to be appointed to act as servicer with respect to JEA’s charges to Customers for Vogtle Energy and payments collected from Customers with respect thereto.

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<sup>1</sup> **Note: This draft remains subject to the ongoing review of the Office of the General Counsel of the City of Jacksonville and, as such, may require further modifications.**

In consideration of the mutual covenants, representations, warranties, and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS**

Certain terms used in this Agreement are defined in the Glossary attached hereto. Other terms used in this Agreement are defined in the context in which they are used and will have the meanings there indicated. Those terms, acronyms and phrases utilized in the information technology industry shall be interpreted in accordance with their generally understood meanings in such industry.

**2. TERM**

The term of this Agreement will commence upon the Effective Date and, unless earlier terminated in accordance with this Agreement, will expire upon the expiration or termination of the Territorial Agreement (the “Term”).

**3. APPOINTMENT AS SERVICER**

To assure uniform quality in servicing the Vogtle Energy Amounts and to reduce administrative costs, JEA hereby revocably appoints Service Provider, and Service Provider hereby accepts such appointment, to act as servicer on behalf of JEA in providing the Services described in this Agreement, including as custodian for JEA of any and all documents and records that Service Provider shall keep on file relating to the Vogtle Energy Amounts (the “Vogtle Records”)

**4. SERVICES**

Commencing as of the Effective Date, Service Provider shall provide the services described in Schedule A (Services) and elsewhere in this Agreement, as they may evolve and be supplemented, modified or replaced during the Term (the “Services”). Any functions, tasks, activities and responsibilities (collectively, “Functions”) related to the Services are not specifically described in Schedule A (Services) or elsewhere in this Agreement, but that are nevertheless required for the proper performance and provision of the Services in compliance with the requirements of this Agreement, shall be deemed to be included within the scope of Services to be provided by Service Provider. Except as otherwise expressly provided in this Agreement, Service Provider shall be responsible for providing all facilities, personnel and other resources as necessary to provide the Services.

**5. PERFORMANCE**

**5.1 General**

Service Provider is responsible for successfully performing, integrating, completing, delivering, and managing the Services in accordance with this Agreement. Without limiting the generality of the foregoing, Service Provider shall perform the Services strictly in accordance with all quality, accuracy and timeliness standards described in this Agreement. Upon the request of JEA, Service Provider will promptly correct, at no additional charge to JEA and without adverse impact to the Services, any error or omission made by Service Provider Personnel in connection with the Services.

## **5.2 Compliance**

In connection with its performance of this Agreement, Service Provider will comply (and cause its Subcontractors and Service Provider Personnel to comply) at all times with all Laws relevant or applicable to Service Provider's and its Subcontractors' businesses, to the Services, and to Service Provider's other obligations under this Agreement, including, as applicable, Laws relating to collections, consumer protection, non-discrimination, occupational health and safety, fair labor standards, employment of aliens, export controls, and privacy and data security. Service Provider hereby certifies that at all times during the Term it will have a comprehensive information security program that is in compliance with all applicable Privacy Laws and that it will otherwise comply with all applicable Privacy Laws in the performance of this Agreement. Service Provider will promptly notify JEA in the event that it becomes aware of any actual or suspected violation (or charge or investigation) of any Laws that may impact the Services and will fully cooperate with JEA and all governmental authorities in connection therewith.

## **5.3 Service Levels**

Quantitative performance standards for certain of the Services ("Service Levels") are set forth in Schedule B (Service Levels). Service Provider shall render the Services in a manner that meets or exceeds the Service Levels set forth in Schedule B (Service Levels). In cases where this Agreement does not prescribe or otherwise regulate the manner of Service Provider's performance of the Services, Service Provider will render the Services in accordance with Service Provider's prevailing standards and practices for the billing and collection of charges for electrical service, and associated customer support, on its own behalf.

## **5.4 Personnel**

Service Provider will manage, supervise and provide direction to Service Provider Personnel and cause them to comply with the obligations and restrictions applicable to Service Provider under this Agreement. Service Provider is responsible for the acts and omissions of Service Provider Personnel under or relating to this Agreement. Service Provider Personnel will not be considered employees or agents of JEA for any purpose. Service Provider will utilize an adequate number of Service Provider Personnel to perform the Services who are properly educated, trained, familiar with and fully qualified to perform the Services they perform.

## **5.5 Subcontractors**

Service Provider shall remain responsible for the obligations, services, and Functions performed by its Subcontractors to the same extent as if such obligations, services, and Functions were performed by Service Provider employees and, for purposes of this Agreement, such work shall be deemed work performed by Service Provider. Service Provider shall be JEA's sole point of contact regarding the Services, including with respect to payment.

## **5.6 Time of Performance**

Service Provider will perform and complete the Services diligently, in a timely manner, and in accordance with any applicable time schedules set forth in this Agreement, including its Schedules. Service Provider will promptly notify JEA upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any Services. Without prejudice to any

remedies available to JEA, Service Provider will (a) take all actions necessary or prudent to avoid or minimize any delays in performance and (b) inform JEA of the steps Service Provider is taking or will take to do so and the projected actual completion (or delivery) time.

## **6. FINANCIAL**

### **6.1 Customer Payments**

Notwithstanding any other provision in this Agreement, JEA shall have dominion and control over the Vogtle Energy Amounts, and Service Provider, in accordance with the terms hereof, is acting solely as the servicer and custodian for JEA with respect to the Vogtle Energy Amounts and the Vogtle Records. Service Provider acknowledges and agrees that it holds all Vogtle Energy Amounts collected by it and any other proceeds thereof received by it solely for the benefit of JEA and that all such amounts shall be remitted by Service Provider in accordance with this Agreement without any surcharge, fee, offset, charge or other deduction, except as may otherwise be expressly provided in this Agreement. Service Provider further acknowledges and agrees that: (a) JEA owns, free and clear of any claims by Service Provider, all right, title and interest in Vogtle Energy Customer Payments; (b) Service Provider will act solely as a servicer and custodian for JEA in collecting and remitting Vogtle Energy Customer Payments; and (c) Service Provider will hold the Vogtle Energy Customer Payments in trust for JEA until remitted to JEA. Service Provider agrees not to make any claim to reduce its obligation to remit all Vogtle Energy Amounts collected by it in accordance herewith. As a precaution in the event that anyone challenges the Parties' characterization of the ownership of the Vogtle Energy Customer Payments and asserts that Service Provider owns or has any rights therein, Service Provider hereby grants to JEA a first priority security interest in the Vogtle Energy Customer Payments, and any and all accounts of Service Provider or its Affiliates into which Vogtle Energy Customer Payments may be deposited or held, in order to secure the obligation of Service Provider to remit the Vogtle Energy Customer Payments to JEA as required under this Agreement. Service Provider authorizes JEA to file UCC-1 financing statements and to take such other action as JEA may deem necessary or desirable to perfect and protect JEA's rights in the Vogtle Energy Customer Payments, and Service Provider will promptly provide JEA with any information requested by JEA in order to perfect and protect its rights.

### **6.2 Service Provider Charges**

Service Provider's charges for the Services under this Agreement ("Service Provider Services Charges") shall be as set forth in Schedule C (Service Provider Compensation). Service Provider may not charge, and JEA will not be required to pay Service Provider, any amounts for the Services in addition to those expressly set forth in Schedule C or elsewhere in this Agreement or in a Change Order or Statement of Work executed by the Parties. Service Provider acknowledges and agrees that the Service Provider Services Charges constitute fair and reasonable compensation for the obligations to be performed by Service Provider under this Agreement.

### **6.3 Invoicing and Payment**

Service Provider will deliver a single monthly invoice to JEA for all Service Provider Services Charges, together with all permitted charges by Supplier to JEA for services provided under the Transmission Services Agreement, System Coordination Agreement and Distribution Services Agreement, each of even date herewith, between the Parties (collectively, the "Combined Services Charges"), within ten (10) days after the end of each calendar month.



- (a) Invoices will be sent to such address(es) and through such means as may be designated in writing by JEA from time to time.
- (b) Service Provider will include with each invoice the calculations (together with supporting documentation) utilized to establish the Combined Service Charges in sufficient detail to enable JEA to confirm the accuracy of the charges included in the invoice. Promptly upon JEA's request, Service Provider agrees to provide JEA with such additional documentation and other requested information with respect to an invoice as may be reasonably requested by JEA.
- (c) JEA will use Commercially Reasonable Efforts to review and approve Service Provider invoices within thirty (30) days after receipt thereof and any supporting documentation and information reasonably requested by JEA. If JEA disputes an invoice or portion thereof, or determines that an invoice is subject to deduction or set-off for amounts that Service Provider is obligated to pay or credit to JEA under the Agreement or any Ancillary Document, it shall notify Service Provider (email being deemed sufficient for this purpose) of the nature and amount of the dispute, deduction or set-off. In such event, the Parties will promptly meet to discuss the matter and, upon resolution of the matter, Service Provider will issue an adjusted invoice to JEA for approval reflecting the Parties' resolution.
- (d) JEA shall have no obligation to pay any Combined Service Charges that Service Provider fails to invoice to JEA within 120 days after the date that Service Provider first became entitled to bill JEA.

Service Provider may deduct the amount of each invoice of Combined Service Charges that have been approved in writing by JEA from the amounts to be remitted by Service Provider to JEA in accordance with Section 2.5 (Remittance and Segregation of Vogtle Power Customer Charges) of Schedule A (Services) to this Agreement. Service Provider may not withhold or delay the remittance of any amounts to be remitted to JEA thereunder pending JEA's approval of any invoice or resolution of any dispute regarding the Combined Service Charges.

## **7. GOVERNANCE**

### **7.1 Relationship Governance**

The Parties will govern and manage their relationship under the Agreement and the other Ancillary Documents in accordance with the Governance Framework.<sup>2</sup>

### **7.2 Relationship Executives**

Prior to the execution of the Agreement:

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<sup>2</sup> Note to Respondent: An overarching governance framework document for all Ancillary Documents will be discussed and agreed by JEA and Service Provider prior to execution of the Ancillary Documents.

- (a) Service Provider will appoint an executive, approved by JEA, who will have overall responsibility and accountability for Service Provider's relationship with JEA in connection with this Agreement (the "Service Provider Relationship Executive"). The Service Provider Relationship Executive will serve as Service Provider's primary representative and JEA's principal point of contact with Service Provider for matters pertaining to the Agreement; and
- (b) JEA will appoint an executive who will have overall responsibility and accountability for JEA's relationship with Service Provider in connection with this Agreement (the "JEA Relationship Executive"). The JEA Relationship Executive will serve as JEA's primary representative and Service Provider's principal point of contact with JEA for matters pertaining to the Agreement.

### **7.3 Change Control**

The processes and procedures to be followed by the Parties for considering, analyzing, approving (or rejecting) and carrying out Changes, New Services and Projects requested or proposed by either Party (the "Change Control Procedure") shall be as set forth in the Governance Framework.

## **8. JEA RESPONSIBILITIES**

### **8.1 General**

In order to facilitate Service Provider's performance of the Services, JEA will, at its own cost and expense, perform those tasks and fulfill those responsibilities of JEA as set forth in this Agreement. JEA shall cooperate with Service Provider, including by making available management decisions, information, approvals, and acceptances, as reasonably requested by Service Provider, so that Service Provider may accomplish its obligations and responsibilities under this Agreement.

### **8.2 Savings Clause**

Due to the impact any termination or suspension of performance under this Agreement would have on JEA, JEA's failure to perform its responsibilities set forth in this Agreement shall not be grounds for termination of or suspension of performance under this Agreement by Service Provider, except as specifically provided in Section 18.5. However, Service Provider's nonperformance of its obligations under this Agreement shall be excused if and to the extent (a) such Service Provider nonperformance results from JEA's failure to perform its responsibilities; and (b) Service Provider provides JEA with reasonable notice of such nonperformance and uses Commercially Reasonable Efforts to perform notwithstanding JEA's failure to perform.

## **9. CONFIDENTIALITY AND PUBLIC RECORDS LAWS**

### **9.1 Confidential Information**

"Confidential Information" shall mean non-public information disclosed by or on behalf of either Party or its Affiliates (the "Furnishing Party") to the other Party or its Affiliates (the "Receiving Party") relating to the business or operations of the Furnishing Party, including (a) Personally Identifiable Information and other Customer Data; and (b) compilations or summaries of information or data that is itself Confidential Information.

## **9.2 Confidentiality Obligations**

Subject to Sections 9.3 and 9.5 through 9.9 below, the Receiving Party agrees to: (a) receive Confidential Information of the Furnishing Party in confidence, maintain it in strict confidence, and not disclose it to third parties (except as provided herein); (b) use or permit the use of Confidential Information of the Furnishing Party solely in accordance with the terms of this Agreement; and (c) promptly notify the Furnishing Party in writing of any loss or unauthorized use, disclosure or access of the Furnishing Party's Confidential Information of which it becomes aware. The Receiving Party may disclose Confidential Information of the Furnishing Party to any employee, officer, director, agent or representative of the Receiving Party who has a legitimate need to know the information in question for purposes of this Agreement. The Receiving Party may also disclose Confidential Information of the Furnishing Party to the Receiving Party's regulatory, supervisory or oversight authorities, *provided* they are made aware of the Receiving Party's obligations of confidentiality with respect to the Furnishing Party's Confidential Information.

## **9.3 Exclusions**

The restrictions on use and disclosure set forth above shall not apply when, and to the extent that, the Receiving Party can demonstrate that Confidential Information (other than Personally Identifiable Information): (a) is or becomes generally available to the public through no fault of the Receiving Party (or anyone acting on its behalf); (b) was previously rightfully known to the Receiving Party free of any obligation to keep it confidential; (c) is subsequently disclosed to the Receiving Party by a third party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (d) is independently developed by the Receiving Party or a third party without reference to the disclosed Confidential Information; or (e) is required to be disclosed by the Receiving Party as a matter of Law, *provided* that the Receiving Party uses all reasonable efforts to provide the Furnishing Party with at least ten (10) days' prior notice of such disclosure and the Receiving Party discloses only that portion of the Confidential Information that the Receiving Party, in good faith and using ordinary care believes, is legally required to be furnished pursuant to the opinion of legal counsel of the Receiving Party. The Receiving Party shall provide to the Furnishing Party, at the Furnishing Party's expense, such assistance as the Furnishing Party reasonably requests in seeking protective orders, confidential treatment, and the like.

## **9.4 Return or Destruction**

Subject to Section 11.3(d) below, when Confidential Information of the Furnishing Party is no longer required for the Receiving Party's performance under this Agreement, or in any event upon expiration or termination of this Agreement, the Receiving Party will return all materials in any medium that contain, refer to, or relate to Confidential Information of the Furnishing Party or, at the Furnishing Party's election, destroy them, *provided* that each Party may retain one (1) copy for archival purposes.

## **9.5 Access to Public Records**

All documents, data and other records received by JEA in connection with this Agreement are public records and available for public inspection unless specifically exempt by Law. Service Provider shall allow public access to all documents, data and other records made or received by Service Provider in connection with this Agreement unless the records are exempt from Article I, Section 24, Florida

Constitution or Chapter 119, Florida Statutes. JEA may unilaterally terminate this Agreement if Service Provider refuses to allow public access as required under this Agreement.

#### **9.6 Redacted Copies of Confidential Information**

If Service Provider believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, Article I, Chapter 24, Florida Constitution, and related Laws (“Florida Public Records Laws”), Service Provider must (a) clearly segregate and mark the specific sections of the document, data and records as “Confidential,” (b) cite the specific Florida Statute or other legal authority for the asserted exemption, and (c) provide JEA with a separate redacted copy of the documents, data, or records (the “Redacted Copy”). The Redacted Copy shall contain JEA’s contract name and number, and shall be clearly titled “Redacted Copy”. Service Provider should only redact those portions of records that it claims are specifically exempt from disclosure under Florida Public Records Laws. If Service Provider fails to submit a redacted copy of documents, data, or other records it claims is confidential, JEA is authorized to produce all documents, data, and other records submitted to JEA in answer to a public records request for these records.

#### **9.7 Request for Redacted Information**

In the event of a public records or other disclosure request under Florida Public Records Laws or other authority to which Service Provider’s documents, data or records are responsive, JEA will provide the Redacted Copy to the requestor. If a requestor asserts a right to any redacted information, JEA will notify Service Provider that such an assertion has been made. It is Service Provider’s responsibility to respond to the requestor to assert that the information in questions is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or disclosure of the redacted information under legal process, JEA shall give Service Provider prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable Law). Service Provider shall be responsible for defending its determination that the redacted portions of the information are not subject to disclosure.

#### **9.8 Public Records Clause for Service Agreements**

If, under this Agreement, Service Provider is providing services and is acting on behalf of JEA as contemplated by subsection 119.011(2), Florida Statutes, Service Provider shall: (a) keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform such service; (b) provide the public with access to public records on the same terms and conditions that JEA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or otherwise prohibited by Law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by Law; and (d) meet all requirements for retaining public records and transfer, at no cost, to JEA all public records in the possession of Service Provider upon expiration or termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically shall be provided to JEA in a format that is compatible with the information technology systems of JEA.

#### **9.9 Publicity and Advertising**

Service Provider shall not make any announcements or release any information concerning this Agreement or the Services to any member of the public, press or official body unless prior written consent

is obtained from JEA. Service Provider acknowledges and agrees that: (a) JEA is governed by the Florida Public Records Laws such that all contract documents are available for public inspection; and (b) JEA is governed by Florida Public Records Laws and, as such, certain meetings are required to be open to the public.

## **10. DATA SECURITY / PRIVACY**

### **10.1 General**

Service Provider shall have in place and will maintain and comply with throughout the Term a comprehensive information security program that includes physical, electronic and procedural safeguards, security provisions and controls with respect to the Service Delivery Environment that maintain and protect the confidentiality, integrity and availability of all Customer Data. Such safeguards, security provisions and controls: (a) shall meet the standards and practices codified as ISO/IEC 27001:2013, as such standards and practices may be modified or replaced from time to time, and Service Provider shall maintain at all times certification of compliance with such standards and practices (as provided by an accredited certification firm); (b) shall be in compliance with all applicable Laws; and (c) shall be in compliance with Service Provider's security policies and procedures. At JEA's request at any time and from time to time during the Term, Service Provider shall promptly furnish copies of the relevant security policies and procedures of Service Provider and its Subcontractors for review by JEA.

### **10.2 Background Checks.**

Prior to having any Service Provider Personnel perform any Services, Service Provider will screen and conduct background checks of Service Provider Personnel in accordance with Service Provider's policies. Background checks will include the following, at a minimum: (a) prior employment verification for all employees above entry level; (b) social security verification; and (c) felony and misdemeanor criminal checks. If (and to the extent that) any of the background checks described above cannot reasonably be performed in any country outside of the United States at which Services are to be performed, Service Provider perform alternative types of background checks that are available and which approximate as closely as reasonably possible under the circumstances the types of background checks and screening procedures described above to the extent permitted by applicable Law.

### **10.3 Encryption.**

Service Provider shall ensure that all Personally Identifiable Information is encrypted using best in class encryption technologies for information of this nature (a) while being stored on any device or physical media, or in any environment, managed by or on behalf of Service Provider or its Subcontractors (including servers, personal computing devices, disks, tape, network attached storage devices, and storage area networks), and (b) while being transmitted or delivered over a public network or on physical media.

### **10.4 Security Breaches.**

Service Provider shall notify JEA promptly (and in any event within 24 hours) upon discovery or notification of any actual security breach (i.e., unauthorized access or use) or upon a reasonably confirmed suspicion of a potential or threatened security breach that has the capacity to become an actual security breach, whether or not such security breach is at the time believed by Service Provider to currently target or otherwise threaten Customer Data (collectively, a "Security Breach"). Service

Provider shall provide JEA with a detailed description of the incident, the type of data that was the subject of the Security Breach, the identity of the affected individuals, and any other information JEA may request concerning the details of the Security Breach, as soon as such information can be collected or otherwise becomes available. Service Provider shall have a continuing duty to inform JEA of new information learned by Service Provider regarding the Security Breach and the actions being taken by Service Provider to investigate, mitigate and remediate the Security Breach. Service Provider agrees to take action promptly to investigate the incident and to identify, prevent and mitigate the effects of such Security Breach, and to carry out any recovery necessary to remedy the impact, at its own expense.

## **11. INTELLECTUAL PROPERTY**

### **11.1 Independent IP**

As between the Parties, each Party will have and retain all Intellectual Property Rights in and to its Independent IP, including any modifications or enhancements thereto (which, in the case of JEA, is referred to herein as “JEA Independent IP” and, in the case of Service Provider, is referred to herein as “Service Provider Independent IP”), subject to any rights and licenses expressly granted by such Party under this Agreement.

- (a) JEA grants to Service Provider a nonexclusive, non-transferable (except in connection with a permitted assignment of this Agreement), no-charge license during the Term to use the JEA Independent IP in accordance with this Agreement solely for the purpose of providing the Services under this Agreement.
- (b) Service Provider grants to JEA a nonexclusive, non-transferable (except in connection with a permitted assignment of this Agreement), no-charge license during the Term to use the Service Provider Independent IP in accordance with this Agreement solely for the purpose of receiving and utilizing the Services under this Agreement.

### **11.2 Deliverables**

As between JEA and Service Provider (including its Subcontractors), JEA shall own all Intellectual Property Rights in all Deliverables that are created for JEA under this Agreement. As between JEA and Service Provider (including its Subcontractors), all Deliverables shall be works made for hire under the U.S. copyright laws and all Intellectual Property Rights in and to each Deliverable shall vest in JEA on the date such Deliverable is created. Upon JEA’s request or upon expiration or termination of this Agreement, to the extent Service Provider has not already done so, Service Provider will turn over all Deliverables to JEA.

### **11.3 Customer Data**

- (a) As between the Parties, JEA shall have the sole and exclusive rights to all JEA-Specific Customer Data, subject to any rights and licenses expressly granted by JEA hereunder. JEA grants to Service Provider a nonexclusive, non-transferable (except in connection with a permitted assignment of this Agreement), no-charge license during the Term to use the JEA-Specific Customer Data in accordance with this Agreement solely for the purpose of providing the Services under this Agreement.

- (b) As between the Parties, Service Provider shall have the sole and exclusive rights to all Service Provider-Specific Customer Data, subject to any rights and licenses expressly granted by Service Provider hereunder. Service Provider grants to JEA a nonexclusive, non-transferable (except in connection with a permitted assignment of this Agreement), no-charge license during the Term to use the Service Provider-Specific Customer Data in accordance with this Agreement solely for the purpose of receiving and utilizing the Services under this Agreement.
- (c) As between the Parties, each Party shall have the right to use all Joint Customer Data in connection with its business and operations without any obligation to account to the other Party for such use.
- (d) For clarity and notwithstanding anything to the contrary in this Agreement, certain documents and records (including Consolidated Bills) may contain both JEA-Specific Customer Data and Service Provider-Specific Customer Data in the same document or record, and nothing in this Agreement shall be construed to prohibit the continued maintenance and use of such documents and records by each Party in the ordinary course of its operations or to require the return or destruction of such documents and records or the deletion of the JEA-Specific Customer Data (in the case of Service Provider) or Service Provider-Specific Customer Data (in the case of JEA) contained therein.

## **12. AUDITS AND RECORDS**

### **12.1 JEA Audits**

At any time during the Term and for a period two (2) years thereafter, JEA (or its authorized representative) shall have the right to conduct audits to verify Service Provider's performance under and compliance with this Agreement. Service Provider shall provide to JEA and its auditors and representatives such assistance as they reasonably require.

### **12.2 Service Provider Audits**

Service Provider, at its cost, will cause a SOC 1, Type 2 report under SSAE 18 or a SOC 2, Type 2 report under Attestation Standards Section 101 (an "Audit Report") to be performed annually by an independent auditor for each Service Delivery Center used to process or store Customer Data. Each such audit must result in an unqualified opinion by the auditor regarding the design and operating effectiveness of Service Provider's internal controls. The Audit Report must address trust service principles and control criteria in the areas of security, availability, processing integrity, confidentiality and privacy. The Audit Report shall include Service Provider management's assertions on the state of controls and the auditor's opinion confirming management's assertions. Service Provider shall deliver a copy of such report to JEA within thirty (30) days after the completion thereof. Service Provider will promptly remedy any adverse finding or vulnerabilities identified in such Audit Report.

### **12.3 Records**

Service Provider will (and will cause its Subcontractors to) keep and maintain complete and correct books, records, and documentation, including Vogtle Records (collectively, "Books and Records") relating to its (their) activities in relation to this Agreement, and to the performance of the Services, in a manner sufficient to evidence Service Provider's compliance with this Agreement. Service Provider will

(and will cause its Subcontractors to) keep and maintain the Books and Records and all other information required to meet JEA’s audit requirements during the Term for the longer of (a) a period of two (2) years after the expiration or earlier termination of this Agreement, (b) until final resolution of any dispute concerning this Agreement or which is otherwise subject to a litigation hold by JEA, or (c) as long as required by Law or any other provision of this Agreement (the “Retention Period”). During the Retention Period, upon the request of JEA, Service Provider will (and will cause its Subcontractors to) permit JEA, at reasonable times and upon reasonable notice, to examine and audit the Books and Records.

### **13. INSURANCE**

Service Provider represents that it has, as of the Effective Date, and agrees to maintain in force throughout the Term of this Agreement (and, with respect to insurance carried on a claims made basis, until the expiration of the appropriate statute of limitation) at least the types and amounts of insurance coverage specified in Schedule D (Insurance).

### **14. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Service Provider makes the following representations, warranties and covenants to JEA:

#### **14.1 General**

- (a) Service Provider’s execution and performance of this Agreement will not constitute: (i) a violation of any judgment, order or decree; (ii) a material default under any material contract by which Service Provider or any of its assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default;
- (b) Service Provider has the requisite power and authority to enter into and perform this Agreement;
- (c) Service Provider is not under any obligation or restriction that would interfere in any way or conflict with it providing Services and performing its obligations under this Agreement, and Service Provider will not assume any such obligation or restriction during the Term; and
- (d) Service Provider has conducted all due diligence necessary for Service Provider to satisfy itself that it is able to provide the Services in accordance with the requirements of this Agreement and for the Service Provider Services Charges set forth in Schedule C (Service Provider Compensation).

#### **14.2 Quality Standard**

Service Provider will perform the Services described herein in a prompt, professional and workmanlike manner in accordance with the practices and standards observed by the leading utility companies in the United States when performing similar services, and Deliverables will conform in all material respects to their specifications and requirements.

#### **14.3 Efficiency and Cost Effectiveness**

Service Provider will perform the Services efficiently and in a cost-effective manner.



#### **14.4 Intellectual Property**

Service Provider shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Rights of any third party. No Material provided to JEA by or on behalf of Service Provider, nor their use by JEA as contemplated hereunder, will infringe or constitute an infringement or misappropriation of any Intellectual Property Rights of any third party. Service Provider will not be considered in breach hereof to the extent (but only to the extent) any claimed infringement or misappropriation is attributable to: (a) the access or use of the infringing item in a manner not authorized under this Agreement or otherwise in breach thereof; or (b) JEA's modification of the infringing item without the approval or participation of Service Provider. Service Provider has all rights and licenses necessary to convey to JEA the Intellectual Property Rights granted under this Agreement.

#### **14.5 Malware**

Service Provider will use all Commercially Reasonable Efforts to ensure that no Malware is coded or introduced into any systems used in providing the Services.

#### **14.6 Warranty Disclaimer**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES UNDER THIS AGREEMENT, AND EACH PARTY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING MERCHANTABILITY OR OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **15. INDEMNIFICATION**

#### **15.1 Indemnities**

Service Provider will indemnify, defend, and hold harmless JEA, including its governing board, officers, employees, agents, successors and assigns (collectively, "Indemnitee"), against any and all Losses arising from, related to, or in any way connected with, any of the following:

- (a) Any claim relating to the provision or sale of electricity or related services to Customers, or billings to, or collections from, Customers with respect to such provision or sale of electricity or related services, that arise out of acts or omissions of Service Provider or its Affiliates, Subcontractors or suppliers (including any Service Provider Personnel);
- (b) Any claim arising out of a breach by Service Provider of Section 5.2 (*Compliance*), Section 9 (*Confidentiality and Public Records Laws*), Section 10 (*Data Security / Privacy*), or Section 14.4 (*Intellectual Property*);
- (c) Any claim arising out of Service Provider's assertion that all or any portion of its information is not subject to disclosure under Florida Public Records Laws;
- (d) Any claim that any Customer Data (either in paper or electronic format) in the possession of Service Provider or any of its Affiliates, Subcontractors or suppliers was misused or improperly

disclosed, including misuse or unauthorized disclosure caused by theft, electronic system malfunction or any other cause;

- (e) Any claim by Subcontractors arising out of Service Provider’s breach or violation of Service Provider’s subcontracting arrangements;
- (f) Any claim arising out of the death or injury (whether mental or corporeal) of any person arising out of the tortious conduct of Service Provider or any of its Affiliates, Subcontractors or suppliers (including Service Provider Personnel);
- (g) Any damage, loss, or destruction of any real or tangible personal property arising out of the tortious conduct of Service Providers or any of its Affiliates, Subcontractors or suppliers (including Service Provider Personnel); and
- (h) Any claim, demand, action, or charge by any person to the extent arising out of his or her employment with Service Providers or any of its Affiliates, Subcontractors or suppliers, or any application for such employment or the termination thereof.

## **15.2 Indemnification Procedures**

With respect to a claim, the following procedures shall apply:

- (a) Notice. Promptly after receipt by any entity entitled to indemnification under Section 15.1 of notice of the assertion, commencement, or threatened commencement of any Action by a third party in respect of which the Indemnitee will seek indemnification pursuant to any such Section, the Indemnitee shall notify Service Provider of such claim in writing. No failure to so notify Service Provider shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate actual and material damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Indemnitee relating to any claim, but if feasible no later than ten (10) days before the date on which any response to a complaint or summons is due, Service Provider shall notify the Indemnitee in writing if Service Provider acknowledges its indemnification obligation and elects to assume control of the defense and settlement of that claim (a “Notice of Election”).
- (b) Procedure Following Notice of Election. If Service Provider delivers a Notice of Election relating to any claim within the required notice period, Service Provider shall be entitled to have sole control over the defense and settlement of such claim; *provided however*, that the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) Service Provider shall obtain the prior written approval of the Indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After Service Provider has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, Service Provider shall not be liable to the Indemnitee for any legal expenses incurred by the Indemnitee in connection with the defense of that claim. In addition, Service Provider shall not be required to indemnify the Indemnitee for any amount paid or payable by the Indemnitee in the settlement of any claim for which Service Provider has delivered a timely Notice of Election if such amount was agreed to without the written consent of Service Provider.

- (c) Procedure Where No Notice of Election Is Delivered. If Service Provider does not deliver a Notice of Election relating to a claim, or otherwise fails to acknowledge its indemnification obligation or to assume the defense of a claim within the required notice period or, in JEA's reasonable judgment, fails to diligently defend the claim, the Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate, at the cost, expense, and risk of Service Provider, including payment of any judgment or award and the costs of settlement or compromise of the claim. Service Provider shall promptly reimburse the indemnitee for all such costs and expenses, including payment of any judgment or award and the costs of settlement or compromise of the claim. If Service Provider failed to defend a claim for which it was liable, the indemnitor shall not be entitled to challenge the amount of any settlement or compromise paid by the Indemnitee.

## **16. LIMITS ON LIABILITY**

### **16.1 Limitations**

SUBJECT TO SECTION 16.2 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

### **16.2 Exclusions**

The limitations set forth in Section 16.1 shall not apply with respect to: (a) the indemnification obligations under Section 15; (b) Service Provider's failure to properly bill or collect any Vogtle Energy Customer Charges or to remit Vogtle Energy Customer Payments to JEA; (c) damages occasioned by a breach by Service Provider of Section 5.2 (*Compliance*), Section 9 (*Confidentiality and Public Records Laws*), Section 10 (*Data Security / Privacy*), or Section 14.4 (*Intellectual Property*); (d) damages occasioned by improper or wrongful termination of this Agreement, or abandonment of the work, by Service Provider, including the failure to provide Disengagement Assistance; or (e) a Party's gross negligence or willful misconduct.

### **16.3 Direct Damages**

Without limiting each Party's responsibility for direct damages under this Agreement, and without limiting each Party's right to claim other direct damages, the following shall be considered direct damages of the injured Party and shall not be considered consequential damages, to the extent they result from the other Party's failure to perform its obligations under this Agreement: (a) costs of recreating or reloading any of Customer Data that is lost, damaged or corrupted; (b) reasonable costs incurred in managing data security breaches (for a minimum of two (2) years from the occurrence of the data security breach), including forensic and investigative costs, legal expenses, costs of compliance with breach reporting Laws, and the cost of providing credit monitoring services and call center support, and taking other actions to address Customer concerns relating to the data security breach that are reasonable and customary at the time of the data security breach; (c) fines, penalties and other amounts incurred by JEA in connection a breach by Service Provider of its obligations under this Agreement with respect to data security or data privacy, including breaches of Section 5.2 (*Compliance*), Section 9 (*Confidentiality and Public Records Laws*) or Section 10 (*Data Security / Privacy*); (d) costs of implementing a workaround in

respect of a failure to provide the Services or having non-conforming Services remedied; and (e) costs incurred by JEA for services obtained from an alternate source.

#### **16.4 Force Majeure**

- (a) Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, terrorism, or any other similar cause beyond the reasonable control of such Party; *provided however*, that (i) the non-performing Party is without fault in causing such default or delay, and (ii) such default or delay could not have been prevented by reasonable precautions or activation of and adherence to the DR/BC Plan (as defined in Schedule A (Services)) and could not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans, or other means (each such event, a “Force Majeure Event”).
- (b) The affected Party will promptly notify the other Party of the circumstances causing its delay or failure to perform and of its plans and efforts to implement a work-around solution. For as long as such circumstances prevail, the Party whose performance is delayed or hindered will continue to use all Commercially Reasonable Efforts to recommence performance without delay. Service Provider shall not have the right to any additional payments from JEA for costs or expenses incurred by Service Provider as a result of any Force Majeure Event.
- (c) If a Force Majeure Event prevents performance of Services for more than five (5) days, then at JEA’s option: (i) JEA may remove the affected Services from the scope of this Agreement, in which case the Service Provider Services Charges under this Agreement will be equitably adjusted as necessary to reflect the removed Services; and/or (ii) until such time as Service Provider has fully restored performance of the affected Services, JEA may terminate this Agreement as of a date specified by JEA in a written notice of termination to Service Provider. If JEA elects option (ii), JEA will pay the Service Provider Services Charges for all Services actually performed in accordance with this Agreement, but will not be liable for payment of any early termination charges for the terminated Services. JEA shall not be required to pay Service Provider for Services that are not performed by Service Provider as a result of a Force Majeure Event.

### **17. DISPUTE RESOLUTION**

#### **17.1 Informal Dispute Resolution**

Upon the written request of either Party (the date on which the request is provided, the “Dispute Date”), the Parties may (but are not required to) attempt to resolve any dispute arising under or relating to this Agreement (a “Dispute”) through informal means as described in the Governance Framework.

#### **17.2 Formal Proceedings**

Litigation of a Dispute may be commenced by either Party at any time, including the earlier to occur of any of the following:

- (a) If the Parties pursue informal dispute resolution as provided in the Governance Framework, then upon the conclusion in good faith by either of the designated representatives that amicable resolution through continued negotiation of the matter does not appear likely; or
- (b) Commencement of litigation is deemed appropriate by a Party to avoid the expiration of an applicable limitations period or to preserve a superior position with respect to other creditors, or a Party makes a good faith determination that a breach of this Agreement by the other Party is such that a temporary restraining order or other injunctive relief is necessary.

### **17.3 Governing Law; Submission to Jurisdiction**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to conflicts of laws principles that would result in the application of the laws of any other jurisdiction. ANY ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE IN THE CIRCUIT COURT OF THE STATE OF FLORIDA IN DUVAL COUNTY, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT IN ANY SUCH ACTION. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT DELIVERED IN ACCORDANCE WITH SECTION 19.5 HEREOF SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION BROUGHT IN SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN SUCH COURT THAT ANY SUCH ACTION BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

### **17.4 Continued Performance During Dispute Resolution**

Except as otherwise directed by the other Party, each Party shall continue performing its obligations under this Agreement while a Dispute is being resolved except (and then only) to the extent the issue in Dispute precludes performance (a dispute over payment shall not be deemed to preclude performance) and without limiting either Party's right to terminate this Agreement.

## **18. TERMINATION**

### **18.1 Termination Generally**

Prior to its scheduled expiration, this Agreement may be terminated only as provided in this Section 18 or as expressly provided elsewhere in this Agreement. Except as this Agreement expressly provides otherwise, termination by a Party will be without prejudice to and with full reservation of any other rights and remedies available to either Party.

### **18.2 Termination for Cause by JEA**

JEA may, by giving written notice to Service Provider, terminate this Agreement, in whole or in part and at no cost or charge, as of a date specified in the notice of termination, if Service Provider commits:

- (a) a material breach of this Agreement that is capable of being cured within thirty (30) days after notice of breach from JEA to Service Provider, and such breach is not cured in such thirty (30) day period;
- (b) a material breach of this Agreement that is not subject to cure with due diligence within thirty (30) days after notice of breach from JEA to Service Provider;
- (c) numerous breaches of its duties or obligations under this Agreement that collectively constitute a material breach of this Agreement; or
- (d) a material breach of Service Provider of Section 5.2 (*Compliance*), Section 9 (*Confidentiality and Public Records Laws*) or Section 10 (*Data Security / Privacy*).

### **18.3 Termination of the Service Provider Franchise Agreement**

JEA may, by giving written notice to Service Provider, terminate this Agreement, in whole or in part and at no cost or charge, as of a date specified in the notice of termination, if the Service Provider Franchise Agreement is terminated for any reason.

### **18.4 Termination for Convenience by JEA**

JEA may terminate this Agreement for convenience, in whole or in part, with or without cause, at any time, upon at least thirty (30) days' advance written notice of termination to Service Provider. In such event, JEA shall be responsible to pay to Service Provider all outstanding Service Provider Services Charges as of the effective date of termination. JEA will have no liability to Service Provider for any cause whatsoever arising out of, or in connection with, such termination, including lost profits, lost opportunities, or resulting change in business condition.

### **18.5 Termination for Cause by Service Provider**

Service Provider may, by giving at least written notice to JEA, terminate this Agreement, as of a date specified in the notice of termination, if, and only if, JEA fails to pay to Service Provider material undisputed Service Provider Services Charges under this Agreement when due and does not cure such payment failure within sixty (60) days after receipt of written notice from Service Provider of the failure to make such payment.

### **18.6 Extension of Termination/Expiration Effective Date**

JEA may extend the effective date of expiration or termination of this Agreement, either in whole or in part, one or more times as it elects in its discretion, *provided* that (a) the total of all such extensions shall not exceed twelve (12) months following the effective date of expiration or termination in place immediately prior to the initial extension under this Section, and (b) JEA provides written notice to Service Provider of JEA's intent to extend at least fifteen (15) days prior to the then-existing expiration or termination.

### **18.7 Disengagement Assistance**

- (a) Commencing twelve (12) months prior to expiration of this Agreement or on such earlier date as JEA may request, or commencing upon any notice of termination (including notice based upon

default by JEA) of this Agreement, and continuing through the effective date of expiration or termination of this Agreement, and for such additional period thereafter as JEA may request, Service Provider shall provide to JEA, or at JEA's request to JEA's designee, without additional charge, all assistance reasonably requested by JEA to wind down the Services and, if applicable, facilitate the orderly transfer of the Services to JEA or one or more successor service providers designated by JEA, including a competitor of Service Provider ("Disengagement Assistance"). Supplier shall be obligated to provide Disengagement Assistance regardless of the reason for expiration or termination of this Agreement.

- (b) Without limiting the generality of the foregoing, Disengagement Assistance shall include: (i) assisting JEA in the development of a disengagement and winddown plan, including the winddown of billings and collections of Vogtle Energy Amounts under this Agreement; (ii) making available necessary personnel and resources to facilitate the disengagement; (iii) assisting JEA in the conversion and transfer of all Joint Customer Data and JEA-Specific Customer Data to JEA or a successor service provider; and (iv) delivering to each of JEA and its designees the most current copies of all delivered or in-progress Deliverables. For clarity, Supplier will continue to provide, as part of Disengagement Assistance, billings and collections of Vogtle Energy Amounts for JEA after the expiration or termination of this Agreement until there is a final reconciliation and settlement approved in writing by JEA of all Vogtle Energy Amounts.
- (c) Notwithstanding anything to the contrary in this Agreement, if JEA and Service Provider continue to sell Vogtle Energy in the Service Territory following the expiration or termination of this Agreement, Service Provider will continue to furnish Billing Determinants to JEA, without charge, in the same manner and at the same frequency as provided prior to expiration or termination, for as long as such information is requested by JEA.
- (d) Service Provider acknowledges that, if it breaches (or attempts or threatens to breach) its obligation to provide Disengagement Assistance, JEA is likely to be irreparably harmed. In such a circumstance, JEA may proceed directly to court. If a court of competent jurisdiction should find that Service Provider has breached (or attempted or threatened to breach) any such obligations, Service Provider agrees that, without any additional findings of irreparable injury or similar procedural requirements to obtaining injunctive relief (including the posting of bond), it shall not oppose the entry of an appropriate order compelling performance by Service Provider and restraining it from any further breaches (or attempted or threatened breaches).

## **19. MISCELLANEOUS**

### **19.1 Assignment**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign or delegate its rights or obligations hereunder without the prior written consent of the other Party, except that, without the consent of Service Provider, JEA may assign and delegate its rights, obligations and interests hereunder, or transfer such rights, obligations and interests by operation of law, to any other governmental entity or independent agency of the COJ, *provided* that the successor entity gives reasonable assurances to Service Provider that it will be able to fulfill JEA's obligations hereunder. No assignment shall relieve the assigning Party of any of its obligations hereunder.

## **19.2 Independent Contractors**

Service Provider, in furnishing the Services, is acting as an independent contractor, and Service Provider has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Service Provider under this Agreement. This Agreement shall not be construed as constituting Service Provider and JEA as partners, joint venturers, or agents or to create any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Party. None of Service Provider's employees shall be deemed employees of JEA, and Service Provider shall be solely responsible for reporting and payment of all wages, unemployment, and social security, including contributions from them when required by law.

## **19.3 Entire Agreement**

This Agreement, when read in conjunction with the Purchase Agreement and the Ancillary Documents, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior or contemporaneous proposals, understandings, representations, conditions, and agreements, and all other communications, oral or written, between the Parties relating to such subject matter.

## **19.4 Amendment and Modification; Waiver**

This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each of the Parties. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **19.5 Notice**

Any notice, request, instruction or other document to be given hereunder by any Party to the others shall be in writing and delivered personally or sent by (a) registered or certified mail, postage prepaid, (b) email or (c) overnight courier:

If to JEA: c/o the Office of the General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attention: General Counsel  
E-mail: [•]



with a copy (which shall not constitute notice) to:

Pillsbury Winthrop Shaw Pittman LLP  
31 West 52<sup>nd</sup> Street, New York, NY 10019-6131  
Attention: Stephen B. Amdur  
Jarrod D. Murphy  
E-mail: stephen.amdur@pillsburylaw.com  
jarrod.murphy@pillsburylaw.com

If to Service Provider:

[•]  
Attention: [•]  
E-mail: [•]

with a copy (which shall not constitute notice) to:

[•]  
Attention: [•]  
E-mail: [•]

or to such other persons or addresses as may be designated in writing by the Party to receive such communication as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving Party (i) upon actual receipt, if delivered personally; (ii) three (3) Business Days after deposit in the mail, if sent by registered or certified mail; (iii) upon receipt if sent by email and received by 5:00 pm (Eastern Time), on a Business Day (otherwise the next Business Day) (*provided* that if given by email such notice, request, instruction or other document shall be followed up within one (1) Business Day by dispatch pursuant to one of the other methods described herein); or (iv) on the next Business Day after deposit with an overnight courier, if sent by an overnight courier.

## **19.6 Cumulative Remedies**

Except as otherwise expressly provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise.

## **19.7 Severability**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

## **19.8 Survival**

Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement (including Sections 6, 9, 10, 11, 12, 16, 17, 18 and 19) will survive any termination or expiration of this Agreement and continue in full force and effect.

## **19.9 Absence of Third Party Beneficiaries**

Except as expressly provided in the Parties' respective indemnification obligations hereunder, this Agreement is entered into solely between, and may be enforced only by, JEA and Service Provider, and this Agreement shall not be deemed to create any rights in third parties, including Subcontractors, suppliers and Customers of a Party, or to create any obligations of a Party to any such third parties. There are no third party beneficiaries of this Agreement, whether intended, incidental, or otherwise.

## **19.10 Meetings and Public Hearings**

Service Provider will, upon request by JEA, attend all meetings and public hearings as required, in any capacity, as directed by JEA.

## **19.11 Nonexclusive**

Notwithstanding anything to the contrary herein, this Agreement is “non-exclusive” and JEA reserves the right, in its sole discretion, to retain other companies to perform the Services, and/or JEA may self-perform the Services itself.

## **19.12 Time of Essence**

For every material requirement of this Agreement, time is of the essence.

## **19.13 Further Assurances**

Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other Party in order to give full effect to this Agreement. JEA and Service Provider, in order to carry out this Agreement, each shall use Commercially Reasonable Efforts to provide such information, execute such further instruments and documents, and take such actions, as may be reasonably requested by the other Party and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

## **19.14 Rules of Construction**

- (a) Each Party acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged between the Parties shall be deemed the work product of the Parties and may not be construed against any Party by reason of its preparation. Accordingly, any rule of Law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted it is of no application and is hereby expressly waived.

- (b) The section headings in this Agreement are intended to be for reference purposes only and shall not be construed to modify or restrict any of the terms or provisions of this Agreement.
- (c) Where there is similar, but not identical, construction of phrases, sentences, or clauses of this Agreement no implication is made that a “negative pregnant” is intended and they shall each be construed separately and independently, in accordance with their plain meaning.
- (d) Unless the context requires otherwise, (i) “including” (and any of its derivative forms) means including but not limited to, (ii) “may” means has the right, but not the obligation to do something and “may not” means does not have the right to do something, (iii) “will” and “shall” are expressions of command, not merely expressions of future intent or expectation, and (iv) “written” or “in writing” is used for emphasis in certain circumstances, but that will not derogate from the general application of the notice requirements set forth in this Agreement in those and other circumstances.

### **19.15 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile, e-mail or other customary means of electronic transmission shall be deemed to have the same legal effect as delivery of a manually executed counterpart hereof.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Service Provider and JEA have each caused this Agreement to be signed and delivered by its duly authorized representative as of the Effective Date.

**JEA**

**[SERVICE PROVIDER]**

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

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

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

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

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## **GLOSSARY**

“Action” means any claim, action, cause of action, demand, directive, lawsuit, appeal, arbitration, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity, in each case, by or before a Governmental Authority.

“Affiliate” shall mean as to any Person, any other Person that, directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Ancillary Documents” shall mean have the meaning set forth in the Purchase Agreement.

“Billing Determinants” shall mean any information requested by JEA from Service Provider at any time to assist JEA in establishing Vogtle Energy Rates.

“Business Day” shall means any date except a Saturday, Sunday or federal holiday and any day which is a legal holiday under the law of the State of Florida or a day on which banking institutions located in the State of New York are authorized or required by Law to close.

“Change” shall mean a material change to the scope of, charges for, or other contractual commitments of a Party with respect to, the Services being provided by Service Provider.

“Change Order” shall mean the document setting forth the terms of the Parties’ agreement regarding a Change or New Service, as the case may be.

“Commercially Reasonable Efforts” shall mean taking such steps and performing in such a manner as a well-managed business would undertake where such business was acting in a determined, prudent, and reasonable manner to achieve a particular desired result for its own benefit.

“Consolidated Bill” shall mean a consolidated bill processed and prepared by Service Provider that includes Vogtle Energy Customer Charges and Service Provider Energy Customer Charges.

“Contract Year” shall mean each one-year period during the Term, starting on the Effective Date of the Agreement.

“Customer Data” shall mean all data and information (including Personally Identifiable Information), in any form, relating in any manner to a Customer (including Vogtle Energy Customer Charges and Service Provider Energy Customer Charges), that is furnished, generated, transmitted, transferred or used in connection with this Agreement, and any data or information derived therefrom (including any aggregation or extrapolation of such data or information).

“Deliverable” shall mean the work product to be provided by Service Provider in performing the Services.

“Equipment” shall mean the computer and telecommunications equipment used in connection with the performance of the Services.

“Florida PSC” shall mean the Florida Public Service Commission.

“Governance Framework” shall mean the framework for the Parties to govern their relationship under this Agreement and other Ancillary Document, as set forth in [•] of even date herewith between the Parties.<sup>3</sup>

“Governmental Authority” shall mean any federal, state or local, domestic or foreign governmental or regulatory authority, agency, commission, body, arbitrator, court, regional reliability entity, or any other legislative, executive or judicial governmental authority.

“Independent IP” shall mean any Material (i) owned or licensed by a Party or its Affiliates as of the Effective Date or (ii) created subsequently by or on behalf of a Party or its Affiliates outside and independent of this Agreement and any other agreements between the Parties or their respective Affiliates, and that is made available by a Party to the other Party in connection with the Agreement.

“Intellectual Property Rights” shall mean (a) trade names, trademarks and service marks, domain names, trade dress and similar rights, and applications to register any of the foregoing; (b) patents and patent applications; (c) copyrights (whether registered or unregistered) and applications for registration; and (d) confidential and proprietary information, including trade secrets and know-how.

“JEA-Specific Customer Data” shall mean Customer Data that is specific to JEA’s relationship with a Customer.

“Joint Customer Data” shall mean any Customer Data that is not JEA-Specific Customer Data or Service Provider-Specific Customer Data.

“Law” shall mean any federal, state, local or foreign law, statute or ordinance, common law or any rule, regulation, legally binding standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement or authorization of any Governmental Authority. Without limiting the generality of the foregoing, the term “Law” shall include applicable regulations and other applicable requirements of the Florida PSC and the COJ.

“Losses” shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

“Malware” shall mean Software code that is: (i) unauthorized program code or programming instruction(s) or set(s) of instructions intentionally designed to disrupt, disable, harm, monitor, interfere with or otherwise adversely affect computer programs, data files or operations (excluding software keys); or (ii) other code typically described as a virus, Trojan horse, worm, rootkit, spyware, adware, botnet, back door or other type of unauthorized code.

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<sup>3</sup> Note to Respondent: The specific documentation to be used for the Governance Framework will be discussed and agreed by the Parties during final contract negotiations of this Agreement and the other Ancillary Documents.

“Material” shall mean all systems, software (object code and source code), technology, documentation, reports, notes, tools, methods, methodologies, processes, procedures, workflows, inventions, forms, data, data formats, data compilations, program names, designs, drawings, videos and other material created, furnished or made available in connection with this Agreement.

“New Services” shall mean Functions that JEA requests Service Provider to perform that are materially different from, and in addition to, the Services then being provided under this Agreement.

“Party” shall mean either Service Provider or JEA, as appropriate, and “Parties” means Service Provider and JEA, collectively.

“Person” shall mean an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“Personally Identifiable Information” or “PII” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural, or social identity. Without limiting the generality of the foregoing, PII includes the first and last name or first initial and last name of a natural person combined with one or more of the following: (i) government-issued identification number (including driver’s license number, national, provincial or state ID card number, military ID card number, and passport number); or (ii) financial account number (including credit card number, debit card number, and bank account number).

“Privacy Law” shall mean any Law of any domestic or foreign jurisdiction that relates to the confidentiality, security and protection of Personally Identifiable Information, electronic data privacy, trans-border data flow or data protection, including the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act, and the Florida Information Protection Act.

“Project” or “Project Services” shall mean a discrete unit of discretionary, non-recurring work that is not an inherent, necessary or customary part of any recurring Services provided under this Agreement, and is not required for proper performance or provision of such recurring Services in accordance with this Agreement. A Project typically consists of a group of related, phased activities that may span multiple days, weeks or months that are documented through written project schedules with defined milestones and Deliverables.

“Service Delivery Center” shall mean any facility of Service Provider or a Subcontractor at which Services under the Agreement are performed.

“Service Delivery Environment” shall mean, collectively, the Equipment, Software, systems, communications networks and connectivity, facilities, and other infrastructure components owned, controlled, or operated by Service Provider (or its Subcontractors) and used by Service Provider Personnel in providing Services under the Agreement.

“Service Provider Energy Charges” shall mean Service Provider’s charges to Customers for Service Provider Energy.

“Service Provider Energy Customer Charges” shall mean Service Provider’s charges to Customers for Service Provider Energy.

“Service Provider Energy Rates” shall mean the rates and other amounts to be applied in calculating the Service Provider Energy Charges included on Consolidated Bills.

“Service Provider Personnel” shall mean any and all personnel furnished or engaged by Service Provider to perform any part of the Services, including employees and independent contractors of Service Provider and its Subcontractors.

“Service Provider-Specific Customer Data” shall mean Customer Data that is specific to Service Provider’s relationship with a Customer.

“Service Schedule” has the meaning set forth in Section 1.1 (Introduction) to Schedule A (Services).

“Services” has the meaning set forth in Section 4 of the Agreement.

“Software” shall mean computer software, whether applications software or systems software.

“Statement of Work” or “SOW” shall mean a document (or set of documents) prepared by the Parties setting forth Project Services to be provided by Service Provider, including the scope of such Services, Deliverables, performance requirements and associated charges.

“Subcontractor” shall mean any third party (including Affiliates of Service Provider) to whom Service Provider has delegated the performance any Function(s) constituting a part of the Services (including any entity to whom a Subcontractor further subcontracts or otherwise sub-delegates any of its subcontracted duties or obligations).

“Term” has the meaning set forth in Section 2 of the Agreement.

“Vogtle Energy Amounts” shall mean the Vogtle Energy Customer Charges and the Vogtle Energy Customer Payments.

“Vogtle Energy Customer Charges” shall mean JEA’s charges to Customers for Vogtle Energy cost to serve.

“Vogtle Energy Customer Payments” shall mean all amounts received from Customers in respect of the Vogtle Energy Customer Charges.

“Vogtle Energy Rates” shall mean the rates and other amounts to be applied in calculating the Vogtle Energy Customer Charges included on Consolidated Bills, as provided by JEA to Service Provider from time to time.