

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.
DIVISION

CITY OF JACKSONVILLE, FLORIDA,
a Florida municipal corporation, and JEA,
a body politic and corporate,

Plaintiffs,

v.

MUNICIPAL ELECTRIC AUTHORITY
OF GEORGIA, a public body corporate
and politic of the state of Georgia,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

This is an action for a declaratory judgment pursuant to Section 86.011, Florida Statutes. Plaintiffs City of Jacksonville, Florida and JEA seek a judicial declaration that the Power Purchase Agreement (the “PPA,” as is further defined herein) between JEA and Defendant, Municipal Electric Authority of Georgia (“MEAG”)—which purports to saddle JEA and its ratepayers with an unlimited obligation to fund the exorbitant and ever-ballooning cost of constructing units of a nuclear power plant that JEA does not own, over which it has no control, and which will be owned and controlled primarily by private enterprises—violates the Constitution, laws, and public policy of the state of Florida and is therefore *ultra vires*, void *ab initio*, and unenforceable.

NATURE OF THE CASE

1. This action seeks to remove a cloud of uncertainty between what the terms of the PPA purport to require JEA to do, on the one hand, and what the law permits JEA to do, on the

other hand. At the center of this uncertainty is the project to construct the only two new nuclear power units being built in America. After the general contractor filed bankruptcy, a new cost-plus construction contract with a new general contractor was entered into that greatly increased JEA's exposure, which is now uncapped. The project initially was expected to cost \$9.5 billion with a guaranteed maximum price that limited JEA's liability. Current cost-to-completion estimates exceed \$27 billion, and that number is expected to increase. In the interest of the City's citizens and JEA's ratepayers, the City and JEA are uncertain as to the validity of the PPA and seek a declaration of JEA's rights, duties and obligations thereunder.

PARTIES, JURISDICTION, AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 26.012, Florida Statutes.

3. Plaintiff City of Jacksonville, Florida ("City") is an incorporated municipality of the State of Florida.

4. Plaintiff, JEA, is a body politic and corporate and an independent agency of the City, created and established pursuant to Chapter 21 of the Charter of the City of Jacksonville (the "Charter").

5. Defendant, MEAG, is a public body corporate and politic, a public corporation of the state of Georgia, but is not a Georgia institution nor a department or agency of Georgia. O.C.G.A. § 46-3-112. MEAG generates and transmits wholesale electric power to 49 communities (the "Participants") across the state of Georgia.

6. The amount in controversy exceeds \$15,000, exclusive of interest and costs.

7. This Court has specific personal jurisdiction over MEAG under Florida's long-arm statute because this cause of action arises from MEAG's acts in "[o]perating, conducting, engaging

in, or carrying on a business or business venture in [Florida].” § 48.193(1)(a)1, Fla. Stat. MEAG’s collective activities in Florida relating to the PPA show a general course of business activity in Florida for pecuniary benefit.

8. Venue is proper in this Court pursuant to Chapter 47, Florida Statutes, because a substantial part of the events or omissions giving rise to the claim occurred and the cause of action accrued in Jacksonville, Duval County, Florida. The issues in this case concern the validity of the PPA and do not arise out of either party’s actions or inactions in performance thereunder.

GENERAL ALLEGATIONS SUPPORTING DECLARATORY RELIEF

9. The Alvin W. Vogtle Electric Generating Plant (“Plant Vogtle”) is nuclear power plant located in Burke County, Georgia, consisting of two units—Plant Vogtle Units 1 and 2—constructed in 1987 and 1989, respectively.

10. Plant Vogtle Units 1 and 2 are jointly owned by Georgia Power Company (“Georgia Power”), Oglethorpe Power Corporation (“Oglethorpe”), MEAG, and City of Dalton (“Dalton,” and together with Georgia Power, Oglethorpe, and MEAG, the “Original Co-Owners”). The Original Co-Owners hold undivided ownership interests in Plant Vogtle Units 1 and 2 in the following ownership percentages: Georgia Power (45.7%); Oglethorpe (30%); MEAG (22.7%); and Dalton (1.6%).

11. In or about 2005, the Original Co-Owners agreed to expand the facilities at Plant Vogtle by developing two additional nuclear generating units, Plant Vogtle Units 3 and 4 (the “Additional Units”), consisting of two Westinghouse Electric Company LLC AP1000 reactors, each with a nominally rated generating capacity of 1,102 MW (generally, the “Vogtle Project”).

12. In or about May 2005, the Original Vogtle Co-Owners entered into an agreement to develop, construct, license, operate and own as tenants in common the Additional Units. The

Original Vogtle Co-Owners agreed to own and share the cost of constructing the Additional Units in the same ownership interest levels that each own with respect to Plant Vogtle Units 1 and 2—*i.e.*, Georgia Power (45.7%); Oglethorpe (30%); MEAG (22.7%); and Dalton (1.6%).

13. The Nuclear Regulatory Commission (“NRC”) certified the Additional Units’ nuclear reactor design in late 2011 and issued combined construction and operating licenses in early 2012, which allowed full construction of the Additional Units to begin. The NRC operating license Nos. NPF-91 and NPF-92 (“NRC Licenses”) each has a term of 40 years, which begins upon the requisite NRC Commission Finding set forth in 10 C.F.R. § 52.103(g).

14. Pursuant to its agreement with the other Original Co-Owners, MEAG acquired a 22.7 percent undivided ownership interest in the Additional Units, representing a projected 500.3 MW of nominally rated generating capacity.

15. Georgia Power owns the largest share of the Additional Units (45.7%) and acts as Agent for the other Co-Owners. *See* PPA § 104.

16. The total projected output of MEAG’s interest in the Additional Units over their 40-year life was expected to be in excess of its Participants’ needs. Accordingly, MEAG divided its undivided interest in the Additional Units into three separate undivided interests referred to as “Project J,” “Project P,” and “Project M.” *See* PPA “Recitals”. Project J refers to MEAG’s arrangement with JEA, which is described below. *See* PPA § 104. Project M refers to MEAG’s 40-year arrangement to sell 33.871 percent of its share of power from the Additional Units to 29 of its Participants. Project P refers to MEAG’s arrangement to sell 24.995 percent of its share of power from the Additional Units to an Alabama entity called PowerSouth for the initial 20 years of operation and then to 39 of its Participants for the final 20 years of operation.

17. MEAG created three separate legal entities corresponding to each of the three projects (the “Project Entities”) and transferred a portion of its ownership interest in the Additional Units equal to their respective project percentages. As a result of MEAG’s assignment of its ownership interest in Plant Vogtle to the Project Entities, the Vogtle Co-Owners now include Georgia Power, Oglethorpe, Dalton, and the Project Entities, but not MEAG (the “Co-Owners”).

18. To implement Project J, MEAG created MEAG Power SPVJ LLC (the “Project J Entity”) as a wholly-owned, direct subsidiary and transferred to it approximately 41.175 percent of its interest in the Additional Units. *See* PPA § 104.

19. Pursuant to Project J, JEA as buyer and MEAG as seller entered into that certain Power Purchase Agreement dated as of May 12, 2008 (“Original PPA”) for the sale and purchase of approximately 41.175 percent (206 megawatts) of MEAG’s share of the electric capacity and energy projected to be generated during the initial 20 years of operation of the Additional Units. MEAG also contracted with 39 of its Participants (the “Project J Participants”) to sell the Project J Participants the potential output generated after the initial 20 years of operation.

20. On December 31, 2014, the parties executed that certain Amended and Restated Power Purchase Agreement dated as of December 31, 2014 (the “Amended PPA,” and together with the Original PPA, “the PPA”), which supersedes the Original PPA and is the current operative agreement between the parties. *See* Exhibit A.

21. Neither the Original PPA nor the Amended PPA were approved by the Jacksonville City Council (“City Council”).

22. Under the PPA, JEA is entitled to 103 megawatts of capacity and energy from each of the Additional Units over a 20-year term commencing on each unit’s commercial operation

date, but will only receive it in the event the units are actually built and become operational. *See* PPA §§ 104, 204(a), & 102.

23. The PPA requires JEA to purchase all of the capacity and energy generated by Project J during the first 20 years of operation. *See* PPA § 202. The energy that JEA might eventually receive under the PPA is projected to represent approximately 13 percent of JEA's total energy requirements in the year 2023.

24. Under the PPA, JEA did not acquire any ownership interest in the Additional Units or Project J. Moreover, JEA has no control over, or even any right to participate in, any of the decisions concerning the construction or operation of the Vogtle Project or Project J in particular. *See* PPA § 601.

25. MEAG and the Project J Entity entered into a Wholesale Power Purchase Agreement, pursuant to which MEAG is entitled to all of the capacity and energy of the Project J Entity's ownership interest in Project J, and MEAG is obligated to pay all of the Project J Entity's costs and expenses, including the cost of financing the construction of the Additional Units.

26. Under the PPA, MEAG is required to "resell" to JEA all of the power it receives under the Wholesale Power Purchase Agreement from the Project J Entity during the first 20 years of operation of the Additional Units. *See* PPA § 201.

27. In order to finance Project J's portion of the construction costs for the Additional Units, MEAG authorized and validated approximately \$6 billion of revenue bonds to be secured for the first 20 years by the payments to be made by JEA under the PPA (the "Project J Bonds"), and thereafter by the payments to be made by the Project J Participants under their agreements to take over the Project J capacity.

28. MEAG issued a portion of the Project J Bonds in 2010 and 2015, of which approximately \$1.43 billion in principal was outstanding as of December 31, 2017.

29. In 2008, MEAG applied to the U.S. Department of Energy (the “DOE”) for loans guaranteed by the DOE for nuclear projects employing new or significantly improved technology under Title XVII of the Energy Policy Act of 2005.

30. The DOE approved the application and issued a commitment to guarantee loans of up to \$577.4 million (the “DOE Guaranteed Loans”) to be made by the Federal Financing Bank to the Project J Entity.

31. As of December 31, 2017, approximately \$337.9 million of DOE Guaranteed Loans for Project J construction costs had been drawn down by the Project J Entity and are outstanding.

32. The PPA unconditionally requires JEA to pay MEAG for capacity and energy at the full cost of production of Project J, including debt service on the Project J Bonds issued and to be issued by MEAG and on the DOE Guaranteed Loans made and to be made to the Project J Entity to finance the portion of the capacity to be sold to JEA from the Additional Units. *See* PPA §§ 104 & 204.

33. Under the PPA, JEA is obligated to fix the rates for its electric utility and charge its ratepayers at levels at least sufficient to meet its obligations thereunder and must pay those obligations first, prior to making debt service payments on its own debt.

34. JEA’s obligation to pay is completely unconditional regardless of whether the electricity is ever delivered, or whether either or both of the Additional Units are ever “completed or [are] operating or operable, and whether or not [their] Output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the

performance or non-performance by any party of any agreement for any cause whatsoever.” *See* PPA § 204(g). This obligation is called a “hell-or-high-water” clause because of the unconditional nature of the obligation imposed.

35. In 2008, Georgia Power, for itself and as Agent for the other Co-Owners, entered into a contract (“the EPC Contract”), pursuant to which Westinghouse Electric Company LLC (“Westinghouse”) and its affiliate, WECTEC Global Project Services Inc. (“WECTEC”), agreed to design, engineer, procure, construct, and test the Additional Units.

36. The EPC Contract was a fixed-cost contract, which required Westinghouse and WECTEC to absorb most of the construction cost overruns for the Vogtle Project.

37. Construction of the Additional Units experienced significant delays and substantial cost overruns, resulting in construction costs far in excess of the fixed cost under the EPC Contract and delaying the projected completion date by years.

38. As a result of the problems with the construction of the Additional Units, the significant cost overruns and other issues, Westinghouse and WECTEC each filed bankruptcy on March 29, 2017.

39. On June 9, 2017, Georgia Power, for itself and as Agent for the Co-Owners, entered into a “Services Agreement” (later amended and restated on June 20, 2017) with Westinghouse and WECTEC, which called for Westinghouse and WECTEC to transition construction management of the Additional Units to Southern Nuclear Company (“Southern Nuclear”), the parent company of Georgia Power.

40. Effective October 23, 2017, Georgia Power, for itself and as Agent for the Co-Owners, entered into a Construction Completion Agreement (the “Construction Agreement”) with

Bechtel Corporation (“Bechtel”), who serves as the primary construction contractor for the remainder of the Vogtle Project.

41. The terms of Construction Agreement differ considerably from those of the EPC Contract. Unlike the EPC Contract, which was a fixed-cost contract, the Construction Agreement is a cost-reimbursement arrangement. Under the Construction Agreement, the Co-Owners agreed to reimburse Bechtel for its actual construction costs plus certain additional fees. Each Co-Owner is liable for its proportionate share of all amounts owed to Bechtel under the Construction Agreement.

42. Since the Construction Agreement was entered into, the estimated cost to complete construction of the Additional Units has increased uncontrollably and the estimated completion date has repeatedly been pushed back. The initial \$1.387 billion estimated to complete Project J, has ballooned to \$2.918 billion. The initial estimated completion date of April 2016 is now November 2021. There appears to be no end in sight to the ever-increasing cost and delays plaguing the construction of the Additional Units.

43. JEA was not permitted by MEAG to participate in any way with the negotiation of the terms of the Construction Agreement or the decision to press ahead with construction of the Additional Units despite the absence of any economic reason to do so. Thus, JEA is not a party to, did not authorize, and did not participate in any way with, the Construction Agreement or the ill-advised decision of the Co-Owners to continue with the Vogtle Project.

44. The change in the underlying construction contract for the Vogtle Project from a fixed-cost contract to a cost-reimbursement contract fundamentally and drastically changed the nature of JEA’s obligations and risks with respect to Project J. Through the PPA, MEAG and the Project J Entity are able to pass along to JEA a substantial portion of the now-unlimited cost to

construct the Additional Units. JEA must satisfy this open-ended obligation to pay for MEAG's yet unknown and uncapped debt service regardless of the amount, regardless of whether the Additional Units are ever built or ever become operational, and regardless of whether JEA ever receives any electricity, capacity, or benefit whatsoever from the Additional Units.

GROUND IN SUPPORT OF DECLARATORY RELIEF

45. For the reasons set forth below, JEA acted beyond the limits of its authority by entering into the PPA in violation of the constitution, laws, and public policy of the state of Florida, rendering the PPA *ultra vires*, void, and unenforceable.

***First Ground:
The PPA Violates Article VII, Section 10 of the Florida Constitution***

46. Article VII, Section 10 of the Florida Constitution provides, in relevant part:

Pledging credit.—Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

* * *

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

47. Article VII, Section 10 of the Florida Constitution generally prohibits a Florida public entity from, among other things, becoming a joint owner with or lending or using its credit to aid any corporation, association, partnership or person. The prohibition in Article VII, Section 10 has been a part of Florida constitutional law for more than 130 years and reflects the long-standing public policy of the state of Florida that public entities may not jeopardize their financial stability by becoming financially entangled with private enterprise.

48. Article VII, Section 10(d) supplies a limited exception to the prohibition against a public entity's ability to give, lend, or use its credit to aid a private entity. Section 10(d) authorizes the Florida Legislature to enact laws that permit a public entity to be a joint owner of, or give, lend, or use its taxing power or credit for the **joint** ownership, construction, and operation of electrical generation or transmission facilities with any corporation, association, partnership or person.

49. Under Article VII, Section 10(d) of the Florida Constitution, JEA is only permitted to give, lend, or use its credit towards an electrical generation or transmission facility that is co-owned with a private corporation when JEA also has **joint** ownership of the facility.

50. One of the Co-Owners of the Vogtle Project is Georgia Power, a private for-profit corporation, which owns a 45.7 percent share—the largest share—of the Additional Units. The second largest Co-Owner is Oglethorpe, a private not-for-profit corporation, which owns a 30 percent share of the Additional Units. Thus, private enterprises own and control more than 75 percent of the Additional Units.

51. JEA's 20-year obligation to pay for the construction of the Additional Units is estimated to cost JEA more than \$1.6 billion. Further, the PPA also requires JEA to act as liquidity provider (*i.e.*, to provide up to \$75 million in cash upon MEAG's demand) to retire short-term debt instruments issued by MEAG (such as bond anticipation notes, take-out bonds and commercial paper) in the event MEAG cannot refinance those debt instruments. *See* PPA § 204(b). Under the PPA, JEA may not be reimbursed for such liquidity loans to MEAG for up to 20 years if MEAG deems that it is too expensive to access the market to reimburse JEA.

52. JEA's payment obligations under the PPA are "Contract Debt" payable from the general revenues of JEA's electric system before payment of any of JEA's other expenses, including its own debt service. JEA is obligated to raise the rates it charges its customers for

electricity in order to generate enough revenue to satisfy its obligations under the PPA. Further, under the PPA's "hell-or-high-water" clause, JEA is obligated to pay for construction of the Additional Units regardless of whether any power is ever generated from them.

53. JEA has no ownership interest in the Vogtle Project and no ability to control any of the decisions with respect to the Vogtle Project, including the decision to continue to incur expense in constructing the Additional Units. This lack of joint ownership and control violates Article VII, Section 10(d) of the Florida Constitution.

54. Pursuant to the PPA, JEA has given, lent, and used its credit to aid the Co-Owners, including Georgia Power and Oglethorpe, in financing their construction and ownership of the Additional Units, which the Co-Owners own as tenants in common. The primary and paramount purpose of JEA's payment obligations under the PPA is to finance the construction of the Additional Units, as evidenced by the fact that JEA's payments are based on MEAG's debt service on its financing of the construction of the Additional Units and the fact that JEA's payments are due regardless of whether the Additional Units ever produce electricity and regardless of whether JEA ever actually receives any electricity from the Additional Units.

55. JEA acted outside the scope of its constitutional authority under Article VII, Section 10(d) of the Florida Constitution in entering into the PPA because JEA has given, lent, and used its credit to aid the Vogtle Project, the largest Co-Owners of which (75.7 percent) are private corporations, yet JEA retains no ownership interest in the Additional Units and has no power to manage or control the Vogtle Project. Accordingly, the PPA is *ultra vires*, void, and unenforceable.

***Second Ground:
The PPA Violates Chapter 80-513, Laws of Florida***

56. Section 21.04(o) of the Charter allows JEA to enter into agreements with other public or private electric utilities to implement "joint electric power projects" in accordance with

Chapter 80-513, Laws of Florida, as amended (“Chapter 80-513”). Specifically, pursuant to § 21.04(o) of the Charter, JEA has the power:

To enter into agreements with one or more other electric utilities, public or private, and related contracts with respect to joint electric power projects as provided in section 2 of chapter 80-513, Laws of Florida, as amended. The provisions of said chapter 80-513 shall govern and control JEA in all respects in the carrying out of a joint electric power project authorized thereunder notwithstanding any provision of the charter or of the Ordinance Code of the City of Jacksonville which may be in conflict therewith.

57. Section 10 of Chapter 80-513 provides that “[t]he provisions of this act are intended to implement the provisions of s. 10, Article VII of the State Constitution” by permitting JEA to “give, lend or use its credit to aid any joint participant in such project.”

58. Section 1 of Chapter 80-513 authorizes JEA to “acquire, build, construct, erect, extend, enlarge, lease, improve, furnish, equip, own and operate” “projects” which are defined as “*electric generating plants* and transmission lines and interconnections and substations for the generation, transmission and exchanging of electric power and energy both within and without the boundaries of the consolidated City of Jacksonville and within and without the state.” (emphasis added).

59. The Vogtle Project, consisting of the Additional Units, is an electric generating plant located “without the state” of Florida and qualifies as a “project” as defined under section 1 of Chapter 80-513.

60. Section 2(a) of Chapter 80-513 authorizes JEA to

join with any other electric utility located within or without the state or any group of such electric utilities, public or private, for the purpose of *jointly financing*, acquiring, building, constructing, erecting, extending, enlarging, leasing as lessor or as lessee, improving, furnishing, equipping, owning and operating any project in accordance with the provisions of this act, and may contract with any such utility or group of electric utilities *for any such purpose* (emphasis added).

61. Pursuant to the PPA, JEA is “jointly financing” the Vogtle Project with MEAG, Georgia Power, Oglethorpe, and other entities within the meaning of section 2(a) of Chapter 80-513. The PPA provides for more than just the purchase of electricity. It obligates JEA to satisfy a portion of MEAG’s debt service with respect to debt MEAG and the Project J Entity issues to finance the construction of the Additional Units, including the Project J Bonds and the DOE Guaranteed Loans. Although MEAG is the nominal issuer of the Project J Bonds and the Project J Entity is nominally the obligor under the DOE Guaranteed Loans, JEA is the obligated party to whom the bondholders and the DOE are looking for repayment.

62. JEA was required to disclose and did disclose its financial and operational information in MEAG’s prospectus for the issuance of the Project J Bonds and is obligated to provide ongoing disclosure of such information until its payment obligations are complete, as if it had been the issuer of MEAG’s Project J Bonds. Under Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 relating to disclosure requirements in connection with the issuance of municipal securities, JEA is an “obligated person” who is responsible for the repayment of MEAG’s Project J Bonds during the first 20 years.

63. The PPA also requires JEA to act as liquidity provider (*i.e.*, to provide up to \$75 million in cash upon MEAG’s demand) to retire short-term debt instruments issued by MEAG (such as bond anticipation notes, take-out bonds and commercial paper) in the event MEAG cannot refinance those debt instruments. *See* PPA § 204(b). Under the PPA, JEA may not be reimbursed for such liquidity loans to MEAG for up to 20 years if MEAG deems that it is too expensive to access the market to reimburse JEA. *See id.* This is a role typically fulfilled by an external credit support financial institution and not a utility provider.

64. Section 8 of Chapter 80-513 requires that contracts entered into under section 2(a) of Chapter 80-513 (*i.e.*, an agreement to “jointly financ[e]” a project) are invalid unless approved by two-thirds of the membership of City Council. Section 8 of Chapter 80-513 provides, in pertinent part:

[A]ny agreements or contracts entered into by JEA under section 2(a) of this act shall be subject to the prior consent and approval by two-thirds of the membership of the council

65. The PPA is a joint financing contract under section 2(a) of Chapter 80-513. Pursuant to section 8 of Chapter 80-513, the PPA required the prior consent and approval by two-thirds of the membership of City Council. However, no City Council approval was obtained for the PPA.

66. The PPA violates Chapter 80-513 (the act implementing Article VII, Section 10 of the Florida Constitution) because JEA did not obtain approval from City Council before entering into the PPA. Accordingly, the PPA is *ultra vires*, void, and unenforceable.

67. Additionally, the PPA violates Chapter 80-513 because it does not comply with the ownership and control requirements set forth therein. Under the PPA, JEA did not acquire any ownership interest in the Additional Units or Project J and has no control over, or even any right to participate in, any of the decisions concerning the construction or operation of the Vogtle Project or Project J in particular. *See* PPA § 601. Because Chapter 80-513 implements the exception in Article VII, Section 10(d), ownership and control over the project being financed is constitutionally mandated.

68. Additionally, the PPA violates section 2(b) of Chapter 80-513 because it has a maximum term of 50 years from its execution. *See* PPA § 102. Section 2(b) of Chapter 80-513 provides that JEA “[m]ay contract for a period not exceeding 40 years for: (i) The purchase by

take-or-pay contracts, or otherwise, of capacity or energy, or both.” Accordingly, the PPA violates section 2(b) of Chapter 80-513 because it has a maximum term of 50 years.

***Third Ground:
The PPA is a Joint Project Agreement Requiring City Council Approval
Pursuant to § 21.04(n) of the Charter***

69. Section 21.04(n) of the Charter allows JEA to enter into “joint project agreements” to implement a “project” as defined in part II, chapter 361, Florida Statutes, subject to certain requirements:

To enter into joint project agreements as provided by part II of chapter 361, Florida Statutes, for the purpose of implementing a project, as such term is defined in Part II of Chapter 361, Florida Statutes. A copy of all such joint project agreements shall be filed with the council and the mayor at least thirty days prior to the effective date of the agreement. Anything in this provision to the contrary notwithstanding, *(i) any joint project agreement that involves a transfer of any function or operation that comprises more than ten percent of the total of the utilities system by sale, lease or otherwise to any other utility, public or private, or (ii) any joint project agreement that involves the issuance of debt not previously authorized by s.21.04(i)(2), shall require prior approval of the council.* (emphasis added).

70. A “project” is defined in § 361.11(1), Florida Statutes, as “a joint electric power supply project . . . for the joint generation or transmission of electrical energy, or both” The Vogtle Project qualifies as a “project” under this statute.

71. Section 361.12, Florida Statutes, empowers an “electric utility” to join with any one or more “foreign public utilities” for the purpose of “*jointly financing, acquiring, constructing, managing, operating, or owning any project.*” (emphasis added).

72. As set forth above, MEAG and JEA are jointly financing Project J because MEAG and the Project J Entity incur indebtedness based on JEA’s creditworthiness, the debt service of which JEA is then required to pay for the first 20 years. Therefore, the PPA is a “joint project agreement” within the meaning of § 21.04(n) of the Charter.

73. Pursuant to clauses (i) and (ii) of § 21.04(n) of the Charter, respectively, City Council approval is required if the “joint project agreement” (*i.e.*, the PPA) involves either (i) the transfer of any function or operation in excess of 10 percent of the total of the utility system or (ii) the issuance of debt not previously authorized under § 21.04(i)(2) of the Charter.

74. The PPA is a joint project agreement that involves the transfer of a function of JEA in excess of 10 percent of the total of JEA’s electric utilities system. The energy JEA is expected to receive under the PPA is projected to represent approximately 13 percent of JEA’s total energy requirements in the year 2023. The functions being transferred are JEA’s power to control its expenditures in both constructing and operating Project J, both of which JEA has contracted away by agreeing to be responsible for MEAG’s debt service on more than \$1.6 billion of MEAG debt for 20 years as well as operational costs during such time without having any ability to control construction or operating costs.

75. The PPA involves the issuance of debt not previously authorized by City Council under § 21.04(i)(2) of the Charter. JEA’s liability under the PPA constitutes the “issuance of debt” within the meaning of clause (ii) of § 21.04(n)(ii) of the Charter. JEA agreed in the PPA that MEAG and the Project J Entity may incur unlimited amounts of debt, the debt service on which JEA will be responsible to pay over 20 years. JEA’s obligation to pay this debt was not previously authorized by City Council under § 21.04(i)(2) of the Charter.

76. JEA lacked the authority to enter into the PPA pursuant to § 21.04(n) of the Charter because prior City Council approval of the PPA was not obtained as required by clauses (i) and (ii) of § 21.04(n) of the Charter. Accordingly, the PPA is *ultra vires*, void, and unenforceable.

***Fourth Ground:
The PPA is an Agreement to Borrow Money Requiring City Council Approval
Pursuant to § 21.04(j) of the Charter***

77. Section 21.04(j) of the Charter empowers JEA:

To borrow money and to issue notes for any purpose or purposes for which bonds or revenue certificates may be issued under the provisions of this article, in accordance with the provisions of this article relating to the issuance of bonds or revenue certificates (emphasis added).

78. Section 21.04(j) of the Charter is applicable to instances in which JEA borrows money other than by issuing bonds or revenue certificates for any purpose for which bonds or revenue certificates may be issued. Although these borrowings are not bonds or revenue certificates, § 21.04(j) of the Charter nonetheless requires that they be undertaken “in accordance with the provisions of this article [21] relating to the issuance of bonds or revenue certificates.”

79. Section 21.04(i)(2) of the Charter provides the JEA may issue bonds or revenue certificates if “the total aggregate amount of bonds or revenue certificates issued by JEA [are] within the limits prescribed by ordinance of the council.” If a debt issuance would cause the aggregate total amount of bonds and revenue certificates to exceed the limits prescribed by City Council ordinance, JEA must obtain the prior approval from City Council.

80. Under the PPA, JEA is obligated to pay the debt service on bonds issued by MEAG and on the DOE Guaranteed Loans made by the Project J Entity to finance the construction of the Additional Units. Although MEAG is the nominal issuer of the bonds and the Project J Entity is the nominal obligor under the DOE Guaranteed Loans, JEA is the obligated party to whom bondholders and the DOE are looking for repayment. The PPA is first and foremost a financing agreement for JEA to repay money borrowed by MEAG and the Project J Entity for JEA’s presumed benefit, regardless of whether JEA actually receives the benefit.

81. Because the PPA effectively makes JEA the borrower of the Project J Bonds and the DOE Guaranteed Loans, City Council approval of the aggregate indebtedness of JEA under the PPA was required. Because City Council approval was not obtained for this borrowing, the PPA is *ultra vires*, void, and unenforceable.

***Fifth Ground:
The PPA is a Constitutionally Impermissible Delegation of JEA’s Decision-Making
Authority and Responsibility***

82. JEA, as a public entity and an independent agency of the City, impermissibly delegated to MEAG and the Co-Owners its constitutional decision-making authority and responsibility with respect to the incurrence and payment of debt and expenses.

83. Pursuant to the terms of the PPA, JEA does not retain any control over the Vogtle Project generally or Project J in particular, including decisions to incur debt or to continue with construction of the Additional Units. *See* PPA § 601.

84. JEA has no ownership interest in Project J or the Additional Units, no power or authority to participate in project finance and spending decisions, and no power or authority to challenge, object, or have any input with regard to the cost of the Vogtle Project. *See* PPA “Recitals” at 1; PPA §§ 208 & 601.

85. The PPA obligates JEA to an unknown, uncapped substantial amount of debt, and JEA has delegated all decision-making authority to MEAG, the Co-Owners, and Georgia Power as Agent.

86. The PPA also impermissibly imposes restrictions upon JEA’s discretionary power to make expenditures with regard to other projects or purchases because it requires JEA’s payments under the PPA to be made prior to debt service on JEA’s own electric system revenue bonds.

87. The PPA also impermissibly imposes restrictions upon JEA's ability to set its rates because JEA is required to fix its rates in an amount sufficient to cover its obligations under the PPA.

88. JEA has no right under the PPA to suspend or terminate its payment obligations for any reason, including if MEAG fails construct the Additional Units or deliver electricity to JEA.

89. JEA has delegated to MEAG and the Co-Owners plenary authority to make spending and all other decisions concerning JEA's fiscal share of the construction costs of the Additional Units, and JEA retains no ownership or management interest in the Additional Units.

90. JEA's transfer of these powers and interests to MEAG and the Co-Owners is a constitutionally impermissible delegation of JEA's spending power. Therefore, the PPA is *ultra vires*, void, and unenforceable.

***Sixth Ground:
The PPA Violates Florida Public Policy***

91. The citizens and ratepayers in northeast Florida rely on JEA to manage the electric utility system in a prudent manner and to protect them from unjust, ill-considered, or extortionate contracts.

92. Under the PPA, JEA's electric utility ratepayers are burdened for 20 years by the obligation to fund a project in which JEA retains no ownership interest, over which JEA has no management or budgetary control, and from which ratepayers may never receive any electricity or capacity notwithstanding the massive unconditional financial obligations incurred.

93. At the same time, the Project J Participants, who are all members of MEAG, receive the benefit of an indirect ownership interest in the Additional Units by virtue of their membership in MEAG, as well as energy and capacity therefrom, following the 20-year PPA term, for the remainder of such Units' 40-year NRC Licenses' terms.

94. The substantial, open-ended, and unlimited obligations borne by JEA's ratepayers are not balanced by either ownership or management control in the project. There is a complete absence of any JEA oversight or discretion, which constitutes an improper delegation of JEA's spending power. As a result, the PPA is imprudent, ill-considered, and injurious to the public.

95. JEA has a duty to engage in prudent and responsible management of its resources and finances for the benefit of its ratepayers as an established social interest. The Charter allows JEA to enter into contracts that it deems necessary or desirable "for the **prudent** management of JEA funds, debts or fuels, ... including, without limitation, ... contracts for the future delivery or price management of power, energy, ... or other related commodities." *See* § 21.04(l), Charter.

96. Article VII, section 10 of the Florida Constitution reflects the long-held public policy of the state of Florida that forbids the financial entanglement of a public body with private interests without the benefit of ownership and control of the subject matter. The PPA inflicts precisely the sort of harm on JEA and its ratepayers that this public policy was designed to guard against.

97. As a result of the unconditional and uncapped obligations of JEA under the PPA, the improper delegation of JEA's decision-making authority, and the drastic changes imposed on JEA by the Construction Agreement, the PPA exposes JEA and its ratepayers to significant financial risk in violation of the public policy of the state of Florida. Accordingly, the PPA is *ultra vires*, void, and unenforceable.

DEMAND FOR DECLARATORY RELIEF

98. The City and JEA are entitled to declaratory relief because JEA acted without authority and in violation of the constitution, laws, and public policy of the state of Florida in entering into the PPA.

99. The declaratory relief requested herein will resolve a present, actual controversy between the parties and bring certainty as to the respective rights and obligations of the parties concerning the PPA.

100. All conditions precedent to the filing and maintenance of this action have been satisfied, excused, or waived.

WHEREFORE, Plaintiffs City of Jacksonville, Florida and JEA request the entry of judgment declaring that the PPA entered into between JEA and MEAG is *ultra vires*, void, and unenforceable against JEA, and awarding Plaintiffs all further appropriate relief.

DEMAND FOR JURY TRIAL

Plaintiffs, City of Jacksonville and JEA request a trial by jury of all issues so triable.

Respectfully submitted this 11th day of September, 2018.

/s/ George E. Schulz, Jr.

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EXHIBIT A

[EXECUTION COPY]

AMENDED AND RESTATED
POWER PURCHASE AGREEMENT

between

Municipal Electric Authority of Georgia

as Seller

and

JEA

as Buyer

Dated as of December 31, 2014

Plant Vogtle Additional Units PPA Project (Project J)

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This AMENDED AND RESTATED POWER PURCHASE AGREEMENT (“Agreement”) is entered into effective as of December 31, 2014 (the “Execution Date”), between the Municipal Electric Authority of Georgia, a public body corporate and politic, a public corporation and an instrumentality of the State of Georgia, created by the provisions of Georgia Law, Ga. L. 1975, p. 107, *et seq.*, codified at O.C.G.A. §§ 46-3-110, *et seq.*, as amended from time to time (“MEAG”) and JEA, a body politic and corporate organized and existing under the laws of the State of Florida and an independent agency of the City of Jacksonville, Florida (“Buyer”). MEAG and Buyer are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, MEAG owns an undivided ownership interest in two additional nuclear generating units under construction at Plant Vogtle in Burke County, Georgia, a portion of which ownership interest is known as the “Plant Vogtle Additional Units PPA Project” or “Project J,” a portion of which ownership interest is known as the “Plant Vogtle Additional Units PPA-2 Project” or “Project P” and the remainder of which ownership interest is known as the “Plant Vogtle Additional Units Non-PPA Project” or “Project M”;

WHEREAS, MEAG desires to sell the Output (such term, and all other capitalized terms used in these Recitals without definition, having the respective meanings assigned thereto in Section 104 hereof) of the Plant Vogtle Additional Units PPA Project for the Term of this Agreement, and Buyer desires to purchase such Output predicated upon the understanding that the sale of the Output by MEAG to Buyer will require Buyer to assume a proportionate share of the related construction risk;

WHEREAS, the Parties entered into a Power Purchase Agreement, dated as of May 12, 2008, as amended by Amendment No. 1 to Power Purchase Agreement, dated as of April 24, 2009 and by Amendment No. 2 to Power Purchase Agreement, dated as of January 26, 2010 (as so amended, and as the same may be further amended prior to the Effective Date, the “Original Agreement”), relating to the Plant Vogtle Additional Units PPA Project;

WHEREAS, as an additional source of financing, MEAG may decide to obtain one or more loans with respect to the Plant Vogtle Additional Units PPA Project (the “DOE Guaranteed Loan”) to be made by FFB and guaranteed by DOE pursuant to Title XVII of the Energy Policy Act of 2005;

WHEREAS, in the event that MEAG does decide to obtain the DOE Guaranteed Loan, in order to obtain the DOE Guaranteed Loan, MEAG will transfer the portion of its undivided ownership interest in the Additional Units that currently constitutes a part of the Plant Vogtle Additional Units PPA Project to the PPA Project Entity;

WHEREAS, MEAG will simultaneously with the execution and delivery of this Agreement enter into the PPA Project Entity Power Purchase Agreement with the PPA Project Entity, for the purchase and sale of all of the Output for resale to Buyer under this Agreement and to the Additional Units PPA Participants under the Power Sales Contracts during the respective terms of this Agreement and the Power Sales Contracts; and

WHEREAS, the Parties desire to amend and restate the Original Agreement on the terms and conditions hereof in connection with the foregoing.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE I

EFFECTIVENESS; TERM; TERMINATION OR AMENDMENT;

DEFINITIONS AND INTERPRETATION

SECTION 101. EFFECTIVENESS. Notwithstanding anything to the contrary herein, this Agreement shall become fully binding and enforceable on the Execution Date; provided, that the obligations of the Parties hereunder shall not commence, the terms and conditions hereof other than this Section 101 shall not be effective, and the Original Agreement shall not be amended and restated by this Agreement, in each case, until the occurrence of the “Effective Date.” The Effective Date shall occur automatically, without any further action, consent or agreement of the Parties, on the date (if any) on which (a) the “DOE Guarantee” (as defined in the DOE Loan Guarantee Agreement) shall be issued by DOE and (b) both MEAG and Buyer shall have approved in writing the final Credit Subsidy Cost established under (and as defined in) the DOE Loan Guarantee Agreement.

In the event, however, that (a) the Effective Date shall not occur on or before January 1, 2017 or (b) the DOE Loan Guarantee Agreement and the other DOE Loan Documents shall be terminated prior to the making of any Advance, then this Agreement shall be null and void and without further force or effect, and the Original Agreement shall continue in full force and effect.

SECTION 102. TERM. This Agreement shall commence upon the execution by the last signatory and, subject to Section 101, shall remain in full force and effect until midnight Eastern

Prevailing Time on the twentieth (20th) anniversary of the Commercial Operation Date of the second of the Additional Units (the “Term”) or until the Parties’ remaining obligations under this Agreement shall have been fully performed and satisfied, whichever event occurs later, but in no event shall such Term extend beyond fifty (50) years from the Execution Date.

SECTION 103. TERMINATION OR AMENDMENT OF AGREEMENT.

(a) Subject to Section 101, this Agreement shall not be terminated by either Party under any circumstances.

(b) This Agreement, on which purchasers of PPA Bonds and DOE shall have relied as an inducement to purchase and hold the PPA Bonds and to guarantee the DOE Guaranteed Loan, respectively, shall not be amended, modified, or otherwise altered in any manner except as provided in this Agreement. So long as any of the PPA Bonds or the DOE Secured Obligations are outstanding or until adequate provisions for the payment thereof have been made in accordance with the provisions of the PPA Project Bond Resolution and the DOE Loan Documents, respectively, and no undisbursed commitments remain available under the DOE Loan Documents, this Agreement shall not be amended, modified, or otherwise altered in any manner that will (i) reduce the payments pledged as security for the Debt Service on all the PPA Bonds and as security for the DOE Secured Obligations or extend the time of such payments provided herein, (ii) adversely impact, in the opinion of nationally-recognized tax counsel retained by MEAG, (A) the exclusion from gross income for federal income tax purposes of the interest on the PPA Bonds of any Series the interest on which is intended to be so excluded or (B) the eligibility of MEAG to receive cash subsidy payments from the United States Treasury equal to a portion of the interest payable on any Build America Bonds, or (iii) in any manner impair or adversely affect the rights of the owners from time to time of the PPA Bonds or the

rights of the DOE Secured Parties pursuant to the DOE Loan Documents. Subject to the foregoing and any other limitations contained in the PPA Project Bond Resolution or the DOE Loan Documents, any amendment of this Agreement must be in writing and duly executed by both MEAG and Buyer.

SECTION 104. DEFINITIONS. As used herein:

“Act” shall mean that certain Act of the 1975 session of the General Assembly of the State of Georgia, compiled and published in Georgia Law 1975, p. 107, *et seq.*, codified at O.C.G.A. §§ 46-3-110 through 46-3-155.

“Additional Units” shall mean the two 1102 megawatts Nominally Rated additional nuclear units being constructed at Plant Vogtle, in Burke County, Georgia, pursuant to the Development Agreement.

“Additional Units Non-PPA Participant” shall mean a Participant that is a party to a Plant Vogtle Additional Units Non-PPA Power Sales Contract and any other party as assignee of such Power Sales Contract pursuant to Section 702 thereof. “Additional Units Non-PPA Participants” shall mean all Participants that are parties to Plant Vogtle Additional Units Non-PPA Power Sales Contracts. The terms “an Additional Units Non-PPA Participant” or “each Additional Units Non-PPA Participant” shall mean any one of the Additional Units Non-PPA Participants or each of the Additional Units Non-PPA Participants, as the case may be.

“Additional Units Participants” shall collectively mean the Additional Units PPA Participants, the Additional Units PPA-2 Participants and the Additional Units Non-PPA Participants.

“Additional Units PPA Participant” shall mean a Participant that is a party to a Plant Vogtle Additional Units PPA Power Sales Contract and any other party as assignee of such

Power Sales Contract pursuant to Section 702 thereof. "Additional Units PPA Participants" shall mean all Participants that are parties to Plant Vogtle Additional Units PPA Power Sales Contracts. The terms "an Additional Units PPA Participant" or "each Additional Units PPA Participant" shall mean any one of the Additional Units PPA Participants or each of the Additional Units PPA Participants, as the case may be.

"Additional Units PPA-2 Participant" shall mean a Participant that is a party to a Plant Vogtle Additional Units PPA-2 Power Sales Contract and any other party as assignee of such Power Sales Contract pursuant to Section 702 thereof. "Additional Units PPA-2 Participants" shall mean all Participants that are parties to Plant Vogtle Additional Units PPA-2 Power Sales Contracts. The terms "an Additional Units PPA-2 Participant" or "each Additional Units PPA-2 Participant" shall mean any one of the Additional Units PPA-2 Participants or each of the Additional Units PPA-2 Participants, as the case may be.

"Advance" shall mean, for all purposes of this Agreement, one or more advances or borrowings of the DOE Guaranteed Loan made pursuant to the DOE Loan Documents from FFB on a particular date, as determined by an Authorized Officer of the Authority (as defined in the PPA Project Bond Resolution) on or prior to the date of the making thereof, whether or not such advances or borrowings constitute a separate "Advance" for purposes of (and as defined in) the DOE Loan Guarantee Agreement. In the event that such advances or borrowings shall constitute two or more separate "Advances" for purposes of (and as defined in) the DOE Loan Guarantee Agreement, such advances or borrowings may be aggregated for the purpose of establishing level monthly Debt Service pursuant to Section 401(d) hereof.

"Agent" means the Georgia Power Company or a replacement or successor agent, in its capacity as agent for the co-owners of Plant Vogtle under the Ownership Agreement.

“Amortized Reserve Funds” mean any reserve funds maintained by MEAG pursuant to the PPA Project Bond Resolution or by or on behalf of the PPA Project Entity pursuant to the DOE Accounts Agreement funded with the proceeds of PPA Bonds or Advances, subject to the exception set forth in Section 207(a) of this Agreement that reserve funds may be funded with funds other than proceeds of the PPA Bonds or Advances under the stated circumstances, and as to which Buyer is required to pay its Obligation Share of the principal of such PPA Bonds or such Advances during the Term of this Agreement.

“Ancillary Services” means reactive supply and voltage support service (as defined by the transmission provider’s open access transmission tariff) and such other services the Additional Units may provide that are customarily characterized in the industry as ancillary services.

“Applicable Law” means all national, state, provincial, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decisions, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, requirements, or other legal or regulatory determination of any Governmental Authority, including any of the foregoing that are enacted, amended, or issued after the Execution Date and which become effective during the Term of this Agreement.

“Assumed Completion Date” means (a) in the case of the first unit of the Additional Units, December 31, 2018 and (b) in the case of the second unit of the Additional Units, December 31, 2019, it being understood that such dates are to be used solely for purposes of Sections 401(d)(1) and 401(f)(1) hereof and do not imply any expectations on the part of either Party hereto as to the expected Commercial Operation Date of either unit of the Additional Units as of the Execution Date of this Agreement.

“Build America Bonds” shall mean any PPA Bonds with respect to which MEAG has irrevocably elected, pursuant to Section 54AA(g) of the Internal Revenue Code of 1986, as amended, or any other similar federal program creating subsidies for municipal borrowers for which MEAG qualifies, to receive cash subsidy payments from the United States Treasury equal to a portion of the interest payable on such PPA Bonds.

“Buyer’s Billing Statement” shall mean the written statement prepared or caused to be prepared monthly by MEAG that shall be based upon the Plant Vogtle Additional Units PPA Project Annual Budget or upon the amended Plant Vogtle Additional Units PPA Project Annual Budget, which shall show the monthly amount to be paid to MEAG by Buyer under this Agreement.

“Buyer’s Electric System Bond Resolution” shall mean the resolution adopted by Buyer on March 30, 1982 authorizing the issuance of Buyer’s Electric System Revenue Bonds, Series One.

“Buyer’s Obligation Share” or “Obligation Share” shall mean one hundred percent (100%).

“Capacity” means electrical capacity in MW attributable to the PPA Project Entity’s Ownership Interest commencing on the applicable Commercial Operation Date.

“Commercial Operation” shall mean achieving “Commercial Operation” within the meaning of the Operating Agreement.

“Commercial Operation Date” shall mean, with respect to an Additional Unit, the date on which such Additional Unit achieves Commercial Operation.

“Construction Fund” shall mean the Construction Fund established in Section 502 of the PPA Project Bond Resolution.

“Costs of Acquisition and Construction” shall mean, to the extent not included in the Plant Vogtle Additional Units PPA Project Annual Costs, all actual costs and expenses incurred by or for the account of MEAG or the PPA Project Entity for the planning, designing, acquiring, constructing, and installing the PPA Project Entity’s Ownership Interest, including any major renewals, replacements, repairs, additions, betterments or improvements necessary, in the opinion of MEAG or the PPA Project Entity, to keep the PPA Project Entity’s Ownership Interest in good operating condition or to prevent a loss of revenues therefrom, placing the PPA Project Entity’s Ownership Interest in operation, disposing of the PPA Project Entity’s Ownership Interest, and obtaining governmental approvals, certificates, permits and licenses with respect thereto heretofore or hereafter paid or incurred by, or for the account of, MEAG or the PPA Project Entity, as applicable, including the following:

(1) working capital reserves in such reasonable amounts as may be established by MEAG or the PPA Project Entity for the PPA Project Entity’s Ownership Interest (including working capital reserves held in (a) funds or accounts established under the PPA Project Bond Resolution and (b) accounts established under the DOE Accounts Agreement);

(2) acquisition of initial inventories or prepayment of Fuel for the PPA Project Entity’s Ownership Interest and working capital and reserves therefor and working capital and reserves for additional inventories or prepayment of Fuel for the PPA Project Entity’s Ownership Interest held by, or for the account of, either MEAG or the PPA Project Entity;

(3) charges related to processing, design, fabrication, transportation, disposal and storage of Fuel for the PPA Project Entity’s Ownership Interest, including the following: (a) Fuel storage facilities, including spent fuel storage facilities, and (b) working capital and reserves

related to acquisition, processing, design, fabrication, transportation, disposal and storage of Fuel for the PPA Project Entity's Ownership Interest;

(4) reserves for renewals and replacements, retirement from service, or disposal of any facility of the PPA Project Entity's Ownership Interest and contingencies held by, or for the account of, either MEAG or the PPA Project Entity;

(5) training and testing costs incurred by MEAG or the PPA Project Entity attributable to the PPA Project Entity's Ownership Interest;

(6) preliminary investigation and development costs, engineering fees, contractors' fees, costs of labor, materials, equipment, utility services and supplies and legal costs attributable to the PPA Project Entity's Ownership Interest and the Plant Vogtle Additional Units PPA Project;

(7) all costs of insurance applicable to the period of construction of the PPA Project Entity's Ownership Interest; and

(8) amounts necessary to provide funds for contribution to the PPA Project Entity to repay Advances when due (whether at the maturity of principal or upon prepayment) on the DOE Guaranteed Loan and to reacquire from the PPA Project Entity the PPA Project Entity's Ownership Interest at such time as (a) the principal of, and interest and prepayment premiums, if any, due or to become due on, and all other amounts due with respect to, the DOE Guaranteed Loan shall have been paid, at the times and in the manner stipulated in the DOE Loan Guarantee Agreement and the other DOE Loan Documents, as applicable and (b) the PPA Project Entity shall have satisfied all of its obligations under the DOE Loan Guarantee Agreement and the other DOE Loan Documents, as applicable (and no undisbursed commitments remain available thereunder).

Costs of Acquisition and Construction shall also include all other costs, except Financing Costs, incurred by MEAG or the PPA Project Entity and properly allocable to planning, designing, acquiring, constructing and installing the PPA Project Entity's Ownership Interest and the establishment of the Plant Vogtle Additional Units PPA Project including (i) all costs associated with the transfer to the PPA Project Entity of the PPA Project Entity's Ownership Interest and the entry by the PPA Project Entity into the DOE Loan Guarantee Agreement and the other DOE Loan Documents, (ii) the Additional Costs as described and defined in Section 2.2 of the Development Agreement attributable to the PPA Project Entity's Ownership Interest, (iii) amounts required to reimburse Buyer and the Additional Units PPA Participants for amounts paid by them in respect of the payment of the principal of maturing PPA BANs and/or PPA Take-Out Bonds, and (iv) amounts required to be repaid, reimbursed or otherwise paid by MEAG to Buyer pursuant to any provision of this Agreement at the end of the Term hereof.

"Debt Service" shall mean, with respect to any period, the aggregate of the amounts required by the PPA Project Bond Resolution or the DOE Loan Documents to be paid by MEAG or the PPA Project Entity, respectively, during said period into any fund or funds created by the PPA Project Bond Resolution or any account or accounts created by the DOE Accounts Agreement, as applicable, for the sole purpose of paying (i) the principal (including the sinking fund or equivalent payment installments) of, and premium, if any, and interest on, PPA Bonds or the DOE Guaranteed Loan, as applicable, and all other amounts due with respect to the DOE Guaranteed Loan and (ii) any payments on Qualified Hedging Contracts, including any swap premium or swap termination payment, or Reimbursement Obligations, from time to time outstanding as the same shall become due; provided, however, that Debt Service shall not include any acceleration of the maturity of any PPA Bonds or the DOE Guaranteed Loan,

including any redemption of any PPA Bonds or any prepayment of Advances prior to maturity at the election of MEAG or the PPA Project Entity, respectively, or any acceleration resulting from the exercise of remedies by the holders of any PPA Bonds or any trustee acting on behalf of such holders or by the DOE Secured Parties, respectively; and provided, further, that in the case of any swap premium or swap termination payment, the amount of such swap premium or swap termination payment included in Debt Service shall be only the portion of such swap premium or swap termination payment that, in the opinion of a mutually agreed-upon nationally-recognized independent financial advisor experienced in interest rate swaps or similar measures, is allocable to the Term of this Agreement. The swap premium or swap termination payment allocable to the Term of this Agreement shall be determined by such financial advisor based upon an economic analysis performed in a manner consistent with industry practice with the objective of a fair allocation of the payments reflecting the respective remaining time periods of Buyer and the Additional Units PPA Participants.

“Debt Service Fund” has the meaning set forth in the PPA Project Bond Resolution.

“Debt Service Reserve Account” has the meaning set forth in the PPA Project Bond Resolution.

“Development Agreement” shall mean the Plant Vogtle Owners Agreement Authorizing Development, Construction, Licensing and Operation of Additional Generating Units dated as of May 13, 2005.

“DOE” shall mean the United States Department of Energy, as guarantor of the DOE Guaranteed Loan.

“DOE Accounts Agreement” shall mean the Collateral Agency and Accounts Agreement to be entered into among DOE, the DOE Collateral Agent and the PPA Project Entity.

“DOE Collateral Agent” shall mean PNC Bank, National Association, doing business as Midland Loan Services, a division of PNC Bank, National Association, or any successor thereto, in its capacity as Collateral Agent for DOE.

“DOE Debt Service Reserve Account” shall mean the account by that name established pursuant to the DOE Accounts Agreement.

“DOE Debt Service Reserve Requirement” shall have the meaning assigned to the term “Debt Service Reserve Requirement” in the DOE Loan Guarantee Agreement.

“DOE Guaranteed Loan” shall have the meaning given to such term in the recitals hereto.

“DOE Loan Documents” shall have the meaning assigned to the term “Loan Documents” in the DOE Loan Guarantee Agreement.

“DOE Loan Guarantee Agreement” shall mean the Loan Guarantee Agreement to be entered into between the PPA Project Entity and DOE.

“DOE Secured Obligations” shall have the meaning assigned to the term “Secured Obligations” in the DOE Loan Guarantee Agreement.

“DOE Secured Parties” shall mean DOE and the DOE Collateral Agent, as their respective interests may appear.

“Eastern Prevailing Time” means the prevailing time (*i.e.*, Standard Time or Daylight Savings Time) on any given day in the Eastern Time Zone.

“Effective Date” shall have the meaning assigned to such term in Section 101 hereof.

“Energy” shall mean the actual hourly electric energy as measured in MWh attributable to the PPA Project Entity’s Ownership Interest commencing on the applicable Commercial Operation Date.

“Engineering, Procurement and Construction Agreement” means the Engineering, Procurement and Construction Agreement between Georgia Power Company, for itself and as Agent for Oglethorpe Power Corporation, MEAG and the City of Dalton, Georgia, acting by and through its Board of Water, Light and Sinking Fund Commissioners, as Owners, and a consortium consisting of Westinghouse Electric Company LLC and Stone & Webster, Inc., as Contractor for Units 3 & 4 at the Vogtle Electric Generating Plant Site in Waynesboro, Georgia, dated as of April 8, 2008.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, environmental air quality credits, emission reduction credits, renewable energy credits, offsets, and allowances attributable to the generation, purchase, sale, or use of the Output from the PPA Project Entity’s Ownership Interest commencing on the applicable Commercial Operation Date of an Additional Unit, including tags, certificates, credits, allowances, offsets, and similar products or rights attributable to the generation, purchase, sale, or use of the Output of the PPA Project Entity’s Ownership Interest commencing on the applicable Commercial Operation Date of an Additional Unit that can be used to claim responsibility for, ownership of, or any avoidance or reduction of emissions or pollutants, including mercury, nitrogen oxide, sulfur oxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other program. Notwithstanding the foregoing and any other provision in this Agreement, Environmental Attributes do not include: (i) any state or federal production tax credits, other than the “Production Tax Credit,” as defined hereunder; (ii) any investment tax credits and any other tax credits associated with the PPA Project; (iii) any state, federal or private cash payments or grants

relating in any way to the PPA Project or the Output thereof; and (iv) any state, federal or private grants or other benefits related to the PPA Project.

“Execution Date” shall have the meaning assigned to such term in the preamble to this Agreement.

“Federal Financing Bank” or “FFB” shall mean the Federal Financing Bank, a body corporate and instrumentality of the United States of America.

“Financial Advisor” shall have the meaning assigned to such term in Section 401(i) hereof.

“Financing Costs” shall mean all financing costs related to the Plant Vogtle Additional Units PPA Project that may be financed from the proceeds of PPA Bonds or the DOE Guaranteed Loan, including the following:

(1) costs of issuance, including underwriting fees, bank commitment and letter of credit fees, legal and financial advisory fees, bond insurance and indemnity fees, and any payments on Qualified Hedging Contracts including (a) any periodic “net” payments accruing in whole or in part prior to and during construction and for such additional period as MEAG may reasonably determine to be necessary in connection with the placing of the PPA Project Entity’s Ownership Interest in operation, and (b) any swap premium or swap termination payment;

(2) interest accruing in whole or in part on PPA Bonds or the DOE Guaranteed Loan prior to and during construction (or, in the case of PPA Bonds issued or Advances made to finance Fuel, interest accruing in whole or in part on such PPA Bonds or such Advances prior to the loading of such Fuel in the reactor) and for such additional period as MEAG may reasonably determine to be necessary in connection with the placing of the PPA

Project Entity's Ownership Interest in operation in accordance with the provisions of the PPA Project Bond Resolution, including any major renewals, replacements, repairs, additions, betterments or improvements or modifications with respect to the PPA Project Entity's Ownership Interest of a particular Additional Unit undertaken following the Commercial Operation Date of such Additional Unit;

(3) the deposit or deposits from the proceeds of PPA Bonds issued, or Advances made, to finance such costs in any fund or account established pursuant to the PPA Project Bond Resolution or the DOE Loan Documents to meet Debt Service reserve requirements for PPA Bonds or the DOE Guaranteed Loan, or replenishment of such funds if drawn down; and

(4) any other fees, costs and expenses of financing for the PPA Bonds or the DOE Guaranteed Loan.

"Fixed Costs" shall mean, with respect to any period, all fixed costs related to the Plant Vogtle Additional Units PPA Project attributed to such period, as defined by and provided in Section 205(b)(1) of this Agreement.

"Fuel" shall mean the nuclear materials required for the operation of the Plant Vogtle Additional Units, including the initial nuclear fuel cores.

"Fuel Costs" shall mean all costs incurred by MEAG or the PPA Project Entity during any Power Supply Year that are allocable to the acquisition, processing, design, fabrication, transportation, delivering, reprocessing, storage and disposal of Fuel for the PPA Project Entity's Ownership Interest, including the initial nuclear fuel cores, and further including prepayments of such costs or transfers to reserves established for such costs related to future Power Supply Years, less appropriate credits related to such costs, and including those portions of

administrative and general expenses incurred by MEAG and the PPA Project Entity that are properly and reasonably allocable to acquisition and management of Fuel for the PPA Project Entity's Ownership Interest, and, to the extent that any such costs have been paid for through a Nuclear Fuel Construction Fund-Revolving Account that initially was funded through proceeds of PPA Bonds or Advances (or, in the event that MEAG determined that it was practically or economically infeasible for MEAG to issue PPA Bonds or for the PPA Project Entity to satisfy the conditions to the making of Advances for such purpose, through billings to Buyer hereunder), the amount of such costs that are amortized during the Power Supply Year.

“Governmental Authority” means any national, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; provided, however, that “Governmental Authority” shall not in any event include either Party.

“JEA Market Disruption” means, as the context requires, (1) the inability of MEAG to issue investment grade PPA Bonds solely as a result of the creditworthiness of Buyer, which determination shall be made in writing by a nationally-recognized investment bank or financial institution acting as an underwriter for the proposed bond offering and (2) the inability of the PPA Project Entity to satisfy the conditions for an Advance under the DOE Loan Guarantee Agreement solely as a result of either the creditworthiness of Buyer or an action or inaction on the part of Buyer; provided, however, that in the case of clause (2), MEAG must use its best efforts to cause the PPA Project Entity to request an Advance under the DOE Loan Guarantee Agreement in good faith and if MEAG causes the PPA Project Entity to make the request for an Advance but despite MEAG's and the PPA Project Entity's best efforts, DOE nonetheless does

not approve the Advance, then that will constitute a JEA Market Disruption for purposes of clause (2), but not clause (1), above.

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“MEAG’s Interest” shall have the meaning set forth in Exhibit A hereto.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Nominally Rated” means the net electrical unit output, as measured on the high voltage side of the main step-up transformer, guaranteed by the Contractor under the Engineering, Procurement and Construction Agreement.

“Non-amortized Reserve Funds” mean any reserve funds maintained by MEAG pursuant to the PPA Project Bond Resolution or by or on behalf of the PPA Project Entity pursuant to the DOE Accounts Agreement funded with the proceeds of PPA Bonds or Advances, subject to the exception set forth in Section 207(a) of this Agreement that reserve funds may be funded with funds other than proceeds of the PPA Bonds or Advances under the stated circumstances, and as to which Buyer is not required to pay its Obligation Share of the principal of such PPA Bonds or such Advances during the Term of this Agreement.

“Non-PPA Bonds” shall mean the bonds, notes or other evidences of indebtedness issued by MEAG pursuant to or as permitted by the provisions of the Non-PPA Project Bond Resolution to finance or refinance the Costs of Acquisition and Construction and Financing Costs (as such terms are defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts) of the Plant Vogtle Additional Units Non-PPA Project, whether or not any issue of such bonds, notes or other evidences of indebtedness shall be subordinated as to payment to any

other issue of such bonds, notes or other evidences of indebtedness, and shall include refunding Non-PPA Bonds issued pursuant to the provisions of the Plant Vogtle Additional Units Non-PPA Power Sales Contracts.

“Non-PPA Project Bond Resolution” shall mean the Plant Vogtle Additional Units Non-PPA Project Bond Resolution adopted by MEAG and accepted by the Trustee thereunder for the benefit of the owners of the Non-PPA Bonds that provides for the issuance of such Non-PPA Bonds, as the same is proposed to be amended and restated by the Second Amended and Restated Plant Vogtle Additional Units Non-PPA Project Bond Resolution to be adopted by MEAG.

“Non-PPA Project Entity” shall mean MEAG Power SPVM LLC, a limited liability company organized under the laws of the State of Georgia formed by MEAG for the sole purpose of owning and operating the Non-PPA Project Portion of the Additional Units and that is a wholly-owned, direct subsidiary of MEAG.

“Non-PPA Project Portion” shall mean 33.870736 percent of MEAG’s Interest, which portion shall include 169.458 MWs of the output of the Additional Units, based upon the nominal ratings of the Additional Units.

“Nuclear Fuel Construction Fund-Revolving Account” shall mean a non-amortizing reserve fund funded from PPA Bond proceeds or, under the circumstances set forth in Section 207(a) of this Agreement, from revenues derived from either year-end distributions or billings to Buyer under this Agreement at the amount projected to be necessary to handle nuclear fuel working capital needs over unit operations and established pursuant to Section 502(4) of the PPA Project Bond Resolution.

“Nuclear Managing Board Agreement” shall mean the Second Amended and Restated Nuclear Managing Board Agreement dated as of April 21, 2006.

“Operating Agreement” shall mean the Plant Alvin W. Vogtle Nuclear Units Amended and Restated Operating Agreement dated as of April 21, 2006.

“Other Costs” shall mean, with respect to any period, all costs other than Fixed Costs, related to the Plant Vogtle Additional Units PPA Project attributed to such period, as defined by and provided in Section 205(b)(2) of this Agreement.

“Output of the PPA Project Entity’s Ownership Interest” or “Output” shall mean the Capacity, Energy, and Ancillary Services actually generated by, attributable to, or resulting from the PPA Project Entity’s Ownership Interest and any Environmental Attributes and Production Tax Credit attributable to the PPA Project Entity’s Ownership Interest which are purchased by MEAG from the PPA Project Entity pursuant to the PPA Project Entity Power Purchase Agreement for resale hereunder and under the Power Sales Contracts.

“Ownership Agreement” shall mean the Plant Alvin W. Vogtle Additional Units Ownership Participation Agreement dated as of April 21, 2006.

“Participant” shall mean any political subdivision of the State of Georgia that is authorized by Section 46-3-130 of the Act to make contracts for the payment of such rates, tolls, fees and charges as may be prescribed by MEAG for the use of services and facilities of the projects and which has entered into such contracts, and shall include any commission or agency of such political subdivision that operates or conducts or exercises jurisdiction over any essential function of such Participant’s electric distribution system.

“Person” means any individual, partnership, corporation, limited liability company, joint venture, firm, association, joint-stock company, trust, unincorporated organization, or other enterprise (whether or not incorporated), or any Governmental Authority.

“Plant Vogtle Additional Units Non-PPA Power Sales Contracts” shall mean the Plant Vogtle Additional Units Non-PPA Power Sales Contracts, by and between MEAG and the Additional Units Non-PPA Participants, which Power Sales Contracts relate to the Plant Vogtle Additional Units Non-PPA Project.

“Plant Vogtle Additional Units Non-PPA Project” or “Non-PPA Project” shall mean: (1) a percentage of MEAG’s Interest in an amount equal to the Non-PPA Project Portion thereof and (2) working capital for the Non-PPA Project Portion required by MEAG during construction of the Additional Units and for the placing of the Additional Units in operation, and working capital for the Non-PPA Project Portion for operation of the Additional Units; provided, however, that in the event that the amendment and restatement of the Non-PPA Project Bond Resolution provided for in the Second Amended and Restated Plant Vogtle Additional Units Non-PPA Project Bond Resolution to be adopted by MEAG shall become effective, then “Plant Vogtle Additional Units Non-PPA Project” or “Non-PPA Project” shall mean (i) all of MEAG’s right, title and interest (whether direct or indirect) in and to the output of such percentage undivided ownership interest in MEAG’s Interest and (ii) working capital for the Non-PPA Project Portion required by MEAG or the Non-PPA Project Entity during construction of the Additional Units and for the placing of the Additional Units in operation, and working capital for the Non-PPA Project Portion for operation of the Additional Units. The Non-PPA Project is referred to sometimes as “Project M.”

“Plant Vogtle Additional Units Non-PPA Project Annual Costs” shall mean, with respect to a Power Supply Year, to the extent not paid as a part of the Costs of Acquisition and Construction (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts), all costs and expenses of MEAG or the Non-PPA Project Entity paid by MEAG or the Non-PPA Project Entity during such Power Supply Year allocable to the Plant Vogtle Additional Units Non-PPA Project, which costs and expenses shall include those items of cost and expense referred to in Section 308 of the Plant Vogtle Additional Units Non-PPA Power Sales Contracts as the Plant Vogtle Additional Units Non-PPA Project Annual Fixed Costs and Plant Vogtle Additional Units Non-PPA Project Other Annual Costs.

“Plant Vogtle Additional Units PPA Power Sales Contracts” or “Power Sales Contracts” shall mean the Amended and Restated Plant Vogtle Additional Units PPA Power Sales Contracts, by and between MEAG and the Additional Units PPA Participants, which Power Sales Contracts relate to the Plant Vogtle Additional Units PPA Project. A draft of the Plant Vogtle Additional Units PPA Power Sales Contracts, in substantially the same form as the draft presented to and approved by the MEAG Board in substantially final form, is attached as **Exhibit H** to this Agreement.

“Plant Vogtle Additional Units PPA Project” or “PPA Project” shall mean: (1) all of MEAG’s right, title and interest (whether direct or indirect) in and to the Output of the PPA Project Entity’s Ownership Interest, such right, title and interest of MEAG being available to MEAG pursuant to the PPA Project Entity Power Purchase Agreement, and (2) working capital for the PPA Project Portion required by MEAG or the PPA Project Entity during construction of the Additional Units and for the placing of the Additional Units in operation, and working capital

for the PPA Project Portion for operation of the Additional Units. The PPA Project is referred to sometimes as “Project J.”

“Plant Vogtle Additional Units PPA Project Annual Budget” shall mean, with respect to a Power Supply Year, the budget or amended budget adopted by MEAG pursuant to Section 201 of the Power Sales Contracts, which budget shall contain itemized estimates of the Plant Vogtle Additional Units PPA Project Annual Costs and all revenues, income or other funds to be applied to such Plant Vogtle Additional Units PPA Project Annual Costs and shall separately show the Debt Service costs relating to the Plant Vogtle Additional Units PPA Project and shall include separately such itemized estimates for Fixed Costs and for Other Costs.

“Plant Vogtle Additional Units PPA Project Annual Costs” shall mean, with respect to a Power Supply Year, to the extent not paid as a part of the Costs of Acquisition and Construction, all costs and expenses of MEAG or the PPA Project Entity paid by MEAG or the PPA Project Entity during such Power Supply Year allocable to the Plant Vogtle Additional Units PPA Project, which costs and expenses shall include those items of cost and expense referred to in Section 205(b) hereof as the Plant Vogtle Additional Units PPA Project Annual Fixed Costs and Plant Vogtle Additional Units PPA Project Other Annual Costs.

“Plant Vogtle Additional Units PPA-2 Power Sales Contracts” shall mean the Plant Vogtle Additional Units PPA-2 Power Sales Contracts, by and between MEAG and the Additional Units PPA-2 Participants, which Power Sales Contracts relate to the Plant Vogtle Additional Units PPA-2 Project.

“Plant Vogtle Additional Units PPA-2 Project” or “PPA-2 Project” shall mean: (1) a percentage of MEAG’s Interest in an amount equal to the PPA-2 Project Portion thereof and (2) working capital for the PPA-2 Project Portion required by MEAG during construction of the

Additional Units and for the placing of the Additional Units in operation, and working capital for the PPA-2 Project Portion for operation of the Additional Units; provided, however, that in the event that the amendment and restatement of the PPA-2 Project Bond Resolution provided for in the Second Amended and Restated Plant Vogtle Additional Units PPA-2 Project Bond Resolution to be adopted by MEAG shall become effective, then “Plant Vogtle Additional Units PPA-2 Project” or “PPA-2 Project” shall mean (i) all of MEAG’s right, title and interest (whether direct or indirect) in and to the output of such percentage undivided ownership interest in MEAG’s Interest and (ii) working capital for the PPA-2 Project Portion required by MEAG or the PPA-2 Project Entity during construction of the Additional Units and for the placing of the Additional Units in operation, and working capital for the PPA-2 Project Portion for operation of the Additional Units. The PPA-2 Project is referred to sometimes as “Project P.”

“Power Supply Year” shall mean the calendar year, except that the first Power Supply Year shall begin on the earliest of (i) the date an Additional Unit is first declared to be in Commercial Operation; (ii) the date to which all interest is capitalized on PPA Bonds and the DOE Guaranteed Loan; (iii) the date which is twelve (12) months prior to the date on which the first annual principal installment on any of the PPA Bonds is due; (iv) the date which is three (3) months prior to the date on which the first quarterly principal installment on the DOE Guaranteed Loan is due; or (v) the date on which any Plant Vogtle Additional Units PPA Project Annual Costs become payable.

“PPA BANs” shall mean the PPA Bonds, if any, issued by MEAG as permitted by the provisions of the PPA Project Bond Resolution and Section 403(a) hereof to finance or refinance a portion of the Costs of Acquisition and Construction and Financing Costs of the Plant Vogtle Additional Units PPA Project on an interim basis prior to (a) the issuance of other PPA Bonds or

(b) the making of Advances under the DOE Guaranteed Loan, in either such case, satisfying the structuring requirements of Section 401(d) hereof, which PPA BANs (i) shall be issued in the form of notes the principal of which is intended to, and all or a portion of the interest on which may, be paid with moneys which are not Revenues (as defined in the PPA Project Bond Resolution), including the proceeds of other PPA Bonds (including PPA Take-Out Bonds) and (ii) shall have a maturity date not later than thirteen (13) months following the date of issuance thereof. Notwithstanding any other provision of this Agreement, PPA BANs shall not be subject to the structuring requirements of Section 401(d) hereof.

“PPA Bonds” shall mean the bonds, notes or other evidences of indebtedness issued by MEAG pursuant to or as permitted by the provisions of the PPA Project Bond Resolution to finance or refinance the Costs of Acquisition and Construction and Financing Costs of the Plant Vogtle Additional Units PPA Project, whether or not any issue of such bonds, notes or other evidences of indebtedness shall be subordinated as to payment to any other issue of such bonds, notes or other evidences of indebtedness, and shall include refunding PPA Bonds issued pursuant to the provisions of the Plant Vogtle Additional Units PPA Power Sales Contracts.

“PPA Project Bond Resolution” shall mean the Plant Vogtle Additional Units PPA Project Bond Resolution adopted by MEAG and accepted by the Trustee thereunder for the benefit of the owners of the PPA Bonds that provides for the issuance of such PPA Bonds, as the same is proposed to be amended and restated by the Second Amended and Restated Plant Vogtle Additional Units PPA Project Bond Resolution to be adopted by MEAG (the “Second Amended and Restated PPA Project Bond Resolution”). Notwithstanding the previous sentence, neither the draft Second Amended and Restated PPA Project Bond Resolution attached as **Exhibit G** to this Agreement nor the final Second Amended and Restated PPA Project Bond Resolution shall

be revised or amended in any manner that modifies or alters the rights or obligations of Buyer under this Agreement without Buyer's prior consent.

"PPA Project Entity" shall mean MEAG Power SPVJ LLC, a limited liability company organized under the laws of the State of Georgia formed by MEAG for the sole purpose of owning and operating the PPA Project Portion of the Additional Units and that is a wholly-owned, direct subsidiary of MEAG.

"PPA Project Entity Power Purchase Agreement" means the Wholesale Power Sales Agreement, to be entered into between the PPA Project Entity, as seller, and MEAG, as buyer.

"PPA Project Entity's Ownership Interest" shall mean a percentage of MEAG's Interest in the Additional Units in an amount equal to the PPA Project Portion, which, upon the Effective Date, will be transferred to the PPA Project Entity and which includes 9.3466423 percent of the output of the Additional Units.

"PPA Project Portion" shall mean 41.174636 percent of MEAG's Interest, which portion shall include 206.000 MWs of the Output of the Additional Units, based upon the nominal ratings of the Additional Units.

"PPA Take-Out Bonds" shall mean the PPA Bonds, if any, issued by MEAG as permitted by the provisions of the PPA Project Bond Resolution and Section 403(c) hereof to refund PPA BANs. Notwithstanding any other provision of this Agreement, PPA Take-Out Bonds shall not be subject to the structuring requirements of Section 401(d) hereof.

"PPA-2 Project Bond Resolution" shall mean the Plant Vogtle Additional Units PPA-2 Project Bond Resolution adopted by MEAG and accepted by the Trustee thereunder for the benefit of the owners of the PPA-2 Bonds (as defined therein) that provides for the issuance of such PPA Bonds, as the same is proposed to be amended and restated by the Second Amended

and Restated Plant Vogtle Additional Units PPA-2 Project Bond Resolution to be adopted by MEAG.

“PPA-2 Project Entity” shall mean MEAG Power SPVP LLC, a limited liability company organized under the laws of the State of Georgia formed by MEAG for the sole purpose of owning and operating the PPA-2 Project Portion of the Additional Units and that is a wholly-owned, direct subsidiary of MEAG.

“PPA-2 Project Portion” shall mean 24.954628 percent of MEAG’s Interest, which portion shall include 124.850 MWs of the output of the Additional Units, based upon the nominal ratings of the Additional Units.

“Pre-Commercial Generation” shall mean a portion of each Additional Unit’s Output prior to each Additional Unit’s Commercial Operation Date in an amount equal to the PPA Project Portion thereof.

“Production Tax Credit” means production tax credits calculated in accordance with Section 213 of this Agreement arising under 26 U.S.C. § 45, as in effect from time to time during the Term of this Agreement, or any successor or other provision providing for a federal tax credit determined by reference to electric energy produced from nuclear resources and any correlative state tax credit determined by reference to electric energy produced from nuclear resources for which the PPA Project Entity’s Ownership Interest is eligible.

“Project Agreements” shall collectively mean the Development Agreement, the Nuclear Managing Board Agreement, the Operating Agreement, and the Ownership Agreement.

“Prudent Utility Practice” at a particular time shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts that, in the exercise of reasonable judgment

in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice 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 having due regard for manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction.

“Qualified Hedging Contract” has the meaning set forth in the PPA Project Bond Resolution.

“Reimbursement Obligation” has the meaning set forth in the PPA Project Bond Resolution.

“Revenue Fund” has the meaning set forth in the PPA Project Bond Resolution.

“Series” shall mean, for all purposes of this Agreement, any or all PPA Bonds issued upon original issuance on a particular date, as determined by an Authorized Officer of the Authority (as defined in the PPA Project Bond Resolution) on or prior to the date of issuance thereof, whether or not such PPA Bonds constitute a separate “Series” of Bonds for purposes of (and as defined in) the PPA Project Bond Resolution. In the event that the PPA Bonds of any such Series shall constitute two or more separate “Series” of Bonds for purposes of (and as defined in) the PPA Project Bond Resolution, the PPA Bonds of such Series may be aggregated for the purpose of establishing level monthly Debt Service pursuant to Section 401(d), 401(e) or 401(f) hereof, as applicable.

“Term” shall have the meaning assigned to such term in Section 102 hereof.

“Trustee” has the meaning set forth in the PPA Project Bond Resolution.

“Uniform System of Accounts” means the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act as set forth in 18 C.F.R. Part 101.

SECTION 105. RULES OF INTERPRETATION. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) Headings and any rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) The words “hereof,” “herein,” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) A reference to a document or agreement, including this Agreement, shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of, such document, agreement or this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(e) A reference to a Person includes that Person’s successors and permitted assigns;

(f) The term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(g) References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(h) In the event of a conflict, a mathematical formula describing a concept or defining a term shall prevail over words describing a concept or defining a term;

(i) References to any amount of money shall mean a reference to the amount in United States Dollars;

(j) The expression “and/or” when used as a conjunction shall connote “any or all of”;

(k) Words, phrases or expressions not otherwise defined herein that (i) have a well-known and generally accepted meaning in Prudent Utility Practice shall have such meaning in this Agreement or (ii) do not have a well-known and generally accepted meaning in Prudent Utility Practice but that have well-known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) Capitalized terms not specifically defined herein or in a referenced document shall have their normal meanings in the context in which they are used.

SECTION 106. DOE GUARANTEED LOAN AND ADVANCES. MEAG and Buyer acknowledge and agree that, for all purposes of this Agreement, any reference to:

(a) the ability of the PPA Project Entity to borrow funds from FFB as contemplated by the DOE Loan Documents shall include the requirement that all conditions precedent to the making of an Advance under the DOE Guaranteed Loan must be satisfied, including the limitations on use of the proceeds of such Advance for Eligible Project Costs (as defined in the DOE Loan Guarantee Agreement) and the requirement that such Advance be requested during the Availability Period (as defined in the DOE Loan Guarantee Agreement);

(b) the use of proceeds of the DOE Guaranteed Loan or an Advance means the use of such proceeds to the extent permitted under, and in compliance with, the DOE Loan Documents; and

(c) Advances made means Advances made during the Availability Period for Eligible Project Costs.

ARTICLE II

PURCHASE AND SALE

SECTION 201. PURCHASE AND SALE. In accordance with and subject to the terms and conditions of this Agreement (including Section 101), commencing on the Commercial Operation Date of the first of the Additional Units and continuing through the end of the Term, MEAG shall sell to Buyer, and Buyer shall purchase from MEAG, Buyer's Obligation Share of the Output for the following periods: (i) for the first unit of the Additional Units, a period of twenty (20) years commencing on the Commercial Operation Date of the first unit, and (ii) for the second unit of the Additional Units, a period of twenty (20) years commencing on the Commercial Operation Date of the second unit. This Agreement and the PPA Project Entity Power Purchase Agreement are intended to be "back-to-back" power purchase agreements during the Term of this Agreement such that all of the Output shall be purchased by MEAG from the PPA Project Entity pursuant to the PPA Project Entity Power Purchase Agreement and resold to Buyer pursuant to the terms and conditions hereof. For the avoidance of doubt and notwithstanding anything to the contrary herein, and to confirm the understanding of the Parties, if Buyer has satisfied its payment and performance obligations under and in accordance with this Agreement, MEAG is required to purchase such Output from the PPA Project Entity under and

in accordance with the PPA Project Entity Power Purchase Agreement and as long as all the payment and performance obligations of MEAG to the PPA Project Entity have been satisfied under the PPA Project Entity Power Purchase Agreement, the PPA Project Entity is required to sell and provide such Output to MEAG and MEAG in turn is required to sell and provide such Output to Buyer for the full periods set forth in the first sentence of this Section 201.

SECTION 202. OBLIGATION TO TAKE OUTPUT OF THE PPA PROJECT ENTITY'S OWNERSHIP INTEREST. Notwithstanding anything in this Agreement to the contrary, Buyer shall be obligated to take all Output during the periods described herein as and when any such Output shall be produced, and Buyer shall have no right to dispatch or schedule the operation of the PPA Project Entity's Ownership Interest or any facility thereof.

SECTION 203. BUYER'S ADDITIONAL COMPENSATION OBLIGATION.

(a) **General.** As part of its payment obligations set forth in Article II of this Agreement, Buyer shall pay MEAG the amounts described in this Section 203 ("Buyer's Additional Compensation Obligation"). In February of each calendar year during the Term of this Agreement, the Billing Statement provided by MEAG under Section 302 of this Agreement shall include charges, if any, for the total amount of Buyer's Additional Compensation Obligation incurred during the preceding calendar year calculated as set forth in this Section.

(b) **Calculation of Buyer's Additional Compensation Obligation.** Buyer's Additional Compensation Obligation shall be calculated by multiplying the total amount of Energy delivered to Buyer under this Agreement from each Additional Unit at the Delivery Point (as defined in Section 604(a) of this Agreement) during the preceding calendar year by a fixed rate for each MWh determined as follows:

(1) For each Additional Unit, during the first through the fifth calendar year following such Additional Unit's Commercial Operation Date, the fixed rate shall be: \$0.50/MWh.

(2) For each Additional Unit, during the sixth through the tenth calendar year following such Additional Unit's Commercial Operation Date, the fixed rate shall be: \$1.50/MWh.

(3) For each Additional Unit, during the eleventh through the fifteenth calendar year following such Additional Unit's Commercial Operation Date, the fixed rate shall be: \$2.50/MWh.

(4) For each Additional Unit, during the sixteenth through the twenty-first calendar year following such Additional Unit's Commercial Operation Date, the fixed rate shall be: \$3.50/MWh.

SECTION 204. BUYER'S PAYMENT OBLIGATIONS.

(a) ***General.*** Subject to the other provisions of this Agreement relating to the payment of Debt Service, Buyer's obligation to pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs with respect to the first unit of the Additional Units to achieve Commercial Operation shall commence upon the Commercial Operation Date of that unit, and Buyer's obligation to pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs with respect to the second unit of the Additional Units to achieve Commercial Operation shall commence upon the Commercial Operation Date of that unit.

(b) ***Debt Service Generally.*** Except (i) in the case of PPA Bonds issued in accordance with the provisions of Section 401(e) hereof (which only are to be issued following the Commercial Operation Date of the applicable Additional Unit), (ii) in the case of refunding

PPA Bonds issued in accordance with the provisions of Section 401(f) hereof and (iii) with respect to PPA BANs and PPA Take-Out Bonds (Buyer's obligation in respect of the payment of Debt Service on which is governed by the provisions of the penultimate sentence of the first paragraph of Section 204(e) hereof), Buyer's obligation to pay (1) the interest component of Debt Service of each Series of PPA Bonds and each Advance attributable to each Additional Unit shall continue for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (2) the principal component of Debt Service of each Series of PPA Bonds and each Advance attributable to each Additional Unit shall continue for a period of two hundred forty (240) months from and including the month in which such obligation shall commence.

Notwithstanding the foregoing and any other provision of this Agreement, in the event that MEAG shall issue PPA Bonds of any Series (i) that bear interest at variable rates and are subject to tender for purchase at the option of the holders thereof or (ii) in the form of short-term obligations that are intended to be rolled-over at maturity and, as a result of market conditions, (x) such PPA Bonds that bear interest at variable rates cannot be remarketed and either are tendered to MEAG for payment or must be termed-out in advance of their scheduled amortization dates (determined as provided in Section 401(d), 401(e) or 401(f) hereof, as applicable) and/or (y) such PPA Bonds in the form of short-term obligations cannot be rolled-over and must either be paid at maturity or termed-out in advance of their scheduled amortization dates (determined as aforesaid), then Buyer shall be responsible for paying the principal of such PPA Bonds when due.

Notwithstanding any other provision of this Agreement, the aggregate principal amount of the PPA Bonds described in the preceding paragraph to be outstanding at any time, together

with the aggregate principal amount of PPA BANs and PPA Take-Out Bonds outstanding at such time, shall not exceed \$75,000,000, or such greater amount as shall be agreed to in writing by MEAG and Buyer from time to time, but no such PPA Bonds shall be issued for the purpose of financing Fuel Costs applicable to either of the Additional Units prior to the Commercial Operation Date thereof.

In the event that Buyer shall pay to MEAG any amount in respect of the principal of PPA Bonds as provided in the second preceding paragraph, MEAG agrees that on the first date thereafter on which it or the PPA Project Entity is able to borrow funds to pay Costs of Acquisition and Construction and Financing Costs of the Plant Vogtle Additional Units PPA Project, it shall include in such borrowing an amount sufficient to reimburse Buyer for all amounts paid by it in respect of such principal that theretofore have not been reimbursed by MEAG, but without interest thereon; provided, however, that MEAG shall not be so obligated if, in its commercially reasonable judgment, the cost of borrowing funds for the purpose of such reimbursement shall be prohibitive.

In the event that MEAG and the PPA Project Entity do not, for any reason, borrow funds sufficient to reimburse Buyer as provided in the preceding paragraph, at the end of the Term of this Agreement, Buyer shall be refunded the portion of such principal so paid and not theretofore reimbursed in excess of the amount thereof that would have been payable by Buyer had such PPA Bonds been paid in accordance with their scheduled amortization (determined as aforesaid); provided, however, that if all or any portion of the proceeds of such PPA Bonds was used to fund a Non-amortized Reserve Fund (including the Nuclear Fuel Construction Fund-Revolving Account), then, at the end of the Term of this Agreement, Buyer shall be refunded the entirety of

such principal so paid and not theretofore reimbursed with respect to such PPA Bonds that funded such Non-amortized Reserve Fund(s).

(c) **Debt Service on PPA Bonds Issued to Finance Capital Improvements.** In the case of PPA Bonds issued in accordance with the provisions of Section 401(e) hereof to finance the Costs of Acquisition and Construction and Financing Costs of “capital improvements,” as such term is defined in Section 401(e) hereof, for a particular Additional Unit (which only are to be issued following the Commercial Operation Date of the applicable Additional Unit), Buyer’s obligation to pay (i) the interest component of Debt Service of each such Series of PPA Bonds attributable to such Additional Unit shall commence on the day following the date to which all interest is capitalized on the PPA Bonds of such Series and (ii) the principal component of Debt Service of each such Series of PPA Bonds attributable to such Additional Unit shall commence on the date that is one (1) year prior to the first due date of the principal component of Debt Service of such PPA Bonds and, in either such case, shall continue only to the last day on which Buyer is entitled to its Obligation Share of the Output of such Additional Unit pursuant to the terms of this Agreement. In the event of a delay in the in-service date of the capital improvements for which the PPA Bonds of such Series are issued under Section 401(e) hereof, MEAG shall issue additional PPA Bonds under such Section to provide funds to capitalize interest on all such PPA Bonds until the actual in-service date of the capital improvements; provided, however, that in the event that MEAG determines it is practicably or economically infeasible for MEAG to issue such additional PPA Bonds at any time during the period between the estimated in-service date and the actual in-service date of the capital improvements, then MEAG shall not be required to issue such additional PPA Bonds and Buyer’s obligation to pay

interest on all such PPA Bonds shall commence on the day following the date to which all interest is capitalized on the PPA Bonds of such Series.

(d) **Debt Service on Refunding PPA Bonds.** In the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof, Buyer's obligation to pay (i) the interest component of Debt Service of each Series of such refunding PPA Bonds shall continue only for the same number of months for which Buyer would have been obligated to pay the interest component of Debt Service on the PPA Bonds and/or the portion of the principal of the DOE Guaranteed Loan refunded or repaid thereby (hereinafter referred to in this Section 204(d) as the "Refunded PPA Debt") had such Refunded PPA Debt not been so refunded or repaid, and (ii) the principal component of Debt Service of each such Series of refunding PPA Bonds shall continue only for the same number of months for which Buyer would have been obligated to pay the principal component of Debt Service on the Refunded PPA Debt had such Refunded PPA Debt not been so refunded or repaid.

(e) **Commencement of Payment Obligations.** Notwithstanding the foregoing and any other provision in this Agreement but subject to the other provisions of this Agreement relating to the payment of Debt Service, Buyer's obligation to pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs shall commence simultaneously with the commencement of the obligation of the Additional Units Non-PPA Participants to pay their respective shares of the Plant Vogtle Additional Units Non-PPA Project Annual Costs under the Plant Vogtle Additional Units Non-PPA Power Sales Contracts, which obligation may commence prior to the Commercial Operation Date of either Additional Unit as described in Section 211 hereof. Notwithstanding the foregoing and any other provision of this Agreement, if it becomes practically or economically infeasible for MEAG to issue PPA Bonds due to a JEA

Market Disruption, but it is practically and economically feasible for MEAG to issue Non-PPA Bonds, MEAG may commence billing Buyer its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs without simultaneously billing the Additional Units Non-PPA Participants for their respective Obligation Shares (as defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts) of the Plant Vogtle Additional Units Non-PPA Project Annual Costs. Notwithstanding the foregoing and any other provision of this Agreement relating to the billing and payment of Plant Vogtle Additional Units PPA Project Annual Costs, in the event that MEAG shall not have sufficient funds to pay in full the principal of or interest on any PPA BANs or PPA Take-Out Bonds when due (including as a result of the inability of MEAG and the PPA Project Entity, for any reason, to borrow funds in an amount sufficient to refund any PPA BANs or PPA Take-Out Bonds at or prior to their respective due dates (whether through the issuance of other PPA Bonds (including, in the case of PPA BANs, PPA Take-Out Bonds) or otherwise), Buyer shall be obligated to pay to MEAG fifty percent (50%) of the amount of such shortfall, which amount shall be payable on or before the due date of such principal and/or interest, whether before or after the applicable Commercial Operation Date. In furtherance of the foregoing, MEAG agrees that (i) it will provide periodic notice to Buyer as to MEAG's expected ability to refund the principal of any PPA BANs or PPA Take-Out Bonds on or prior to the respective due dates thereof, not less than ninety (90) and thirty (30) days prior to such respective due dates and (ii) if, at any time prior to the respective due dates of the principal of such PPA BANs or PPA Take-Out Bonds, it shall determine that neither it nor the PPA Project Entity will be able to borrow funds in an amount sufficient to refund such principal, it promptly will provide notice to Buyer as to such determination; provided, however, that MEAG's failure

to provide any such notice to Buyer shall not affect Buyer's obligation as stated in the preceding sentence, which obligation shall be absolute and unconditional.

In the event that Buyer shall pay to MEAG any amount in respect of the principal of PPA BANs and/or PPA Take-Out Bonds as provided in the preceding paragraph, MEAG agrees that on the first date thereafter on which it or the PPA Project Entity is able to borrow funds to pay Costs of Acquisition and Construction and Financing Costs of the Plant Vogtle Additional Units PPA Project, it shall include in such borrowing an amount sufficient to reimburse Buyer and the Additional Units PPA Participants for all amounts paid by them in respect of such principal that theretofore have not been reimbursed by MEAG, but without interest thereon; provided, however, that MEAG shall not be so obligated if, in its sole judgment, the cost of borrowing funds for the purpose of such reimbursement shall be prohibitive.

In the case of any such PPA BANs and/or PPA Take-Out Bonds that were issued to finance or refinance Costs of Acquisition and Construction and Financing Costs of "capital improvements," as such term is defined in Section 401(e) hereof, for a particular Additional Unit following the Commercial Operation Date thereof, in the event that any amounts paid by Buyer in respect of the principal thereof theretofore have not been reimbursed by MEAG, at the end of the Term of this Agreement, Buyer shall be entitled to a payment from MEAG calculated as follows. First, MEAG shall determine a separate imputed debt service for all such capital improvement items having comparable estimated economic useful lives based upon the following assumptions: (i) that PPA Bonds were issued to finance Buyer's Obligation Share of such capital improvement items on July 1 of the calendar year in which such capital improvements are placed in service at an interest rate equal to the average of the Bond Buyer Weekly 25 Revenue Bond Index as published in *The Bond Buyer* updated weekly on Thursday

(Bloomberg ticker symbol is BBWK25RV) for such year (or, if such index shall cease to be published, at an interest rate equal to the average for such calendar year of such generally accepted alternate index as MEAG shall select with the written consent of Buyer, which consent shall not be unreasonably withheld); (ii) that such PPA Bonds were amortized over the shorter of (X) the term of the applicable Additional Unit's combined construction and operating license, or (Y) the estimated economic useful life of the capital improvement items; and (iii) that such PPA Bonds were structured upon a fully-amortizing level debt service basis for the assumed term, with the first principal installment of such PPA Bonds coming due on January 1 of the second full calendar year following the date on which such capital improvement items are placed in service. Second, with respect to each such capital improvement item (or group of capital improvement items having comparable estimated useful lives), at the end of the Term of this Agreement, MEAG shall reimburse Buyer the difference between the principal of such PPA BANs and/or PPA Take-Out Bonds paid by Buyer and the total principal payments that would have become due and owing by Buyer on the assumed PPA Bonds during the period from the time such principal was paid by Buyer through the remaining Term of this Agreement under the imputed debt service calculation set forth in this paragraph.

(f) **Amounts Payable in Advance; Adjustments for Prior Months.** Buyer shall pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs in advance for each month of each Power Supply Year as set forth in the Plant Vogtle Additional Units PPA Project Annual Budget or amended Plant Vogtle Additional Units PPA Project Annual Budget for the respective month and reflected in the monthly Buyer's Billing Statement for the respective month in accordance with Section 302 of this Agreement. In each monthly Buyer's Billing Statement, MEAG may charge or credit Buyer for any adjustment to the Buyer's Billing

Statement for prior monthly periods required to reflect any other actual cost incurred or credit received by MEAG during any respective prior monthly period.

(g) **Buyer's Obligation.** Buyer shall pay its Obligation Share of Plant Vogtle Additional Units PPA Project Annual Costs whether or not the PPA Project Entity's Ownership Interest is completed or is operating or operable, and whether or not its Output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or non-performance by any party of any agreement for any cause whatsoever. Buyer shall pay the Buyer's Additional Compensation Obligation only in the event the PPA Project Entity's Ownership Interest is operating, and Buyer shall not be responsible for paying the Buyer's Additional Compensation Obligation during periods in which the Output of the PPA Project Entity's Ownership Interest is suspended, interrupted, or terminated.

(h) **Nature of Buyer's Payment Obligations.** Buyer hereby agrees that amounts payable to MEAG under this Agreement (i) shall constitute a Contract Debt (as that term is defined in Buyer's Electric System Bond Resolution), payable as a Cost of Operation and Maintenance of Buyer's Electric System (as those terms are defined in Buyer's Electric System Bond Resolution), and (ii) shall be paid by Buyer as a cost of purchased power and energy for Buyer's wholesale and retail load and otherwise as an expense of operation and maintenance of Buyer's Electric System.

SECTION 205. PLANT VOGTLE ADDITIONAL UNITS PPA PROJECT ANNUAL COSTS.

(a) **General.** MEAG shall determine all of the Plant Vogtle Additional Units PPA Project Annual Costs, exclusive of costs paid from the proceeds of PPA Bonds or Advances, commencing with the first Power Supply Year, or such earlier time as MEAG shall determine in accordance with Section 205(b) of this Agreement. Such annual costs shall include the costs payable by MEAG or the PPA Project Entity under the Project Agreements and such other costs incurred by MEAG or the PPA Project Entity as set forth in Section 205(b) hereunder that are billed to Buyer pursuant to that Section. MEAG is expressly authorized to bill in accordance with Section 205(b) hereunder some or all of the Debt Service costs that are payable during construction and prior to the Commercial Operation Date of any of the Additional Units.

(b) **Plant Vogtle Additional Units PPA Project Annual Costs.** The Plant Vogtle Additional Units PPA Project Annual Costs for the generating and related facilities of the PPA Project Entity's Ownership Interest shall include the following items of cost and expense:

(1) "Plant Vogtle Additional Units PPA Project Annual Fixed Costs", which means all fixed costs allocable to the Plant Vogtle Additional Units PPA Project incurred by MEAG or the PPA Project Entity, including:

(A) Amounts that MEAG or the PPA Project Entity is required to pay for taxes or payments in lieu thereof attributable to the PPA Project Entity's Ownership Interest and/or the Plant Vogtle Additional Units PPA Project;

(B) Amounts required for renewals and replacements attributable to the PPA Project Entity's Ownership Interest, or payment or deposit of such amounts into any reserve fund or account;

(C) Amounts to be set aside by MEAG or the PPA Project Entity for the retirement from service or disposal of the facilities of the PPA Project Entity's Ownership Interest in accordance with the methodology set forth in Exhibit B hereto; provided, however, that Buyer's responsibility for such amounts that are incurred during the term of this Agreement plus such amounts that are estimated to be incurred after the term of this Agreement shall not exceed fifty percent (50%) of the total amount of such costs incurred during the term of this Agreement and estimated to be incurred after the term of this Agreement;

(D) Amounts that MEAG or the PPA Project Entity is required under the PPA Project Bond Resolution or the DOE Loan Documents to pay or deposit into any fund or account established by the PPA Project Bond Resolution or the DOE Loan Documents for the payment of Debt Service on the PPA Bonds or the DOE Guaranteed Loan, as applicable;

(E) Amounts (not otherwise included under any item of this Section 205(b)) for the Plant Vogtle Additional Units PPA Project that MEAG or the PPA Project Entity is required under the PPA Project Bond Resolution or the DOE Loan Documents, as applicable, to pay or deposit during any Power Supply Year into any other fund or account established by the PPA Project Bond Resolution or the DOE Loan Documents, as applicable, or payment or deposit of such amounts into any such fund or account established outside the PPA Project Bond Resolution or the DOE Loan Documents; provided, however, in the event MEAG or the PPA Project Entity utilizes letter of credit agreements or other financing instruments to finance such payments or deposits, the related financing costs shall also be included herein;

(F) Amounts for payment or deposit into any fund or account outside the pledge of the PPA Project Bond Resolution or the DOE Loan Documents attributable to costs or reserves of the Plant Vogtle Additional Units PPA Project, including such amounts established by MEAG in the Plant Vogtle Additional Units PPA Project Annual Budget to provide reasonable reserves for the payment of the PPA Project Entity's share of costs required pursuant to either the Ownership Agreement or the Operating Agreement; provided, however, in the event MEAG or the PPA Project Entity utilizes letter of credit agreements or other financing instruments to finance such payments or deposits, the related financing costs shall also be included herein;

(G) Amounts for payment of Additional Costs (as that term is described and defined in Section 2.2 of the Development Agreement) attributable to the PPA Project Entity's Ownership Interest incurred during any Power Supply Year, which expenditures, to the extent they are capital expenditures, shall be treated as capital costs under Section 206(b); and

(H) Without duplication, all fixed costs required to be paid by the PPA Project Entity (whether to DOE, as operating expenses or otherwise) in the DOE Loan Documents other than such costs and expenses set forth in Section 205(b)(2).

(2) "Plant Vogtle Additional Units PPA Project Other Annual Costs", which means all Plant Vogtle Additional Units PPA Project Annual Costs other than the Plant Vogtle Additional Units PPA Project Annual Fixed Costs allocable to the Plant Vogtle Additional Units PPA Project incurred by MEAG or the PPA Project Entity, including:

(A) All costs of producing and delivering Capacity and Energy from the PPA Project Entity's Ownership Interest to Buyer including (i) Fuel Costs and other

ordinary operation and maintenance costs and provisions for reserves therefor, administrative and general costs, insurance and overhead costs and any charges payable by MEAG or the PPA Project Entity in connection with the Output of the PPA Project Entity's Ownership Interest, (ii) working capital reasonably required for operation of the Plant Vogtle Additional Units PPA Project, and (iii) a share, determined by MEAG to be allocable to the Plant Vogtle Additional Units PPA Project in accordance with the methodology set forth in Exhibit C hereto, of all operation and maintenance costs related to the operation and conducting of the business of MEAG, including salaries, fees for legal, engineering, and other services and all other expenses properly related to the conduct of the affairs of MEAG;

(B) Except to the extent funded by PPA Bonds or reserves held by MEAG or the PPA Project Entity, amounts required to pay the costs of or to provide reserves for (i) extraordinary operating and maintenance costs attributable to the Plant Vogtle Additional Units PPA Project including the prevention or correction of any unusual loss or damage to keep the facilities of the PPA Project Entity's Ownership Interest in good operating condition or to prevent a loss of revenues therefrom; provided, however, in the event MEAG or the PPA Project Entity utilizes letter of credit agreements or other financing instruments to finance such operating and maintenance costs, or reserves therefor, the related financing costs shall also be included herein; (ii) any major renewals, replacements, repairs, additions, betterments and improvements to the Additional Units necessary, in the opinion of MEAG or the PPA Project Entity, to keep the facilities of the PPA Project Entity's Ownership Interest in good operating condition or to prevent a loss of revenues therefrom, which expenditures, to the extent

they are capital expenditures, shall be treated as capital costs under Section 206(b); provided, however, in the event MEAG or the PPA Project Entity utilizes letter of credit agreements or other financing instruments to finance such renewals, replacements, repairs, additions, betterments and improvements, or reserves therefor, the related financing costs shall also be included herein; and (iii) any major additions, improvements, repairs or modifications to any such facility, or any retirements or disposals of any such facility, required by any Governmental Authority having jurisdiction over the Additional Units or for which the PPA Project Entity shall be responsible by virtue of any obligation of the PPA Project Entity arising out of any contract to which the PPA Project Entity may be a party relating to ownership of the Additional Units or any facility thereof, including the Project Agreements, to the extent that MEAG or the PPA Project Entity is not reimbursed therefor from the proceeds of insurance or funds for such payments are not available to MEAG or the PPA Project Entity therefor from any funds or accounts established by MEAG or by or on behalf of the PPA Project Entity, or funds for such payment are not provided or to be provided by the issuance of PPA Bonds pursuant to Article IV of this Agreement, which expenditures, to the extent they are capital expenditures, shall be treated as capital costs under Section 206(b); provided, however, in the event MEAG or the PPA Project Entity utilizes letter of credit agreements or other financing instruments to finance such additions, improvements, repairs, modifications, retirements or disposals, or reserves therefor, the related financing costs shall also be included herein; and

(C) Without duplication, all amounts required to be paid by the PPA Project Entity (whether to DOE, as operating expenses or otherwise) in the DOE Loan Documents other than fixed costs as set forth in Section 205(b)(1).

SECTION 206. TREATMENT OF CAPITAL COSTS; CERTAIN INTEREST EXPENSES.

(a) **Financing of Capital Costs with PPA Bonds and Advances.** Except as provided in Section 206(b), (c) and (d) hereunder, MEAG shall finance or cause the PPA Project Entity to finance capital costs attributable to the PPA Project Entity's Ownership Interest and incurred by the PPA Project Entity during the term of this Agreement with proceeds of PPA Bonds or Advances, as applicable. At a minimum, all costs treated by the Agent as capital costs pursuant to the Ownership Agreement shall be treated as "capital costs" for purposes of this Section 206. Additionally, MEAG or the PPA Project Entity, as applicable, may also elect to treat as capital costs for purposes of this Section any other cost item which the Agent has treated as an expense item so long as MEAG re-characterizes such costs under the Plant Vogtle Additional Units Non-PPA Project Power Sales Contracts.

(b) **Exception for Financing of Capital Costs Where Practically or Economically Infeasible.** During any period when (i) MEAG determines it is practically or economically infeasible for (x) MEAG to issue PPA Bonds and Non-PPA Bonds, (y) the PPA Project Entity to satisfy the conditions to the making of an Advance and (z) the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts) to finance capital costs attributable to the Non-PPA Project Entity's Ownership Interest and the Plant Vogtle Additional Units Non-PPA Project, or (ii) MEAG determines it is practically or economically infeasible for

(x) MEAG to issue PPA Bonds and (y) the PPA Project Entity to satisfy the conditions to the making of an Advance to finance capital costs attributable to the PPA Project Entity's Ownership Interest, in both such cases, due to a JEA Market Disruption, but it is practically and economically feasible for MEAG to issue Non-PPA Bonds attributable to the Plant Vogtle Additional Units Non-PPA Project or for the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts) to finance capital costs attributable to the Plant Vogtle Additional Units Non-PPA Project, and MEAG or the PPA Project Entity incurs capital costs during the term of this Agreement, MEAG or the PPA Project Entity shall finance such capital costs from a reserve fund maintained for the payment of renewals and replacements; provided, however, that, for any portion of such capital costs attributable to the PPA Project Entity's Ownership Interest that cannot be financed by such a reserve fund, MEAG shall bill Buyer its Obligation Share of such costs (including such costs incurred by the PPA Project Entity and billed to MEAG) pursuant to Sections 205(b)(1)(B) or 205(b)(2)(B)(ii) – (iii) hereof; and provided, further, that MEAG shall not bill Buyer its Obligation Share of such capital costs prior to the Commercial Operation Date of the first Additional Unit.

In the event that Buyer shall pay to MEAG any amount in respect of its Obligation Share of such capital costs as provided in the preceding paragraph, MEAG agrees that on the first date thereafter on which it or the PPA Project Entity is able to borrow funds to pay such capital costs, it shall include in such borrowing an amount sufficient to reimburse Buyer for all amounts paid by it in respect of such capital costs that theretofore have not been reimbursed by MEAG, but without interest thereon; provided, however, that MEAG shall not be so obligated if, in its

commercially reasonable judgment, the cost of borrowing funds for the purpose of such reimbursement shall be prohibitive.

In the event that any such costs theretofore have not been reimbursed by MEAG, at the end of the Term of this Agreement, Buyer shall be entitled to a payment from MEAG calculated as follows. First, MEAG shall determine a separate imputed debt service for all such repair or replacement items having comparable estimated economic useful lives that are constructed or acquired with respect to each Additional Unit during a particular calendar year based upon the following assumptions: (i) that PPA Bonds were issued to finance Buyer's Obligation Share of such capital costs on July 1 of such calendar year at an interest rate equal to the average of the Bond Buyer Weekly 25 Revenue Bond Index as published in *The Bond Buyer* updated weekly on Thursday (Bloomberg ticker symbol is BBWK25RV) for such year (or, if such index shall cease to be published, at an interest rate equal to the average for such calendar year of such generally accepted alternate index as MEAG shall select with the written consent of Buyer, which consent shall not be unreasonably withheld); (ii) that such PPA Bonds were amortized over the shorter of (X) the term of the applicable Additional Unit's combined construction and operating license, or (Y) the estimated economic useful life of the repair or replacement item(s); and (iii) that such PPA Bonds were structured upon a fully-amortizing level debt service basis for the assumed term, with the first principal installment of such PPA Bonds coming due on January 1 of the second full calendar year following the date on which such capital costs are incurred. Second, with respect to each such renewal or replacement item (or group of renewal or replacement items having comparable estimated useful lives), at the end of the Term of this Agreement, MEAG shall reimburse Buyer the difference between the capital costs paid by Buyer and the total principal payments that would have become due and owing by Buyer on the assumed PPA

Bonds during the period from the time such capital costs were paid by Buyer through the remaining Term of this Agreement under the imputed debt service calculation set forth in this Section 206(b).

(c) **Funding of Nuclear Fuel Construction Fund-Revolving Account.** MEAG shall fund a Nuclear Fuel Construction Fund-Revolving Account from the proceeds of those PPA Bonds or Advances specifically allocated to fund Fuel Costs. MEAG shall utilize the funds within the Nuclear Fuel Construction Fund-Revolving Account to fund the PPA Project Entity's purchase of the initial core and subsequent nuclear fuel reloads except that the initial core may be funded using the proceeds of PPA Bonds and Advances, including the capitalized interest associated with the nuclear fuel on such PPA Bonds and Advances. If Fuel Costs are funded with proceeds of PPA Bonds or Advances, the amount of such costs that are amortized during a Power Supply Year shall be treated as capitalized costs and billed to Buyer pursuant to Section 205(b)(2)(A).

(d) **Financing of Interest Costs.** During any period when (i) MEAG determines it is practicably or economically infeasible for (x) MEAG to issue PPA Bonds and Non-PPA Bonds, (y) the PPA Project Entity to satisfy the conditions to the making of an Advance and (z) the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts), or (ii) MEAG determines it is practically or economically infeasible for (x) MEAG to issue PPA Bonds and (y) the PPA Project Entity to satisfy the conditions to the making of an Advance, in both such cases, due to a JEA Market Disruption, but it is practically and economically feasible for MEAG to issue Non-PPA Bonds or for the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional

Units Non-PPA Power Sales Contracts) to finance interest costs attributable to either of the Additional Units and incurred by MEAG prior to the Commercial Operation Date of the applicable unit, Buyer shall bear Buyer's Obligation Share attributable to the Plant Vogtle Additional Units PPA Project of such interest costs that could not be financed for the PPA Project through the Commercial Operation Date of the applicable unit ("Capitalized Interest") and MEAG shall bill Buyer its Obligation Share of such annual Power Supply Year Capitalized Interest costs pursuant to Section 205(b)(1) hereof.

In the event that Buyer shall pay to MEAG any amount in respect of its Obligation Share of such annual Power Supply Year Capitalized Interest costs as provided in the preceding paragraph, MEAG agrees that on the first date thereafter on which it or the PPA Project Entity is able to borrow funds to pay such Capitalized Interest, it shall include in such borrowing an amount sufficient to reimburse Buyer for all amounts paid by it in respect of such annual Power Supply Year Capitalized Interest costs that theretofore have not been reimbursed by MEAG, but without interest thereon; provided, however, that MEAG shall not be so obligated if, in its commercially reasonable judgment, the cost of borrowing funds for the purpose of such reimbursement shall be prohibitive.

In the event that any such costs theretofore have not been reimbursed by MEAG, at the end of the Term of the Agreement, Buyer shall be entitled to a payment from MEAG calculated as follows. Attached hereto as **Exhibit I** is an example of the payment calculation described in this subpart. First, MEAG shall determine a separate imputed debt service for each such monthly amount billed to Buyer in respect of Capitalized Interest with respect to each of the Additional Units based upon the following assumptions: (i) that PPA Bonds were issued to finance such interest costs on the date on which Buyer pays such Capitalized Interest amount to

MEAG at an interest rate (the “Assumed Rate”) equal to the average of the Bond Buyer Weekly 25 Revenue Bond Index as published in *The Bond Buyer* updated weekly on Thursday (Bloomberg ticker symbol is BBWK25RV) during the month in which such Capitalized Interest amount is so billed and paid (or, if such index shall cease to be published, at an interest rate equal to the average for such calendar year of such generally accepted alternate index as MEAG shall select with the written consent of Buyer, which consent shall not be unreasonably withheld) and in an amount equal to the amount of such Capitalized Interest so paid, less assumed interest earnings thereon to the next following January 1 or July 1 (whichever shall occur first) at a rate of interest equal to the applicable Assumed Rate and plus assumed interest thereon to the Commercial Operation Date of the applicable Additional Unit at a rate of interest equal to the applicable Assumed Rate, compounded semi-annually on each January 1 and July 1; (ii) that such PPA Bonds were amortized over the term of the applicable Additional Unit’s combined construction and operating license; and (iii) that such PPA Bonds were structured upon a fully-amortizing level debt service basis for the assumed term, with the first principal installment of such PPA Bonds coming due on January 1 of the second full calendar year following the Commercial Operation Date of the applicable Additional Unit. Second, at the end of the Term of this Agreement, MEAG shall reimburse Buyer the difference between (i) the sum of all Capitalized Interest amounts paid by Buyer plus interest on each such Capitalized Interest amount from the date so paid to the Commercial Operation Date of the applicable Additional Unit at a rate equal to the applicable Assumed Rate compounded semi-annually on each January 1 and July 1, and less interest earned on such Capitalized Interest amount at the Assumed Rate and (ii) the sum of the total principal payments that would have become due and owing by Buyer on the assumed PPA Bonds corresponding to each such Capitalized Interest amount during the

period from the time such Capitalized Interest amount was paid by Buyer through the remaining Term of this Agreement under the imputed debt service calculations set forth in this Section 206(d).

(e) *True-Up for Debt Service on Post-Commercial Operation Capital Improvements.* In the case of any PPA Bonds issued in accordance with the provisions of Section 401(e) hereof (which only are to be issued following the Commercial Operation Date of the applicable Additional Unit), in the event that Buyer shall pay any amounts in respect of Debt Service on such PPA Bonds prior to the actual in-service date of the capital improvements financed through the issuance of such PPA Bonds, then, at the end of the Term of this Agreement, Buyer shall be entitled to a payment from MEAG in an amount equal to such amounts in respect of Debt Service paid prior to the actual in-service date.

SECTION 207. RESERVE FUNDS.

(a) *General.* All reserve funds maintained pursuant to this Agreement or the PPA Project Bond Resolution, or caused by MEAG or otherwise required to be held by or on behalf of the PPA Project Entity pursuant to the DOE Accounts Agreement, shall be either Non-amortized Reserve Funds or Amortized Reserve Funds. Provided, however, in the event that (i) MEAG determines it is practically or economically infeasible for (x) MEAG to issue PPA Bonds and Non-PPA Bonds, (y) the PPA Project Entity to satisfy the conditions to the making of an Advance and (z) the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts), to finance such reserves, or (ii) MEAG determines it is practically or economically infeasible for (x) MEAG to issue PPA Bonds and (y) the PPA Project Entity to satisfy the conditions to the making of an Advance to finance such reserves, in both such cases,

due to a JEA Market Disruption, but it is practically and economically feasible for MEAG to issue Non-PPA Bonds or for the Non-PPA Project Entity (if applicable) to satisfy the conditions to the making of an Advance (as such term is defined in the Plant Vogtle Additional Units Non-PPA Power Sales Contracts) to finance such reserve funds for the Non-PPA Project, MEAG may utilize revenues derived from either year-end distributions or billings to Buyer under this Agreement to finance such reserve funds (other than reserve funds held by or on behalf of the PPA Project Entity that are financed using the proceeds of Advances), but only so long as MEAG is also utilizing revenues derived from either year-end distributions or billings to the Additional Units Non-PPA Participants under the Plant Vogtle Additional Units Non-PPA Power Sales Contracts to also finance such reserve funds for the Non-PPA Project, unless the billing was necessitated by a JEA Market Disruption.

In the event that Buyer shall pay to MEAG any amount to finance such reserve funds as provided in the preceding paragraph, MEAG agrees that on the first date thereafter on which it or the PPA Project Entity is able to borrow funds to finance such reserve funds, it shall include in such borrowing an amount sufficient to reimburse Buyer for all amounts paid by it in respect of such reserve funds that theretofore have not been reimbursed by MEAG, but without interest thereon; provided, however, that MEAG shall not be so obligated if, in its commercially reasonable judgment, the cost of borrowing funds for the purpose of such reimbursement shall be prohibitive.

To the extent that either Amortized Reserve Funds or Non-amortized Reserve Funds are funded with revenues derived from the foregoing sources, amounts placed into such reserve funds (i) derived from revenues attributable to Buyer to either initially fund such reserve funds or increase the funding of such reserve funds (but not to replenish such reserve funds) and (ii)

which were not utilized for their intended purpose during the Term of this Agreement, shall be reimbursed by MEAG to Buyer at the end of the Term of this Agreement.

(b) **Non-amortized Reserve Funds.** For any Non-amortized Reserve Funds created under the PPA Project Bond Resolution, the Power Sales Contracts or the DOE Accounts Agreement, Buyer shall be responsible for paying its Obligation Share of any interest on the PPA Bonds and/or the DOE Guaranteed Loan, as applicable, that financed such Non-amortized Reserve Funds during each Power Supply Year during the Term of the Agreement, offset by Buyer's Obligation Share of any interest earned on such funds during such Power Supply Year that are not required under the PPA Project Bond Resolution and/or the DOE Loan Documents, as applicable, to be retained in such funds. Except as provided in Section 303 of this Agreement, Buyer shall not be entitled to any reimbursement at the end of the Term of this Agreement with respect to such funds.

(c) **Amortized Reserve Funds.** For any Amortized Reserve Funds created under the PPA Project Bond Resolution, the Power Sales Contracts or the DOE Accounts Agreement, Buyer shall be responsible for paying its Obligation Share of both principal and interest on the PPA Bonds and/or the DOE Guaranteed Loan, as applicable, that financed such Amortized Reserve Funds during each Power Supply Year during the Term of the Agreement, offset by Buyer's Obligation Share of any interest earned on such funds during such Power Supply Year that are not required under the PPA Project Bond Resolution and/or the DOE Accounts Agreement, as applicable, to be retained in such funds. At the end of the Term of this Agreement, MEAG shall reimburse Buyer the total amount of principal payments made by Buyer on PPA Bonds or the DOE Guaranteed Loan relating to such funds.

(d) **Investment of Funds and Accounts.** MEAG agrees that monies held in the Funds and Accounts (as those terms are defined in the PPA Project Bond Resolution) established pursuant to the PPA Project Bond Resolution or in Project Accounts (as that term is defined in the DOE Accounts Agreement) established pursuant to the DOE Accounts Agreement shall be invested and reinvested to the fullest extent practicable in Investment Securities (as defined in the PPA Project Bond Resolution) or Permitted Investments (as defined in the DOE Accounts Agreement), as applicable, which mature not later than such times as shall be necessary to provide monies when needed for payments to be made from such Funds and Accounts or Project Accounts, as applicable. Interest earned on any monies or investments in any Fund or Account established pursuant to the PPA Project Bond Resolution (net of that which represents a return of accrued interest paid in connection with the purchase of any investment) shall be paid into the Revenue Fund, subject to the specific exceptions provided for in Section 603 of the PPA Project Bond Resolution. Interest earned on any monies or investments in any Project Account established pursuant to the DOE Accounts Agreement (net of that which represents a return of accrued interest paid in connection with the purchase of any investment) shall be applied pursuant to the DOE Accounts Agreement, and any amounts thereof distributed to MEAG by the PPA Project Entity shall be paid into the Revenue Fund.

(e) **Operation of Reserve Funds.** **Exhibit E** hereto sets forth the general principles that will be applied by MEAG with respect to each of the reserve funds that may be established by MEAG or caused by MEAG to be established by or on behalf of the PPA Project Entity pertaining to the Plant Vogtle Additional Units PPA Project. MEAG shall comply and shall cause the PPA Project Entity to comply with such principles with respect to the operation of each of the reserve funds; however, in the event that MEAG determines that it is necessary to operate

any of the reserve funds in a manner different than the principles described in **Exhibit E**, it (i) will provide notice and an opportunity for Buyer to comment with respect to any proposed changes prior to their implementation; (ii) shall take into consideration any comments and proposed changes submitted by Buyer; and (iii) shall provide Buyer with a written response explaining MEAG's rationale for its disposition of Buyer's comments and proposed changes; provided, however, that MEAG shall have sole discretion to determine whether to incorporate any such comments or proposed changes.

(f) **Accounts Held Outside of PPA Project Bond Resolution.** To the extent that MEAG establishes any collateral or margin or other similar account(s) outside of the PPA Project Bond Resolution in order to secure its obligations to a third party under any contract or agreement entered into by MEAG in connection with the PPA Project, and all or a portion of the amounts deposited to such account(s) are derived from either year-end distributions or billings to Buyer under this Agreement, MEAG agrees that it shall pay a portion of any interest earnings it receives from the investment of moneys in such account(s) (in proportion to the amount on deposit in such account(s) funded from such year-end distributions or billings to Buyer) to Buyer promptly upon receipt of such earnings. To the extent not paid or credited to Buyer under Section 303 of this Agreement, at the end of the Term of this Agreement, MEAG shall reimburse Buyer for the amount deposited to such account(s) from such year-end distributions or billings to Buyer.

SECTION 208. OWNERSHIP AND OPERATION OF THE PPA PROJECT ENTITY'S

OWNERSHIP INTEREST. The PPA Project Entity will acquire and own, and MEAG will issue PPA Bonds in Series from time to time under or in accordance with the PPA Project Bond Resolution or cause the PPA Project Entity to receive Advances to finance, the PPA Project

Entity's Ownership Interest. MEAG may also, at its sole discretion, enter into Qualified Hedging Contracts relating to such PPA Bonds and Advances.

SECTION 209. INSURANCE. MEAG shall maintain or cause to be maintained by the PPA Project Entity, the Agent or otherwise, as Costs of Acquisition and Construction or as Plant Vogtle Additional Units PPA Project Annual Costs, such insurance with respect to the PPA Project Entity's Ownership Interest as shall be available and as is usually carried by utilities constructing and operating nuclear generating facilities and such other insurance as is usually carried by electric utilities in conformity with Prudent Utility Practice. In the event that an insurance policy covers the Plant Vogtle Additional Units PPA Project, the Plant Vogtle Additional Units Non-PPA Project and/or the Plant Vogtle Additional Units PPA-2 Project, the costs of such insurance coverage shall be allocated to each such Project based upon a fraction (a) the numerator of which is equal to such Project's percentage of MEAG's Interest in the Additional Units and (b) the denominator of which is equal to the sum of all such Projects' percentages of MEAG's Interest in the Additional Units (each such fraction being hereinafter referred to as an "Allocation Fraction"). Any payments made by an insurer to MEAG in connection with one or more claims under a policy that covers the Plant Vogtle Additional Units PPA Project, the Plant Vogtle Additional Units Non-PPA Project and/or the Plant Vogtle Additional Units PPA-2 Project shall be allocated to all such Projects based upon each such Project's respective Allocation Fraction. Any insurance payments received by MEAG or the PPA Project Entity under a policy providing coverage only for the Plant Vogtle Additional Units PPA Project shall be credited entirely to such Project. Any such payments allocated or credited to the Plant Vogtle Additional Units PPA Project as aforesaid (a) to the extent received by MEAG, shall be subject to the lien of the PPA Project Bond Resolution and (b) to the extent

received by the PPA Project Entity, shall be subject to the security interest and lien of the DOE Secured Parties described in Section 605 hereof and, in either such case, may be applied to rebuild or replace the applicable Additional Unit or to prepay the DOE Guaranteed Loan in accordance with the DOE Loan Documents prior to any distribution thereof by the PPA Project Entity to MEAG.

Any payments received by MEAG or the PPA Project Entity during the term of this Agreement from business interruption insurance which are allocated to the Plant Vogtle Additional Units PPA Project in accordance with this section shall be credited and paid to Buyer to the extent that such payments cover losses that occurred during the term of this Agreement and pertain to Output that Buyer was entitled to receive pursuant to the terms of this Agreement, provided that such business interruption insurance payments, (a) to the extent received and for the time period held by MEAG, shall be subject to the lien of the PPA Project Bond Resolution and (b) to the extent received and for the time period held by the PPA Project Entity, shall be subject to the security interest and lien of the DOE Secured Parties described in Section 605 hereof and, provided, further, that once proceeds of such business interruption insurance are paid to Buyer as permitted by, and in accordance with the provisions of, the PPA Project Bond Resolution or the DOE Loan Documents, as applicable, such proceeds shall be free and clear of any such security interest or lien.

SECTION 210. PLEDGE OF PAYMENTS. All payments required to be made by Buyer pursuant to this Agreement attributable to the Plant Vogtle Additional Units PPA Project or to the Plant Vogtle Additional Units PPA Project Annual Costs, and any or all rights to collection or enforcement of such payments, may be pledged to secure the payment of the PPA Bonds and the DOE Secured Obligations.

SECTION 211. BUYER'S PAYMENT OBLIGATIONS IN THE EVENT OF PROJECT DELAY OR OWNERS' TERMINATION.

(a) **Delay in Scheduled Commercial Operation Dates.** In the event of a delay in the scheduled Commercial Operation Date of either or both of the Additional Units, MEAG may commence billing of the principal component of Debt Service of the PPA Bonds of any Series or of Debt Service of the DOE Guaranteed Loan relating to the delayed Additional Unit or Units prior to the Commercial Operation Date of such unit or units. Buyer shall be obligated to pay its Obligation Share of such principal component of Debt Service on the PPA Bonds of such Series and on the DOE Guaranteed Loan relating to such unit or units, which MEAG is required to structure in accordance with Section 401(d) hereunder, commencing on the date that is (x) one (1) year prior to the first due date of the principal component of Debt Service of the PPA Bonds of such Series and (y) three (3) months prior to the first due date of the principal component of Debt Service of the DOE Guaranteed Loan, as applicable, related to such unit or units. Provided, however, in the event that MEAG determines it is practicably or economically infeasible for MEAG to limit billing under the circumstances described above to the principal component relating to the PPA Bonds or to the DOE Guaranteed Loan, as applicable, or both, MEAG may bill the entirety of the Debt Service on such PPA Bonds or the portion of the principal of the DOE Guaranteed Loan related to such unit or units. Buyer shall (i) be entitled to its Obligation Share of the Output, and (ii) pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs of the affected Additional Unit for a twenty (20)-year term commencing on the Commercial Operation Date of such Additional Unit; provided, however, that (A) except (1) in the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof and (2) with respect to PPA BANs and PPA Take-Out Bonds (Buyer's obligation in

respect of the payment of Debt Service on which is governed by the provisions of the penultimate sentence of the first paragraph of Section 204(e) hereof), Buyer's obligation to pay (x) the interest component of Debt Service of each such Series of PPA Bonds and of the DOE Guaranteed Loan attributable to such Additional Unit, which MEAG is required to structure in accordance with Section 401(d) hereunder, shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (y) the principal component of Debt Service of each such Series of PPA Bonds and of the DOE Guaranteed Loan attributable to such Additional Unit, which MEAG is required to structure in accordance with Section 401(d) hereunder, shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (B) in the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof, Buyer's obligation to pay (1) the interest component of Debt Service of each Series of such refunding PPA Bonds shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for the same number of months for which Buyer would have been obligated to pay the interest component of Debt Service on the PPA Bonds and/or the portion of the principal of the DOE Guaranteed Loan refunded or repaid thereby (hereinafter referred to in this Section 211(a) as the "Refunded PPA Debt") had such Refunded PPA Debt not been so refunded or repaid, and (2) the principal component of Debt Service of each such Series of refunding PPA Bonds shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for the same number of months for which Buyer would have been obligated to pay the principal

component of Debt Service on the Refunded PPA Debt had such Refunded PPA Debt not been so refunded or repaid.

(b) *Cancellation or Termination of Additional Unit(s) Prior to Commercial Operation Date.* In the event that either or both of the Additional Units is cancelled or terminated pursuant to the Development Agreement prior to the Commercial Operation Date of such unit or units, Buyer shall be obligated to pay the following costs: (i) fifty percent (50%) of its Obligation Share of the Costs of Acquisition and Construction relating to the cancelled unit or units, but not including any such costs that have been paid with the proceeds of PPA Bonds or Advances, and (ii) its Obligation Share of Plant Vogtle Additional Units PPA Project Annual Costs relating to such unit or units for a period of twenty (20) years from the date that MEAG commences the billing of such Annual Costs relating to such unit or units to Buyer and the billing of the Plant Vogtle Additional Units Non-PPA Annual Costs relating to such unit or units to the Additional Units Non-PPA Participants; provided, however, that (A) except (1) in the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof and (2) with respect to PPA BANs and PPA Take-Out Bonds (Buyer's obligation in respect of the payment of Debt Service on which is governed by the provisions of the penultimate sentence of the first paragraph of Section 204(e) hereof), Buyer's obligation to pay (i) the interest component of Debt Service of each Series of PPA Bonds and of the DOE Guaranteed Loan attributable to such Additional Unit, which MEAG is required to structure in accordance with Section 401(d) hereunder, shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (ii) the principal component of Debt Service of each such Series of PPA Bonds and of the DOE Guaranteed Loan attributable to such Additional Unit,

which MEAG is required to structure in accordance with Section 401(d) hereunder, shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (B) in the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof, Buyer's obligation to pay (1) the interest component of Debt Service of each Series of such refunding PPA Bonds shall be included as part of Plant Vogtle Additional Units PPA Project Annual Costs only for the same number of months for which Buyer would have been obligated to pay the interest component of Debt Service on the PPA Bonds and/or the portion of the principal of the DOE Guaranteed Loan refunded or repaid thereby (hereinafter referred to in this Section 211(b) as the "Refunded PPA Debt") had such Refunded PPA Debt not been so refunded or repaid and (2) the principal component of Debt Service of each such Series of refunding PPA Bonds shall be included as part of the Plant Vogtle Additional Units PPA Project Annual Costs only for the same number of months for which Buyer would have been obligated to pay the principal component of Debt Service on the Refunded PPA Debt had such Refunded PPA Debt not been so refunded or repaid. Further provided, however, that any expenditures of MEAG or the PPA Project Entity made to retire from service or to dispose of either or both of the Additional Units shall be billed to Buyer either (x) as a component of decommissioning funds pursuant to Section 205(b)(1)(C) in accordance with the methodology in **Exhibit B** to this Agreement, or (y) pursuant to another subpart of Section 205(b)(1), provided that if billed under such other subpart, Buyer is billed no more than fifty percent (50%) of such expenditures, but no such expenditures shall be billed to Buyer under more than one subpart of Section 205(b)(1).

(c) **Cancellation or Termination of Additional Unit(s) After Commercial Operation**

Date. In the event either or both of the Additional Units is cancelled or terminated pursuant to the Development Agreement after the Commercial Operation Date of such unit, Buyer shall be obligated to continue to pay its Obligation Share of the Plant Vogtle Additional Units PPA Project Annual Costs allocated to the cancelled unit for a period of twenty (20) years following the Commercial Operation Date of such cancelled unit. Provided, however, any expenditures of MEAG or the PPA Project Entity made to retire from service or to dispose of either or both of the Additional Units shall be billed to Buyer either (i) as a component of decommissioning funds pursuant to Section 205(b)(1)(C) in accordance with the methodology in **Exhibit B** to this Agreement, or (ii) pursuant to another subpart of Section 205(b)(1), provided that if billed under such other subpart, Buyer is billed no more than fifty percent (50%) of such expenditures, but no such expenditures shall be billed to Buyer under more than one subpart of Section 205(b)(1). Further provided, however, (A) that in the event that MEAG commences billing Buyer a Debt Service component which MEAG is required to structure in accordance with Section 401(d) hereunder relating to such unit prior to the Commercial Operation Date, Buyer's obligation to pay (x) the interest component of Debt Service of each such Series of PPA Bonds and/or the DOE Guaranteed Loan attributable to such Additional Unit shall continue only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence and (y) the principal component of Debt Service of each such Series of PPA Bonds and/or the DOE Guaranteed Loan attributable to such Additional Unit shall continue only for a period of two hundred forty (240) months from and including the month in which such obligation shall commence, (B) in the case of PPA Bonds issued in accordance with the provisions of Section 401(e) hereof (which only are to be issued following the Commercial

Operation Date of the applicable Additional Unit), Buyer's obligation to pay the interest and principal components of Debt Service of each such Series of PPA Bonds attributable to each Additional Unit shall continue only until the last day on which Buyer is entitled to its Obligation Share of the Output of such Additional Unit pursuant to the terms of this Agreement, (C) in the case of refunding PPA Bonds issued in accordance with the provisions of Section 401(f) hereof, Buyer's obligation to pay (i) the interest component of Debt Service of each Series of such refunding PPA Bonds shall continue only for the same number of months for which Buyer would have been obligated to pay the interest component of Debt Service on the PPA Bonds and/or the portion of the principal of the DOE Guaranteed Loan refunded or repaid thereby (hereinafter referred to in this Section 211(c) as the "Refunded PPA Debt") had such Refunded PPA Debt not been so refunded or repaid, and (ii) the principal component of Debt Service of each such Series of refunding PPA Bonds shall continue only for the same number of months for which Buyer would have been obligated to pay the principal component of Debt Service on the Refunded PPA Debt had such Refunded PPA Debt not been so refunded or repaid, and (D) with respect to PPA BANs and PPA Take-Out Bonds, Buyer's obligation in respect of the payment of Debt Service on which shall be governed by the provisions of the penultimate sentence of the first paragraph of Section 204(e) hereof).

(d) **Sale of Assets of Cancelled or Terminated Additional Unit(s).** In the event that (i) either unit of the Additional Units is cancelled or terminated pursuant to the Development Agreement, and (ii) during the Term of this Agreement, MEAG directly or indirectly sells all or a portion of its interest in such cancelled or terminated Additional Unit, its nuclear fuel, its equipment, or its related facilities through a sale of such assets or a sale of its ownership interest in the PPA Project Entity, MEAG agrees to distribute to Buyer or credit on Buyer's Billing

Statement fifty percent (50%) of its Obligation Share of the net proceeds allocated to the PPA Project Entity's Ownership Interest, if any, actually paid to and received by MEAG or the PPA Project Entity, as applicable, as a result of any such sale, provided that MEAG similarly distributes or credits any such net proceeds to any or all of the Additional Units Participants and provided, further, however, that the proceeds of such sale or disposition of such interest (a) to the extent received by MEAG, shall be subject to the lien of the PPA Project Bond Resolution and (b) to the extent received by the PPA Project Entity, shall be subject to the security interest and lien of the DOE Secured Parties on MEAG's ownership interest in the PPA Project Entity and on the PPA Project Entity's undivided ownership interest in the Additional Units, as applicable, described in Section 605 hereof and may be applied first as a prepayment of the DOE Guaranteed Loan or otherwise applied pursuant to the DOE Loan Documents prior to any distribution thereof by the PPA Project Entity to MEAG.

(e) *Amendments to Development Agreement to Defer Construction of Additional Unit(s)*. In the event the Agent requests that the co-owners of Plant Vogtle approve an amendment to the Development Agreement to authorize the Agent to defer the construction of an Additional Unit for a period that, absent an amendment to the Development Agreement, would be treated as a discontinuation of the Additional Unit pursuant to Section 3.8 of that agreement, MEAG agrees that it shall take into consideration Buyer's position on such an amendment in the same manner in which MEAG considers the position of the Additional Unit Participants prior to determining whether to cause the PPA Project Entity to approve such amendment. However, after taking into account the collective interests of Buyer and the Additional Unit Participants, MEAG, in its sole discretion, shall cause the PPA Project Entity to elect to either approve or disapprove of any amendment to the Development Agreement.

SECTION 212. ALLOCATION OF COSTS AMONG PLANT VOGTLE ADDITIONAL UNITS PPA PROJECT, PLANT VOGTLE ADDITIONAL UNITS PPA-2 PROJECT AND PLANT VOGTLE ADDITIONAL UNITS NON-PPA PROJECT. Except (a) as provided in Exhibit C to this Agreement for the allocation of MEAG's administrative and general expenses and (b) as provided in the following sentence, MEAG covenants and agrees that it shall allocate all costs and other expenses incurred or payable by it directly, or indirectly through the PPA Project Entity, the PPA-2 Project Entity and/or the Non-PPA Project Entity, as applicable, in connection with its interest in the Additional Units, other than debt service and other debt-related and financing costs and expenses, among the Plant Vogtle Additional Units PPA Project, the Plant Vogtle Additional Units PPA-2 Project and the Plant Vogtle Additional Units Non-PPA Project in proportion to the respective number of MWs constituting each such Project. In the case of any costs related to the DOE Guaranteed Loan and any DOE-guaranteed loans obtained by the Non-PPA Project Entity and/or the PPA-2 Project Entity, other than debt service, MEAG Power shall allocate such costs based upon a fraction the numerator of which is the FFB Credit Facility Commitment (as defined in the DOE Loan Guarantee Agreement) and the denominator of which is the sum of such FFB Credit Facility Commitment and the FFB credit facility commitments of the Non-PPA Project Entity and/or the PPA-2 Project Entity.

SECTION 213. PRODUCTION TAX CREDIT. In any Power Supply Year during the Term of this Agreement in which MEAG directly, or indirectly from the Agent, the PPA Project Entity, or any other source, receives a payment or credit in exchange for the allocation to any person of the Production Tax Credit, from either or both of the Additional Units relating to the PPA Project, MEAG shall, at the end of such Power Supply Year, pay to Buyer or credit on Buyer's Billing Statements for the remaining month or months of the Power Supply Year next

succeeding such Power Supply Year fifty percent (50%) of any such payment or credit representing the Production Tax Credit for such year.

SECTION 214. PRE-COMMERCIAL GENERATION. MEAG shall sell, or cause the PPA Project Entity to sell, all Pre-Commercial Generation at fair market value, and shall pay into the Construction Fund all revenues, income, rents, receipts, and other compensation of any type derived by MEAG from or attributable to the sale of any Pre-Commercial Generation.

ARTICLE III

BILLING AND PAYMENT

SECTION 301. THE PLANT VOGTLE ADDITIONAL UNITS PPA PROJECT ANNUAL BUDGET.

(a) ***Adoption of Annual Budgets.*** MEAG shall prepare and submit to Buyer a proposed Plant Vogtle Additional Units PPA Project Annual Budget at least ninety (90) days prior to the beginning of each Power Supply Year. Such budget shall show separately (i) the Plant Vogtle Additional Units PPA Project Annual Fixed Costs, and (ii) the Plant Vogtle Additional Units PPA Project Other Annual Costs. Within thirty (30) days after receipt of the Plant Vogtle Additional Units PPA Project Annual Budget, Buyer may submit to MEAG any matters or suggestions relating to such Plant Vogtle Additional Units PPA Project Annual Budget that Buyer may care to present, and MEAG shall give due consideration to said matters or suggestions. At its sole discretion and subject to the terms of this Agreement, MEAG shall then proceed with the consideration and adoption of such Plant Vogtle Additional Units PPA Project Annual Budget not less than thirty (30) nor more than forty-five (45) days prior to the beginning of such Power Supply Year, and shall cause copies of such adopted Plant Vogtle Additional Units PPA Project Annual Budget to be delivered to Buyer; provided, however, that

the Plant Vogtle Additional Units PPA Project Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available in the discretion of MEAG.

(b) **Amendment of Annual Budgets.** As may be required from time to time during any Power Supply Year, MEAG may adopt an amended Plant Vogtle Additional Units PPA Project Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. MEAG shall prepare and submit to Buyer such amended Plant Vogtle Additional Units PPA Project Annual Budget at least thirty (30) days prior to the effective date of such amended Plant Vogtle Additional Units PPA Project Annual Budget. Any such amended Plant Vogtle Additional Units PPA Project Annual Budget shall show separately (i) the Fixed Costs, and (ii) the Other Costs. Within fifteen (15) days after receipt of the amended Plant Vogtle Additional Units PPA Project Annual Budget, Buyer may submit to MEAG any matters or suggestions relating to such amended Plant Vogtle Additional Units PPA Project Annual Budget that Buyer may care to present, and MEAG shall give due consideration to said matters or suggestions. At its sole discretion and subject to the terms of this Agreement, MEAG shall then proceed with the consideration and adoption of such amended Plant Vogtle Additional Units PPA Project Annual Budget, and shall provide copies of such adopted amended Plant Vogtle Additional Units PPA Project Annual Budget to Buyer.

(c) **Estimates of Annual Budgets.** In addition to Section 301(a) of this Agreement, by April 1 of the year before each Power Supply Year, MEAG shall prepare and submit to Buyer a reasonable best estimate under the circumstances of its Plant Vogtle Additional Units PPA Project Annual Budget from October 1 of the year before that Power Supply Year to September 30 of the Power Supply Year based on MEAG's current revenue requirements projections.

Within thirty (30) days after receipt of such estimate, Buyer may submit to MEAG any matters or suggestions relating to such best estimate that Buyer may care to present, and MEAG shall give due consideration to said matters or suggestions.

(d) **Submission of Matters or Suggestions to PPA Project Entity.** MEAG agrees that any matters or suggestions that Buyer submits to MEAG under this Section 301 that relate to Project Costs (as defined in the PPA Project Entity Power Purchase Agreement) shall be submitted by MEAG to the PPA Project Entity under and in accordance with Section 5.1 of the PPA Project Entity Power Purchase Agreement.

SECTION 302. BILLING STATEMENT. In the last quarter of each year preceding a Power Supply Year, MEAG shall prepare and submit to Buyer a reasonable best estimate under the circumstances of the monthly due dates of Buyer's Billing Statements for the next succeeding Power Supply Year. MEAG shall bill Buyer each month during each Power Supply Year, in advance, but no sooner than the fifteenth (15th) day of the calendar month immediately preceding such month and no later than the twentieth (20th) day of the calendar month immediately preceding such month, by providing Buyer with a Buyer's Billing Statement for such month for Buyer's Obligation Share of Plant Vogtle Additional Units PPA Project Annual Costs as set forth in Section 205 hereof. Such statement shall be paid by Buyer on or before the tenth (10th) day from the date MEAG sends Buyer's Billing Statement to Buyer. Buyer shall perform its payment obligations hereunder by making payments to the Revenue Fund or, if otherwise specified by MEAG in a Buyer's Billing Statement delivered to Buyer hereunder (which Buyer's Billing Statement shall include a statement confirming that such direction to change funds is in compliance with the PPA Project Bond Resolution), to the Initial Power Purchaser Arrearages Payment Account in the Initial Power Purchaser Arrearages Fund

established pursuant to the PPA Project Bond Resolution, in either such case, into an account held by the Trustee under the PPA Project Bond Resolution as MEAG shall notify Buyer (a) if Buyer shall not be in default in any of its payment obligations hereunder, at least thirty (30) days prior to the due date of any amount due hereunder and (b) if Buyer shall be in default in any of its payment obligations hereunder, at least ten (10) days prior to the due date of any amount due hereunder. Amounts due and not paid by Buyer on or before said day shall bear an additional charge of one and one-half percent (1½%) per month for each month, or fraction thereof, until the amount due is paid in full. At the end of each Power Supply Year, adjustments of billing shall be made in accordance with Section 303 hereof.

SECTION 303. ADJUSTMENT OF BILLING.

(a) **General.** At the end of each Power Supply Year, MEAG shall determine if the aggregate amount paid by Buyer under this Agreement to provide recovery of all MEAG's Plant Vogtle Additional Units PPA Project Annual Fixed Costs and Plant Vogtle Additional Units PPA Project Other Annual Costs during such Power Supply Year was in the proper amount. Such determination shall be made by MEAG no later than the time that such determination is made by MEAG pursuant to Section 204(a) of the Plant Vogtle Additional Units Non-PPA Power Sales Contracts. Upon making such determination, any amount found to have been paid by Buyer in excess of the amount that should have been paid by Buyer shall, at the election of Buyer, either be paid to Buyer, or credited on Buyer's Billing Statements to Buyer for the remaining month or months of the Power Supply Year next succeeding the Power Supply Year for which such adjustment was determined to have been necessary. Buyer shall be fully compensated for any over recovery by the end of such next succeeding Power Supply Year either as the result of credits, payments or a combination thereof. The amount of any deficiencies shall

be added to Buyer's Billing Statements in equal installments over the remaining month or months of the Power Supply Year next succeeding the Power Supply Year for which such adjustment was determined to be necessary.

(b) **Performance of Year-End Reconciliation.** The year-end reconciliation described in the foregoing subpart (a) shall be performed in a manner consistent with the provisions of the PPA Project Bond Resolution, including Section 511 thereof. **Exhibit F** hereto sets forth the general principles that MEAG will apply with respect to such year-end reconciliation.

(c) **Intra-Year Adjustments.** At its election, MEAG may establish a policy for making monthly, quarterly or semi-annual retroactive adjustments to Buyer's billings to account for variances between the billed amounts and the actual costs incurred during the respective period in order to avoid large cumulative adjustments at the end of the Power Supply Year under Section 303(a) of this Agreement. Such intra-year adjustments are not to be used to avoid a budget amendment when there are material changes affecting the remaining months of the Power Supply Year. MEAG shall consistently apply any such policy throughout the Term; provided, however, that MEAG may amend or revise any such policy no more than once every five (5) Power Supply Years.

SECTION 304. DISPUTED BILLING STATEMENT. In case any portion of any monthly Buyer's Billing Statement received by Buyer from MEAG shall be in bona fide dispute, Buyer shall pay MEAG the full amount of such Billing Statement. Upon determination of the correct amount, the difference between the correct amount and the full amount, if any, shall be credited to Buyer by MEAG after such determination. In the event such Billing Statement is in dispute, MEAG shall exercise due diligence in considering such dispute and will advise Buyer with

regard to MEAG's position relative thereto within thirty (30) days following written notification by Buyer of such dispute.

SECTION 305. RESALE COVENANT. So long as MEAG has tax exempt PPA Bonds or Build America Bonds outstanding, Buyer agrees that it shall not, without the express written consent of MEAG, enter into any contract or agreement pursuant to which a non-exempt person agrees to purchase all or a portion of the Output of the PPA Project Entity's Ownership Interest in a manner that results in private business use within the meaning of the Internal Revenue Code of 1986, as amended, modified or re-enacted (or any successor thereto) (the "Code"). For purposes of the preceding sentence, "non-exempt person" shall mean any entity that is not a state, territory or possession of the United States, the District of Columbia or any political subdivision thereof.

SECTION 306. TAX COVENANT. Buyer hereby covenants and agrees that it shall take no action, nor shall it consent to or approve the taking of any action affecting any right, obligation, or interest under this Agreement, including any action related to the sale of all or a portion of Buyer's Obligation Share of the Output of the PPA Project Entity's Ownership Interest, that would, in the opinion of nationally-recognized tax counsel retained by MEAG, adversely affect (a) the exclusion from gross income for federal income tax purposes of the interest on the PPA Bonds of any Series the interest on which is intended to be so excluded or (b) the eligibility of MEAG to receive cash subsidy payments from the United States Treasury equal to a portion of the interest payable on any Build America Bonds. In furtherance thereof, Buyer shall provide information reasonably requested by MEAG regarding compliance with the Code, including providing an appropriate certification that Buyer has complied fully with the provisions of this tax covenant. The certification form, which is subject to modification periodically to reflect

further developments in the Federal income tax laws governing the exclusion from Federal gross income of interest on the PPA Bonds and the eligibility of MEAG to receive cash subsidy payments from the United States Treasury equal to a portion of the interest payable on any Build America Bonds, is attached hereto as **Exhibit J**.

SECTION 307. RATE COVENANT. Buyer hereby covenants and agrees that it shall establish, maintain and collect rates and charges for the electric service of its Electric System so as to provide revenues sufficient, together with available Electric System reserves, to enable Buyer to pay to MEAG all amounts payable under this Agreement and to pay all other amounts payable from and all lawful charges against or liens on the revenues of its Electric System.

SECTION 308. REPORTS; SITE ACCESS.

(a) **Reports.** MEAG shall prepare and issue to Buyer the following reports during each Power Supply Year:

(1) Financial and operating statements relating to the Plant Vogtle Additional Units PPA Project on a quarterly basis;

(2) Status of the Plant Vogtle Additional Units PPA Project Annual Budget on a monthly basis commencing as of the date that MEAG first submits a Buyer's Billing Statement to Buyer pursuant to Section 302 hereof;

(3) Status of the construction budget of the Additional Units during construction on the same basis that such reports are received by MEAG or the PPA Project Entity; and

(4) Analysis of operations relating to the Additional Units on a monthly basis commencing as of the date that MEAG first submits a Buyer's Billing Statement to Buyer

pursuant to Section 302 hereof on the same basis that such reports are received by MEAG or the PPA Project Entity.

In addition, within ten (10) days after receipt by the PPA Project Entity of any report furnished by the DOE Collateral Agent to pursuant to Section 2.18(b) or (c) of the DOE Accounts Agreement, MEAG shall provide, or shall cause the PPA Project Entity to provide, to Buyer a copy of such report.

(b) **Examination of Records.** Buyer, upon reasonable prior written notice to MEAG, at its sole expense, has the right to have its duly authorized representatives examine during regular business hours any reports, records, or other documents related to the PPA Project issued by the Agent to MEAG or the PPA Project Entity, of a legal, business, financial or commercial nature, including documents relating to dispatching and metering, the Engineering, Procurement and Construction Agreement, the price book, any other information regarding pricing or pricing disputes, information that MEAG or the PPA Project Entity has the right to audit, notices of and requests for changes and resulting change orders, invoices and related supporting documentation, information regarding insurance claims, the monthly status report, updates of the project schedule or payment schedules, and descriptions of the plant, its components, or its systems, and MEAG further agrees that, if requested to do so by Buyer, MEAG will cause the PPA Project Entity to request consent from the contractor with respect to disclosure of any additional information constituting contractor's Confidential Proprietary Information, as that term is defined in the Engineering, Procurement and Construction Agreement.

(c) **Site Access.** To the extent it is authorized to do so under the Project Agreements, and upon Buyer's prior written request, MEAG shall periodically cause the PPA Project Entity to permit Buyer and its designated representatives to access the Plant Vogtle site, at Buyer's sole

expense, for the purpose of observing and reporting on plant conditions and activities. Buyer agrees that it shall exercise any such right of access in accordance with any requirements governing such access contained in the Project Agreements or as otherwise directed by the Agent, including complying with all applicable rules and regulations in effect at Plant Vogtle, whether imposed by a Governmental Authority or by the Agent.

SECTION 309. RECORDS AND ACCOUNTS. MEAG shall keep, and shall cause the PPA Project Entity to keep, accurate records and accounts of the facilities comprising the PPA Project Entity's Ownership Interest and of the operations of the PPA Project Entity's Ownership Interest in accordance with the Uniform System of Accounts. Said accounts shall be subject to MEAG's annual audit by a firm of independent certified public accountants experienced in electric utility accounting and of national reputation to be submitted to MEAG within one hundred and fifty (150) days after the close of each Power Supply Year. All transactions of MEAG and the PPA Project Entity relating to the Plant Vogtle Additional Units PPA Project with respect to each Power Supply Year shall be subject to such an audit. A copy of MEAG's annual audit shall be provided to Buyer.

SECTION 310. AUDIT RIGHTS. Buyer, upon sixty (60) days' prior written notice to MEAG, at its sole expense, has the right to have its duly authorized representatives examine the records of MEAG and the PPA Project Entity during regular business hours to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. Buyer shall have one (1) year after the date on which a Buyer's Billing Statement is received to audit that Billing Statement. Audit rights under this Agreement shall be subject to any obligations of confidentiality to third parties imposed on MEAG or the PPA Project Entity. MEAG shall use, and shall cause the PPA Project Entity to use,

commercially reasonable efforts to address or comply with such confidentiality obligations to enable Buyer to exercise its audit rights under this Agreement.

ARTICLE IV

PPA BONDS AND DOE GUARANTEED LOAN

SECTION 401. ISSUANCE OF PPA BONDS AND MAKING OF ADVANCES.

(a) ***General.*** MEAG may sell and issue PPA Bonds, and may cause the PPA Project Entity to draw upon the DOE Guaranteed Loan in accordance with the provisions of the PPA Project Bond Resolution and the DOE Loan Documents, respectively, at any time and from time to time to finance Costs of Acquisition and Construction and Financing Costs, including the issuance of PPA Bonds to pay the costs of (i) any major renewals, replacements, repairs, additions, betterments, or improvements to the Additional Units necessary, in the opinion of MEAG or the PPA Project Entity, to keep the PPA Project Entity's Ownership Interest in good operating condition or to prevent a loss of revenues therefrom, including spent fuel storage facilities, (ii) any major additions, improvements, repairs, or modifications to the Additional Units or any retirements or disposals of the Additional Units required by any Governmental Authority having jurisdiction over the Additional Units or for which MEAG or the PPA Project Entity shall be responsible by virtue of any obligation of MEAG or the PPA Project Entity arising out of any contract to which MEAG or the PPA Project Entity may be a party relating to ownership of the Additional Units or any facility thereof, including the Project Agreements, or (iii) additional Fuel inventory for each facility of the PPA Project Entity's Ownership Interest in any Power Supply Year to the extent that sufficient funds are not available in any reserves established by MEAG or the PPA Project Entity for Fuel Costs; provided, however, that no such

PPA Bonds may be issued or Advance made for the purpose of adding additional generating units to the Plant Vogtle Additional Units PPA Project.

(b) **Security for PPA Bonds and DOE Guaranteed Loan.** Any PPA Bonds and the DOE Guaranteed Loan may be secured by assignment of all payments attributable to the Plant Vogtle Additional Units PPA Project or the Plant Vogtle Additional Units PPA Project Annual Costs to be made in accordance with or pursuant to the provisions of this Agreement and the Power Sales Contracts, as such payments may be increased and extended by reason of the issuance of such PPA Bonds or the making of additional Advances, and such PPA Bonds may be issued and such Advances may be made in amounts sufficient to pay the full amount of such costs and sufficient to provide such reserves as may be reasonably determined by MEAG or the PPA Project Entity to be desirable in accordance with the PPA Project Bond Resolution, the Project Agreements and the DOE Loan Documents, as appropriate.

(c) **Allocation of Principal of PPA Bonds and Advances to Additional Units.** In the event that the PPA Bonds of any Series are to be issued by MEAG or Advances are to be made by the PPA Project Entity to finance or refinance Costs of Acquisition and Construction and/or Financing Costs of both Additional Units, MEAG shall allocate the principal of the PPA Bonds of such Series and/or the principal of such Advances to each of the Additional Units, in such manner as MEAG shall deem appropriate.

(d) **Structuring of Debt Service on PPA Bonds and Advances.** MEAG agrees that, except as provided in subparts (e), (f), (g) and (h) hereof, it shall structure the Debt Service on each Series of PPA Bonds and each Advance in accordance with the following parameters:

(1) The principal of the PPA Bonds of such Series or the principal of such Advance (or, in the event that the PPA Bonds of such Series are to be issued or such

Advance is to be made to finance Costs of Acquisition and Construction and Financing Costs of both Additional Units, the principal of the PPA Bonds of such Series or of such Advance allocated to each Additional Unit) shall be assumed to be amortized in such a manner as will result in level monthly Debt Service with respect to such principal over a period of forty (40) years. The assumed period of forty (40) years during which such amortization shall occur with respect to a particular Series or Advance (or the portion thereof allocated to a particular Additional Unit) shall commence (x) in the case of the PPA Bonds of such Series, not earlier than twelve (12) months nor later than thirty-six (36) months following the estimated Commercial Operation Date of the Additional Unit to which such principal of such PPA Bonds of such Series relates, as estimated by MEAG at the time of the pricing of the PPA Bonds of such Series and (y) in the case of such Advance, on the day of the third (3rd) month preceding the date on which the first quarterly principal installment on such Advance is due that corresponds numerically to the day on which such principal installment is due (or, if there is no such corresponding day in the third (3rd) preceding month, on the last day of the third (3rd) preceding month), with such Debt Service being calculated, for the entire forty (40)-year amortization period, (i) in the event that all of the PPA Bonds of such Series or all of the principal of such Advance allocated to a particular Additional Unit shall bear interest at fixed rates during the entirety of the period beginning on the Assumed Completion Date applicable to such Additional Unit and ending on (a) in the case of the first unit of the Additional Units, December 31, 2038 and (b) in the case of the second unit of the Additional Units, December 31, 2039, at such actual fixed rates of interest, and (ii) in the event that any portion of the PPA Bonds of such Series or any portion of such Advance

allocated to a particular Additional Unit shall not bear interest at fixed rates during the entirety of the period beginning on the Assumed Completion Date applicable to such Additional Unit and ending (a) in the case of the first unit of the Additional Units, December 31, 2038 and (b) in the case of the second unit of the Additional Units, December 31, 2039, (X) in the case of the portion of such PPA Bonds of such Series or the portion of such Advance that bear interest at fixed rates during the entirety of such period, at such actual fixed rates of interest and (Y) in the case of the portion of such PPA Bonds of such Series or any portion of such Advance that do not bear interest at fixed rates during the entirety of such period, at an assumed rate of interest of one percent (1%) per annum.

Notwithstanding anything in this Agreement to the contrary, the aggregate principal amount of Advances that do not bear interest at fixed rates during the entirety of the period beginning on the Assumed Completion Date applicable to such Additional Unit and ending on (a) in the case of the first unit of the Additional Units, December 31, 2038 and (b) in the case of the second unit of the Additional Units, December 31, 2039 made as permitted by this Section 401(d) shall be limited in total to no more than \$250,000,000, or such greater amount as shall be agreed to in writing by MEAG and Buyer from time to time.

(2) The amounts and due dates of all installments of principal coming due during the first twenty (20) years of the amortization of the principal of the PPA Bonds of such Series or of the principal of such Advance (or, in the event that the PPA Bonds of such Series are to be issued or such Advance is to be made to finance Costs of Acquisition and Construction and Financing Costs of both Additional Units, of all

installments of principal coming due during the first twenty (20) years of the amortization of the principal of the PPA Bonds of such Series or of the principal of such Advance allocated to each Additional Unit) determined pursuant to the foregoing clause (1) shall be the actual amounts and due dates of the first twenty (20) years of the amortization of the principal of the PPA Bonds of such Series or of the principal of such Advance (or of the principal of the PPA Bonds of such Series or of the principal of such Advance allocated to each Additional Unit as aforesaid).

(3) MEAG and the PPA Project Entity shall have the sole discretion to determine the actual amount(s) and due date(s) of the amount of the principal of the PPA Bonds of such Series or the principal of such Advance (or, in the event that the PPA Bonds of such Series are to be issued or such Advance is to be made to finance or refinance Costs of Acquisition and Construction and Financing Costs of both Additional Units, of the amount of the principal of the PPA Bonds of such Series or the principal of such Advance allocated to each Additional Unit) remaining after the establishment of the principal installments provided for in the foregoing clause (2). Without limiting the generality of the foregoing, MEAG and the PPA Project Entity shall have the sole discretion to cause such remaining amount(s) of principal to be due (X) on the same dates and in the same amounts as shall be determined pursuant to the foregoing clause (1), or (Y) on such other date(s) and in such other amount(s) as MEAG (or the PPA Project Entity, at the direction of MEAG) shall determine.

(e) **PPA Bonds to Finance Capital Improvements.** PPA Bonds issued after the Commercial Operation Date of a particular Additional Unit to finance Costs of Acquisition and Construction and Financing Costs of (i) any major renewals, replacements, repairs, additions,

betterments, or improvements to such unit necessary, in the opinion of MEAG, to keep the PPA Project Entity's Ownership Interest in good operating condition or to prevent a loss of revenues therefrom, including spent fuel storage facilities or (ii) any major additions, improvements, repairs, or modifications to such unit required by any Governmental Authority having jurisdiction over the Additional Units or for which MEAG (or the PPA Project Entity) shall be responsible by virtue of any obligation of MEAG (or the PPA Project Entity) arising out of any contract to which MEAG (or the PPA Project Entity) may be a party relating to ownership of the Additional Units or any facility thereof, including the Project Agreements (such items described in the foregoing clauses (i) and (ii) being referred to herein as "capital improvements") shall not be subject to the debt service structure described in Section 401(d) hereof, but MEAG agrees that it shall structure the Debt Service on each such Series of PPA Bonds in accordance with the following parameters:

(1) The principal of the PPA Bonds of such Series (or, in the event that the PPA Bonds of such Series are to be issued to finance Costs of Acquisition and Construction and Financing Costs of capital improvements to both Additional Units, the principal of the PPA Bonds of such Series allocated to each Additional Unit) shall be allocated to each such capital improvement item (or group of capital improvement items having comparable estimated useful lives) and such principal shall be assumed to be amortized in such a manner as will result in level monthly Debt Service with respect to such principal over the assumed period described in the following sentence. The assumed period during which such amortization shall occur shall commence on January 1 of the second calendar year following the year in which the in-service date of the capital improvements (or group of capital improvements) is estimated to occur and shall end on

the earlier of (X) the expiration of the term of the applicable Additional Unit's combined construction and operating license, or (Y) the end of the estimated economic useful life of the capital improvement item (or group of capital improvement items), as estimated at the time of the pricing of the PPA Bonds of such Series, with such Debt Service being calculated (i) in the event that all of the PPA Bonds of such Series shall bear interest at fixed rates for the entire term thereof, at the actual fixed rates of interest thereon, and (ii) in the event that any portion of the PPA Bonds of such Series shall not bear interest at fixed rates for the entire term thereof, (X) in the case of the PPA Bonds of such Series that bear interest at fixed rates for the entire term thereof, at the actual fixed rates of interest thereon and (Y) in the case of the PPA Bonds of such Series that do not bear interest at fixed rates for the entire term thereof, at an assumed rate of interest of one percent (1%) per annum.

(2) The amounts and due dates of each installment of the principal of the PPA Bonds of such Series (or, in the event that the PPA Bonds of such Series are to be issued to finance Costs of Acquisition and Construction and Financing Costs of capital improvements for both Additional Units, of each installment of the principal of the PPA Bonds of such Series allocated to each Additional Unit) coming due on or before January 1 of the calendar year following the last day on which Buyer is entitled to its Obligation Share of the Output of the applicable Additional Unit pursuant to the terms of this Agreement determined pursuant to the foregoing clause (1) shall be the actual amounts and due dates of each such installment of the principal of the PPA Bonds of such Series (or of the principal of the PPA Bonds of such Series allocated to each Additional Unit as aforesaid).

(3) MEAG shall have the sole discretion to determine the actual amount(s) and due date(s) of the amount of the principal of the PPA Bonds of such Series (or, in the event that the PPA Bonds of such Series are to be issued to finance or refinance Costs of Acquisition and Construction and Financing Costs of capital improvements for both Additional Units, of the amount of the principal of the PPA Bonds of such Series allocated to each Additional Unit) remaining after the establishment of the principal installments provided for in the foregoing clause (2). Without limiting the generality of the foregoing, MEAG shall have the sole discretion to cause such remaining amount(s) of principal to be due (X) on the same dates and in the same amounts as shall be determined pursuant to the foregoing clause (1), or (Y) on such other date(s) and in such other amount(s) as MEAG shall determine.

(f) **Refunding PPA Bonds.** Refunding PPA Bonds issued in accordance with the provisions of Section 402 hereof to refund PPA Bonds or to provide funds for contribution to the PPA Project Entity to repay Advances shall not be subject to the debt service structure described in subpart (d) hereof, but the Debt Service on each such Series of refunding PPA Bonds shall be structured in a manner consistent with the principles governing the issuance of PPA Bonds and the making of Advances hereunder, so as to equitably apportion the savings or dissavings, as applicable, resulting from the issuance of such refunding PPA Bonds both during the Term of this Agreement and during the period that the Additional Units PPA Participants are obligated to pay Debt Service on such refunding PPA Bonds under the Plant Vogtle Additional Units PPA Power Sales Contracts. In particular, no refunding PPA Bonds shall be issued unless one of the following requirements is satisfied:

(1) in the case of refunding PPA Bonds allocable to a particular Additional Unit that bear interest at fixed rates for the entire term thereof that are to be issued to refund PPA Bonds or prepay a portion of the principal of the DOE Guaranteed Loan that do not bear interest at fixed rates during the entirety of the period beginning on the Assumed Completion Date applicable to such Additional Unit and ending on (a) in the case of the first unit of the Additional Units, December 31, 2038 and (b) in the case of the first unit of the Additional Units, December 31, 2039, the Debt Service on the refunding PPA Bonds is structured so as to result in level monthly Debt Service over the period from and including the month following the month in which the refunding PPA Bonds are issued to and including the month in which Buyer's obligation to pay the principal component of Debt Service on the refunded PPA Bonds or the prepaid portion of the principal of the DOE Guaranteed Loan, as applicable, would have ended, had the refunded PPA Bonds or the prepaid portion of the principal of the DOE Guaranteed Loan, as applicable, not been so refunded or prepaid, determined in the manner provided in Section 204(d) hereof; or

(2) in the case of refunding PPA Bonds to be issued to achieve Debt Service savings on PPA Bonds or the DOE Guaranteed Loan, the issuance of such refunding PPA Bonds shall result in (x) no cash flow dissavings in any year during the period from and including the year in which the refunding PPA Bonds are issued to and including the year preceding the final maturity date of the refunded PPA Bonds or the prepaid portion of the principal of the DOE Guaranteed Loan, as applicable, and (y) the weighted average life of the refunding PPA Bonds shall not exceed the remaining weighted average life of the refunded PPA Bonds or the prepaid portion of the principal of the DOE Guaranteed

Loan, as applicable, calculating such remaining weighted average life of the refunded PPA Bonds or the prepaid portion of the principal of the DOE Guaranteed Loan, as applicable, immediately prior to the issuance of the refunding PPA Bonds; or

(3) in the case of refunding PPA Bonds to be issued to extend the maturity of (X) any PPA Bonds any principal installment for which constitutes a Refundable Principal Installment (as defined in the PPA Project Bond Resolution) or (Y) any “bullet” maturity of any Advance that bears interest at a fixed rate for the entire term thereof and that was made to finance cost overruns (which, for purposes of this Section 401(f)(3), shall be either (i) costs in excess of the then current construction budget for the Additional Units as in effect as of the date of execution of the DOE Loan Guarantee Agreement or (ii) costs resulting from a delay in the actual Commercial Operation Date of either or both Additional Units) from the Assumed Completion Date thereof, the final maturity date of the refunding PPA Bonds shall be not later than the latest date on which the principal of the refunded PPA Bonds or repaid Advance, as the case may be, was permitted to mature in accordance with its forty (40)-year amortization period determined under subpart (d)(1) hereof, and the Debt Service on the refunding PPA Bonds shall be structured so as to result in level monthly Debt Service over the period from and including the month in which the maturity date of the refunded PPA Bonds or repaid Advance, as the case may be, was to occur to and including the month preceding the final maturity date of the refunding PPA Bonds, determined in the same manner provided in subpart (d)(1) hereof.

Notwithstanding the requirements of this section, the Parties agree that there may be opportunities to issue refunding PPA Bonds using a different Debt Service structure in order to

refund PPA Bonds or prepay or repay Advances that would be to the mutual benefit of the Parties, and the Parties agree to consider such opportunities in good faith and in a timely manner in order to be able to implement such opportunities to the extent that both Parties, in their respective sole discretion, mutually agree to do so.

(g) **PPA Bonds and Advances to Fund Non-amortized Reserve Funds.** PPA Bonds issued and Advances made to fund Non-amortized Reserve Funds shall not be subject to the debt service structure described in subpart (d) hereof; provided, however, that MEAG shall structure any PPA Bonds issued or Advances made to fund Non-amortized Reserve Funds in a manner whereby (i) any payments of the principal components of such PPA Bonds or of such Advances shall occur after the Term of this Agreement, and (ii) Buyer shall not be required to pay its Obligation Share of the principal components of such PPA Bonds or of such Advances. For purposes of this subpart (g), (I) PPA Bonds issued to fund Non-amortized Reserve Funds may constitute all or any portion of any Series of PPA Bonds (or of any maturity or maturities within a Series), as determined by an Authorized Officer of the Authority (as defined in the PPA Project Bond Resolution) on or prior to the date of issuance thereof and (II) any Advance made to fund Non-amortized Reserve Funds may constitute all or any portion of a particular Advance, as determined by the PPA Project Entity at the direction of an Authorized Officer of the Authority on or prior to the date of the making of such Advance.

(h) **Exceptions to Level Debt Service Requirement for Combined Borrowings.** It is understood and agreed by the Parties that (I) the DOE Loan Documents provide that, in connection with the making of any Advance, the PPA Project Entity is required to deliver to FFB the total principal amount (and, in certain cases, the proposed amortization of principal) with respect to each Advance prior to the date on which the interest rate on such Advance is set and,

as a result, it may not be possible to structure exactly level monthly Debt Service with respect to a combination of two (or more) Advances, (including a 30-year fully-amortizing fixed rate Advance combined with a 30-year fixed rate Advance the principal of which is payable at the final maturity date of the DOE Guaranteed Loan) and (II) if MEAG intends to cause the PPA Project Entity to make one or more Advances, in connection therewith, MEAG may determine that it is advantageous for MEAG, Buyer and the Additional Units PPA Participants that the principal of such Advance(s) that otherwise would have been payable at the final maturity date of the DOE Guaranteed Loan instead be financed through the issuance of PPA Bonds of one or more Series the principal of which will be payable after the final maturity date of the DOE Guaranteed Loan.

In the case of either (I) or (II) set forth in the paragraph above (either or both together a “Combined Borrowing”), the Parties agree that MEAG may structure the Debt Service on such Advance(s) or on the PPA Bonds of such Series, whichever shall be the first to be made or issued, as applicable, in such manner as it shall determine in its sole discretion (the first such Advance(s) to be made or the first such PPA Bonds of such Series to be issued, as the case may be, is referred to in this subpart (h) as a “Non-Level Borrowing”), but in no event shall the final maturity date of the PPA Bonds of any such Series be later than forty-one (41) years after the estimated Commercial Operation Date of the second Additional Unit, as estimated by MEAG at the time of the pricing of the PPA Bonds of such Series. In the case of either (I) or (II) set forth in the paragraph above, MEAG shall use its best efforts to cause the aggregate Debt Service on the PPA Bonds of such Series or such Advance(s), whichever shall be the next to be issued or made (or designated by an Authorized Officer of the Authority (as defined in the PPA Project Bond Resolution) as the next to be issued or made if such PPA Bonds or such Advance(s) are

made concurrently with the Non-Level Borrowing), as applicable, together with the Debt Service on such Non-Level Borrowing, to satisfy the requirements of the parameters set forth in clause (1) of subpart (d) of this Section 401 (the next PPA Bonds of such Series to be issued or the next such Advance(s) to be made, as the case may be, is referred to in this subpart (i) as a “Levelizing Borrowing” and such Levelizing Borrowing, together with the related Non-Level Borrowing, is referred to in this subpart (h) as a “Combined Borrowing”); provided, however, that if, following the making or issuance, as applicable, of such Non-Level Borrowing, MEAG is unable, for any reason whatsoever, to satisfy the requirements of such parameters as aforesaid, then the Parties agree that, at the end of the Term of this Agreement, one Party shall make to the other Party such payment, determined as provided in the following paragraph, as will compensate the other Party for MEAG’s inability to create levelized Debt Service on such Combined Borrowing as set forth in Section 401(d).

If, as permitted by the first paragraph of this subpart (h), MEAG shall cause to be made and issued a Combined Borrowing and, despite MEAG’s best efforts, the aggregate Debt Service on such Combined Borrowing fails to satisfy the requirements of clause (1) of subpart (d) of this Section 401, then, unless the Parties agree that no such adjustment shall be necessary, MEAG shall determine, in accordance with the procedure below, whether such Combined Borrowing, has resulted in Buyer being obligated to pay aggregate Debt Service on such Combined Borrowing with respect to each Additional Unit during the Term of this Agreement that is greater or less than the aggregate Debt Service that Buyer would have been obligated to pay with respect to such Additional Unit had such Combined Borrowing, been structured on a level debt service basis on the date that the related Levelizing Borrowing was made or issued (each, an “Assumed Level Debt Service Borrowing”), using an interest rate per annum equal to the actual

yields to maturity for each separately stated maturity of the PPA Bonds and the Advance(s) constituting such Combined Borrowing, it being understood and agreed by the Parties that each installment of principal constituting a portion of a single stated maturity shall have and be deemed to have the same yield to maturity as is applicable to such stated maturity. Attached hereto as **Exhibit L** is an example of the true-up payment calculations described in this subpart. In the event that MEAG shall determine that Buyer is obligated to pay a greater amount of aggregate Debt Service on the Combined Borrowing with respect to a particular Additional Unit than it would have been obligated to pay during the Term of this Agreement on the applicable Assumed Level Debt Service Borrowing with respect to such Additional Unit, then, at the end of the Term of this Agreement, MEAG shall pay to Buyer the sum of the amounts, determined on an annual basis, equal to the difference between (X) the amount of the Debt Service on such Combined Borrowing that Buyer actually paid during each year during the Term of this Agreement with respect to such Additional Unit and (Y) the amount of the Debt Service on such Assumed Level Debt Service Borrowing that Buyer would have paid during such year with respect to such Additional Unit had such Combined Borrowing been structured on a level debt service basis, future valued to the date on which the Term of this Agreement shall end, using an interest rate per annum equal to the actual par weighted average yield to maturity of the PPA Bonds and/or the Advance(s) constituting such Combined Borrowing (the "Weighted Average Yield"). In the event that MEAG shall determine that Buyer is obligated to pay a lesser amount of aggregate Debt Service on the Combined Borrowing with respect to a particular Additional Unit than it would have been obligated to pay during the Term of this Agreement on the applicable Assumed Level Debt Service Borrowing with respect to such Additional Unit, then, at the end of the Term of this Agreement, Buyer shall pay to MEAG the sum of the amounts,

determined on an annual basis, equal to the difference between (X) the amount of the Debt Service on such applicable Assumed Level Debt Service Borrowing that Buyer would have paid during each year during the Term of this Agreement with respect to such Additional Unit had such Combined Borrowing been structured on a level debt service basis and (Y) the amount of the Debt Service on such Combined Borrowing that Buyer actually paid during such year with respect to such Additional Unit, in each such case, future valued to the date on which the Term of this Agreement shall end, using an interest rate per annum equal to the Weighted Average Yield.

(i) **Procedure for Resolving Disputes.** In the event that Buyer shall in good faith dispute any of the determinations made by MEAG as provided in subpart (h) of this Section 401, MEAG shall engage, in accordance with the procedure below, an individual employed by a nationally-recognized independent financial advisory firm experienced in the structuring and issuance of debt securities by political subdivisions (hereinafter referred to in this subpart (i) as a “Financial Advisor”) who shall confirm whether or not such determination(s) have been made in accordance with the provisions of subpart (h). In the event that such Financial Advisor shall determine that any such determination made by MEAG as provided in subpart (h) was not made in accordance with the provisions of such subpart, then, at the end of the Term of this Agreement, one Party shall pay to the other Party such amount as such Financial Advisor shall calculate in accordance with the provisions of this subpart (i).

Such Financial Advisor shall be selected as follows: If, at the time of such selection, MEAG and Buyer both have on retainer the same Financial Advisor, then such Financial Advisor shall be engaged by MEAG to make the determination(s) provided for in this subpart (i). If, however, at such time, MEAG and Buyer do not both retain the same Financial Advisor, then

each Party shall submit to the other a list containing the names of five qualified Financial Advisors, and the first Financial Advisor appearing on Buyer's list that also appears on MEAG's list shall be engaged by MEAG to make the determination(s) provided for in this subpart (i). If no Financial Advisor appears on both Parties' lists, then the Financial Advisor shall be selected in a blind drawing wherein the names of each of the proposed candidates appearing on the two lists are placed into a container held by MEAG's Chief Executive Officer and one name is drawn from the container by Buyer's Chief Executive Officer.

SECTION 402. ISSUANCE OF REFUNDING PPA BONDS. In the event it shall be advantageous, in the opinion of MEAG, to refund any PPA Bonds or prepay any portion of the principal of the DOE Guaranteed Loan, MEAG may issue and sell refunding PPA Bonds which may be secured by assignment of all payments attributable to the Plant Vogtle Additional Units PPA Project or the Plant Vogtle Additional Units PPA Project Annual Costs to be made in accordance with or pursuant to the provisions of this Agreement and the Power Sales Contracts.

SECTION 403. ISSUANCE OF PPA BANs AND PPA TAKE-OUT BONDS.

(a) **Issuance of PPA BANs.** In the event that MEAG, in its sole judgment, shall determine that it is advantageous for MEAG, Buyer and the Additional Units PPA Participants that any Series of PPA Bonds to be issued to finance or refinance the payment of a portion of the Costs of Acquisition and Construction and Financing Costs be issued in the form of PPA BANs, MEAG shall be authorized to issue such PPA BANs on such terms and conditions as MEAG, in its sole judgment, shall determine; provided, however, that in the case of any PPA BANs to be issued prior to the Commercial Operation Date of a particular Additional Unit MEAG shall fund, from the proceeds of such PPA BANs, all interest to accrue thereon through the maturity date thereof.

(b) **Security for PPA BANs.** In addition to any assignment of all payments attributable to the Plant Vogtle Additional Units PPA Project or the Plant Vogtle Additional Units PPA Project Annual Costs to be made in accordance with or pursuant to the provisions of this Agreement and the Power Sales Contracts, as such payments may be increased and extended by reason of the issuance of any PPA BANs, as permitted by Section 401(b) hereof, such PPA BANs may be secured by an assignment of proceeds of other PPA Bonds (including PPA Take-Out Bonds) to be issued to refund such PPA BANs.

(c) **Issuance of PPA Take-Out Bonds.** In the event that MEAG shall issue PPA BANs as provided in paragraph (a) of this Section but shall not borrow (whether through the issuance of PPA Bonds satisfying the structuring requirements of Section 401(d) hereof or otherwise), on or before the maturity date of such PPA BANs, funds in an amount sufficient to pay such PPA BANs on the maturity date thereof, MEAG shall be authorized to issue PPA Take-Out Bonds in an aggregate principal amount not to exceed the sum of (i) the principal amount of such PPA BANs and (ii) MEAG's costs and expenses in connection with the issuance of the PPA Take-Out Bonds, on such terms and conditions as MEAG, in its sole judgment, shall determine; provided, however, that the PPA Take-Out Bonds shall be payable as to principal in ten (10) equal semi-annual installments, commencing on the first business day of the sixth month following the date of issuance thereof and on the first business day of each sixth month thereafter.

(d) **Limitation on Amount of PPA BANs and PPA Take-Out Bonds.** Notwithstanding anything herein to the contrary, the total aggregate principal amount of PPA BANs and PPA Take-Out Bonds to be outstanding at any time, together with the aggregate principal amount of the PPA Bonds described in the second paragraph of Section 204(b) hereof

outstanding at such time, shall not exceed \$75,000,000, or such greater amount as shall be agreed to in writing by MEAG and Buyer from time to time, but no such PPA BANs or PPA Take-Out Bonds shall be used to finance Fuel Costs applicable to either of the Additional Units prior to the Commercial Operation Date thereof.

SECTION 404. ADJUSTMENT OF THE PLANT VOGTLE ADDITIONAL UNITS PPA PROJECT COSTS.

(a) **Excess PPA Bond Proceeds.** In the event the proceeds derived from the sale of any PPA Bonds (including by reimbursement from the PPA Project Entity to MEAG of proceeds of PPA Bonds previously issued and applied for Costs of Acquisition and Construction and Financing Costs) exceed the aggregate amount required for the purposes for which such PPA Bonds were issued, the amount of such excess attributable to the issuance of the PPA Bonds shall be timely used during the Term of this Agreement to make up any deficiency then existing in any fund or account under the PPA Project Bond Resolution in the manner therein provided, and any balance shall be timely used during the Term of this Agreement (a) to retire by purchase, redemption or defeasance PPA Bonds in advance of maturity or (b) to retire by prepayment Advances in advance of maturity, in each such case, in a manner consistent with the principles governing the issuance of PPA Bonds and the making of Advances hereunder, so as to equitably apportion the Debt Service savings resulting from the retirement of such PPA Bonds or Advances both during the Term of this Agreement and during the period that the Additional Units PPA Participants are obligated to pay Debt Service on the PPA Bonds and the DOE Guaranteed Loan under the Plant Vogtle Additional Units PPA Power Sales Contracts and, in such event, MEAG will reduce such elements of the Plant Vogtle Additional Units PPA Project

Annual Costs as are necessary and appropriate to reflect such accelerated retirement or prepayment or redemption.

(b) *Amounts Required to be Applied to Prepayment of DOE Guaranteed Loan.* In addition, Buyer acknowledges and agrees that certain amounts held under the DOE Accounts Agreement may be applied only to the prepayment of the DOE Guaranteed Loan (hereinafter referred to in this Section 404(b) as a “DOE debt retirement”), and that, as a result of such application, it may not be possible to maintain level Debt Service over the Term of this Agreement and the term of the Plant Vogtle Additional Units PPA Power Sales Contracts. In any such circumstance, MEAG agrees that it shall use its best efforts to maintain level Debt Service as aforesaid, but if, despite its best efforts, it is unable to do so, it will use its best efforts to equitably apportion the Debt Service savings resulting from the DOE debt retirement both during the Term of this Agreement and during the period that the Additional Units PPA Participants are obligated to pay Debt Service on the PPA Bonds and the DOE Guaranteed Loan under the Plant Vogtle Additional Units PPA Power Sales Contracts and, in such event, MEAG will reduce such elements of the Plant Vogtle Additional Units PPA Project Annual Costs as are necessary and appropriate to reflect such DOE debt retirement.

MEAG agrees that if, at the end of the Term of this Agreement, any amounts that are intended for the prepayment of the DOE Guaranteed Loan but were not applied to prepayment and remain on deposit in any such account under the DOE Accounts Agreement, MEAG shall pay (from a source other than a DOE Accounts Agreement account) Buyer an amount with respect to each Additional Unit equal to the principal amount of Advances that matured during the Term of this Agreement that would have been prepaid if such amounts had been applied to DOE debt retirement on the respective dates that such amounts were received by the PPA Project

Entity, on a level debt service basis, using an assumed interest rate per annum of four percent (4%), but without interest thereon. Attached hereto as **Exhibit M** is an example of the calculation of the payment described in this paragraph.

If, as a result of any DOE debt retirement as provided in the second preceding paragraph, MEAG shall be unable to maintain level Debt Service both during the Term of this Agreement and during the period that the Additional Units PPA Participants are obligated to pay Debt Service on the PPA Bonds and the DOE Guaranteed Loan under the Plant Vogtle Additional Units PPA Power Sales Contracts, or to equitably apportion the Debt Service savings resulting from such DOE debt retirement, in either case, despite MEAG's best efforts, unless the Parties agree that no such adjustment shall be necessary, MEAG shall determine, in accordance with the following procedures, whether the amount of Debt Service paid by Buyer with respect to each Additional Unit after giving effect to such DOE debt retirement is greater or less than the amount of Debt Service that Buyer would have paid with respect to such Additional Unit had such DOE debt retirement been structured on a level debt service basis (each, an "Assumed Level Debt Service Debt Retirement"), using an interest rate per annum equal to (i) if the amounts applied to such DOE debt retirement were derived, directly or indirectly, from assets of the Additional Units that were acquired or constructed as part of the original construction of the Additional Units, four percent (4%) (attached hereto as **Exhibit N** are examples of these true-up payment calculations, as further described in subparagraph (1) below) and (ii) if the amounts applied to such DOE debt retirement were derived, directly or indirectly, from assets of the Additional Units that were acquired or constructed subsequent to the Commercial Operation Date of the applicable Additional Unit(s), the weighted average yield to maturity of the applicable Advance(s) made or PPA Bonds issued to finance the acquisition and construction of such assets

(attached hereto as **Exhibit O** are examples of these true-up payment calculations, as further described in subparagraph (2) below):

(1) If the amounts applied to such DOE debt retirement were derived, directly or indirectly, from assets of the Additional Units that were acquired or constructed as part of the original construction of the Additional Units, at the end of the Term of this Agreement, MEAG shall calculate the sum of the amounts, determined on an annual basis, commencing with the year in which the amounts were received, equal to the difference between (X) the amount of Debt Service that Buyer actually paid during each year during the Term of this Agreement with respect to each Additional Unit after giving effect to such DOE debt retirement and (Y) the amount of Debt Service that Buyer would have paid during such year with respect to such Additional Unit, taking into account such applicable Assumed Level Debt Service Debt Retirement, in each such case, future valued to the date on which the Term of this Agreement shall end, using an interest rate per annum of four percent (4%).

(2) If the amounts applied to such DOE debt retirement were derived, directly or indirectly, from assets of the Additional Units that were acquired or constructed subsequent to the Commercial Operation Date of the applicable Additional Unit(s), at the end of the Term of this Agreement, MEAG shall calculate the sum of the amounts, determined on an annual basis, commencing with the year in which the amounts were received, equal to the difference between (X) the amount of Debt Service that Buyer actually paid during each year during the Term of this Agreement with respect to each Additional Unit after giving effect to such DOE debt retirement and (Y) the amount of Debt Service that Buyer would have paid during such year with respect to such

Additional Unit, taking into account such applicable Assumed Level Debt Service Debt Retirement, in each such case, future valued from the date(s) on which the applicable Advance(s) were made or PPA Bonds issued to finance the acquisition and construction of such assets, using an assumed interest rate per annum equal to the actual weighted average yield to maturity of such applicable Advance(s) and/or PPA Bonds.

(3) In the case of any determination pursuant to either (1) or (2) above, MEAG shall calculate (X) the aggregate amount of Debt Service that Buyer actually paid during each year during the Term of this Agreement with respect to each Additional Unit after giving effect to such DOE debt retirement, future valued as aforesaid, and (Y) the aggregate amount of Debt Service that Buyer would have paid during each year during the Term of this Agreement with respect to such Additional Unit, taking into account such applicable Assumed Level Debt Service Debt Retirement, future valued as aforesaid, and, at the end of the Term of this Agreement, (i) if the amount determined pursuant to (X) above shall be greater than the amount determined pursuant to (Y) above, MEAG shall pay Buyer the amount of the difference between (X) and (Y), without interest thereon and (ii) if the amount determined pursuant to (X) above shall be less than the amount determined pursuant to (Y) above, Buyer shall pay MEAG the amount of the difference between (X) and (Y), without interest thereon.

In the event that Buyer shall in good faith dispute any of the determinations or calculations made by MEAG as provided in this Section 404(b), MEAG shall engage, in accordance with the procedure set forth in Section 401(i), a Financial Advisor who shall confirm whether or not such determination(s) and/or calculation(s) have been made in accordance with the provisions of this Section 404(b). In the event that such Financial Advisor shall determine

that any such determination(s) and/or calculation(s) made by MEAG as provided in this Section 404(b) was not made in accordance with the provisions of this Section 404(b), then, at the end of the Term of this Agreement, one Party shall pay to the other Party such amount as such Financial Advisor shall calculate in accordance with the provisions of this Section 404(b).

(c) **Notice of Application of Amounts to Retirement of PPA Bonds or Prepayment of DOE Guaranteed Loan.** MEAG agrees that it (i) will provide advance notice to Buyer of its intent to apply any such excess proceeds and/or amounts held under the DOE Accounts Agreement to the retirement by purchase, redemption or defeasance of any PPA Bonds in advance of maturity or the retirement by prepayment of any Advances in advance of maturity as aforesaid, which notice shall identify the PPA Bonds or Advances to be so retired (or the method by which such PPA Bonds or Advances shall be selected) and the method of such retirement; (ii) will provide Buyer the opportunity to comment with respect to such matters prior to their implementation; (iii) shall take into consideration any comments and proposed changes with respect to such matters submitted by Buyer; and (iv) shall provide Buyer with a written response explaining MEAG's rationale for its disposition of Buyer's comments and proposed changes; provided, however, that MEAG shall have sole discretion to determine whether to incorporate any such comments or proposed changes with respect to such matters.

ARTICLE V

EVENTS OF DEFAULT;

REMEDIES; INDEMNIFICATION

SECTION 501. **EVENTS OF BUYER'S DEFAULT; CONTINUING OBLIGATION; REMEDIES.**

(a) **Non-Payment Default.** Buyer's failure to make to MEAG any of the payments for which provision is made in this Agreement shall constitute a default on the part of Buyer. MEAG shall provide written notice to Buyer prior to invoking the remedies provided for hereunder. In the event of a non-payment default by Buyer, Buyer shall not be relieved of its liability for payment of any amounts required to be made under this Agreement, and MEAG further shall have the right and obligation to exercise its best efforts to recover from Buyer any amount in default. In enforcement of any right of recovery, MEAG may bring against Buyer any suit, action, or proceeding in law or in equity, including mandamus, injunction, and action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement, or obligation to make payment for which provision is made in this Agreement, and MEAG may, upon sixty (60) days' written notice to Buyer, cease and discontinue providing service under this Agreement. If the default continues for a period in excess of 180 days, MEAG may, at its discretion, permanently discontinue service to Buyer. In the event MEAG permanently discontinues service to Buyer in accordance with this Section 501(a), MEAG agrees to apply the net proceeds from any sale, lease or other arrangement to a third party of all or a portion of the Output of the PPA Project Entity's Ownership Interest to which Buyer was previously entitled under this Agreement to mitigate Buyer's payment obligations under Article II of this Agreement in the manner permitted by the PPA Project Bond Resolution and the DOE Loan Documents.

(b) **Other Defaults.** Buyer's failure to comply with any other covenant, agreement, representation, warranty or obligation of this Agreement shall also constitute a default on the part of Buyer. In the event of a default by Buyer other than a default in making a payment when due under this Agreement, MEAG may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or

appropriate to enforce any covenant, agreement or obligation of this Agreement against Buyer but MEAG may not discontinue service as a result of a default by Buyer other than a non-payment default.

SECTION 502. DEFAULT BY MEAG. MEAG's failure to comply with any covenant, agreement, representation, warranty or obligation of this Agreement or the PPA Project Entity Power Purchase Agreement shall constitute a default on the part of MEAG. In the event of a default by MEAG, Buyer may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement, or obligation of this Agreement or the PPA Project Entity Power Purchase Agreement against MEAG; provided, however, that nothing in this Agreement shall be construed to permit Buyer to terminate, rescind, void, or otherwise abandon all or any portion of its obligations to MEAG under this Agreement as the result of a default by MEAG. As to Buyer's remedy of specific performance hereunder, MEAG hereby acknowledges that the damages recoverable at law in the event of a default by MEAG will be difficult to ascertain and will not adequately compensate Buyer, and, therefore, specific performance is an appropriate remedy to enforce any covenant, agreement, or obligation of this Agreement or the PPA Project Entity Power Purchase Agreement against MEAG in the event of a default hereunder.

SECTION 503. ABANDONMENT OF REMEDY. In case any proceeding taken on account of any default shall have been discontinued or abandoned for any reason, the Parties to such proceeding shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of MEAG and Buyer shall continue as though no such proceedings had been taken. Any such abandonment shall not be deemed a waiver of any other or further default hereunder.

SECTION 504. LIMITATION ON DAMAGES; MITIGATION.

(a) **General.** The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof for breach of any provision of this Agreement for which an express remedy or measure of damages is herein provided.

(b) **Remedies Exclusive.** For breach of any provision for which an express and exclusive remedy or measure of damages is provided, the Parties agree that such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived.

(c) **Limitation to Actual Damages.** If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only.

(d) **Limitations on Damages.** Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort, in contract, at law or in equity, or otherwise; provided, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is found to be entitled to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. This Section 504 shall (i) apply to the fullest extent allowed by law irrespective of whether liability of MEAG or Buyer is claimed, or found to be based in contract (including breach of warranty or contract), tort (including negligence or negligent misrepresentation of MEAG, Buyer, or others), strict liability, law or equity, or otherwise, and (ii) survive the completion of the services or the termination of this Agreement.

(e) **Validity of Limitations on Damages.** All limitations on damages contained in this Agreement shall apply even if the remedies provided in this agreement are deemed to “fail of their essential purpose” or are otherwise held to be invalid or unenforceable.

(f) **Duty to Mitigate Damages.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement; provided, that in no event shall the mitigating Party owe any payment to the non-performing Party in connection with such mitigation.

SECTION 505. INDEMNIFICATION. MEAG and Buyer shall assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and save harmless the other from all liability and expense on account of any and all damages, claims, or actions, including injury to or death of persons arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying Party and not caused in whole or in part by the negligence of the other Party; provided that any liability which is incurred by MEAG through the operation and maintenance of the Plant Vogtle Additional Units PPA Project and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of MEAG, and any payments made by MEAG to satisfy such liability shall become part of the Plant Vogtle Additional Units PPA Project Annual Costs.

ARTICLE VI

DELIVERY OF OUTPUT; SERVICE;

DOE GUARANTEED LOAN ARRANGEMENTS

SECTION 601. AUTHORITY AND RESPONSIBILITY. Buyer acknowledges that the Agent has the sole authority and responsibility for the planning, licensing, design, construction, acquisition, completion, start up, commissioning, renewal, addition, replacement, modification and decommissioning of each of the Additional Units as well as sole responsibility for the management, control, operation and maintenance of the Additional Units. Buyer further acknowledges that the Agent shall have sole authority for the scheduling of the operation and dispatching of the output of each of the Additional Units. In the event the Agent fails to comply with its obligations, MEAG shall cause the PPA Project Entity to pursue with reasonable diligence any valid claims against the Agent subject to any limitations in the Project Agreements. Buyer acknowledges that, in the event the Agent fails to comply with its obligations, the sole and exclusive remedy of the co-owners (including the PPA Project Entity) under the Project Agreements is to remove the Agent. Neither MEAG nor the PPA Project Entity assumes any responsibility for those matters that fall within the authority and responsibility of the Agent, nor shall MEAG or the PPA Project Entity be liable to Buyer in any way for such matters. Buyer further agrees that any failure by the Agent to comply with its obligations or otherwise perform, in whole or in part, shall not excuse Buyer's performance under this Agreement.

SECTION 602. REPLACEMENT OR SUCCESSOR AGENT. MEAG shall notify Buyer as soon as practicable in the event the co-owners of Plant Vogtle consider appointing a replacement or successor to the Agent. After receiving such notice, Buyer may submit to MEAG any matters or suggestions relating to any Person proposed as such a replacement or successor that Buyer

may care to present, and MEAG agrees for itself and on behalf of the PPA Project Entity to take into consideration such matters or suggestions timely submitted by Buyer in the same manner in which MEAG considers the matters or suggestions of the Additional Units PPA Participants, the Additional Units PPA-2 Participants and the Additional Units Non-PPA Participants prior to determining whether to cause the PPA Project Entity to approve or disapprove of any such Person. However, after taking into account the collective interests of Buyer, the Additional Units PPA Participants, the Additional Units PPA-2 Participants and the Additional Units Non-PPA Participants, and the requirements of the DOE Loan Documents, MEAG, in its sole discretion, shall elect to cause the PPA Project Entity either to approve or disapprove the appointment of any Person proposed as a replacement or successor Agent.

SECTION 603. SERVICE. Buyer acknowledges that the Agent may temporarily interrupt, increase or reduce deliveries of electric energy from the PPA Project if the Agent determines that such interruption, increase or reduction is necessary in case of emergencies. The Agent may also interrupt or reduce deliveries of electric energy from the PPA Project in order to install equipment in or make repairs to or replacements, investigations, and inspections of or to perform other maintenance work on its generation or transmission facilities and related apparatuses (planned interruptions). MEAG shall notify Buyer of any planned interruption or reduction, giving the Agent's reason therefor, and stating the Agent's estimate of the probable duration thereof.

SECTION 604. ELECTRIC INTERCONNECTION AND TRANSMISSION SERVICE.

(a) **Connection to Transmission System.** Buyer's payment obligations calculated and billed in accordance with Articles II and III of this Agreement shall include its Obligation Share of the costs of all property and equipment for connecting the Additional Units to the

transmission system at the point where said transmission system forms part of the Georgia Integrated Transmission System (the “Delivery Point”), including the step-up transformers, high side bushing to the electrical transmission system, all related switching stations, remote terminal unit and connections to Supervisory Control and Data Acquisition System (SCADA).

(b) **Transmission Services.** Buyer shall arrange, either directly or indirectly through a third party, for all transmission service and transmission ancillary services and shall pay all costs pursuant to the transmission provider’s tariff and the transmission provider’s protocols including all costs associated with line losses, necessary to transmit the Output delivered under this Agreement from the Delivery Point to any point at which Buyer redelivers the Output to its customer(s).

(c) **Coordination of Energy Delivery.** Energy delivery hereunder shall be coordinated with the Agent, MEAG and Buyer and in accordance with the transmission provider’s tariff and applicable North American Electric Reliability Corporation (NERC) requirements. To facilitate this effort, the Parties shall develop operating procedures no later than six (6) months prior to the Commercial Operation Date of the first Additional Unit. These operating procedures will address issues associated with the delivery and determination of the quantity of energy delivered. These issues will include, but are not limited to: physical energy delivery method, metering systems, accounting and serving station service loads, allocation of common load between multiple units, rounding methodology, electronic communication of unit output, and daily communications.

SECTION 605. DOE GUARANTEED LOAN ARRANGEMENTS.

(a) **General.** Buyer acknowledges and agrees that, in connection with the entry into the DOE Loan Documents, MEAG will transfer the PPA Project Portion of MEAG’s Interest to

the PPA Project Entity, MEAG's wholly-owned, special-purpose direct subsidiary. In connection with this transfer, MEAG will enter into the PPA Project Entity Power Purchase Agreement with the PPA Project Entity in the form set forth in **Exhibit P** to this Agreement pursuant to which MEAG will purchase the Output of the PPA Project Entity's Ownership Interest for resale to Buyer under this Agreement and to the Additional Units PPA Participants under the Power Sales Contracts during the respective terms of this Agreement and the Power Sales Contracts. Other than during the continuance of an event of default by Buyer under this Agreement, during the Term of this Agreement MEAG agrees and covenants that it will not (i) amend, modify or waive any provision of the PPA Project Entity Power Purchase Agreement from the form set forth in **Exhibit P** hereto or (ii) provide any consent or agreement under or in connection with the PPA Project Entity Power Purchase Agreement, including with respect to consent to assignment by the PPA Project Entity of its rights and obligations under the PPA Project Entity Power Purchase Agreement (other than a collateral assignment for security purposes), in each case, without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(b) **Security Interests and Liens Permitted.** Buyer acknowledges and agrees that (i) MEAG may grant a first-priority security interest in and lien on its ownership interest in the PPA Project Entity to the DOE Collateral Agent, and (ii) the PPA Project Entity may grant a first-priority security interest in and lien on all of its assets, including its undivided ownership interest in the Additional Units, its right, title and interest in, to and under the PPA Project Entity Power Purchase Agreement and the Project Agreements and all other collateral specified in the DOE Loan Documents, to the DOE Collateral Agent, in each such case, to secure the DOE Secured Obligations under the DOE Loan Documents and the DOE Guaranteed Loan.

(c) **Buyer's Consent and Direct Agreement.** In connection with such assignment and security interest, Buyer hereby agrees to enter into a consent and direct agreement with the DOE Collateral Agent for the benefit of the DOE Secured Parties in substantially the form attached hereto as **Exhibit K.**

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

SECTION 701. MEAG'S REPRESENTATIONS AND WARRANTIES. MEAG represents and warrants as follows:

(a) MEAG is a public body corporate and politic, a public corporation and an instrumentality of the State of Georgia, duly organized and validly existing under the laws of the State of Georgia. The PPA Project Entity is a limited liability company, duly organized and validly existing under the laws of the State of Georgia.

(b) MEAG has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by MEAG have been duly authorized by all necessary corporate action on the part of MEAG and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of MEAG or any other party to any other agreement with MEAG. The PPA Project Entity has the power and authority to enter into and perform the PPA Project Entity Power Purchase Agreement and is not prohibited from entering into the PPA Project Entity Power Purchase Agreement or discharging and performing all covenants and obligations on its part to be performed pursuant to the PPA Project Entity Power Purchase Agreement. The execution, delivery and performance of the PPA Project Entity

Power Purchase Agreement by the PPA Project Entity have been duly authorized by all necessary limited liability company action on the part of the PPA Project Entity and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of the PPA Project Entity or any other party to any other agreement with the PPA Project Entity.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by MEAG with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to MEAG, the documents of formation of MEAG or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which MEAG is a party or by which any of its property is bound. The execution and delivery of the PPA Project Entity Power Purchase Agreement, consummation of the transactions contemplated therein, and fulfillment of and compliance by the PPA Project Entity with the provisions of the PPA Project Entity Power Purchase Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to the PPA Project Entity, the documents of formation of the PPA Project Entity or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which the PPA Project Entity is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by MEAG. This Agreement is a legal, valid and binding obligation of MEAG enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity. The PPA Project Entity Power Purchase Agreement has been duly executed and delivered by the

PPA Project Entity. The PPA Project Entity Power Purchase Agreement is a legal, valid and binding obligation of the PPA Project Entity enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) No bankruptcy is pending against MEAG or to its knowledge threatened against it. No bankruptcy is pending against the PPA Project Entity or to its knowledge threatened against it.

(f) MEAG has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration and on an arm's length basis.

(g) MEAG MAKES NO WRITTEN OR ORAL REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OF ANY ENVIRONMENTAL ATTRIBUTES OR PRODUCTION TAX CREDIT OR ANY LAW GOVERNING THE EXISTENCE OF ANY ENVIRONMENTAL ATTRIBUTES OR PRODUCTION TAX CREDIT UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE. BUYER SHALL SOLELY BEAR THE RISK OF NOT OBTAINING ANY ENVIRONMENTAL ATTRIBUTES OR PRODUCTION TAX CREDIT.

(h) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, MEAG MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM,

TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY MEAG AND WAIVED BY BUYER.

SECTION 702. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer represents and warrants as follows:

(a) Buyer is a body politic and corporate organized and existing under the laws of the State of Florida and an independent agency of the City of Jacksonville, Florida.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(c) The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all necessary corporate action on the part of Buyer and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(d) No authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Buyer in connection with the execution, delivery and performance of this Agreement except those which Buyer anticipates will be timely obtained in the ordinary course of performance of this Agreement.

(e) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any

outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(f) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(g) Buyer has the financial resources and capability to satisfy its obligations under this Agreement.

(h) Amounts payable to MEAG under this Agreement (i) shall constitute a Contract Debt (as that term is defined in Buyer's Electric System Bond Resolution), payable as a Cost of Operation and Maintenance of Buyer's Electric System (as those terms are defined in Buyer's Electric System Bond Resolution), and (ii) shall be paid by Buyer as a cost of purchased power and energy for Buyer's wholesale and retail load and otherwise as an expense of operation and maintenance of Buyer's Electric System.

(i) No bankruptcy is pending against Buyer or to its knowledge threatened against it.

(j) Buyer has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration and on an arm's length basis.

ARTICLE VIII

DISPUTE RESOLUTION

SECTION 801. DISPUTE RESOLUTION.

(a) Each of MEAG and Buyer shall appoint a representative to coordinate with the other Party the implementation of this Agreement (each a "Representative" and collectively the

“Representatives”). If any dispute arises with respect to any Party’s performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within ten (10) days after the written request of either Representative. If the Representatives are unable to resolve such dispute within thirty (30) days after their initial meeting (in person or by telephone), senior officers or executives of Buyer and senior officers or executives of MEAG shall meet, either in person or by telephone, within ten (10) days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute within thirty (30) days after their initial meeting (in person or by telephone), either Party may refer the dispute to the Superior Court of Fulton County, Georgia or the U.S. District Court for the Northern District of Georgia pursuant to Section 1003, which shall be the sole legally binding forums available to the Parties for resolution of a dispute hereunder.

(b) While any dispute is pending, the Parties shall continue to perform their obligations under this Agreement notwithstanding such dispute.

ARTICLE IX

NOTICES AND COUNTERPARTS

SECTION 901. NOTICES. Except as may be otherwise expressly provided for herein, all notices, requests, statements and other communications to be given under this Agreement shall be made to the addresses and persons specified in Exhibit D hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, express courier (*e.g.*, UPS, FedEx, or DHL), facsimile or electronic mail (so long as a copy of such electronic mail notice is provided thereafter by hand delivery or express courier).

Except as may otherwise be specified in this Agreement, all notices, requests, statements and other communications shall be deemed to have been duly given on (i) the date of delivery if delivered by hand or by express courier; (ii) the time stamp upon delivery if sent by electronic mail; (iii) date of receipt of a time-stamped, legible copy thereof if sent by facsimile; or (iv) the earlier of the dates set forth in clauses (i), (ii) and (iii) if delivery is made by more than one of such means. Either Party may change its respective notice information upon giving the other Party at least fourteen (14) days' prior written notice thereof.

SECTION 902. COUNTERPARTS. This Agreement may be executed in counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which is an original and all of which constitute one and the same instrument.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 1001. ASSIGNMENT.

(a) **General.** Except as provided in subsection (b) of this Section 1001, neither Party may assign or transfer all or any part of any right, obligation, or interest under this Agreement without the prior written consent from the other Party or if any such assignment or transfer is prohibited under the PPA Project Bond Resolution or the DOE Loan Documents. Any such attempted assignment or transfer shall be null, void and without effect; provided, however, that nothing in this Section 1001 shall limit the authority of Buyer to sell to a third party all or a portion of Buyer's Obligation Share of the Output of the PPA Project Entity's Ownership Interest, subject to the provisions of Sections 305 and 306 hereof.

(b) **Exception to Secure PPA Bonds and DOE Secured Obligations.** Notwithstanding subsection (a) of this Section 1001, Buyer acknowledges and agrees that

MEAG may assign and pledge to the Trustee designated in the PPA Project Bond Resolution, for the benefit of the DOE Collateral Agent, DOE and the other secured parties identified therein, all its right, title and interest in and to all payments to be made to MEAG under the provisions of this Agreement attributable to the Plant Vogtle Additional Units PPA Project or to the Plant Vogtle Additional Units PPA Project Annual Costs as security for the payment of the amounts due and payable and other obligations under, or secured by, the PPA Project Bond Resolution (including as security for amounts owed by the PPA Project Entity under the DOE Loan Documents) and, upon the execution of such assignment and pledge, such Trustee shall have all rights and remedies herein provided to MEAG, including to give all notices, take all actions and exercise all rights, including any or all rights to collection that are provided to MEAG as set forth in this Agreement, on behalf or in the place of MEAG, and any reference herein to MEAG shall be deemed, with the necessary changes in detail, to include such Trustee. The Trustee and the PPA Project Entity each shall be a third-party beneficiary of the covenants and agreements of Buyer herein contained.

SECTION 1002. SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein, and this Agreement shall be construed to adopt, but not to enlarge upon, all of the applicable provisions of said Act, and all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provision of said Constitution or laws, the former as proposed by the legislature, approved by the people of the State of Georgia and interpreted by the courts of

the State of Georgia, and the latter as adopted by the legislature and as interpreted by the courts of the State of Georgia, shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

SECTION 1003. GOVERNING LAW; JURISDICTION AND VENUE. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia, applied without giving effect to principles of conflicts of laws or choice of law that would require the application of the law of any other state. Each Party irrevocably submits to the jurisdiction and venue of the Superior Court of Fulton County, Georgia and the U.S. District Court for the Northern District of Georgia in any dispute arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such dispute may be heard and determined in the Superior Court of Fulton County, Georgia and the U.S. District Court for the Northern District of Georgia. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such proceeding. The Parties further agree, to the extent permitted by law, that any final and unappealable judgment against any of them in any proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

SECTION 1004. FORWARD CONTRACT. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” and that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

SECTION 1005. ENTIRE AGREEMENT. Except as provided in the final paragraph of Section 101 hereof, this Agreement amends and restates and replaces the Original Agreement in

its entirety and this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein.

SECTION 1006. DRAFTING AND INTERPRETATION. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

SECTION 1007. AMENDMENT. Subject to Section 103(b) of this Agreement, no amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both Parties.

SECTION 1008. NON-WAIVER. No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

SECTION 1009. SURVIVAL. Upon the expiration of the Term of this Agreement (the "Termination Date"), the Parties shall no longer be bound by the terms and conditions hereof, except (i) to the extent necessary to enforce any rights and the obligations of the Parties, including payment obligations, arising under this Agreement prior to such Termination Date, (ii) to the extent necessary to enforce the right to receive any payments pursuant to **Exhibit B** to this Agreement and (iii) the obligations of the Parties hereunder with respect to confidentiality, audit

and indemnification shall survive any termination of this Agreement and shall continue for a period of one (1) year following such Termination Date, provided that such obligations with respect to indemnification shall continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

SECTION 1010. RELATIONSHIPS OF PARTIES. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of any other Party.

SECTION 1011. EXHIBITS. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

SECTION 1012. ATTORNEYS' FEES. If a Party commences a legal proceeding against the other Party because of an alleged breach of such Party's obligations under this Agreement, each Party shall bear its own expenses, including attorneys' fees, incurred in connection with the legal proceeding and any appeal thereof.

SECTION 1013. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

SECTION 1014. NO ADVERSE DISTINCTION. MEAG shall not make any adverse distinction in connection with discharging its responsibilities to Buyer under this Agreement and in discharging MEAG's responsibilities (i) to the Additional Units PPA Participants under the Plant Vogtle Additional Units PPA Power Sales Contracts or (ii) to the Additional Units Non-PPA Participants under the Plant Vogtle Additional Units Non-PPA Power Sales Contracts.

SECTION 1015. COOPERATION. The Parties shall cooperate with each other and with each other's employees and agents by taking all actions necessary to fully effectuate the intent of this Agreement, including providing upon reasonable request to each other all information and

documents relevant to the purposes of this Agreement and making their employees and agents available in connection with any of the matters addressed in this Agreement.

Without limiting the generality of the foregoing, Buyer shall (i) provide to MEAG such information regarding Buyer as MEAG shall reasonably determine to be necessary or desirable in connection with the issuance by MEAG of any PPA Bonds or the making by the PPA Project Entity of any Advance and (ii) shall enter into, and perform its obligations under, such continuing disclosure undertakings as are necessary to comply with the provisions of paragraph (b)(5) of Rule 15c2-12, as amended, promulgated by the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, with respect to any issue of PPA Bonds that are subject to the requirements of said paragraph (b)(5) of Rule 15c2-12. In addition, notwithstanding the foregoing, this Section 1015 shall not require, nor shall it be construed to require, a Party to provide information or documents or to make its employees or agents available in contravention of any contractual obligation or limitation (including any such obligation or limitation in this Agreement or the Project Agreements), or in contravention of any obligation or limitation under Applicable Law.

SECTION 1016. FLORIDA PUBLIC RECORDS LAW. The parties acknowledge that Buyer is a body politic and corporate that is subject to Chapter 119, Florida Statutes, and related statutes known as the “Public Records Laws.” If a request is made to Buyer to view or disclose (i) any information provided by MEAG to Buyer prior to the Execution Date of this Agreement, including any “Confidential Information,” as that term is defined in the Parties’ October 9, 2006 Confidential Information Exchange Agreement, or (ii) any information provided by MEAG to Buyer pursuant to the terms of this Agreement, Buyer shall notify MEAG of such request and the date that such records will be viewed by or released to the requester unless MEAG obtains a

court order enjoining such disclosure. If MEAG fails to obtain a court order enjoining disclosure, Buyer will release the requested information on the date specified. Such release shall be deemed to be made with MEAG's consent and will not be deemed to be a violation of law, including laws concerning trade secrets, copyright or other intellectual property.

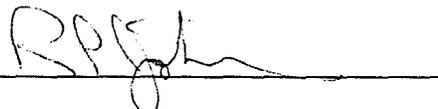
SECTION 1017. COMPLIANCE WITH OBLIGATIONS. MEAG agrees and covenants that it will fully and timely comply with its obligations under and in connection with, and, to the extent applicable, cause the PPA Project Entity to fully and timely comply with its obligations under and connection with, this Agreement, the PPA Project Entity Power Purchase Agreement, the PPA Project Bond Resolution, the DOE Loan Guarantee Agreement and the other DOE Loan Documents, including payment of all costs and compliance with all financial obligations in such documents; provided, however, that MEAG's failure to comply with the provisions of this Section shall not affect Buyer's obligations as set forth in Section 502 and Section 204(g).

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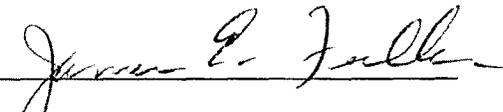
IN WITNESS WHEREOF, MEAG has caused this Agreement to be executed in its corporate name by its duly authorized officers and, by the execution hereof it is acknowledged that payments made under this Agreement may be assigned, as provided in this Agreement, and MEAG has caused its corporate seal to be hereunto impressed and attested; Buyer has caused this Agreement to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto impressed and attested, and delivery hereof by MEAG to Buyer is hereby acknowledged, all as of the day and year first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

[Signature blocks on following pages]

**MUNICIPAL ELECTRIC
AUTHORITY OF GEORGIA**

BY: 
TITLE: President and Chief Executive Officer
DATE: December 31, 2014

ATTEST:

BY: 
TITLE: Assistant Secretary-Treasurer
DATE: December 31, 2014



[Plant Vogtle Additional Units PPA Project (Project J) A&R PPA]

JEA

BY: Paul E. McElroy
TITLE: Managing Director and Chief Executive Officer
DATE: DECEMBER 22, 2014

ATTEST:

BY: Melissa M. Chalmers
TITLE: EXECUTIVE ASSISTANT
DATE: DECEMBER 22, 2014



I hereby certify that the expenditure contemplated by the forgoing Agreement has been duly authorized, and provision has been made for the payment of monies provided herein to be paid.

Melissa M. Dykes, Chief Financial Officer
Title:

Approved as to Form:

Jody Z. Brooks
Office of General Counsel
City of Jacksonville, Florida