AGREEMENT FOR PRELIMINARY ENGINEERING AND DEVELOPMENT SERVICES AND OPTION TO PURCHASE EQUIPMENT

by

SOUTHERN COMPANY SERVICES, INC.

and

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AGREEMENT FOR PRELIMINARY ENGINEERING AND DEVELOPMENT SERVICES AND OPTION TO PURCHASE EQUIPMENT

This Agreement is for the reservation of manufacturing capacity for long lead equipment and performance of preliminary engineering and development services (**"Agreement"**) by and between Southern Company Services, Inc., for itself and acting in behalf of its affiliate Georgia Power Company (**"Purchaser"**) with a place of business located at 600 North 18th Street, Birmingham, Alabama 35203 and REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED, (collectively **"Contractor"**). Contractor and Purchaser are hereinafter referred to individually as a **"Party"** and collectively as the **"Parties."**

RECITALS

A. Contractor and Purchaser plan to finalize the terms of an Engineering, Procurement, and Construction Agreement inclusive of the Long Lead Services & Equipment as defined below (the **"EPC Agreement"**) pursuant to which Purchaser will purchase from Contractor three (3) REDACTED simple cycle combustion turbines (individually **"Unit"** or collectively **"Units"**) for the engineering, procurement, and construction of a dual fuel power plant on a turnkey basis (the **"Project"**).

B. The Purchaser desires the Units achieve substantial completion by no later than (i) December 1, 2026, for the First Unit; (ii) December 1, 2026, for the Second Unit; and (iii) April 1, 2027, for the Third Unit (collectively the **"Guaranteed Substantial Completion Dates"**).

C. Purchaser desires Contractor to maintain an equipment delivery schedule to support the desired Guaranteed Substantial Completion Dates. As such, Contractor needs to procure certain services and long lead equipment and materials (those services and materials, as more particularly described in Exhibit A, are hereafter referred to as the **"Long Lead Services & Equipment"**) while the Parties negotiate in good faith the terms of the EPC Agreement.

D. The Parties agree to negotiate in good faith and execute the EPC Agreement on or before December 1, 2023.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree to the following:

1 EPC AGREEMENT

It is the intent of the Parties to sign and execute an EPC Agreement (inclusive of the Long Lead Services & Equipment) for the Project that will supersede the terms and conditions of this Agreement upon the effective date of such EPC Agreement. Notwithstanding the foregoing, Purchaser shall have the option to purchase the Long Lead Equipment through an equipment purchase agreement in lieu of the EPC Agreement.

2 PRICE AND PAYMENT TERMS

2.1 Purchaser has agreed to advance payment to Contractor in a lump sum amount of REDACTED the "Reservation Fee", by no later than October 30, 2023, to secure engineering services and reserve manufacturing capacity of such Long Lead Services & Equipment as set forth in Exhibit A of this Agreement.

2.2 Purchaser will make separate payments to each of the Contractors as set forth in this Article 2. One payment will be made by Purchaser to REDACTED in the amount of REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED and a separate payment will be made by Purchaser toREDACTED the amount of REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED in accordance with the following wiring instructions.

WIRING INSTRUCTIONS for REDACTED
Will be provided on its invoice

WIRING INSTRUCTIONS for REDACTED
Will be provided on its invoice

3 TERMINATION

3.1 In the event (i) Purchaser and Contractor cannot, having negotiated in good faith, reach mutual agreement by December 1, 2023, to either (a) the EPC Agreement; (b) an equipment purchase agreement; (c) amend this Agreement; or(d) apply the Long Lead Equipment to another Purchaser project; or (ii) Purchaser terminates this Agreement in accordance with Section 3.2, then Purchaser agrees to waive in full the reimbursement of the Reservation Fee paid to Contractor. Notwithstanding anything to the contrary, if Purchaser terminates this Agreement, REDACTED agrees to use commercially reasonable efforts to secure another customer's contractual commitment to use the REDACTED Long Lead Equipment by no later than March 31, 2024, and in such event the Party repurposing the REDACTED Long Lead Equipment shall negotiate in good faith with Purchaser a credit equal to the value of the portion of the repurposed REDACTED Long Lead Equipment amount paid by another customer for such Long Lead Equipment (excluding Long Lead Services and REDACTED Long Lead Equipment). In no event shall any Long Lead Services performed under this Agreement be applied to another project or be credited to Purchaser.

3.2 Purchaser has right to terminate this Agreement, with or without cause, at any time upon written notice to the Contractor. The Parties acknowledge and agree that the Reservation Fee (less any credit, if any, as described in Section 3.1) constitutes a liquidated damage, and that such amount is a reasonable and appropriate measure of the damage that may be incurred by Contractor in connection with any termination hereunder and is not a penalty.

4 NOT USED

5 CONFIDENTIALITY

5.1 Protected Information. "**Protected Information**" means tangible and intangible non-public and/or proprietary information and data that is owned by, controlled by, or in the possession of a Party or any of its affiliates that is treated as confidential, proprietary, or otherwise not subject to public disclosure, whether or not so marked, including, without limitation, technical, business, financial, economic, marketing, operational, and strategic information. Protected Information includes: (i) information and data furnished or disclosed by or on behalf of a disclosing Party ("**Discloser**") to another Party ("**Recipient**") in connection with or pursuant to this Agreement; (ii) the existence and terms of this Agreement and the negotiation of the Agreement or EPC Agreement; (iii) trade secrets as defined by applicable law; and (iv) any document, note, or other tangible or intangible material that contains, reflects, or is generated from any Protected Information. Protected Information does not include information that: (a) is or becomes publicly available other than through fault or negligence of Recipient; (b) was, at the time of the disclosure, already in the Recipient's possession; (c) is disclosed to Recipient by a third party who, to the Recipient's knowledge, is not prohibited from disclosing the information under any agreement with Discloser; and (d) Recipient develops or derives without the aid, application, or use of the Discloser's Protected Information. Discloser shall use reasonable efforts to mark all materials containing Protected Information, but Discloser's failure to mark information does not by itself disqualify information from being Protected Information if other factors or circumstances, or a Party's course of performance, clearly indicate to Recipient at the time of disclosure or the Recipient acknowledges that the information should be treated as Protected Information. Recipient shall not remove markings and shall include markings on permitted copies.

5.2 Treatment of Protected Information. Protected Information is made available by the Parties solely for use in carrying out the Agreement. Recipient agrees to hold confidential, refrain from unauthorized storage and disclosure of, and exercise reasonable efforts (including implementing and maintaining reasonable administrative and organizational measures to protect, through both physical and technical safeguards, against unauthorized access or unlawful use of data), consistent with the efforts Recipient exercises to protect information of its own that it regards as confidential (but in no case less than a reasonable standard of care), to keep in confidence and not disclose to unauthorized persons any Protected Information. The Recipient shall not use any Protected Information for any purpose other than as necessary to fulfill its obligations under this Agreement or as otherwise authorized by this Agreement. The confidentiality requirements in this Agreement will supersede any prior confidentiality agreement between the Parties. This Agreement will govern the treatment of Protected Information related to the Project.

5.3 Authorized Disclosure of Protected Information. Each Party agrees that it will not, without the written consent of the other Party (unless expressly allowed by this Agreement), disclose a Discloser's Protected Information to any third party, except that Recipient may disclose Protected Information: (i) to its affiliates, employees, subcontractors, consultants, agents, and advisors (collectively, "**Representatives**") who (a) need to know the information in connection with Recipient's performance of its obligations under this Agreement; and (b) are subject to a contractual obligation to maintain confidentiality of Protected Information with terms no less restrictive than this Agreement; and (ii) to the extent required by applicable law and in accordance with Section 5.5 below. Recipient shall be responsible for any unauthorized disclosure of Protected Information, including but not limited to any Representative's unauthorized disclosure or misuse of Protected Information.

5.4 **Disclosure of Confidential Information to the Commission.** Contractor understands and agrees that, despite any other Agreement provision, Purchaser shall have a right to disclose Protected Information to the Georgia Public Service Commission ("**Commission**") in connection with Purchaser's regulatory obligations before the Commission. Purchaser will mark Protected Information as "trade secret" and will request confidential treatment of Protected Information in accordance with the Commission's trade secrets rule, but Purchaser gives no assurance or guarantee regarding the Commission's treatment of Protected Information.

5.5 **Disclosure Required by Applicable Law.** If applicable law requires disclosure of Protected Information, then, unless prohibited by applicable law, Recipient shall: (i) promptly notify Discloser in writing of any legal request or requirement that Recipient or any of its Representatives disclose Protected Information; and (ii) to the extent possible without violating such legal requirement, permit Discloser adequate time and control to exercise its legal options to prohibit or limit disclosure. If any disclosure is required, Recipient or Representatives must furnish only that portion of Protected Information that is reasonably required to comply with such request or requirement and must exercise commercially reasonable efforts to obtain a reasonable assurance that confidential treatment will be afforded Protected Information that is disclosed. Despite the forgoing, Purchaser shall have no obligation to notify Contractor of legal process served on Purchaser by, and any resulting disclosure to, a governmental or regulatory having authority over Purchaser.

5.6 **Notice of Unauthorized Disclosure.** Recipient shall immediately notify Discloser, and no other, of any actual or anticipated unauthorized disclosure of Protected Information in accordance with the Agreement's notice provisions and shall include the following information in the notice: (i) a specific identification of the Protected Information that was the subject of the unauthorized disclosure; (ii) the identity of the unauthorized recipient; and (iii) the remedial measures, if any, to recover Protected Information and to prevent future unauthorized disclosure.

5.7 Enforcement. Recipient recognizes that unauthorized use or disclosure of Protected Information may give rise to irreparable injury to Discloser for which monetary damages may be inadequate and that Discloser may seek and obtain injunctive relief against the breach or threatened breach of Recipient's obligations under this Agreement, in addition to any other legal remedies that may be available to Discloser.

5.8 Warranties. Discloser warrants that it has all necessary ownership rights, third party permissions, licenses, and assignments regarding Protected Information that it discloses and that it is in full governmental compliance regarding Protected Information. Discloser warrants that Protected Information disclosed will neither infringe on any copyright nor constitute misappropriation of trade secrets, unauthorized access under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, conversion or theft of the property of another, or otherwise violate any applicable law.

5.9 **Duration of Confidentiality Obligations.** The terms of this Article 5 (*Confidentiality*) shall survive for a period of five years after Agreement termination or expiration, except that, to the extent any Protected Information constitutes a trade secret under applicable law, Recipient's obligations under this Article 5 (*Confidentiality*) shall apply for the life of such trade secret. Despite the forgoing sentence, if the Parties execute an EPC Agreement, the Agreement's confidentiality terms shall be deemed subsumed and replaced by the EPC Agreement.

5.10 **No Rights Conferred.** Discloser does not confer upon Recipient any right, title, or interest in or to Protected Information absent a specific separate written license to that effect. No license or other right (express or implied) is granted to Recipient, including any license by implication, estoppel or otherwise, under any patent, Trade Secret, trademark, or copyright held or obtained by Discloser, whether or not licensable. Recipient will not sell, lease, license, or in any manner (directly or indirectly) assign, transfer, or dispose of any portion of Protected Information.

6 LIMITATION OF LIABILITY

For the avoidance of doubt, other than as described in Section 3.1, Purchaser shall not be liable to Contractor under this Agreement for any additional amounts. Except in the event of fraud or willful misconduct intending to cause harm, neither Party shall be liable to the other in contract, tort, or otherwise for any claims, liabilities, or losses for special, consequential, incidental, indirect, punitive, or exemplary damages of any nature, including, without limitation, lost income or profits, arising out of this Agreement (other than with respect to a breach of Article 5) or alleged to result from the failure to proceed with (i) an equipment purchase agreement or (ii) the EPC Agreement. The Parties hereby waive, in advance, any claims (whether such claims are based on breach of contract, tort, equity, or any other theory) based on any of the circumstances stated in the preceding sentence (and its exceptions); unless and until the (i) equipment purchase agreement or (ii) EPC Agreement is executed by the Parties.

7 GENERAL

7.1 Governing Law

This Agreement shall be governed in all respects by the laws of the State of Georgia, without regard to its conflict of laws principles.

7.2 Amendments

No modification, amendment, or waiver of any of the provisions of this Agreement will be effective without the written consent of the Parties hereto.

7.3 No Third-Party Beneficiaries; Assignment

This Agreement will inure to the benefit of and be binding upon each of the Parties hereto and their respective successors and permitted assigns, but otherwise shall not give rise to any third-party beneficiary rights or claims. Neither Party may assign any of its rights, interests, or obligations hereunder without the prior written consent of the other Party, except that either Party may assign this Agreement to one of its affiliates upon written notice to the other Party.

7.4 Waivers

No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

7.5 Counterparts; Facsimile and Electronic Copies

This Agreement may be executed by facsimile or sent in the form of a pdf electronic copy via email and in counterparts, all of which for all purposes shall be deemed to be an original and all of which shall, taken together, constitute one and the same instrument.

7.6 Relationship of Parties
Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, or formal business entity of any kind.

7.7 Other Business Activities
Except as set forth in future definitive agreements that may be executed by the Parties, this Agreement and the related discussions between the Parties shall in no way prohibit or restrain the Parties from engaging in any other present or future business activities or discussions with other persons or entities unrelated to this Project.

7.8 Effective Date
The Agreement will become effective when all Parties have fully signed it (the **"Effective Date"**). For the avoidance of doubt, the Effective Date of this Agreement will be the date it is signed by the last authorized signatory to sign it (as indicated by the date associated with that individual's signature).

7.9 Notices
Any notice from one Party to the other Party hereunder shall be made in writing, by first class mail, by overnight courier, by email or by facsimile with original copy to follow by first class mail or overnight courier to the following:

If to PURCHASER:

REDACTED
Manager, Generation Development & Technology Application
600 North 18th Street
BIN 16N-8294
Birmingham, AL 35203
PH: 205-257-7060

If to CONTRACTOR:



and to:



7.10 Survival
Notwithstanding anything to the contrary in this Agreement, the provisions of this Agreement set forth in Article 3, Article 5, Article 6, and Article 7 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SOUTHERN COMPANY SERVICES, INC., "Purchaser"

By: _____

Name: RIck Anderson

Title: SVP & SPO - East

Date: 10/03/2023

[redacted]

[redacted]

Exhibit A

Long Lead Services & Equipment

	Long Lead Equipment
1	REDACTED Combustion Turbines (Longitudinal)
2	REDACTED Combustion Turbine Auxiliaries (ECA Cooler, TCA Cooler, Modular Enclosure, Control System)
3	REDACTED Generators
4	REDACTED Generator Auxiliaries (Control cabinets & packages including SFC/ EXC, SFC & excitation transformers, enclosures including neutral terminal enclosure)
5	Generator Step-up transformers (GSUs) (Purchaser Furnished)
6	REDACTED Generator Circuit Breakers (GCBs)
7	REDACTED Station Service Transformers
8	REDACTED Power Distribution Center complete with MV & LV Switchgear, MCC's, DC and UPS equipment, Relay Panels, Panel Boards.
9	REDACTED Diesel Generator
	Long Lead Services
10	Geotech / Subsurface Investigation
11	General Subcontractor (Undergrounds)
12	Engineering