

**DISTRIBUTION SERVICES AGREEMENT**

between

JEA

and

[•]

dated as of

[•]

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

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 INTERPRETATION.....	1
ARTICLE 2 TERM.....	2
Section 2.1    Term .....	2
Section 2.2    Term Extension.....	2
Section 2.3    Service Commencement Date .....	2
ARTICLE 3 SERVICE PROVIDER’S OBLIGATIONS.....	2
Section 3.1    Services.....	2
(A)    Distribution over Service Provider’s Distribution System.....	2
(B)    Customary Services.....	2
Section 3.2    Performance.....	2
(A)    General .....	2
(B)    Title .....	3
(C)    Proportionate Distribution.....	3
(D)    Distribution Losses .....	3
(E)    Prudent Utility Practice.....	3
(F)    Facilities .....	3
Section 3.3    Independent Contractor .....	3
Section 3.4    Charges .....	3
ARTICLE 4 INSURANCE.....	3
Section 4.1    Required Insurance .....	3
Section 4.2    Certificates.....	3
Section 4.3    Claims Made.....	4
ARTICLE 5 COMPLIANCE; SURVIVAL .....	4
Section 5.1    Compliance with Applicable Law .....	4
Section 5.2    Survival.....	4
ARTICLE 6 DEFAULT, REMEDIES AND DISPUTE RESOLUTION.....	4
Section 6.1    Events of Default by Service Provider .....	4
(A)    Events of Default .....	4
(B)    JEA’s Remedies for Service Provider Default.....	4
Section 6.2    Dispute Resolution .....	4
(A)    Dispute Resolution.....	4
(B)    Negotiation.....	4

(C) Litigation..... 5

(D) Submission to Jurisdiction ..... 5

(E) Provisional Relief..... 5

(F) Obligation to Repair; Termination Notice ..... 5

SECTION 6.3 WAIVER OF CERTAIN DEFENSES ..... 5

ARTICLE 7 GENERAL ..... 5

Section 7.1 Force Majeure..... 5

(A) Performance Excused..... 5

(B) Notice, Mitigation ..... 6

(C) Conditions to Relief on Account of Force Majeure ..... 6

Section 7.2 Indemnification by Service Provider ..... 6

(A) Indemnification ..... 6

(B) Third Party Claims. .... 6

Section 7.3 Proprietary Information ..... 7

(A) Confidential Information..... 7

(B) Permitted Disclosures..... 7

Section 7.4 Relationship of the Parties ..... 8

Section 7.5 Assignment and Transfer..... 8

Section 7.6 Amendment and Modification; Waiver ..... 8

Section 7.7 Notices ..... 8

Section 7.8 Entire Agreement..... 9

Section 7.9 Further Assurances ..... 9

Section 7.10 No Third Party Beneficiaries ..... 9

Section 7.11 Termination ..... 9

Section 7.12 Counterparts ..... 9

ARTICLE 8 REPRESENTATIONS AND WARRANTIES ..... 9

Section 8.1 Representations and Warranties of JEA ..... 10

(A) Organization and Qualification of JEA..... 10

(B) Authority of JEA..... 10

(C) Consents and Approvals; No Violations ..... 10

(D) Legal Proceedings ..... 10

Section 8.2 Representations and Warranties of Service Provider ..... 10

(A) Organization and Qualification of Service Provider ..... 10

(B) Authority of Service Provider ..... 11

(C) Consents and Approvals; No Violations ..... 11

(D) Legal Proceedings ..... 11

(E) Restrictions on Nongovernmental Use..... 11

**Schedule 1- Definitions**

## **DISTRIBUTION SERVICES AGREEMENT<sup>1</sup>**

This DISTRIBUTION SERVICES AGREEMENT (collectively with the Schedules hereto, this “Agreement”) dated as of [•], is made and entered into by and between JEA, a body politic and corporate (“JEA”), and [•], a [•] (“Service Provider”). Service Provider and JEA are sometimes hereinafter referred to individually as a “Party” and together as the “Parties”. All initially capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in Schedule 1 hereto.

- A. JEA has previously entered into an Amended and Restated Power Purchase Agreement, dated December 31, 2014 (the “Vogtle PPA”) with the Municipal Electric Authority of Georgia (“MEAG”) for 206 MW of capacity and related energy from Plant Vogtle Units 3 and 4, a nuclear generating station under construction in Burke County, Georgia, in which MEAG has a 22.7% undivided ownership interest.
- B. JEA is entitled to 103 MW from each of Vogtle Units 3 and 4 for a 20-year term commencing on each unit’s operational date on a “take or pay” basis.
- C. JEA intends to continue the Vogtle PPA until its conclusion or termination so as not to cause any adverse tax effects on bondholders.
- D. JEA and Service Provider have entered into an Asset Purchase and Sale Agreement pursuant to which Service Provider has agreed to acquire substantially all of the assets and liabilities of JEA’s Business (as defined therein) (the “Transaction”), not including the Vogtle PPA, which will be retained by JEA.
- E. The Parties desire to enter into this Agreement in order to distribute the energy sourced under the Vogtle PPA from Plant Vogtle from the Delivery Point or Points on Service Provider’s Distribution System to JEA’s End-use Customers.
- F. JEA will remain fully responsible for the exercise and performance of all of rights and obligations of JEA under the Vogtle PPA, including the purchase and acceptance of, and payment for, energy from Plant Vogtle thereunder.

In consideration of the mutual covenants, representations, warranties and other agreements hereinafter set forth and in support of the Transaction, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1 INTERPRETATION**

All references in this Agreement to Schedules, Articles, Sections and clauses refer to the corresponding Schedules, Articles, Sections and clauses of this Agreement unless expressly provided otherwise. The table of contents and headings appearing at the beginning of any Articles, Sections or clauses of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, or clauses and shall be disregarded in construing the language contained therein. The words “this Agreement,” “herein,” “hereby,” “hereunder” and “hereof” and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words “this Article,” “this

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

Section,” “this clause” and words of similar import, refer only to the Article, Section or clause hereof in which such words occur. The word “including” (in its various forms) means “including, without limitation.” Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained herein shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms, and shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. References to any Person include the successors and permitted assigns of that Person. When calculating the period of time before which, within which, or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. Unless the context otherwise requires, all references to a specific time shall refer to Eastern Time. References to any applicable Law refer to such applicable Law as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated under such statute) and references to any section of any Law include any successor to such section, unless otherwise specifically indicated. Unless the context otherwise requires, all references to days means calendar days. Unless otherwise specifically indicated, any reference herein to “dollar(s)” or “\$” means U.S. dollars.

## **ARTICLE 2**

### **TERM**

**Section 2.1** **Term.** This Agreement and the rights and obligations of each Party hereunder will commence and take effect on the date of the closing of the Transaction (the “Closing”) and shall extend for the period of time that the Territorial Agreement is in force (the “Term”). This Agreement shall terminate (A) automatically when the Territorial Agreement expires or is terminated, or (B) pursuant to Section 7.11.

**Section 2.2** **Term Extension.** The Term shall automatically be extended to the extent that the term of the Territorial Agreement is extended.

**Section 2.3** **Service Commencement Date.** Service Provider shall begin rendering Services under this Agreement immediately upon the Closing.

## **ARTICLE 3**

### **SERVICE PROVIDER’S OBLIGATIONS**

**Section 3.1** **Services.** Service Provider shall be responsible for providing the following services (each, a “Service” and collectively the “Services”):

(A) **Distribution over Service Provider’s Distribution System.** Service Provider shall use its Distribution System to transmit energy and capacity from the Delivery Point(s) on Service Provider’s Distribution System solely to JEA’s End-use Customers in the Service Territory.

(B) **Customary Services.** Service Provider shall provide any other customary services that are not explicitly enumerated in the Agreement but are necessary to the delivery of the Services.

**Section 3.2** **Performance.**

(A) **General.** Service Provider shall be responsible for successfully performing, integrating, completing, delivering, and managing the Services. Service Provider may use its own assets (e.g., facilities, infrastructure, systems and tools) and/or assets acquired from JEA in providing these services. Service Provider will be responsible for performing the Services in

accordance with all applicable federal, state, and local Laws and regulations, including NERC and the Florida Public Service Commission requirements.

(B) **Title.** Title to the energy delivered under the Vogtle PPA to the End-use Customers pursuant to this Agreement shall remain at all times with JEA until such energy passes through Service Provider’s meter at the End-use Customer’s location. For the avoidance of doubt, nothing in this Agreement shall be construed to be an assignment of any of JEA’s rights or obligations under the Vogtle PPA.

(C) **Proportionate Distribution.** Energy under this Agreement will be distributed and billed to each of JEA’s End-use Customers in proportion to the total net energy supplied to all JEA’s customers. For the avoidance of doubt, the proportion of the energy supplied to each of JEA’s End-use Customers shall be equal to the ratio of the energy supplied under the Vogtle PPA divided by the total energy supplied to all electrical customers in the Service Territory.

(D) **Distribution Losses.** Service Provider shall deliver energy sourced from the Vogtle PPA minus distribution losses. Distribution losses for the Services under this Agreement shall be as determined by the ratemaking process in the Service Territory. Service Provider shall provide to JEA information related to distribution losses for ratemaking purposes.

(E) **Prudent Utility Practice.** Service Provider shall perform the Services in accordance with Prudent Utility Practice.

(F) **Facilities.** Service Provider shall be responsible for providing all distribution lines, substations, transformers, facilities, hardware, software, and physical plant necessary to perform the Services.

**Section 3.3 Independent Contractor.** JEA hereby engages Service Provider as an independent contractor to furnish the Services described in this Agreement.

**Section 3.4 Charges.** Service Provider shall provide the Services pursuant to its obligations under its franchise agreement with the City of Jacksonville to distribute energy to consumers in the Service Territory.

## **ARTICLE 4 INSURANCE**

**Section 4.1 Required Insurance.** Service Provider agrees to maintain, at its own cost and expense, general and automobile liability, worker’s compensation, and other forms of insurance relating to its operations for the life of this Agreement in the manner, and amounts, as are usual and customary for similarly situated companies in its industry.

**Section 4.2 Certificates.** Upon request, Service Provider shall provide to JEA, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Service Provider under this Agreement or, in the alternative, a list of self-insurance measures undertaken. Certificates of insurance shall provide the following information: (A) name of insurance company, policy number and expiration date; (B) the coverage required and the limits on each, including the amount of deductibles or self-insured retentions; (C) a statement indicating that Service Provider shall endeavor to provide at least thirty (30) days’ prior written notice of cancellation of a policy; and (D) a statement indicating that JEA has been named as an additional insured.

**Section 4.3 Claims Made.** If any insurance is written on a “claims made” or “claims first made” basis, Service Provider shall maintain the coverage for a minimum of three (3) years after the termination of this Agreement.

**ARTICLE 5  
COMPLIANCE; SURVIVAL**

**Section 5.1 Compliance with Applicable Law.** Service Provider shall perform all of its obligations hereunder in accordance with Applicable Law.

**Section 5.2 Survival.** Sections 4.1, 7.2, 7.3, 7.4, and 7.7 shall survive termination of this Agreement.

**ARTICLE 6  
DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

**Section 6.1 Events of Default by Service Provider.**

(A) Events of Default. Any failure or refusal by Service Provider to perform any material obligation under this Agreement which failure or refusal is not otherwise excused by Force Majeure and has not been cured within thirty (30) days following receipt of written notice thereof from JEA shall constitute an event of default (an “Event of Default”); *provided, however*, that as long as Service Provider is diligently attempting in good faith to cure such failure or refusal and it is reasonably expected that such failure is subject to cure, then Service Provider, as the case may be, shall have an additional thirty (30) days to cure such default.

(B) JEA’s Remedies for Service Provider Default. Upon the occurrence of an Event of Default by Service Provider under Subsection 6.1(A), JEA may recover any Losses from such Event of Default.

**Section 6.2 Dispute Resolution.**

(A) Dispute Resolution. Any dispute arising out of or relating to this Agreement or the interpretation, breach, termination or validity thereof (a “Dispute”) shall be resolved in accordance with the procedures below, which shall constitute the sole and exclusive procedures for the resolution of such Disputes, including as to the validity of any termination or effective date of any termination.

(B) Negotiation. The Parties shall attempt to resolve any Dispute promptly by negotiation. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within five (5) days after receipt of the notice, the receiving Party shall submit to the other Party a written response. The notice and response shall include a statement of that Party’s position and a summary of arguments supporting that position. Within five (5) days after receipt of the initial notice, designated senior executives of each Party shall meet at a mutually acceptable time and place, and thereafter as often as each Party reasonably deems necessary, to attempt through diligent, good faith negotiations to resolve the Dispute. The Parties shall endeavor to complete the negotiation process within ten (10) days after the receipt of the Dispute notice. All negotiations and discussions pursuant to this Subsection 6.2(B) shall be confidential and shall be treated as compromise settlement discussions and negotiations for purposes of Federal Rule of Evidence 408 and any applicable Florida state evidence rules and shall not be used or offered as evidence in any subsequent proceeding.

(C) Litigation. Any Dispute which has not been resolved by negotiation as provided in Subsection 6.2(B) above within twenty (20) days after receipt of a Dispute notice may be referred to the Circuit Court of the State of Florida in Duval County, in accordance with Subsection 6.2(D) below.

(D) Submission to Jurisdiction. Any Action arising out of or based upon this Agreement or the transactions contemplated hereby shall be in the Circuit Court of the State of Florida in Duval County, which court shall have exclusive jurisdiction for such purpose and the Parties irrevocably submit to the exclusive jurisdiction of such court in any such Action. Service of process, summons, notice or other document delivered in accordance with Section 7.7 shall be effective service of process for any Action brought in such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any Action in such court and irrevocably waive and agree not to plead or claim in such court that any such Action brought in such court has been brought in an inconvenient forum.

(E) Provisional Relief. Either Party may proceed in the Circuit Court of the State of Florida in Duval County to seek to obtain provisional judicial relief if, in the such Party's sole discretion, such Action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of such negotiation or litigation under Subsection 6.2(A), (B) or (C) above.

(F) Obligation to Repair; Termination Notice. The Parties will continue to perform their respective obligations hereunder, including Service Provider's performance of the Services in accordance with the terms hereof, notwithstanding the existence of any Dispute, including responsibility for the costs thereof. Such performance by the Parties shall in no case prejudice their rights thereafter to dispute their responsibility for the costs. During the dispute resolution process pursuant to this Section 6.2, any termination notice delivered pursuant to this Agreement shall be tolled and this Agreement shall not terminate until the later of (a) the end of the period provided in such termination notice, and (b) the issuance of a final, binding ruling by a Governmental Authority that the termination of this Agreement was proper.

**Section 6.3** WAIVER OF CERTAIN DEFENSES. SERVICE PROVIDER ACKNOWLEDGES THAT IT IS RESPONSIBLE FOR THE SERVICES AND AGREES THAT, UNLESS OTHERWISE PERMITTED PURSUANT TO THE PROVISIONS OF THIS AGREEMENT WITH RESPECT TO THE OCCURRENCE OF A FORCE MAJEURE EVENT, IT SHALL NOT ASSERT (A) IMPOSSIBILITY OR IMPRACTICABILITY OF PERFORMANCE, (B) LACK OF FITNESS FOR USE OR OPERATION OF ITS DISTRIBUTION SYSTEM, (C) THE EXISTENCE, NON-EXISTENCE, OCCURRENCE OR NON-OCCURRENCE OF ANY FORESEEN OR UNFORESEEN FACT, EVENT OR CONTINGENCY THAT MAY BE A BASIC ASSUMPTION OF SERVICE PROVIDER, (D) COMMERCIAL FRUSTRATION OF PURPOSES, OR (E) CONTRACT OF ADHESION, AS A DEFENSE AGAINST ANY CLAIM BY JEA AGAINST SERVICE PROVIDER.

## **ARTICLE 7 GENERAL**

### **Section 7.1** Force Majeure.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither JEA nor Service Provider shall be liable to the other for any failure or delay in

performance of any obligation under this Agreement (other than any payment at the time due and owing), to the extent due to the occurrence of a Force Majeure event.

(B) Notice, Mitigation. The Party claiming a Force Majeure event (the “Claiming Party”) shall notify the other Party in writing, on or promptly after the date the Party experiencing such Force Majeure event first knew of the commencement thereof, followed within fifteen (15) days by a written description of (1) the Force Majeure event and the cause thereof (to the extent known), (2) the date the Force Majeure event began and the cause thereof, its estimated duration, the estimated time during which the performance of the Claiming Party’s obligations hereunder will be delayed, and the impact, if any, on any scheduled completion dates for Capital Improvements, (3) its estimated impact on the other obligations of the Claiming Party under this Agreement and (4) potential mitigating actions which might be taken by the Claiming Party and any areas where costs might be reduced and the approximate amount of such cost reductions. The Claiming Party shall provide prompt written notice to the other Party of the cessation of such Force Majeure event. Whenever such act, event or condition shall occur, the Claiming Party shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. While the Force Majeure event continues, the Claiming Party shall give notice to the other Party before the first day of each succeeding month updating the information previously submitted. The Claiming Party shall furnish promptly (if and to the extent available to it) any additional documents or other information relating to the Force Majeure event reasonably requested by the other Party.

(C) Conditions to Relief on Account of Force Majeure. If and to the extent a Force Majeure event interferes with or delays Service Provider’s performance of the Services in accordance herewith, and Service Provider has given timely notice and description as required by Subsection 7.1(B), Service Provider shall be excused from performance and be entitled to schedule relief and to recovery of the increased costs subject, however, to cost substantiation. In the event that Service Provider believes it is entitled to schedule or other performance relief hereunder on account of any Force Majeure event, it shall furnish JEA written notice of the specific relief requested and detailing the event giving rise to the claim within forty-five (45) days after the giving of notice delivered pursuant to Subsection 7.1(B). Within forty-five (45) days after receipt of such a timely submission from Service Provider, JEA shall issue a written determination as to the extent, if any, it concurs with Service Provider’s claim for relief, and the reasons therefor.

**Section 7.2 Indemnification by Service Provider.**

(A) Indemnification. Service Provider agrees that to the fullest extent permitted by Law, it will defend, indemnify and hold harmless JEA, its Affiliates, and Subcontractors, and their respective Representatives (as applicable in the circumstances), (the “JEA Indemnified Parties”) from and against (and pay the full amount of) any Loss and will defend the JEA Indemnified Parties in any Action, including appeals, for personal injury to, or death of, any Person, or Loss to property and for any Loss arising out of (i) any breach by Service Provider of any representation, warranty or covenant of Service Provider in this Agreement, (ii) any Third Party Claims for which Service Provider has assumed responsibility under this Agreement, or (iii) the gross negligence or willful misconduct of any member of the Service Provider Group.

(B) Third Party Claims. A JEA Indemnified Party shall promptly notify Service Provider of the assertion of any Third Party Claim against it for which it is entitled to be indemnified hereunder, shall give Service Provider the opportunity to defend such claim, and shall not settle the claim without the approval of Service Provider. Service Provider shall be entitled to control the handling of any such Third Party Claim and to defend or settle any such claim, in its sole discretion, with counsel of its own

choosing that is acceptable to the JEA Indemnified Parties; *provided, however*, that, in the case of any such settlement, Service Provider shall also obtain written release of all liability of the JEA Indemnified Parties, in form and substance reasonably acceptable to the JEA Indemnified Parties. Notwithstanding the foregoing, each JEA Indemnified Party shall have the right to employ its own separate counsel in connection with, and to participate in (but, except as provided below, not control) the defense of, such claim, but the fees and expenses of such counsel incurred after notice to Service Provider of its assumption of the defense thereof shall be at the expense of such JEA Indemnified Party unless:

(1) the employment of counsel by such JEA Indemnified Party has been authorized by Service Provider;

(2) counsel to such JEA Indemnified Party shall have reasonably concluded that there may be a conflict on any significant issue between Service Provider and such JEA Indemnified Party in the conduct of the defense of such claim; or

(3) Service Provider shall not in fact have employed counsel reasonably acceptable to the JEA Indemnified Party to assume the defense of such claim within twenty (20) days following the receipt by Service Provider of the notice from the JEA Indemnified Party regarding the assertion of the applicable claim, in each case the fees and expenses of counsel for such JEA Indemnified Party shall be at the expense of Service Provider; *provided, however*, that, with respect to clauses (2) and (3) of this sentence, Service Provider shall not be obligated to pay the fees and expenses of more than one law firm, plus local counsel if necessary in each relevant jurisdiction, for all such JEA Indemnified Parties with respect to any claims arising out of the same events or facts or the same series of events or facts. Service Provider shall not be entitled, without the consent of such JEA Indemnified Party, to assume or control the defense of any claim as to which counsel to such JEA Indemnified Party shall have reasonably made the conclusion that there may be a conflict on any significant issue between Service Provider and such JEA Indemnified Party in the conduct of the defense of such claim as set forth in clause (ii) above, *provided* that the foregoing limitation shall apply only with respect to those issues for which there may be such a conflict. These indemnification provisions are for the protection of the JEA Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 7.2 shall survive termination or expiration of this Agreement.

### **Section 7.3 Proprietary Information.**

(A) Confidential Information. The Parties hereby acknowledge that they may have a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement, including any non-public know-how, system information, and other information of a confidential nature (“Confidential Information”). Subject to the terms of this Agreement (including the permitted disclosures described below), each Party shall maintain in confidence all Confidential Information provided by the other Party, and shall not disclose such Confidential Information to any third party except to those related parties and subcontractors as are necessary to the disclosing Party’s activities under this Agreement, and strictly on a need-to-know basis. In maintaining confidentiality of another Party’s Confidential Information, each Party shall exercise the same degree of care that it exercises with its own confidential information and in no event less than a reasonable degree of care.

(B) Permitted Disclosures. Notwithstanding any confidential or proprietary designation thereof by a Party, a Party may disclose the following: (1) information which is known to that Party without any restriction as to disclosure or use at the time it is furnished, (2) information which is or becomes generally available to the public without breach of any agreement, (3) information which is

received from a third party without limitation or restriction on such third party or at the time of disclosure, or (4) following notice to the disclosing Party, information which, in the opinion of counsel, is required to, be or may be, disclosed under any Applicable Law, including requirements for public disclosure of information pursuant to (a) Chapter 119 of the Florida Statutes and any supporting regulations, (b) Chapter 286 of the Florida Statutes and any supporting regulations, (c) Article I, Section 24 of the Florida constitution and any supporting regulations, (d) an order of a court of competent jurisdiction, or (e) a lawful subpoena.

**Section 7.4 Relationship of the Parties.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall be deemed to constitute either Party a partner, joint venture partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties. Neither Party shall have the authority, and neither Party will represent that it has such authority, to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

**Section 7.5 Assignment and Transfer.** This Agreement may be assigned by either Party only with the prior written consent of the other Party, except that (a) without the consent of Service Provider, JEA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other governmental entity or independent agency of the City of Jacksonville, Florida, *provided* that the successor entity gives reasonable assurances to Service Provider that it will be able to fulfill JEA’s obligations hereunder, and (b) without the consent of JEA, Service Provider may assign this Agreement to a wholly-owned direct or indirect subsidiary of Service Provider or its parent, if any, *provided* that, notwithstanding any such assignment, Service Provider shall remain responsible for all of its obligations hereunder.

**Section 7.6 Amendment and Modification; Waiver.** This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each of the Parties. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 7.7 Notices.** Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by (A) registered or certified mail, postage prepaid, (B) email or (C) overnight courier:

If to Service Provider:                    [NAME]  
                                                          [ADDRESS]  
                                                          [CITY STATE ZIP]  
                                                          Attention: [•]  
                                                          Facsimile No: [•]  
                                                          Email: [•]

If to JEA:                                        JEA  
                                                          21 W. Church Street  
                                                          Jacksonville, Florida 32201  
                                                          Attention: Managing Director  
                                                          Facsimile No: 904-665-4233

Email: [•]

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

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

**Section 7.8 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter, including all documents or communications, whether oral, written or electronic, submitted or made by Service Provider or any of its Representatives in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

**Section 7.9 Further Assurances.** Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other Party in order to give full effect to this Agreement. JEA and Service Provider, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

**Section 7.10 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 7.11 Termination.** This Agreement may be terminated for convenience by JEA with ninety (90) days' advance written notice to Service Provider.

**Section 7.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile, e-mail or other customary means of electronic transmission shall be deemed to have the same legal effect as delivery of a manually executed counterpart hereof.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

**Section 8.1 Representations and Warranties of JEA.** JEA represents and warrants to Service Provider as follows:

(A) Organization and Qualification of JEA. JEA is a body politic and corporate duly created and established under the Laws of the State of Florida and has all requisite power and authority to own, lease or operate the material properties and material assets now owned, leased or operated by it and to carry on its business as presently conducted.

(B) Authority of JEA. JEA has all requisite body politic power and authority to enter into this Agreement, to carry out its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by JEA and, assuming the due authorization, execution and delivery by Service Provider, constitutes a legal, valid and binding obligation of JEA enforceable against JEA in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or similar laws affecting creditors' rights generally, sovereign immunity (to the extent applicable) and by general principles of equity, whether considered in a proceeding in equity or law (such laws and principles, collectively, the "Enforceability Exception").

(C) Consents and Approvals; No Violations. Assuming the truth and accuracy of the representations and warranties of Service Provider set forth in Subsection 8.2(C), no filing with or notice to, and no consent or approval of, any Governmental Authority is required on the part of JEA for the execution, delivery and performance by JEA of this Agreement or the consummation by JEA of the transactions contemplated hereby, except: (1) those as a result of any facts or circumstances relating to Service Provider or any of its Affiliates or their respective businesses, or (2) any permit, declaration, filing, authorization, registration, consent or approval, the failure to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect. Assuming compliance with the items described in clause (1) of the preceding sentence, neither the execution, delivery or performance by JEA of this Agreement, nor the consummation by JEA of the transactions contemplated hereby will (a) conflict with or result in any breach or violation of any provision of its organizational documents, or (b) violate any Law applicable to its business, except, in the case of clause (b), for breaches, violations, defaults, Encumbrances or rights of termination, amendment, cancellation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

(D) Legal Proceedings. As of the date of this Agreement, there are no actions existing, pending or, to the knowledge of JEA, threatened in writing against JEA relating to its business, and there are no orders outstanding against JEA relating to its business, in each case, that would reasonably be expected to have a material adverse effect or would reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or materially delaying the transactions contemplated by this Agreement.

**Section 8.2 Representations and Warranties of Service Provider.** Service Provider represents and warrants to JEA as follows:

(A) Organization and Qualification of Service Provider. Service Provider is a [•] duly organized, validly existing and in good standing under the Laws of the State of [•] and has all requisite power and authority to own, lease or operate its properties and assets and to carry on its business as currently conducted. Service Provider is duly qualified or licensed to transact business and is in good standing (if applicable) in each jurisdiction in which the property and assets it owns, leases or operates, or the nature of the business it conducts, makes such qualification or licensing

necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a material adverse effect.

(B) Authority of Service Provider. Service Provider has all requisite corporate power and authority to enter into this Agreement, to carry out its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Service Provider and, assuming the due authorization, execution and delivery by JEA, constitutes a legal, valid and binding obligation of Service Provider enforceable against Service Provider in accordance with its terms, subject to the Enforceability Exception.

(C) Consents and Approvals; No Violations. Assuming the truth and accuracy of the representations and warranties of JEA set forth in Subsection 8.1(C), no filing with or notice to, and no consent or approval of, any Governmental Authority is required on the part of Service Provider for the execution, delivery and performance by Service Provider of this Agreement or the consummation by Service Provider of the transactions contemplated hereby, except: (1) those as a result of any facts or circumstances relating to JEA or any of its Affiliates or their respective businesses, or (2) any permit, declaration, filing, authorization, registration, consent or approval, the failure to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect. Assuming compliance with the items described in clause (1) of the preceding sentence, neither the execution, delivery or performance by Service Provider of this Agreement, nor the consummation by Service Provider of the transactions contemplated hereby will (a) conflict with or result in any breach or violation of any provision of its organizational documents, or (b) violate any Law applicable to its business, except, in the case of clause (b), for breaches, violations, defaults, Encumbrances or rights of termination, amendment, cancellation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

(D) Legal Proceedings. As of the date of this Agreement, there are no actions existing, pending or, to the knowledge of Service Provider, threatened in writing against Service Provider relating to its business, and there are no orders outstanding against Service Provider relating to its business, in each case, that would reasonably be expected to have a material adverse effect or would reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or materially delaying the transactions contemplated by this Agreement.

(E) Restrictions on Nongovernmental Use. Service Provider does not expect that the capacity and energy provided under the Vogtle PPA (the “PPA Project”) to be used in any trade or business carried on by any natural person or any activity carried on by anyone other than a natural person or a state or local governmental unit (the “Private Use Limits”). For purposes of this Subsection (E), “use” includes the sale of power to non-governmentally owned utilities pursuant to output or requirements contracts as well as any other arrangements for the sale or transmission of power on terms different from those available to the general public. Except as otherwise described in this Subsection (E), Service Provider shall not permit any private business use of the PPA Project. This requirement is applied by taking into account any arrangements Service Provider with third parties for the sale of power from the PPA Project that would be taken into account as a “use” of the PPA Project if made by Service Provider. Service Provider agrees to notify JEA prior to any such use. Service Provider covenants to comply with the Private Use Limits throughout the term of the Vogtle PPA:

(1) Other Uses of the PPA Project. Service Provider may enter into a variety of arrangements with nongovernmental persons, including wholesale and retail customers of JEA and nongovernmental utilities and other providers of electric generation and

transmission service. With respect to the PPA Project, each of these arrangements will satisfy one of the following exceptions to the limitations on private business use and private security or payments:

(a) in the case of sales of electric generation service, the term of such transactions will not exceed three years (including renewal options), such transactions will be negotiated, arm's length arrangements that provide for compensation at fair market value or are based on generally applicable and uniformly applied rates, and the PPA Project was not acquired with a principal purpose of providing that facility for use by that nongovernmental person;

(b) in the case of sales of electric generation service, the compensation for such service will not exceed the properly allocable cost of ordinary and necessary expenses that are directly attributable to the operation of the PPA Project used by the nongovernmental person;

(c) in the case of sales of electric generation service, the output is sold (i) to a retail customer pursuant to a requirements contract that does not involve minimum guaranteed payments, or (ii) under a contract pursuant to which the average annual payments to be made under the contract do not exceed 1 percent of the average annual debt service on all outstanding tax-exempt bonds (and Build America Bonds) issued to finance the PPA Project;

(d) the use of the PPA Project is by an entity that qualifies as an agency of JEA or another governmental unit, as approved by the Internal Revenue Service or JEA's tax counsel, that such entity does not, in turn, use the output of the PPA Project in a manner that gives rise to private business use;

(e) in the case of sales of electric generation service, the output is sold to a wholesale customer pursuant to a wholesale requirement contracts wherein (i) the term of the contract does not exceed the lesser of 5 years or the term of the Bonds, and (ii) the amount of the output sold does not exceed 5% of the available output of the PPA Project; and

(f) in the case of sales of electric generation service, output that is allocable to portions of the PPA Project that were financed with amounts other than the proceeds of Build America Bonds or obligations the interest on which is excluded from gross income for federal income tax purposes.

(2) The above requirements in this Subsection 8.2(E) may be modified as a result of change in law or guidance from the Internal Revenue Service as approved by the Internal Revenue Service or JEA's tax counsel.

[SIGNATURE PAGE FOLLOWS]

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

JEA

By: \_\_\_\_\_  
Name:  
Title:

[Service Provider]

By: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE 1**

### **DEFINITIONS**

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

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

“Agreement” has the meaning set forth in the Preamble.

“Applicable Law” means any Law, rule, regulation, condition or requirement, guideline, ruling, ordinance or order of, or any Legal Entitlement issued by, any Governmental Authority and applicable from time to time to the performance of the obligations of the Parties hereunder.

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

“Claiming Party” has the meaning set forth in Subsection 7.1(B).

“Closing” has the meaning set forth in Section 2.1.

“Confidential Information” has the meaning set forth in Subsection 7.3(A).

“Delivery Points” means the points where energy delivered under the Vogtle PPA is delivered at **[26 kV and 13.8kV]** onto Service Provider’s Distribution System.

“Dispute” has the meaning set forth in Subsection 6.2(A).

“Distribution Substations” means any and all facilities and equipment located at a substation that are used for or in support of the transmission of electricity at or below **[26]** kV including conductors, associated poles and towers, transformers, circuit breakers, protective relays, static VAR compensators, meters and related structures and control equipment.

“Distribution System” means the equipment and facilities (including Distribution Substations) used to deliver power and energy to end users, including transformers, switches, and feeders with an operating voltage at or below **[26]** kV or such other facilities as may be designated by the applicable regulatory agency.

“Encumbrances” means any mortgage, pledge, security interest, encumbrance, lien or charge. For the avoidance of doubt, the term “Encumbrance” shall not be deemed to include any license of Intellectual Property Rights.

“End-use Customer” means any customer in the Service Territory who receives energy supplied by JEA through Service Provider’s distribution system, whether that supply occurs directly from JEA or through a retail energy provider.

“Enforceability Exception” has the meaning set forth in Subsection 8.1(B).

“Event of Default” has the meaning set forth in Subsection 6.1(A).

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means any act, event or condition, whether affecting the distribution system, the System Power Supply, JEA, Service Provider, or any of JEA’s subcontractors or Service Provider’s Subcontractors to the extent that it materially and adversely affects the ability of either Party to perform any obligation under this Agreement (except for payment obligations), as the case may be, if such act, event or condition is beyond the reasonable control and is not also the result of the willful misconduct or negligent action or omission or failure to exercise reasonable diligence on the part of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, as the case may be *provided, however*, that the contesting in good faith or the failure to contest such action or inaction in good faith shall not be construed as willful misconduct or negligent action or a lack of reasonable diligence of either Party.

(A) Inclusions. Subject to the foregoing, a Force Majeure may only, but not necessarily will, include the following acts, events or conditions:

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the distribution and distribution system), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, computer sabotage or virus, acts of a public enemy or terrorist events, extortion, war, blockade or insurrection, riot or civil disturbance;

(2) the failure of any Governmental Authority or private utility having operational jurisdiction in the area in which the distribution lines of the T&D System are located, to provide and maintain non-electric utilities (i.e., water, gas, wastewater, telephone, etc.) to any facility comprising part of the T&D System which are required for the performance of this Agreement and which failure directly results in a delay or curtailment of the performance of any of the services provided by Service Provider under this Agreement;

(3) any failure of title to any portion of the T&D System Site or any enforcement of any Encumbrance on the T&D System Site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the Party adversely affected thereby; or

(4) the preemption of materials or services by a Governmental Authority in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the T&D System.

(B) Exclusions. It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure:

(1) a change or development in regional, national or international political conditions or in general economic, business, regulatory, political or market conditions or in national or international financial, banking or securities markets (including any disruption thereof or changes in interest or exchange rates);

(2) the financial condition of JEA, Service Provider, or any of their Affiliates or any Subcontractor;

(3) subject to clause (ii) in the first paragraph of this definition, the consequences of error, negligence or omissions by Service Provider, any Subcontractor, any of their Affiliates or any other Person in the performance of any work hereunder;

(4) any increase for any reason in premiums charged by Service Provider’s insurers or the insurance markets generally for the required insurance;

(5) the failure of Service Provider to secure Intellectual Property Rights or licenses in connection with the technology necessary to perform its obligations under this Agreement;

(6) equipment malfunction or failure (unless caused by an event that would otherwise constitute a Force Majeure);

(7) union work rules, requirements or demands which have the effect of increasing the number of employees employed at the T&D System, reducing the operating flexibility of Service Provider or otherwise increase the cost to Service Provider of operating and maintaining the T&D System;

(8) any impact of prevailing wage laws on Service Provider’s operation and maintenance costs with respect to wages and benefits;

(9) the failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason (unless caused by an event that would otherwise constitute a Force Majeure);

(10) strikes, work stoppages or other labor disputes or disturbances with respect to Service Provider’s workforce;

(11) a change or development that generally affect any industry or geographic area in which either Party operates; or

(12) a change or development in the market for (including the price of) commodities or changes in the electric generation, transaction or distribution industries.

“Governmental Authority” means any federal, state or local, domestic or foreign governmental or regulatory authority, agency, commission, body, arbitrator, court, regional reliability entity, or any other legislative, executive or judicial authority (including independent system operators, RTOs and FERC-designated Electric Reliability Organizations such as NERC).

“Intellectual Property Rights” means all (a) trade names, trademarks and service marks, domain names, trade dress and similar rights, and applications to register any of the foregoing; (b) patents and patent

applications; (c) copyrights (whether registered or unregistered) and applications for registration; and (d) confidential and proprietary information, including trade secrets and know-how.

“JEA” has the meaning set forth in the Preamble.

“JEA Indemnified Parties” has the meaning set forth in Subsection 7.2(A).

“Law” means any federal, state, local or foreign law, statute or ordinance, common law or any rule, regulation, legally binding standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement or permit, license, approval, or authorization of any Governmental Authority.

“Legal Entitlement” means any permit, license, approval, authorization, consent and entitlement of whatever kind and however described which is required under Applicable Law to be obtained or maintained by any person with respect to the performance of any obligation under this Agreement.

“Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

“Loss” or “Losses” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“MEAG” has the meaning set forth in Recital A.

“NERC” means the North American Electric Reliability Corporation.

“Party” or “Parties” has the meaning set forth in the Preamble.

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

“PPA Project” has the meaning set forth in Subsection 8.2(E).

“Private Use Limits” has the meaning set forth in Subsection 8.2(E).

“Prudent Utility Practices” means any of the practices, methods and acts engaged in or accepted by a significant portion of the electrical utility, water and wastewater utility, and gas utility industry (as applicable) in the United States at the time the decision was made or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with applicable Law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“Representatives” means, in respect of any Person, the officers, directors, employees, consultants, agents, advisors (including legal and financial), controlled Affiliates, financing sources and other representatives of such Person and its subsidiaries.

“Service” and “Services” have the meaning set forth in Section 3.1.

“Service Provider” has the meaning set forth in the Preamble.

“Service Provider Group” means Service Provider, its Affiliates, and Subcontractors, and their respective Representatives, as applicable in the circumstances.

“Service Territory” means the geographic area to be served by JEA and Service Provider pursuant to the terms of the Territorial Agreement.

“Subcontractor” means every Person (other than employees of Service Provider) employed or engaged by Service Provider or any Person directly or indirectly in privity with Service Provider (including every sub-subcontractor of whatever tier) for any portion of the Services, whether for the furnishing of labor, materials, supplies, equipment, services, or otherwise.

“Subcontract” means those agreements and contracts entered into by and between Service Provider and any Subcontractor.

“System Power Supply” means electric capacity, energy and ancillary services from all power supply sources owned by or under contract to JEA or Service Provider, spot market capacity, energy and ancillary services purchases made by or on behalf of JEA, and any load control programs or measures adopted by JEA.

“T&D System” means Service Provider’s electric transmission and distribution systems and facilities and other assets and systems related thereto.

“T&D System Site” means the real property and interests therein upon which the components of the T&D System are and will be located.

“Territorial Agreement” means the Territorial Agreement, dated as of the date hereof, between JEA and Service Provider.

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

“Third Party Claim” means any claim brought against a Party by a third party other than claims made by a third party attributable to breach of a representation, warranty or covenant made herein with respect to Intellectual Property Rights.

“Transaction” has the meaning set forth in Recital D.

“Vogtle PPA” has the meaning set forth in Recital A.

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