

## **2) Contract Terms and Conditions**

### **2.1) Contract Document Terms and Conditions**

Section 2 of this Solicitation contains JEA's general terms and conditions that will govern the Contract awarded under this Solicitation. The Contract Documents will incorporate by reference all of the terms and conditions of this Solicitation, including all Scope of Work, Appendices, Exhibits, Schedules and Forms included with this Solicitation. In addition to the terms and conditions set forth in this Section 2, JEA shall provide project-specific terms and conditions to the successful Respondent upon award.

### **2.2) Definitions**

Capitalized words and terms used in this Solicitation shall have the meaning given to them in this Section 2. The Technical Specifications to this Solicitation may define additional words and terms where necessary to clarify the Work. Unless otherwise stated in this Solicitation or the Contract Documents, definitions set forth in Technical Specifications shall apply only within the Technical Specifications.

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation", and the terms "include", "includes" and "included" have similar meanings. Any reference in the Contract to any other agreement is deemed to include a reference to that other agreement, as amended, supplemented or restated from time to time. Any reference in the Contract to "all applicable laws" or "all applicable laws, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.

#### **Acceptance**

JEA's written notice by the Project Manager to the Company that all Work as specified in the Contract, or a portion of the Work as specified in a Task or Work Order, has been completed to JEA's satisfaction. Approval or recognition of the Company meeting a Milestone or interim step does not constitute Acceptance of that portion of Work. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

**Access Days** means any twenty-four (24) hour period during which Supplier is granted reasonably unimpeded access to the Equipment for the purposes of remedying the Equipment to achieve Substantial Completion; provided, however, that if the Supplier is provided such access and Supplier elects not to utilize all of the available hours of such day, then such day will nonetheless still be counted as an Access Day. Supplier is only permitted to perform Equipment tuning and dynamic checks as necessary to perform the required Performance Tests, and to remedy Equipment defects during this period.

#### **Anniversary Date**

The date which is twelve (12) months after the effective date of the Contract, and each date which is twelve (12) months after an Anniversary Date that occurs while the Contract is in effect.

#### **Applicable Laws**

All local, state, and federal laws, statutes, codes, ordinances, rules, and regulations in effect at the time the Work is awarded under this Agreement.

#### **Bid Validity**

The timeframe in which a bid shall not be modified.

### **Change Order**

A document providing the written modification to a previously issued contract Document, adjusting Contract Price, scope of work, or completion time.

### **Claim**

Any claim, liability, loss, demand, damage, lien, cause of action of any kind, obligation, responsibility, cost, expense, royalty, fee, assessment, penalty, fine, judgment, interest, or award, pending or threatened, whether arising by law, contract, tort, voluntary settlement, or otherwise.

### **Company**

The legal entity with whom JEA executes this Contract.

### **Company Representative**

The individual responsible for representing the Company in all activities concerning the fulfillment and administration of the Contract. The Company shall provide JEA with the name and responsibilities of the Company Representative, in writing after Award of the Contract and before starting the Work under the Contract. Should the Company need to change the Company Representative, the Company shall promptly notify JEA in writing of the change.

### **Contract**

The written agreement executed by JEA and the Company that describes the rights and obligations of JEA and the Company with respect to the Work and incorporates all of the Contract Documents.

### **Contract Amendment**

A written document signed by JEA and the Company issued after the execution of the Contract which authorizes an addition, deletion or revision of the Scope of Work, or the Contract Price, the Term or any other provision of the Contract.

### **Contract Documents**

The documents that govern the performance of the Work by the Company. The Contract Documents consist of the following documents, which shall have priority in the order listed below, and which are incorporated herein by reference:

- a) Fully executed Contract Amendments, Change Orders, and/or Purchase Orders;
- b) Executed Contract Documents, including all exhibits and/or attachments thereto;
- c) The Solicitation, including all appendices, exhibits, attachments, and issued addenda;
- d) All documents submitted by Company in response to the Solicitation;
- e) JEA's Purchase Order

Documents not enumerated in this section are not Contract Documents and do not form part of this Agreement. No terms, conditions, limitations, or exclusions in Company's proposal documents or invoices shall be binding upon JEA, and such terms, conditions, limitations, or exclusions shall not become part of the Contract Documents.

**Contract Price**

The total amount payable by JEA to the Company during the Term in accordance with the terms and conditions of the Contract.

**Contract Time**

The number of calendar days or the period of time from when the written Purchase Order is issued to the Company, to the date Company has agreed to complete the Work, as set forth in the Contract Documents.

**Defect**

Work that fails to reach Acceptance, or Work that fails meet the requirements of any test, inspection or approval required or permitted by the Contract Documents, and any Work that meets the requirements of any test or approval, but nevertheless does not meet the requirements of the Contract Documents.

**Delivery**

Delivery of Equipment shall be made DDP JEA's Facility (Incoterms 2020), unless otherwise agreed in writing between the Parties. Company shall be responsible for complying with all applicable laws and regulations necessary for the import of the Equipment into the United States. In the event some or all of the Equipment is exempt from duties or fees associated with import, JEA shall cooperate with Company to provide any documentation necessary to obtain such exemption.

**Equipment**

All equipment included for one Multi Shaft Power Island configured for fast start to MECL performance as more particularly described in the Technical Specifications and Company's Proposal.

**Final Completion**

With respect to Company's obligations to JEA under this Contract, Final Completion of the Work shall be deemed to have occurred upon completion of all of Supplier's obligations under this Contract, including, but not limited to the following:

- (a) JEA has received all licenses, and approvals required to be obtained and submitted by Supplier;
- (b) JEA has received all Specifications and Drawings, including record and as-built Drawings, test data, and other technical information of the types the Company is required to provide under this Contract;
- (c) JEA agrees that Supplier successfully completed all tests Supplier is required to perform under this Contract and under Applicable Laws and standards and that Supplier provided all required regulatory body certificates to JEA;
- (d) JEA received all required operation and maintenance manuals Supplier is required to provide under this Contract;
- (e) Supplier provided and delivered to the JEA all spare parts and all special tools as required by this Purchase Order;
- (f) the Work is complete and complies with all Applicable Laws and the Contract Documents, including the Specifications and Drawings;

- (g) Supplier has complied with all requirements with respect to releases of claims;
- (h) Supplier has met all requirements as set forth in Section 01100.8 of the Technical Specifications;
- (i) JEA has received any liquidated damage payments that may be due from Supplier under this Contract; and
- (j) JEA has accepted the Work in writing.

#### **Force Majeure Event**

An event that is not reasonably foreseeable and is beyond the control of both the Company and JEA, including act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of JEA to secure approval, validation, or sale of bonds; inability of JEA or the Company to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics or pandemics declared by public health authorities; quarantines; fires; hurricanes, tornados, floods; other natural disasters; or strikes. In the case of epidemic or pandemic, the Parties stipulate that a Force Majeure Event shall not include any epidemic or pandemic that is ongoing as of the date of execution of this Agreement. For the avoidance of doubt, a Force Majeure Event shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

#### **Guaranteed Equipment Delivery Date**

The date on which Company guarantees Delivery of all Equipment purchased under this Contract, which date shall be no later than the following:

	<b>Deliveries</b>	<b>Date</b>
1	HRSG Steel Casing	March 1 2029
2	HRSG Modules and Drums	May 1 2029
3	Steam Turbine and Generator	July 1 2029
4	Combustion Turbine and Generator	July 1 2029

#### **Guaranteed Submittal Delivery Date**

The date on which Company guarantees that all documents identified in the Schedule of Submittals attached to the Technical Specifications shall be delivered to JEA such that JEA able to determine that the Work will meet the requirements of the Contract Documents, which date shall be no later than July 1, 2029.

#### **Guaranteed Substantial Completion Date**

The date on which Company guarantees that all requirements for Substantial Completion shall be met, which date shall be no later than December 30, 2030.

#### **Holiday**

Any public holiday observed by JEA or the City of Jacksonville. As of the effective date of this Agreement, the term “Holiday” includes the following:

- a) New Year’s Day
- b) Martin Luther King, Jr. Day
- c) Presidents’ Day
- d) Memorial Day
- e) Juneteenth
- f) Independence Day
- g) Labor Day
- h) Veterans Day
- i) Thanksgiving Day
- j) Day after Thanksgiving
- k) Christmas Eve
- l) Christmas Day

### **Invoice**

A document issued by Company to JEA seeking payment for all or a portion of the Work in accordance with the Contract Documents.

### **JEA Project Manager**

The individual assigned by JEA to coordinate with the Company and administer the Contract. It shall be the Company’s responsibility to coordinate all Work-related activities with the JEA Project Manager. The JEA Project Manager shall perform day-to-day administration and liaison functions, and make available to the Company appropriate personnel, to the extent practical, and to furnish records and available data necessary to conduct the Work. The JEA Representative will also authorize the Company to perform work under the Contract. The term “JEA Project Manager” shall also include any person designated by JEA to perform such functions on behalf of the JEA Project Manager.

### **Liquidated Damages**

Damages incurred by JEA as a result of Company’s failure to fulfill the requirements of this Contract where such damages are difficult to ascertain with certainty. Liquidated Damages include the following:

- a) Submittal Delay Liquidated Damages;
- b) Equipment Delivery Delay Liquidated Damages;
- c) Substantial Completion Delay Liquidated Damages;
- d) Guaranteed Quantity Liquidated Damages; and
- e) Performance Liquidated Damages.

Liquidated Damages are not assessed as a penalty, but rather are a reasonable estimate of the harm to JEA as a result of Company’s failure to perform the obligations to which the Liquidated Damages apply.

### **Major Component**

A component described in Company’s equipment delivery schedules set forth in [Article [X] Delivery Schedule defined prior to contract].

## Milestone

A point in time representing an intermediate event in the Work. A Milestone shall be capable of validation by meeting all of the items prescribed in a defining checklist as agreed to in writing by the parties.

## Minor Component

Any component that is not a Major Component.

## Minimum Performance Levels

The Minimum Performance Levels required to achieve Substantial Completion are as follows:

	<b>Average Ambient Conditions</b>	<b>Hot Day Ambient Conditions</b>
Guaranteed Equipment Net Electrical Output	[97%] of the Guaranteed Equipment Net Electrical Output	[97%] of the Guaranteed Equipment Net Electrical Output
Guaranteed Equipment Net Heat Rate	[103%] of the Guaranteed Equipment Net Heat Rate	[103%] of the Guaranteed Equipment Net Heat Rate
Guaranteed Equipment Ammonia Consumption	[120%] of the Guaranteed Equipment Ammonia Consumption	[120%] of the Guaranteed Equipment Ammonia Consumption
Guaranteed Equipment Minimum Emissions Compliant Load (MECL)	[103%] of the Guaranteed Equipment MECL	[103%] of the Guaranteed Equipment MECL
Guaranteed Equipment MECL Heat Rate	[103%] of the Guaranteed Equipment MECL Heat Rate	[103%] of the Guaranteed Equipment MECL Heat Rate
Guaranteed CTG Demineralized Water Injection Rate	[110%] of the Guaranteed CTG Demineralized Water Injection Rate	[110%] of the Guaranteed CTG Demineralized Water Injection Rate
Guaranteed CTG Inlet Air Chiller Duty	[110%] of the Guaranteed CTG Inlet Air Chiller Duty	[110%] of the Guaranteed CTG Inlet Air Chiller Duty
Guaranteed Chilled Water Flowrate	[110%] of the Guaranteed Chilled Water Flowrate	[110%] of the Guaranteed Chilled Water Flowrate
Guaranteed Equipment Ramp Rate	Must Meet	Must Meet
Guaranteed Steady State Emissions	Must Meet	Must Meet
Startup and Shutdown Emissions Guarantees	Must Meet	Must Meet
Near Field Noise Levels	Must Meet	Must Meet
Reliability Guarantee	Must Meet	Must Meet

Note: The Minimum Performance Levels above apply for both natural gas and fuel oil, where applicable.

### **Notice to Proceed**

A written notice issued by JEA authorizing the Company to begin work in accordance with the terms of the Contract. A Notice to Proceed may be issued on a limited basis (Limited Notice to Proceed) in which case the Company's authorization to begin work shall be limited to the work described in the Limited Notice to Proceed. A Notice to Proceed without limitations may also be referred to herein as a Full Notice to Proceed.

### **Performance Guarantees**

The Performance Guarantees are specified in Section 01100.3.1 of the Technical Specifications.

### **Performance Tests**

The Performance Tests are specified in Section 01100.3.3 of the Technical Specifications.

### **Purchase Order**

A commercial document issued by JEA, authorizing work and indicating types, quantities, and agreed prices for products or services the Company will provide to JEA. The words "Purchase Order" shall be clearly marked across the top of the document. The Purchase Order shall include a PO number used for reference and invoicing purposes, an authorized JEA signature, and shall state the dollar amount of the lawfully appropriated funds authorized to be expended by JEA. A Purchase Order may also be referred to as a "PO".

### **Ready for First Fire**

Ready for First Fire means that stage in the progress of the Work with respect to the Equipment when the following have occurred: (i) JEA has installed the Equipment; (ii) JEA has performed the required cold commissioning activities for the Equipment; (iii) the tasks set forth in the Ready-For-First-Fire checklist set forth in Exhibit [to be provided by Company] have been completed; and (iv) fuel is available for the Equipment to accomplish ignition of the gas turbines for the first time. **Subcontractor**

Any entity or individual engaged by Company to provide services to JEA for which Company is contractually obligated, responsible, and liable to provide and perform under this Contract.

### **Substantial Completion**

With respect to Company's obligations to JEA under this Contract, Substantial Completion shall mean that all of the following requirements of the Work have been achieved: (i) all Performance Tests conditional to Substantial Completion as required in the Contract Documents have been successfully completed and passed, and Company has completed making necessary and desirable system adjustments identified during the start-up and testing process conditional to the safe and reliable operation of the Equipment; (ii) all Performance Guarantees conditional to Substantial Completion as required in the Contract Documents have been satisfied; (iii) the Work is completed and capable of being operated in the normal course of business in compliance with Applicable Laws and Company's applicable written procedures and requirements, except punch list items, and Company has submitted and JEA has approved the punch list for Company's Work in accordance with the Contract Documents; (iv) Company has provided to JEA preliminary operating and maintenance manuals in accordance with the Contract

Documents; (v) Company has delivered to JEA the special tools in accordance with the Contract Documents; (vi) Company has provided JEA copies of all technical information letters applicable to the Equipment and details regarding their implementation in accordance with the Contract Documents; (vii) if and to the extent that Company has utilized any of JEA's spare parts during Company's commissioning and Performance Testing, Company has either replaced such spare parts or placed an order for such spare parts (on an expedited basis); (viii) Company has completed all training of JEA's personnel in accordance with the Contract Documents; (ix) all Submittal Delay Liquidated Damages, Equipment Delivery Delay Liquidated Damages, and Substantial Completion Delay Liquidated Damages incurred by Company through the date of Substantial Completion as required under the Contract Documents have been paid to JEA; (x) Company has delivered to JEA Letters of Credit in a form acceptable to JEA in accordance with the Contract Documents; and, (xi) Company has delivered to JEA all lien waivers in accordance with the Contract Documents to be delivered as of such date.

### **Supplier**

Any entity or individual that provides supplies or materials in connection with the Work.

### **Unit Price**

The Company charge to JEA, rounded to the nearest cent, for the performance of each unit of Work or Services as defined in the Contract Documents.

### **Work**

The scope of services described in the Contract Documents or a subsequently issued Change Order, including any actions, products, documentation, electronic programs, reports, testing, transport, administration, management, services, materials, tools, equipment, and other deliverables to be furnished or performed by the Company under the Contract, together with any and all additional such deliverables that are not specifically provided in the Contract, but can be reasonably inferred as necessary to complete the Company's obligations under the Contract.

### **2.3) Performance of Work**

Company shall perform the Work as set forth in the Contract Documents, including all necessary, incidental, and related activities required for full performance under this Contract. Services provided by the Company shall be under the general direction of the JEA Project Manager, who shall act as JEA's representative during the term of this Contract. Company shall provide and perform all Work under this Contract in accordance with generally accepted standards of professional practice and in accordance with all Applicable Laws and the requirements of any applicable grant agreements. Company shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, reports, memoranda, other documents and services, and materials performed, provided, or furnished by Company. Company shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work resulting from the negligent acts, errors, omissions, or intentional misconduct of Company.

Review, approval, or acceptance by JEA of data, studies, reports, memoranda, incidental professional services, and materials furnished by Company under this Contract shall not relieve Company of its responsibility for the adequacy, completeness, and accuracy of the Work and materials. Neither JEA's review, approval, acceptance of, or payment for any part of the Work shall be construed to operate as a waiver of any of JEA's rights under this Contract or any cause of action it may have arising out of the performance under this Contract.



### **2.3.1) Company Review of Project Requirements**

The Company shall review all requirements and specifications prior to commencing Work. The Company represents that its total Response Price and the schedule for the execution of the Work are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

The Company shall immediately notify the Project Manager in writing of any conflict with applicable law, or any error, inconsistency or omission it may discover. JEA will promptly review the alleged conflicts, errors, inconsistencies or omissions, and issue a Change Order or Contract Amendment as appropriate if JEA is in agreement with the alleged conflict, and issue revised specifications. Any Work the Company performs prior to receipt of approved Change Order will be at the Company's sole risk.

### **2.3.2) Company Employees, Subcontractors, and Agents**

**2.3.2.1)** All employees, subcontractors and agents of the Company performing work under the Contract shall be properly trained and qualified. Upon request, Company shall furnish a copy of a technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of JEA and with all controlling laws and regulations relevant to the services they are providing under the Contract.

**2.3.2.2)** The Company shall comply with all licensing, registration and certification requirements pursuant to applicable laws, rules and regulations. The Company shall secure all licenses, registrations and certifications as required for the performance of the Work and shall pay all fees associated with securing them. The Company shall produce written evidence of licenses and other certifications immediately upon request from JEA.

**2.3.2.3)** Unless otherwise agreed in writing by the parties, all Work shall be performed by employees: (a.) who are full time employees of Company or approved subcontractors; (b.) qualified to perform the Services, and (c.) fluent in the English language (to the extent that such employees or subcontractors are working at the JEA project site). Subsequent to the execution of this Contract, Company shall notify the JEA Project Manager in writing prior to making changes in professional personnel assigned, or to be assigned, as provided in Company's Response to manage or perform Work under this Contract. The JEA Project Manager shall have the right to reject any personnel assigned by Company to perform work under this Contract. If the right of rejection is exercised by the JEA Project Manager, Company shall submit replacement of professional personnel to the JEA Project Manager for approval. The JEA Project Manager shall have the right to require the removal of Company's previously assigned personnel and Company shall promptly replace the same, subject to the JEA Project Manager's approval at no cost to JEA.

**2.3.2.4)** The Company shall take all actions necessary to ensure that the Company's employees, subcontractors and agents are not considered employees of JEA. Such actions include, but are not limited to, ensuring that Company's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than JEA.

**2.3.2.5)** The Company's employment of unauthorized aliens shall be a violation of section 274AI of the Immigration and Nationality Act and a breach of the provisions of the Contract. The Company and all Subcontractors must enroll and participate in the federal E-Verify Program prior the performance of any part of the Work and appropriately screen all individuals performing any part of the Work. Proof of enrollment and participation must be provided to the JEA Representative upon request.

## **2.4) Security**

### **2.4.1) JEA Access Requirements**

If the Work requires an individual to access JEA's facilities or properties, the Project Manager or other JEA Representative will determine whether or not such individual must have a JEA access badge prior to accessing JEA facilities or properties. This determination will be made based upon the business need and in accordance with JEA's applicable security policies and procedures. In no event shall individuals share JEA access badges.

Individuals issued an access badge must adhere to all of JEA's security badge usage policies and procedures. Violation of the provisions of this Section or any of JEA's security policies may result in immediate termination of the Contract.

In particular, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an individual leaves the Company or any subcontractor. The Company will bear any costs associated with issuance, and production, of any lost or stolen JEA access badge. The Company is required to report all badge loss, or termination, notifications to the JEA Representative and JEA Security. JEA Security can be contacted at (904) 665-8200 and security@jea.com. Failure to make the reports required in this paragraph may result in significant regulatory fines and penalties. The Company shall be responsible for all such costs and JEA shall have the right to immediately terminate the Contract.

The provisions in this Section shall apply to Company's Subcontractors, Suppliers, and other agents performing any of the Work and shall be included in Company's contracts with its Subcontractors and Suppliers for any part of the Work.

### **2.4.2) Background Checks and Other Security Policies**

The Company, at its sole expense, shall conduct appropriate background checks and screen each individual who will provide services to JEA as a part of the Work or who will have access to JEA's computer systems, either through on-site or remote access. The minimum background screening process shall include, but not be limited to, the following checks:

- i. Social Security Number (SSN) Trace;
- ii. Criminal Records (County and State Criminal Felony and Misdemeanor, National Criminal Database, Federal Criminal);
- iii. Background checks undertaken by JEA for its own employees who have duties similar to the duties of the Company's employee(s); and
- iv. Background checks which may be required pursuant to applicable background screening policies adopted by JEA from time to time.

The background screening must be conducted prior to the employee providing any services or performing any Work for JEA. JEA has the right to require more regular background checks and has the right to require that the Company provide background check results to JEA. JEA shall have the right to audit the Company's background check process to ensure compliance with JEA standards. If, at any time,

the Company discovers that an individual providing services to JEA as a part of the Work has a criminal record that includes a felony or misdemeanor, the Company shall immediately inform JEA and JEA will assess the circumstances surrounding the conviction, time frame, nature, gravity and relevancy of the conviction to the job duties. JEA, in its sole discretion, shall determine whether the individual will be placed on, or terminated from, a JEA assignment. Additionally, all individuals providing services to JEA shall have the responsibility to self-disclose any misdemeanor or felony conviction that occurs while assigned to JEA within three business days of the conviction. If the Company learns of any such conviction, the Company shall notify JEA immediately. The Company shall comply with all applicable laws and regulations governing the conduct of background checks, including but not limited to the Fair Credit Reporting Act (FCRA). Failure of the Company to comply with the terms of this paragraph may result in immediate termination of its contract with JEA.

#### **2.4.3) JEA Critical Infrastructure Protection (CIP)**

Pursuant to federal regulations, JEA is required to implement Critical Infrastructure Protection (CIP) and comply with NERC/FERC reliability standards for identified assets (collectively the "Assets"). Assets include both physical and cyber Assets that are essential for JEA to maintain the integrity of the bulk electric system. Therefore, the Company must ensure that all individuals that have access to any Assets meet all requirements of JEA, including, but not limited to the background screenings required by this Contract, prior to the individual performing any services for JEA. The specific Assets an individual will access will determine the specific JEA training and criminal background check that will be required before an employee will be approved to perform services for JEA. The Company will be responsible for all labor costs associated with completion of the training. The provisions of this Section and the immediately preceding section shall apply to all of the Company's Subcontractors and agents, and shall be included in Company's contracts with its Subcontractors for any part of the Work. JEA reserves the right to modify these terms if the applicable regulations change or additional regulations become applicable. JEA will provide sufficient notice in advance for Company to comply with JEA's requirements related to the updated regulations.

If applicable for all or any part of the Work, Company must also be able to certify and demonstrate to JEA's satisfaction that Company is able to comply with JEA's supply chain cyber security risk management plan and the requirements of NERC Reliability Standard NERC CIP-013, including, but not limited to CIP-013 R1. Company must demonstrate that Company has, in JEA's sole discretion, appropriate cyber security processes, including, but not limited to, addressing the following:

- i. Notification by Company to JEA, within 12 hours or sooner, of any Company personnel, who have been terminated, retired or ceased working on JEA projects;
- ii. Notification by the Company of Company-identified incidents related to the products or services provided to JEA that pose cyber security risk to JEA;
- iii. Coordination of responses to Company-identified incidents related to the products or services provided to JEA that pose cyber security risk to JEA;
- iv. Notification by Company when remote or onsite access should no longer be granted to Company representatives;
- v. Disclosure by Company of known vulnerabilities related to the products or services provided to the JEA;
- vi. Method for verification of software integrity and authenticity of all software and patches provided by the Company for use in JEA's Bulk Electric System's Cyber System;
- vii. Coordination of controls for (i) Company-initiated Interactive Remote Access, and (ii) system-to-system remote access with Company; and

viii. Compliance with JEA CIP Cyber Security Policy (MD-202).

## **2.5) Schedule**

Company shall perform the Work within the time periods specified in the Contract Documents. The Work shall commence upon receipt of a Notice to Proceed from JEA.

### **2.5.1) Liquidated Damages**

Company's failure to meet the requirements identified in this Section 2.5.1 will cause JEA to incur harm that will be very difficult to ascertain with certainty. The Parties therefore agree the Liquidated Damages specified in this Section 2.5.1 represent a reasonable estimate of JEA's harm for Company's failure to perform the obligation to which such Liquidated Damages apply and are not intended as a penalty. Company's obligation to pay Liquidated Damages for breach of one specified requirement does not relieve Company of its obligation to pay Liquidated Damages for breach of another specified requirement. JEA shall not be required to prove that it has incurred actual damages to recover Liquidated Damages.

In the event that JEA becomes entitled to the Liquidated Damage(s) provided in this Section 2.5.1, JEA may deduct the amount of such liquidated damages from any money due or which may become due to Company under any Purchase Order issued under this Contract. Should any Liquidated Damage amounts be in excess of the remaining unpaid balance of the Purchase Order, Company shall pay to JEA such amounts within thirty (30) days after receipt of JEA's invoice therefor. If Company fails to pay such amounts within thirty (30) days, JEA may draw upon the Letter of Credit.

In the event that Company challenges any Liquidated Damages provision as unenforceable, invalid or inoperative on any basis or in the event a provision for Liquidated Damages specified herein is found or determined by a court of competent jurisdiction to be void, voidable, invalid or otherwise inoperative, then with respect to such challenge, or with respect to such situation, event or circumstance under which the Liquidated Damages provision is found to be unenforceable, invalid or inoperative, JEA shall be entitled to claim and seek against Company any other remedies available under the Contract Documents, at law or in equity for Company's failure to satisfy the requirements to which the Liquidated Damages applied.

#### **2.5.1.1) Submittal Delay Liquidated Damages**

The submittals subject to Liquidated Damages for late delivery are listed in the Schedule of Submittals included as Attachment 2 of the Technical Specifications. To be considered complete, all documents comprising a submittal must be delivered to JEA and must be properly prepared and sufficient to allow JEA to determine that the Work will meet the requirements of the Contract Documents. Liquidated Damages will accrue for each failure to deliver a complete submittal beginning on the first calendar day after the Guaranteed Submittal Delivery Date and continuing until that submittal is completed and submitted. Liquidated Damages will be assessed for each failure at the rate of two thousand dollars (\$2,000) per calendar day ("Submittal Delay Liquidated Damages").

#### **2.5.1.2) Equipment Delivery Delay Liquidated Damages**

Each item of Equipment subject to Liquidated Damages for late Delivery is listed in the definitions under Guaranteed Equipment Delivery Date. If all components comprising the item of Equipment are not Delivered by the Guaranteed Equipment Delivery Date, liquidated damages will accrue for each failure as shown below ("Equipment Delivery Delay Liquidated Damages").

a) Major Components

- i. Beginning on the first (1<sup>st</sup>) calendar day after the specified Guaranteed Equipment Delivery Date for each Major Component and continuing for fifteen (15) calendar days or until Delivery of the Major Component is completed, whichever is earlier, Equipment Delivery Delay Liquidated Damages will be assessed at the rate of fifty thousand dollars (\$50,000) per calendar day.
- ii. Beginning on the thirty-first (31<sup>st</sup>) calendar day after the specified Guaranteed Equipment Delivery Date for each Major Component and continuing until delivery of the Major Component is completed, Equipment Delivery Delay Liquidated Damages will be assessed at the rate of one hundred thousand dollars (\$100,000) per calendar day.

b) Minor Components

- i. Beginning on the first (1<sup>st</sup>) calendar day after the Guaranteed Equipment Delivery Date for each Minor Component and continuing for fifteen (15) calendar days or until delivery of the Minor Component is completed, whichever is earlier, Liquidated Damages will be assessed at the rate of twenty-five thousand dollars (\$25,000) per calendar day.
- ii. Beginning on the sixteenth (16<sup>th</sup>) calendar day after the specified delivery date for each Minor Component and continuing for fourteen (14) calendar days or until delivery of the Minor Component is completed, whichever is earlier, Liquidated Damages will be assessed at the rate of thirty-seven thousand five hundred dollars (\$37,500) per calendar day.
- iii. Beginning on the thirty-first (31<sup>st</sup>) calendar day after the specified delivery date for each Minor Component and continuing until delivery of the Minor Component is completed Liquidated Damages will be assessed at the rate of fifty thousand dollars (\$50,000) per calendar day.

**2.5.1.3) Substantial Completion Delay Liquidated Damages**

Company guarantees that it shall achieve Substantial Completion no later than the Guaranteed Substantial Completion Date. Company's obligation to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date is conditioned upon Company being provided, if required, a total (not necessarily consecutive) of fifteen (15) Access Days in the aggregate. As a condition precedent to Company's Access Days listed above, all precedent conditions for Ready for First Fire shall be satisfied. In the event JEA's planned first fire conditions cannot be achieved due to failure of the Work to the extent attributable to Company, the above Access Days will be reduced day for day until the Work has been remedied and first fire can be achieved. Company shall pay to JEA liquidated damages for delays in achieving Substantial Completion beyond the fifteen (15) Access Days, subject to the conditions in this Section 2.5.1.3, calculated for each day of delay at the following rates ("Substantial Completion Delay Liquidated Damages"):

- i. Beginning on the first (1<sup>st</sup>) calendar day of delay and continuing for thirty (30) calendar days thereafter, Substantial Completion Delay Liquidated Damages will be assessed in the amount of two hundred thousand dollars (\$200,000) per day for each day of delay.
- ii. Beginning on the thirty-first (31<sup>st</sup>) calendar day of delay and continuing for each calendar day thereafter, Substantial Completion Delay Liquidated Damages will be assessed in the amount of three hundred thousand dollars (\$300,000) per day for each day of delay.

If Company has not achieved all Minimum Performance Levels by the Guaranteed Substantial Completion Date, Company shall be afforded 30 days from the Guaranteed Substantial Completion Date to complete corrective action to meet all Minimum Performance Levels. If Company has not achieved all Minimum Performance Levels by the end of the 30-day cure period, such failure shall constitute an event of default under Section 2.13.3. Substantial Completion Delay Liquidated Damages will accrue during this 30-day period. In the event that JEA claims such a default at the end of the 30-day period, JEA shall be entitled to terminate for cause in accordance with Section 2.13.3.

#### **2.5.1.4) Guaranteed Quantity Liquidated Damages**

Company has guaranteed certain construction quantities (“Guaranteed Quantities”) as set forth in Attachments 11, 12, and 14 to the Technical Specifications (the “Guaranteed Quantity Attachments”). Company agrees that for any difference in the quantities required in excess of the Guaranteed Quantities, the Company shall pay to JEA, as Liquidated Damages and not as a penalty, an amount determined as follows, and based upon the rates set forth in the Guaranteed Quantity Attachments (“Guaranteed Quantity Liquidated Damages Rates”).

In the event the actual quantities, by line item, exceed the corresponding Guaranteed Quantities for that line item then a value will be calculated (“Excess Costs”) based upon the Guaranteed Quantity Liquidated Damages Rates.

In the event the actual quantities, by line item, are less than the corresponding Guaranteed Quantities for that line item then a value will be calculated (“Surplus Costs”) based upon Guaranteed Quantity Liquidated Damages Rates.

After all such Excess Costs and Surplus Costs have been determined by line item, Company’s liability for Liquidated Damages incurred pursuant to this Section 2.5.1.4 shall be the amount by which the aggregate value of Excess Costs exceeds the aggregate value of Surplus Costs. In no event shall Company be entitled to additional monies in the event the aggregate value of Surplus Costs exceeds the aggregate value of Excess Costs.

#### **2.5.1.5) Performance Liquidated Damages**

Company shall achieve the Minimum Performance Levels provided in the Contract Documents as a condition to achieve Substantial Completion. Company’s obligation to meet the Minimum Performance Levels constitutes an absolute and fundamental component of this Contract. In this respect, this Contract does not provide for the payment of Liquidated Damages in lieu of achieving the Minimum Performance Standards.

If Company fails to meet any or all of the Minimum Performance Levels, then Company shall, with JEA’s approval and at Company’s sole cost and expense, immediately do all things necessary or appropriate to achieve the Minimum Performance Levels including, without limitation, exercise each and every repair or replacement alternative, regardless of cost to Company or difficulties associated therewith. Company shall be responsible for expenses in connection with the removal and reinstallation of any equipment and/or materials and/or structures not provided by Company so as to allow Company to perform corrective measures. JEA will repeat the Performance Tests after Company notifies JEA in writing that the cause of the failure has been corrected. Company will be responsible for all costs associated with each retest.

Performance Guarantees are specified in Technical Section 01100.3.1 of this Purchase Order. In the event that Supplier has achieved Minimum Performance Levels, but fails to achieve Performance

Guarantees by the end of the Performance Guarantee Cure Period, then Supplier shall pay to Purchaser liquidated damages for the respective performance shortfall with respect to gammonuarantee, at the following rates (“Performance Liquidated Damages”):

<b>Performance Guarantee Subject to Liquidated Damages</b>	<b>LD Rates (Natural Gas)</b>	<b>LDs Rates (Fuel Oil)</b>
Equipment Net Electrical Output	[\$1,600]/kW	[\$1,600]/kW
Equipment Net Heat Rate	[\$290,000]/Btu/kWh (HHV)	[\$170,000]/Btu/kWh (HHV)
Equipment Ammonia Consumption	[\$11,100] per lbm/hr	[\$11,100] per lbm/hr
Equipment Minimum Emission Compliant Load (MECL)	[\$1,600]/kW	[\$1,600]/kW
MECL Heat Rate	[\$140,000]/Btu/kWh (HHV)	[\$85,000]/Btu/kWh (HHV)
CTG Demineralized Water Injection Rate	N/A	[\$45,000] per lbm/hr
CTG Inlet Air Chiller Duty	[\$371,000] per MMBtu/hr	N/A
CTG Chilled Water Flowrate	[\$272,000] per kpph	N/A

#### **2.5.1.6) Liquidated Damages Caps**

With respect to Liquidated Damages assessed under this Contract, the following caps shall apply:

- The total Submittal Delay Liquidated Damages payable by Company shall not exceed two million dollars (\$2,000,000).
- The total Equipment Delivery Delay Liquidated Damages and Substantial Completion Delay Liquidated Damages payable by Company shall not exceed twenty-five percent (25%) of the Contract Price.
- The total Guarantee Quantity Liquidated Damages payable by Company shall not exceed five percent (5%) of the Contract Price.
- The total Performance Liquidated Damages payable by Company shall not exceed twenty-five percent (25%) of the Contract Price.
- The total for all Liquidated Damages payable by Company shall not exceed thirty five percent (35%) of the Contract Price.

#### **2.5.1.7) Work Scheduling to Achieve Final Completion**

Company shall be granted reasonable access to the job site for the purpose of completing the Work and correcting any performance shortfall; provided, however, Company recognizes that the Owner may be commercially operating the Equipment during the Performance Guarantee Cure Period and Company will make all reasonable efforts to minimize the downtime or curtailed operation of the Equipment during this period. To the extent that Company reasonably needs an outage or to curtail operation, and the Owner needs to keep the Equipment in full service because of peak energy demands, and the Supplier and Purchaser agree that continued operation of the Equipment is not a safety or potential damage related concern, then Supplier and Purchaser will mutually agree to an equitable extension of the Performance Guarantee Cure Period based on a Remedial Plan. Accordingly, Supplier

shall schedule and coordinate with Purchaser any work, including support of performance or emissions testing, required to achieve Final Completion to minimize any adverse impact on Owner's ability to operate the Equipment. For the duration of the Performance Guarantee Cure Period, Purchaser shall provide Supplier reasonable opportunity to make required corrections or improvements to the Equipment during any scheduled and unscheduled outages as may occur during such time, to the extent reasonably practical, but shall not be required hereby to take the Equipment out of operation solely for purposes of such corrections.

If, Supplier elects to stop attempting to meet the unmet Performance Guarantees at any time during the Performance Guarantee Cure Period or, at the end of the Performance Guarantee Cure Period, the Equipment does not meet the Performance Guarantees, then Performance Liquidated Damages as measured during the most recent Performance Test shall be due and payable in accordance with the provision of Article 1.5.

### **2.5.2) Force Majeure**

No party shall be liable for any default or delay in the performance of its obligations under the Contract due to a Force Majeure Event to the extent that: (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by reasonable precautions; and (c) such default or delay could not have been reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans or other means.

In the event of any delay resulting from a Force Majeure Event, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in the Contract Documents.

In the event of any delay or nonperformance resulting from a Force Majeure Event, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated impact of such delay or nonperformance. Such written notice shall indicate the extent to which it is anticipated that any delivery or completion dates will be thereby affected within seven calendar days.

## **2.6) Invoicing and Payments**

### **2.6.1) Compensation Method**

JEA shall pay the Company for the Work performed by the Company in accordance with the rates stated in the Company's Response upon receipt of a proper invoice from the Company. Company shall submit invoices to JEA based upon the Milestone Schedule agreed upon by the parties. Company acknowledges and agrees that Company's entitlement to compensation is contingent upon satisfactory completion of the Work and delivery of all work product and deliverables identified in the Contract Documents. No payment by JEA shall be interpreted to constitute approval or acceptance of any Work, nor shall it be considered a waiver of any of the terms of this Contract.

b) **Reimbursable Expenses.** In addition to the hourly rates, Company shall also be reimbursed for travel and travel-related expenses directly attributable to the Work (the "Expenses") provided that such Expenses are approved in writing by JEA in advance. Unless otherwise mutually agreed in writing in advance any Expenses shall comply with the Authorized Expense requirements set forth below. JEA shall not be liable for Expenses that have not been approved in writing in advance by JEA. All requests for payment of such Expenses shall include copies of paid receipts, invoices, or other documentation acceptable to JEA. Company acknowledges and agrees that failure to furnish the requested



documentation may result in JEA's denying all or part of the Expenses for which reimbursement is sought. Reimbursable Subcontractor Expenses must also comply with the requirements of this section.

Company shall choose the most economical means of transportation, considering the nature of the business, the traveler's time, cost of transportation, meals, lodging and incidental expenses required. Reimbursement shall be made only for travel performed over usually regularly traveled routes to the destination. When travel is by indirect route for the traveler's own convenience, reimbursement for expenses shall be based only on such charges as would have been incurred over the usually traveled route.

### **Authorized Expenses:**

#### **Airplane**

Travel by common carrier shall be reimbursed at the lowest coach fare rate available (except that the first-class rate is authorized if coach fare is not available). Reservations for a Saturday night stay over are encouraged if it results in a net savings after considering all incremental travel related expenses.

Reimbursement for rented aircraft shall be based on the hourly rental rate for the aircraft, including fuel, if the cost of renting the aircraft can be demonstrated to be less than the lowest available common carrier coach fare.

A copy of the itinerary showing the cost must be submitted along with the expense statements.

#### **Private Automobiles**

If the total miles from the departure point to destination exceeds 400 miles round trip, the mileage reimbursement for use of a private motor vehicle shall be limited to the lesser of:

- i. IRS-authorized mileage rates described in Section 106.706 of the Ordinance Code, City of Jacksonville; or
- ii. the lowest airline common carrier coach fare available to the nearest airport plus IRS-authorized mileage rate per mile from the airport to the destination.

If travel is by private automobile, reimbursement shall be based on IRS authorized mileage rate in existence at the time of travel. All mileage shall be completed from the constructive point of origin to the point of destination. Vicinity mileage incurred while driving on official business may also be reimbursed. No other reimbursement for expenses related to the operation, maintenance and ownership of a vehicle shall be allowed when a private motor vehicle is used on public business.

#### **Car Rental**

Rental cars shall be approved only if taxis or other means of transportation are less economical or otherwise impractical.

Every effort shall be made to coordinate travel so that Travelers share a rental car and thereby eliminate multiple cars at the same location. Travelers shall use the intermediate or midsize class vehicles unless the number of passengers or the volume of equipment makes the intermediate/midsize class impractical. Personal accident insurance purchased by the traveler will not be reimbursed by JEA.

A copy of itemized rental car charges will be made and submitted with the expense statement.

#### **Lodging**

Reasonable reimbursement will be made for the cost of overnight lodging when a Traveler is away from his/her place of residence. Travelers shall select lodging, which is the most economically available, consistent with the duties being performed. Travelers will be reimbursed for a single room rate; double occupancy rates may be obtained if two Travelers share a room.

Travelers must document all lodging expenses with itemized statement and paid receipt from lodging facility. A copy of the receipt must be submitted with the expense statement. Personal expenses such as entertainment, in-room movies, in-room services, in-room concessions (i.e., mini-bar charges) and other personal charges will not be reimbursed.

### **Meals**

Reimbursement is authorized for meals for all travelers while in a business travel status at the following fixed subsistence/per diem rates, or, at the traveler's option, at the amount submitted, not to exceed the following fixed maximum subsistence rates, but only when travel begins before and extends beyond the times specified:

- i. Breakfast - when Travel Time begins before 6:00 a.m. and extends beyond 8:00 a.m. The JEA breakfast per diem maximum is \$10.
- ii. Lunch - when Travel Time begins before 12:00 noon and extends beyond 2:00 p.m. The JEA lunch per diem maximum is \$14.
- iii. Dinner - when Travel Time begins before 6:00 p.m. and extends beyond 8:00 p.m. The JEA dinner per diem maximum is \$26.

International Travel – For travel outside of the United States, the per diem rate is doubled to \$100 per day.

The maximum JEA per diem rate of up to \$50 will be paid for an entire day. When travel time for that day begins before 6:00 a.m. and extends beyond 8:00 p.m., if receiving a daily per diem as part of the Contract, meal per diems are not applicable.

Per diem rates may not be claimed for meals made available without specific charge at a seminar, conference or training session, except those provided by common carrier transportation.

### **Incidental Transportation Expenses**

The following expenses incidental to transportation of the Traveler may be reimbursed:

- i. Taxi fare
- ii. Ferry fares, bridge, rail and tunnel tolls
- iii. Storage and parking fees
- iv. Valet parking may be selected when there is not a more economical means of parking or where less economical options present a safety concern. Justification for the use of valet parking must be provided.
- v. One of the long-term (non-valet) airport parking options (vs. hourly parking) must be utilized for approved travel greater than 24 hours.

- vi. Reasonable gratuities for services incurred at a cost (not to exceed 20% of the cost of the service or to exceed the total subsistence allowance in the case of meals)
- vii. Reasonable gratuities for services incurred without a cost (limited to \$10 per day) (receipt not required, but service justification must be indicated)

#### **2.6.2) Invoicing**

Within sixty (60) days from completion of the Work or of any Milestone, the Company shall submit all Invoices or Applications for Payment in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to the following email address: [ACCTPAYCUSTSRV@JEA.COM](mailto:ACCTPAYCUSTSRV@JEA.COM). Invoices shall be accompanied by such supporting documentation as may be reasonably required by JEA for verification of the invoice. In the event Company's supporting documentation is not sufficient for JEA to verify Company's invoice, JEA may request additional documentation or information, and the timeframe for payment will be extended accordingly. Payment by JEA shall be made in compliance with the provisions of the Florida Local Government Prompt Payment Act (Section 218.70, Florida Statutes, et seq.). JEA may withhold payment if the Company is in violation of any conditions or terms of the Contract Documents.

JEA may decline to pay payment, may withhold funds otherwise payable, or may demand the return of some or all of the amounts previously paid to Company for any costs or expenses that JEA incurs or reasonably expects to incur as a result of Company's failure to comply with the Contract Documents or as a result of Company's failure to pay Subcontractors or Suppliers.

In the case of early termination of the Contract, all payments made by JEA against the Contract Price prior to notice of termination shall be credited to the amount, if any, due the Company. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Company, the Company shall refund the excess amount to JEA within ten (10) days of determination or written notice.

#### **2.6.3) Cost-Savings Plan**

During the term of this Contract, JEA and Company are encouraged to identify ways to reduce the total cost to JEA related to the Work provided by the Company. JEA and Company may negotiate Contract Amendments that allow such reductions in total costs including, but not limited to, the sharing of savings resulting from implementation of cost-reducing initiatives between JEA and Company. The decision to accept any cost savings initiative shall be in the sole discretion of JEA, and JEA shall not be liable to Company for any cost that may be alleged to be related to a refusal to accept a cost savings initiative proposed by Company.

#### **2.6.4) Price Adjustments**

Contract prices (also referred to as "Unit Prices") for the Work will remain firm fixed through the first year of the Contract. For the purposes of this clause, the end date of the first year of the Contract shall be referred to as the "Anniversary Date", and the term "Anniversary Date" shall also apply to the end date of any renewals.

Thirty (30) days prior to the Anniversary Date, the Company may propose a percent adjustment to the Unit Prices based on the percent change in the CPI as calculated below. Price adjustment to the Unit Prices will be recognized by JEA within 30 days from the date of the request.

JEA also reserves the right to decrease the Unit Prices on the Anniversary Date if justified by the CPI. All price adjustments to the Unit Prices shall be capped at 6%. No retroactive price adjustments will be allowed.

Price Adjustments shall be based on the Consumer Price Index for All Urban Customers Series ID: CUUR0000SA0 and shall be calculated according to the following formula:

Price Increase/Decrease Formula = ((Latest CPI Index– Base CPI Index)/ Base 12 CPI Index)) X 100 = Percent Change (%) (rounded to thousandth of a percent)

#### **2.6.5) Discount Pricing**

JEA offers any or all of the following optional payment terms, one of which may be elected at the request of the Company by sending an email to the JEA Buyer listed in the Solicitation:

- i. -1% 20, net 30
- ii. -2% 10, net 30

The Company may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. All payment dates are calculated from the date of receipt of a proper Invoice by JEA's Accounts Payable department.

#### **2.6.6) Taxes**

JEA is a municipally owned utility and is exempt from paying Florida Sales and Use Tax and Manufacturer's Federal Excise Tax when purchasing tangible personal property for its direct consumption. Additionally, pursuant to Florida Statute 212.08(5)(c)3, if Company or Subcontractor is buying materials for JEA's electric generating stations, other than Northside Unit 3, JEA can issue the Company or Subcontractor an affidavit that will allow Company or Subcontractor to purchase materials tax free on behalf of JEA.

#### **2.6.7) Availability of Funds**

JEA's obligations under this Contract are contingent upon the availability of lawfully appropriated funds. While JEA will make every reasonable effort to provide the necessary funds to perform under this Contract, JEA makes no express commitment to provide such funds in any given fiscal year. It is expressly acknowledged that Company may not demand that JEA appropriate such funds in any given fiscal year.

#### **2.7) Warranty**

The Company warrants that all items provided under the Contract shall be in accordance with the requirements of the Contract and all services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry. The Company warrants that the Work will meet the service levels, functional and performance requirements defined in the Contract.

The Company warrants all Work for a period of one year following Acceptance of the Work. If any failure to meet the foregoing warranty appears during the Term or within one year after Acceptance, the Company shall again perform the Work directly affected by such failure at the Company's sole expense.

The Company represents and warrants that it has the full right, power and authority to enter into the Contract and to perform the Work, and that the performance of its obligations and duties hereunder does not and will not violate any Contract to which the Company is a party or by which it is otherwise bound.

The Company represents and warrants that it will conduct the Work in a manner and with sufficient labor, materials and equipment necessary to affect a diligent pursuance of the Work.

The Company represents and warrants that it has the responsibility and capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Work complies with all safety requirements of the Contract Documents.

The Company represents and warrants that its employees and Subcontractors shall exercise the degree of skill and care required by customarily accepted good practices and procedures.

## **2.8) Insurance**

Before starting the Work, and without further limiting its liability under the Contract, Company shall procure and maintain throughout the Term at its sole expense, insurance of the types and in the minimum amounts stated below:

### Workers' Compensation

Florida Statutory coverage and Employer's Liability (including appropriate Federal Acts); Insurance Limits: Statutory Limits (Workers' Compensation) \$500,000 each accident (Employer's Liability).

### Commercial General Liability

Premises-Operations, Products-Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, Explosion, Collapse and Underground, Hazards (XCU Coverage) as appropriate; Insurance Limits: \$1,000,000 each occurrence, \$2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

### Automobile Liability

All autos-owned, hired, or non-owned; Insurance Limits: \$1,000,000 each occurrence, combined single limit.

### Professional Services/Errors and Omissions:

\$5,000,000 each claim and annual aggregate

Excess or Umbrella Liability -(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability)

\$10,000,000 each occurrence and annual aggregate. Company shall procure and maintain Marine Cargo insurance insuring the Equipment against loss or damage arising from customary "at risk" marine perils while in transit. Coverage shall be sufficient to cover the replacement value of the Equipment while in transit by land, air, and/or sea from the time the Equipment is loaded for transit until completion of Delivery.

Company's Commercial General Liability and Excess or Umbrella Liability policies shall be effective for two years after Work is complete. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Company shall specify JEA, the EPC contractor, and any financing parties as an additional insured for all coverage except Workers' Compensation and Employer's Liability and Professional Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Company shall include a Waiver of Subrogation on all required insurance in favor of JEA, its board members, officers, employees, agents, successors and assigns.

Such insurance shall be written by a company or companies licensed to do business in the State of Florida and satisfactory to JEA. Prior to commencing any Work under the Contract, certificates evidencing the maintenance of the insurance shall be uploaded to JEA's ISupplier Portal which can be found at [https://isuppliercloud.jea.com/OA\\_HTML/AppsLocalLogin.jsp](https://isuppliercloud.jea.com/OA_HTML/AppsLocalLogin.jsp)

The insurance certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice by JEA.

It shall be the sole responsibility of Company to ensure that any Subcontractors performing work for Company are properly insured against any claim, action, loss, damage, injury, liability, cost and expense (including, but not by way of limitation, reasonable attorney's fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Subcontractors.

## **2.9) Indemnification**

**2.9.1)** Company shall indemnify, defend, and hold harmless JEA and its governing board, officers, agents, employees, successors, and assigns ("Indemnified Party") from any Claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and court costs, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Company and any person or entity employed or utilized by Company in the performance of this Contract or the Work thereunder. This indemnification shall be separate and apart from, and in addition to, any other indemnification provisions set forth elsewhere in this Contract.

**2.9.2)** To the extent permitted by, and in accordance with Section 725.08, Florida Statutes, Company further agrees that "damages, losses, and costs" includes fines, citations, court judgments, insurance claims, restoration costs, or other liability, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of Company and persons employed or utilized by Company in the performance of this Contract.

**2.9.3)** To the extent permitted by, and in accordance with Section 725.08, Florida Statutes, for purposes of indemnity, "persons employed or utilized by Company" shall be construed to include, but not be limited to, Company's staff, employees, subcontractors, deliverers, suppliers, furnishers of materials or services, or anyone else acting for, on behalf of, or at the request of the Company.

**2.9.4)** Company shall indemnify, defend, and hold harmless JEA from any Claim, including reasonable attorney's fees and court costs, associated with the unwarranted disclosure of any JEA employees' personal identifiable identification data that is in its possession, whether in paper or electronic format, including disclosure caused by theft, electronic system malfunction, negligence, or any other cause for the information to become public or otherwise used for malicious intents.

**2.9.5)** Company shall indemnify, defend, and hold harmless JEA from any Claim, including reasonable attorney's fees and court costs, arising out of the unwarranted disclosure of any JEA customer information that is in the possession of Company or any of its employees, agents or Subcontractors whether in paper or electronic format, including disclosure caused by theft, electronic system

malfunction, negligence, or any other cause for the information to become public or otherwise used for any purpose whatsoever.

**2.9.6)** Company shall indemnify, defend, and hold harmless JEA from any claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, rules, or regulations by Company or any person utilized by Company in the performance of this Contract.

**2.9.7)** Company shall indemnify, defend, and hold harmless JEA from any claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) arising from or in connection with (a) Company's actions or activities under the Contract that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Company's activities, (b) any environmental, health, and safety liabilities arising out of or relating to the operation or other activities performed in connection with the Contract by the Company at any time on or prior to the effective date of the Contract, or (c) any bodily injury (including illness, disability, and death, regardless of when any such bodily injury occurred, was incurred, or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property), or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by Company. JEA will be entitled to control any remedial action and any legal proceeding relating to an environmental claim.

## **2.10) Intellectual Property**

The Company grants to JEA an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party service provider) the Company's intellectual property including, without limitation, all trade secrets, patents, copyright and know-how ("Intellectual Property"), that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of Work.

If the Work contains, has embedded in, requires for the use of any third-party Intellectual Property, or if the third-party Intellectual Property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, the Company shall secure for JEA an irrevocable, perpetual, royalty free and fully paid-up right to use all third-party Intellectual Property. The Company shall secure such right for JEA at the Company's expense and prior to incorporating any third party Intellectual Property into any Work, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third-party service provider.

The Company will, at its expense, defend all Claims against JEA based on any allegation that the Work, or any part of the Work, constitutes an infringement of any patent or any other intellectual property right, and will pay to JEA all costs, damages, charges, and expenses occasioned to JEA by reason thereof. JEA will give the Company written notice of any such claim, action or proceeding and, at the request and

expense of the Company, JEA will provide the Company with available information, assistance and authority for the defense.

If, in any action or proceeding, the Work, or any part thereof, is held to constitute an infringement, the Company will, within 30 days of notice, either secure for JEA the right to continue using the Work or will, at the Company's expense, replace the infringing items with non-infringing Work or make modifications as necessary so that the Work no longer infringes.

The Company will obtain and pay for all patent and other intellectual property royalties and license fees required in respect of the Work.

#### **2.10.1) Intellectual Property Indemnification**

Company shall hold harmless and indemnify JEA from and against liability or loss, including but not limited to any claims, judgments, court costs and attorneys' fees incurred in any claims, or any pretrial, trial or appellate proceedings on account of infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, trademarks, patented or unpatented inventions, articles or appliances, or allegations thereof, pertaining to the Work, or any part thereof, combinations thereof, processes therein or the use of any tools or implements used by Company.

Company will, at its own expense, procure for JEA the right to continue use of the Services, parts or combinations thereof, or processes used therein resulting from a suit or judgment on account of patent, trademark or copyright infringement.

If, in any such suit or proceeding, a temporary restraining order or preliminary injunction is granted, Company will make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of such restraining order or temporary injunction.

If, in any such suit or proceeding, any part of the Services is held to constitute an infringement and its use is permanently enjoined, Company will, at once, make every reasonable effort to secure for JEA a license, authorizing the continued use of the Work. If Company fails to secure such license for JEA, Company will replace the Work with non-infringing Work, or modify the Work in a way satisfactory to JEA, so that the Work are non-infringing.

#### **2.11) Ownership of Work Product, Proprietary Information, and Data**

##### **2.11.1) Work Made for Hire**

With the exception of Company's pre-existing intellectual capital and third-party Intellectual Property, JEA shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to any product generated by the Work including, but not limited to, software, source code, reports, deliverables, or work product developed by the Company for JEA in connection with the Work, and derivative works relating to the foregoing. Such Work shall include, but shall not be limited to, those reports and deliverables specified in the Contract Documents. The Company understands and agrees that the Work, or any portion of the Work, shall be a "work made for hire" for JEA pursuant to federal copyright laws. Any software, report, deliverable, or work product as used in connection with the Work, but, previously developed by the Company specifically for other customers of the Company or for the purpose of providing substantially similar services to other Company customers, generally shall not be considered "work made for hire", so long as the foregoing are not first conceived or reduced to practice as part of the Work. To the extent any of JEA deliverables are not deemed works made for hire by operation of law, the Company hereby irrevocably



assigns, transfers, and conveys to JEA, or its designee, without further consideration all of its right, title and interest in such Work, including all rights of patent, copyright, trade secret, trademark or other proprietary rights in such materials. Except as provided in the foregoing sentences, the Company acknowledges that JEA shall have the right to obtain and hold in its own name any intellectual property right in and to the Work. The Company agrees to execute any documents or take any other actions as may reasonably be necessary, or as JEA may reasonably request, to perfect or evidence JEA's ownership of the Work.

#### **2.11.2) Proprietary Information**

The Company shall not copy, reproduce, or disclose to third parties, except in connection with the Work, any information that JEA furnishes to the Company. The Company shall insert in any subcontract a restriction on the use of all information furnished by JEA. The Company shall not use this information on another project. The Company shall return all information furnished by JEA upon completion of the Work. Upon request of JEA, Company must certify in writing that all information furnished to JEA has been returned to JEA and eliminated from Company's and any applicable subcontractors' computer systems.

#### **2.11.3) Data Ownership, Protection and Location**

JEA shall own all right, title and interest in all data of JEA and JEA's customers that is related to the Work. The Company shall only access JEA's data and JEA's customers' accounts and data if (i) required to provide the Work, (ii) required in response to service or technical issues, (iii) required by the express terms of the Contract, or (iv) at JEA's written request. Protection of personal privacy and data shall be an integral part of the Work to ensure that there is no inappropriate or unauthorized use of data of JEA or JEA's customers at any time.

The Company shall safeguard the confidentiality, integrity, and availability of all data of JEA and its customers.

The Company shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against the unauthorized access, disclosure or theft of Personal Data or Non-Public Data. For the purposes of the Contract, "Personal Data" shall mean data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information: government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information including account number, credit or debit card numbers; or protected health information relating to a person. Non-Public Data shall mean data, other than Personal Data, that is not subject to distribution to the public as public information and is deemed to be sensitive and confidential because it is exempt by statute, ordinance or administrative rule from access by the general public as public information;

All data obtained by Company under the Contract shall become and remain the property of JEA:

- i. All Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise agreed in writing by JEA and the Company, the Company shall be responsible for encryption of the Personal Data and non-Public Data;
- ii. At no time shall any Personal Data or Non-Public Data of JEA or its customers be copied, disclosed or retained by the Company or any party related to the Company

for subsequent use in any transaction that is not a part of the Work to be provided under the Contract;

- iii. The Company shall not use any Personal Data, Non-Public Data or any other information collected in connection with the Contract for any purpose other than providing the Work; The Company will prevent its employees, other than employees with a need to know, from gaining access to JEA's data and information. The Company will direct and take all reasonable steps to insure that any Company employee who encounters any such information during the course of performing the Company's responsibilities of the Contract shall maintain the confidentiality of such information, which shall not be passed onto other Company employees or any other person. The Company shall also enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of JEA data to that which is absolutely necessary to perform job duties. The Company shall provide the Work solely from data centers in the United States. Storage of JEA data at rest shall be located solely in data centers in the United States. The Company shall not allow its personnel or its subcontractors to store JEA and JEA customer data on portable devices, including personal computers, except for devices that are used and kept only at its data centers in the United States. The Company shall permit its personnel and subcontractors to access JEA and JEA customer's data remotely only as required to provide technical support. The Company shall deploy reasonable steps and safeguards as part of a network security program in accordance with accepted industry practices, including but not limited to, Purchasing Card Industry-Data Security Standards (PCI-DSS), to prevent unlawful hacking to gain surreptitious access into JEA's and JEA's customer's data.

The Company shall promptly notify JEA of any breaches or issues regarding the security of systems that maintain JEA or JEA's customer data. However, any such notification by the Company shall not affect the Company's obligations to secure JEA's data as provided under the Contract. The Company shall notify JEA within six hours if it learns that JEA or any of JEA's customers has been, have been, or may have been, the subject of a Security Incident (which is defined below) of any kind which may compromise data of JEA or its customers. In any such event, the Company shall: (i) investigate the incident(s) and provide a report to JEA within 24 hours; (ii) conduct a forensic investigation to determine a cause and what data/systems are implicated; (iii) provide daily updates of its investigation to JEA and permit JEA reasonable access to the investigation; (iv) communicate and cooperate with JEA concerning communication with outside parties such as law enforcement and media; and (v) cooperate with JEA in determining whether and how notice, if any, will be provided to JEA's customers with all applicable laws and regulations.

The term "Security Incident" means the potentially unauthorized access by non-authorized persons to Personal Data or Non-Public Data that the Company believes could reasonably result in the use, disclosure, or theft of unencrypted Personal Data or Non-Public Data of JEA or its customers within the possession or control of the Company. If a Data Breach (defined below) with respect to Personal Data or Non-Public data has occurred, the Company shall promptly implement necessary remedial measures and document responsive actions taken related to the Data Breach, including any post-incident review and actions taken to make changes in business practices in providing the Work, if necessary.

If a Data Breach is a result of the Company's breach of its obligation to encrypt Personal Data or Non-Public Data or otherwise prevent the release of Personal or Non-Public Data or the Company's failure to comply with any of the security requirements comply with the Contract, the Company shall bear the costs associated with (i) the investigation and resolution of the Data Breach; (ii) notifications to individuals, regulators or others required by state law; (iii) a credit monitoring service required by state or federal law; (iv) a website or toll-free number and call center for affected individuals required by state law; and (v) completing all corrective actions as reasonably determined by the Company based on root cause.

The term "Data Breach" means the unauthorized access by a non-authorized person or persons that results in the use, disclosure or theft of unencrypted Personal Data, Non-Public Data or JEA's customer information.

## **2.12) Public Records**

### **2.12.1) Access to Public Records**

All documents, data and other records received by JEA in connection with the Contract are public records and available for public inspection unless specifically exempt by law. The Company shall allow public access to all documents, data and other records made or received by the Company in connection with the Contract unless the records are confidential or exempt from production under Section 24(a) of Article I of the Florida Constitution or Chapter 119, Florida Statutes ("Florida's Public Records Law"). JEA may unilaterally terminate the Contract of the Company refuses to allow public access as required under the Contract.

### **2.12.2) Confidential Information**

#### **2.12.2.1) Redacted Copies of Confidential Information**

If the Company believes that any portion of any documents, data or other records submitted to JEA are confidential or exempt from disclosure under Florida's Public Records Law, Company must (1) clearly segregate and mark the specific sections of the document, data and records as "Confidential", (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) 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". Company should only redact those portions of records that Company claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company 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.

#### **2.12.2.2) Request for Redacted Information**

In the event of a public records or other disclosure request under Florida's Public Records Law or other authority to which the Company'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 the Company that such an assertion has been made. It is the Company'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 the Company prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable law). The Company shall be responsible for defending its determination that the redacted portions of the information are not subject to disclosure.

The Company shall protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses (including but not limited to reasonable attorney's fees and costs) arising from or relating to the Company's assertion that all or any portion of its information is not subject to disclosure.

**2.12.2.3) Public Records Clause for Service Contracts**

If, under the Contract, the Company is providing services and is acting on behalf of JEA as contemplated by subsection 119.011(2), Florida Statutes, the Company shall:

- i. Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
- ii. 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;
- iii. 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
- iv. Meet all requirements for retaining public records and transfer, at no cost, to JEA all public records in possession of the Company upon termination of the contract 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.

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**JEA**  
**Attn: Public Records**  
**225 North Pearl Street**  
**Jacksonville, Florida 32202**  
**Ph: 904-665-8606**  
[publicrecords@jea.com](mailto:publicrecords@jea.com)

**2.13) Term and Termination**

**2.13.1) Term**

This Contract shall commence upon the Effective Date and shall remain in effect through project completion. JEA may, in its sole discretion, renew this Contract for \_\_\_\_ additional \_\_\_\_-year renewal terms.

**2.13.2) Termination for Convenience**

JEA shall have the absolute right to terminate the Contract, in whole or part, with or without cause, at any time upon written notification to the Company of such termination.

In the event of termination for convenience, JEA will pay the Company for all Work performed by the Company prior to the termination date.

Upon receipt of such notice of termination, the Company shall stop the performance of the Work except as may be necessary to carry out a termination and take any other action toward termination of the Work that JEA may reasonably request, including all reasonable efforts to provide for a prompt and efficient transition as directed by JEA.

JEA shall have no liability to the Company for any cause whatsoever arising out of, or in connection with, termination for convenience including, but not limited to, lost profits, lost opportunities, or any resulting change in business condition.

### **2.13.3) Termination for Cause**

JEA may terminate the Contract for cause upon written notice to the Company if any of the following occurs (each, an “Event of Default”):

1. The Company assigns or subcontracts the Work without JEA’s prior written consent;
2. Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
3. A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
4. The Company makes an assignment for the benefit of creditors;
5. The Company suspends the operation of a substantial portion of its business;
6. The Company suspends the whole or any part of the Work to the extent that it impacts the Company's ability to meet the schedule for the Work, or the Company abandons the whole or any part of the Work;
7. The Company breaches or fails to comply with any of the conditions or provisions of the Contract Documents, and, if such breach or failure is capable of cure, Company does not cure the breach or failure within 15 days after receipt of written notice from JEA;
8. The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
9. The Company has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector;
10. The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriated property belonging to JEA; or
11. The Company experiences any material adverse change in the financial or business condition that affects its ability to perform its duties under this Contract.

If, within fifteen (15) days after service of such notice to discontinue or notice to cure upon the Company, an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work or the material breach has not been remedied, JEA may declare the Company to be in default and terminate the Contract.

This Section shall in no way limit JEA's right to all remedies for nonperformance provided under law or in equity. Further, the rights and remedies available to JEA are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

In the event of termination for cause, the Company shall immediately surrender all Work records to JEA. In such a case, JEA may set off any money owed to the Company against any liabilities resulting from the Company's nonperformance.

Except as otherwise provided herein, JEA has no responsibility whatsoever to issue to the Company notices of any kind, including but not limited to deficient performance letters and scorecards, regarding its performance prior to declaring an event of Default for performance related issues.

If the Company is determined to be in default, JEA may charge the expenses of completing the Work to the Company and may deduct such expenses from monies due, or which at any time thereafter may become due, to the Company. If such expenses are more than the sum that would otherwise have been payable under the Contract, then the Company shall pay the amount of such excess to JEA upon receipt of notice of the expenses from JEA. JEA shall not be required to obtain the lowest price for completing the Work, but may make such expenditures that, in its sole judgment, shall best accomplish completion of the Work. JEA will, however, make reasonable efforts to mitigate the costs of completing the Work.

If, after an Event of Default, it is determined that an Event of Default did not occur, or that the default was excusable, the rights and obligations of the parties shall be the same as if JEA had terminated the Contract for convenience.

#### **2.13.4) Actions After Termination**

Immediately upon termination or expiration of this Contracts, Company shall return to JEA all materials, documents and things used by Company and belonging to JEA, including proposals, computer files, borrower files, building keys, and any other property or information regarding continued business compliance or goodwill, whether in electronic or hard-copy form.

Furthermore, upon JEA's request, Company shall certify in writing that all of the foregoing documents or materials, including archival or backup copies, whether in electronic or hard-copy form, have been returned to JEA, deleted from any computer system, or otherwise destroyed.

#### **2.13.5) Transition Services**

At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), JEA may request Company to provide reasonable transition assistance services ("Transition Assistance"). Company will provide such Transition Assistance until such time as JEA notifies the Company that JEA no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service contractor (either JEA itself or a third-party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by JEA, those

third parties shall cooperate with Company in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Company.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to JEA. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Company charges to government entities for comparable services; provided however, that if JEA terminates the Contract because of a breach by Company, then (i) the Transition Assistance shall be provided at no cost to JEA, and (ii) JEA will be entitled to any other remedies available to it under law. Company may withhold Transition Assistance after the Termination Date if JEA does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Company in accordance with the invoicing and payment provisions of the Contract.

#### **2.13.6) Suspension of Work**

JEA may suspend the performance of the Work, in whole or in part, by providing Company with five days' prior written notice of such suspension. In the event of a suspension of Work, the Company shall resume performance of the Work when and to the extent directed in writing to do so by JEA.

Suspension of Work shall not affect any other rights or remedies JEA may have under this Solicitation and the Contract.

#### **2.13.7) Data Obligations upon Termination or Suspension of Contract**

In the event of the Contract expiration or termination, the Company shall implement an orderly return of JEA's data in a mutually agreeable format at a time agreed to by JEA and the Company, or upon JEA's request, the Company shall secure the disposal of all JEA data. During any period of service suspension, the Company shall not take any action to intentionally erase any JEA data or its customers. In the event of termination of any services or the Contract in its entirety, the Company shall not take any action intentionally to erase any data of JEA or its customers except as mutually agreed upon in writing by the Company and JEA. Upon JEA request, the Company shall securely dispose of all request data in all its forms.

#### **2.14) Miscellaneous Provisions**

##### **2.14.1) Meetings and Public Hearings**

The Company shall attend all meetings and public hearings as directed by JEA.

##### **2.14.2) Publicity and Advertising**

The Company shall not take any photographs, make any announcements, or release any information concerning the Contract or the Work to any member of the public, press or official body unless prior written consent is obtained from JEA. The Company shall not use JEA's logo without obtaining prior written consent from JEA.

##### **2.14.3) Nondiscrimination**

The Company represents that it has adopted and shall maintain throughout the Term a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employee relations. The Company shall, on written request from JEA, allow JEA reasonable access to the Company's records of employment, employment

advertisement, application forms and other pertinent data and records for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of the Contract; provided however, the Company shall not be required to produce, for inspection, records covering periods of time more than one year from the effective date of the Contract.

The Company shall comply with the following:

- i. The provisions of Presidential Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 as applicable to Equal Employment Opportunity;
- ii. The provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA); and
- iii. The provisions of the Employment and Training of Veterans Act, 38 U.S.C. 4212 (formerly 2012).

The Company agrees that if any of the Work of the Contract will be performed by a Subcontractor, the provisions of this subsection shall be incorporated into and become a part of the subcontract.

#### **2.14.4) Hiring of Other Party's Employees**

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two years from the termination date of this Agreement. It shall not be considered a breach of this Section for either party to make employment solicitations to the general public or groups that may include employees of the other party. Nor shall it be considered a breach of this Section for either party to respond to, act upon, or accept inquiries and applications resulting from, or make offers of employment resulting from, (i) such solicitations to the general public or groups or (ii) unsolicited employment inquiries or applications.

#### **2.14.5) Labor Relations**

The Company shall negotiate and resolve any disputes between the Company and its employees, or anyone representing its employees. The Company shall immediately notify JEA of any actual or potential labor dispute that may affect the Work and shall inform JEA of all actions it is taking to resolve the dispute.

#### **2.14.6) Ambiguous Contract Provisions**

The Contract has been the subject of meaningful analysis and discussions between the parties of the specifications, terms and conditions contained in the Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared the Contract.

#### **2.14.7) Contract Amendments**

This Contract shall not be amended except in a written amendment executed by duly authorized representatives of the parties.

#### **2.14.8) Governing Law and Venue**



The rights, obligations and remedies of JEA and the Company as specified under the Contract will be interpreted and governed in all respects exclusively by the laws of the State of Florida without giving effect to the principles of conflicts of laws thereof. Litigation involving the Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

**2.14.9) Severability**

If a court deems any provision of this Contract void, invalid, or otherwise unenforceable, such provision shall be severable, and the remaining provisions of this Contract not having been deemed void, invalid, or otherwise unenforceable shall remain in effect.

**2.14.10) Remedies**

**2.14.10.1) Cumulative Remedies**

Except as otherwise expressly provided in the Contract, all remedies provided for in the Contract 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.

**2.14.10.2) No Damages for Home Office Overhead**

With regard to any provision in this agreement pertaining to damages, equitable or otherwise, under no circumstances shall there be recovery by the Company for home office overhead. Any damages claimed shall be proven by discrete accounting of direct project costs, and no theoretical formula or industry estimating reference manuals shall be permissible.

**2.14.11) Disputes**

**2.14.11.1) Continuation of Services**

In the event of a dispute or disagreement between JEA and Company in connection with this Contract, the Company shall carry on the Work and maintain the progress schedules during such dispute or disagreement. No Work shall be delayed or postponed pending resolution of any such disputes or disagreements, except as JEA and Company may otherwise agree in writing. Suspension of the Work or portion thereof by Company shall entitle JEA to terminate the Contract for Default.

**2.14.11.2) Dispute Resolution**

If any dispute or disagreement between the parties arises under this Contract, and such dispute cannot be resolved by good faith negotiation at the field level between the parties' respective Project Managers, such dispute shall promptly be referred to senior representatives of the JEA Business Unit and Company's Project Team, who shall meet as soon as reasonably possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve said dispute or disagreement. At least five calendar days prior to any such meeting, the parties shall exchange relevant information that will assist in resolving the dispute or disagreement.

If the senior representatives of the parties are unable to resolve the dispute or disagreement on terms acceptable to both parties, Company may submit a written dispute claim to JEA's Chief Procurement Officer (the Dispute Claim). Such claim shall identify the subject of the dispute or disagreement, state the grounds for each issue to be reviewed and the applicable provisions of the

Contract or other legal authority deemed applicable to the Dispute Claim, and identify any administrative remedies pursued prior to submission of the Dispute Claim and their outcome.

Upon receipt of the Dispute Claim, the Chief Procurement Officer shall review the information submitted and may request additional information from either party. Upon receipt of a request for additional information, the parties shall provide the requested information within the time period provided in the request. Failure to timely provide requested information may result in resolution of the Dispute Claim without consideration of the requested information.

The Chief Procurement Officer shall render a decision within twenty-one (21) days of receiving all requested information. The Chief Procurement Officer's decision shall be final unless Company takes further legal action in Circuit Court.

#### **2.14.11.3) Arbitration**

Notwithstanding any term to the contrary in any of the Contract Documents, JEA shall not be obligated to arbitrate or permit any binding arbitration in connection with this Agreement.

#### **2.14.12) Entire Agreement**

The Contract constitutes the entire agreement between the parties. No statement, representation, writing, understanding, or agreement made by either party, or any representative of either party, which are not expressed herein shall be binding.

#### **2.14.13) Headings**

The headings contained herein are included for convenience or reference only and shall not be construed to be interpretations of text.

#### **2.14.14) Independent Contractor**

Company is performing the Contract as an independent contractor and nothing in the Contract will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between JEA and Company. Neither Company nor JEA will be or become liable or bound by any representation, act, or omission of the other.

#### **2.14.15) Language and Measurements**

All communication between the Company and JEA, including all documents, notes on drawings, and submissions required under the Contract, will be in the English language. Unless otherwise specified in the Contract, the US System of Measurements shall be used for quantity measurement. All instrumentation and equipment will be calibrated in US System of Measures.

#### **2.14.16) Negotiated Contract**

Except as otherwise expressly provided, all provisions of the Contract shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. The parties agree that they have had meaningful discussion and negotiation of the provisions, terms and conditions contained in the Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared the Contract.

#### **2.14.17) Nonexclusive Contract**

Notwithstanding anything contained herein that may appear to be the contrary, the Contract is "non-exclusive" and JEA reserves the right, in its sole discretion, to retain other companies to perform all or any portion of the Work, and JEA may self-perform all or any portion of the Work itself.

#### **2.14.18) References**

Unless otherwise specified, each reference to a statute, ordinance, law, policy, procedure, process, document, drawing, or other informational material is deemed to be a reference to that item, as amended or supplemented from time to time.

#### **2.14.19) Right to Audit and Financial Reporting**

##### Accounting System

The Company shall establish and maintain a reasonable accounting system that enables JEA to readily identify the Company's assets, expenses, cost of goods, and use of funds.

##### Audited Financial Statements

The Company shall provide to JEA audited financial statements for its most recent fiscal year not later than five days after receipt of written request from JEA.

##### Content and Retention of Records

The Company's records shall include, but not be limited to, accounting records; written policies and procedures; subcontract files (including proposals of successful and unsuccessful Respondents, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; invoices as support for other reimbursement; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of the Contract and for a period of five years after the completion of the Contract, maintain such records, together with such supporting or underlying documents and materials.

##### Inspection /Audit of Records

Upon JEA's request, the Company shall allow JEA to audit, to examine, and to make copies of or extracts from its financial and operating records (in whatever form they may be kept, whether written, electronic, or other) kept by the Company, its employees, agents, assigns, successors, and subcontractors, for the purpose of determining invoice accuracy, or otherwise assessing compliance with the Contract Documents.

The Company shall at any time requested by JEA, whether during or after completion of the Contract, and at Company's own expense make such records available for inspection and audit (including copies and extracts of records as required) by JEA. Such records shall be made available to JEA during normal business hours at the Company's office or place of business in a workspace suitable for the audit on three days' prior written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JEA. The Company shall have knowledgeable personnel available to answer questions for the auditors during the time they are performing the audit and for a period of two weeks thereafter. Company shall ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any

subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

#### Cost of Audits

If the audit identifies (i) overpricing or overcharges of any nature by the Company to JEA in excess of one-half of one percent (.5%) of the total billings under the Contract at the time of the audit or (ii) fraud, misrepresentation or non-performance, the Company shall reimburse JEA for the total costs of the audit.

#### Billing Adjustments and Recoveries

The Company shall pay JEA all amounts identified as owing to JEA as a result of any such audit or inspection of the Company's invoices and records no later than 90 days after the Company's receipt of JEA's findings.

#### City of Jacksonville Office of the City Council Auditor

A Company providing contractual services purchased by JEA agrees and be deemed to have agreed by virtue of doing business under contract with JEA to be subject to audit upon request by the Office of the City Council Auditor pursuant to Article 5 of the JEA Charter.

### **2.14.20) Safety**

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including, but not limited to, JEA's Contractor Safety Management Process (available at JEA.com), and orders of any public body having jurisdiction for the safety of persons or protection of property. The Company understands and agrees that a violation of any provision of this Section is grounds for an immediate termination of the Contract for default, with no requirement for JEA to provide Company with advanced notice and opportunity to cure. Additionally, the Company shall be responsible for all JEA damages associated with such termination.

The Company shall only use those Subcontractors who have met JEA Safety Prequalification requirements in the JEA Contractor Safety Management Process. The Company shall ensure that Subcontractors and their personnel have all the necessary personal protective equipment and training needed to perform the Work safely.

The Company understands and agrees that JEA Representatives may stop Work at any time that JEA, at its sole discretion, considers the Company's Work to be unsafe or a risk to person or property, and to direct the Company to, at a minimum, perform as directed in such a way as to render the Work environment safe. The Company understands and agrees that it is responsible for paying all costs associated with providing a safe work environment including, but not limited to, any costs associated with any JEA directed safety improvements. The Company also understands and agrees that it is solely responsible for the safety of personnel and property associated with the Work, and that any actions taken by JEA to prevent harm to persons or damage to equipment does not, in any way, relieve the Company of this responsibility.

The Company Representative, or alternatively, the Company Supervisor, shall be designated as the Company's representative responsible for the prevention of accidents.

If the nature of the Work requires, the Company shall notify the police and fire departments as to its Work Location in order to ensure prompt response in an emergency.

Finally, the Company represents and warrants to JEA that it has the capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Work complies with all safety requirements of the Contract Documents. The Company shall be responsible for executing the necessary safety training and supervision of its employees and Subcontractors and acknowledges that JEA is not responsible for training or supervising the Company's employees, except when noted for the purpose of enforcing compliance with these safety requirements.

**2.14.21) Subcontractors**

Company shall not subcontract its performance under this Contract without JEA's prior written consent, which may be withheld for any reason. In the event JEA approves the use of Subcontractors, the Company shall provide Subcontractors possessing the skills, certifications, registrations, licenses, training, tools, demeanor, motivation and attitude to successfully perform the Work for which they are subcontracted. The Company shall remove Subcontractors from performing Work under the Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of the Contract, or when JEA notifies the Company that JEA has determined a Subcontractor is failing to work in a manner consistent with the requirements of the Contract. If the Company subcontracts its performance under this Contract in violation of this section, it shall constitute a breach of this Contract, and JEA may terminate this Contract for cause.

**2.14.22) Assignment**

Neither party shall assign, transfer, or encumber its interest in this Contract without the written consent of the other party. Any assignment, transfer, or encumbrance in violation of this section shall be void and ineffective and shall constitute a breach of this Contract. In such event, the non-assigning party shall be entitled to immediately terminate this Contract in addition to any other remedies available at law or in equity. JEA reserves the right to condition its approval of any assignment, transfer, or encumbrance upon further due diligence.

**2.14.23) Survival**

The obligations of JEA and the Company under the Contract that are not, by the express terms of the Contract, to be performed fully during the Term, including, but not limited to all warranty obligations, shall survive the termination of the Contract.

**2.14.24) Time and Date**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under the Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA's Procurement Department.

**2.14.25) Time of the Essence**

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

**2.14.26) Waiver**

A delay or omission by JEA to exercise any right or power under the Contract shall not be construed to be a waiver thereof. A waiver by JEA under the Contract shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by a party of a right under or breach of, the Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, the Contract.

The Company's obligations to perform and complete the Work in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of JEA's rights under the Contract: approval of payments, including final payment; Certificate of Contract Completion; any use of the Work by JEA; nor any correction of faulty or defective work by JEA.