

CONSTRUCTION AGREEMENT
(Project # _____)

THIS CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 20___, by and between the electric transmission function of Virginia Electric and Power Company a public service corporation organized and existing under the laws of the Commonwealth of Virginia (“DEV”), and **[If VEPCO is the Project Developer:** the power generation function of Virginia Electric and Power Company, a public service corporation organized and existing under the laws of the Commonwealth of Virginia] **[If third party is Project Developer:** organized and existing under the laws of the State/Commonwealth of _____] (“Project Developer”). DEV and Project Developer each may be referred to herein as a “Party” or collectively as the “Parties.” **[If VEPCO is the Project Developer:** As used herein, references to “Virginia Electric and Power Company” means the entity under and through which Project Developer and DEV perform their respective functions.] For the avoidance of doubt, the term “Party” or “Parties” shall not include PJM Interconnection, L.L.C.

RECITALS

WHEREAS, DEV is the electric transmission function of Virginia Electric and Power Company, a vertically-integrated public utility that (1) owns transmission assets subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (“FERC”) that are operated by PJM Interconnection, L.L.C. (“PJM”); and (2) owns and operates distribution facilities located in the Commonwealth of Virginia that are subject to the regulatory jurisdiction of the Virginia State Corporation Commission (“State Corporation Commission”);

[If third party is Project Developer: WHEREAS, Project Developer is a _____ that [(1) owns generation assets subject to the regulatory jurisdiction of FERC that are operated by PJM; and (2)] develops generation assets that need to interconnect to the PJM Transmission System;]

[If VEPCO is Project Developer: WHEREAS, Project Developer is the power generation function of Virginia Electric and Power Company, a vertically-integrated public utility that (1) owns generation assets subject to the regulatory jurisdiction of FERC; and (2) develops generation assets that need to interconnect to the PJM Transmission System;]

WHEREAS, DEV routinely engages in, or oversees, the design, construction, and energization of interconnection facilities for the interconnection of new or modified generating facilities to the DEV Transmission System, including but not limited to DEV Interconnection Facilities and Project Developer Interconnection Facilities, and is the Transmission Owner (as that term is defined in the PJM Operating Agreement) for the Dominion Zone in the PJM Region (as defined in the PJM OATT);

WHEREAS, in 2020, the Virginia General Assembly passed, and the Governor of Virginia signed into law, the Virginia Clean Economy Act (“Act”), which sets forth the goal, *inter alia*, that Virginia Electric and Power Company serve 100 percent of its retail electric load in the State of

Virginia with nuclear, renewable and energy storage generating resources by 2045, and which sets interim deadlines, beginning in 2026, for Virginia Electric and Power Company to produce minimum amounts of electric energy for sale to retail customers from renewable generating resources;

WHEREAS, Virginia Electric and Power Company has an obligation to ensure the safe, reliable, and affordable delivery of electricity to its customers year-round, and new generating facilities are needed to meet the growing capacity and energy needs of its customers;

WHEREAS, there are many generating facilities that are in PJM's Transition Cycle No. 1 (in PJM Queues AE1, AE2, AF1, AF2 and AG1) and PJM's Transition Cycle No. 2 (in PJM Queues AG2 and AH1) seeking to interconnect to the DEV Transmission System, and DEV is relying on a significant number of those facilities in order to be able to satisfy the growing capacity and energy needs of its customers as well as the minimum renewable and energy storage generation mandates of the Act, including the minimum renewable generation mandates that will be implemented in 2026;

WHEREAS, PJM recently received FERC approval of a filing that revised the PJM OATT to substantially revise its generation interconnection process, which is likely to require additional time for PJM to process the backlog of new interconnection queue positions for the interconnection of many of the generating facilities seeking to interconnect to the DEV Transmission System, including the generating facilities that Virginia Electric and Power Company is relying on to meet energy and capacity needs and for compliance with the deadlines set forth in the Act;

WHEREAS, DEV expects this additional time to process the PJM backlog to last until at least the 2026-27 time period, but in any event until the transition period for the revised PJM interconnection process is complete;

WHEREAS, DEV seeks to implement a process, to be applicable during the PJM transition to its revised generation interconnection rules, that will allow, at a Project Developer's request and expense, for the construction of interconnection facilities (but not Network Upgrades) identified in this Agreement for generating facilities moving through the PJM interconnection process in PJM's Transition Cycle No. 1 (in PJM Queues AE1, AE2, AF1, AF2 and AG1) and PJM's Transition Cycle No. 2 (in PJM Queues AG2 and AH1) that are seeking to interconnect to new transmission facilities that have not yet been constructed and for which there is no other project in the PJM interconnection queue having precedence to interconnect;

WHEREAS, Project Developer acknowledges that DEV will not agree to utilize this process for a proposed interconnection to existing DEV transmission facilities as there may be another project in the PJM interconnection queue having precedence to interconnect to the same existing facilities;

WHEREAS, the construction of these types of interconnection facilities will enable Project Developer to timely construct and test such facilities, and will also facilitate the full interconnection and commercial operation of such facilities once they have completed the PJM

interconnection process and have become subject to an effective Generation Interconnection Agreement and Construction Service Agreement under the PJM OATT;

WHEREAS, Project Developer intends to construct, own, and operate a new generating facility with a capacity of ___ MW located in _____ that will interconnect to the DEV Transmission System (defined below as “Project Developer Facility”), and Project Developer has submitted to PJM an Interconnection Request for the Project Developer Facility, for which PJM has assigned Queue Position # _____;

WHEREAS, DEV has completed a Project Developer Study which provided a non-binding estimate of the costs and construction schedule for interconnecting the Project Developer Facility to the DEV Transmission System, and specified and estimated the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Project Developer Study, in accordance with Good Utility Practice, to physically and electrically connect the Project Developer Facility to the DEV Transmission System;

WHEREAS, in order to advance the implementation of the interconnection service for the Project Developer Facility, and prior to the completion and execution of the PJM Construction Service Agreement specified in the PJM OATT, Project Developer has requested to proceed with the construction of the basic interconnection facilities that will be required for the interconnection of the Project Developer Facility to the DEV Transmission System in accordance with the terms of this Agreement;

WHEREAS, Project Developer acknowledges that the purpose of this Agreement is to expedite, at Project Developer’s request, the engineering and procurement of certain long-lead items and the construction of certain Facilities, as described in the Appendices, necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request for the Project Developer Facility;

WHEREAS, Project Developer also acknowledges that, while it is actively participating in the PJM interconnection queue process related to the same generating facility, PJM’s interconnection studies related to such Facilities [**may not have**] [**have not**] been completed. [**Include as applicable:** As of the Effective Date of this Agreement, the following study or studies for the Project Developer Facility have been completed by PJM: [**identify completed System Impact or other study(ies)**], dated [_____];

WHEREAS, Project Developer requested that DEV perform the Project Developer Study, which study has been completed;

WHEREAS, Project Developer has determined that the Project Developer Study: (i) has sufficiently demonstrated, in Project Developer’s sole opinion, the necessity of Facilities to interconnect the Project Developer Facility to the DEV Transmission System, and (ii) warrants, in Project Developer’s sole judgment, its request that DEV provide engineering and procurement for the equipment, and commence construction, as indicated in the Appendices, for use in interconnecting the Project Developer Facility with the DEV Transmission System and eventually the PJM Transmission System; and

WHEREAS, Project Developer and DEV desire to have each perform, and each is willing to perform, in accordance with the terms of this Agreement the engineering, procurement, and construction of the basic interconnection facilities described in Appendix A to this Agreement within each Party's scope set forth in Appendix B to this Agreement.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE I – DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Unless otherwise specified, all references herein to Sections, Articles, Schedules, Exhibits or Appendices are to Sections, Articles, Schedules, Exhibits or Appendices of this Agreement.

“Affiliate” means any two or more entities, one of which Controls the other or that are under common Control. “Control,” as that term is used in this definition, shall mean the possession, directly or indirectly, of the power to direct the management or policies of an entity. Ownership of publicly-traded equity securities of another entity shall not result in Control or affiliation for purposes of this Agreement if the securities are held as an investment, the holder owns (in its name or via intermediaries) less than 10 percent of the outstanding securities of the entity, the holder does not have representation on the entity's board of directors (or equivalent managing entity) or vice versa, and the holder does not in fact exercise influence over day-to-day management decisions. Control shall be presumed to arise from the ownership of or the power to vote, directly or indirectly, 10 percent or more of the voting securities of such entity.

“Applicable Laws and Regulations” means all duly promulgated applicable federal, State and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the relevant parties, their respective facilities, and/or the respective services they provide.

“Applicable Regional Entity” means SERC Reliability Corp.

“Applicable Standards” means the requirements and guidelines of NERC, SERC, PJM and DEV, the Transmission Owner FERC Form No. 715 – Annual Transmission Planning and Evaluation Report for each Applicable Regional Entity, and Applicable Technical Requirements and Standards.

“Applicable Technical Requirements and Standards” means those certain technical requirements and standards applicable to interconnections of generation facilities with the facilities of DEV, as more fully described in Appendix D.

“Construction Service Agreement” has the meaning set forth in the PJM OATT.

“Costs” mean costs and expenses, as estimated or calculated, as applicable, including, but not limited to, construction, design, and procurement expenditures, any other type of capital expenditures and overhead, return, and the costs of financing and taxes and any Incidental Expenses.

“DEV Interconnection Facilities” means all Facilities that are not Project Developer Interconnection Facilities and that are owned, controlled, operated and maintained by DEV on the DEV side of the Point of Change of Ownership identified in Appendix A of this Agreement, including any modifications, additions or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Project Developer Facility with the DEV Transmission System.

“DEV Transmission System” means the portion of the PJM Transmission System owned or controlled by DEV.

“Emergency Condition” means a condition or situation (i) that in the judgment of any Party is imminently likely to endanger life or property; or (ii) that in the judgment of DEV is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the DEV Transmission System, the transmission systems or distribution systems to which the DEV Transmission System is directly or indirectly connected; or (iii) that in the judgment of Project Developer is imminently likely to cause damage to the Project Developer Facility or to the Project Developer Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not constitute an Emergency Condition, unless one or more of the enumerated conditions or situations identified in this definition also exists.

“Environmental Law” means Applicable Laws and Regulations relating to pollution or protection of the environment, natural resources or human health and safety.

“Facilities” means Project Developer Interconnection Facilities and/or DEV Interconnection Facilities.

“Facilities Study” has the meaning set forth in the PJM OATT.

“Force Majeure” means, for the purposes of Article XI, any act, event or occurrence that is unforeseeable, not caused by the affected Party, and beyond the control of the affected Party shall be an event of force majeure, which may include but not be restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, pandemic, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force majeure does not include (i) a failure of performance that is due to an affected party’s own negligence or intentional wrongdoing; (ii) any removable or

remediable causes (other than settlement of a strike or labor dispute) which an affected party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected party.

“Generation Project Developer” means an entity that submits an Interconnection Request to interconnect a new generation facility to the DEV Transmission System.

“Generation Interconnection Agreement” means the PJM form of interconnection agreement applicable to a Generation Interconnection Request, which form is set forth in the PJM OATT, Part IX, Subpart B.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, 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 a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region; including those practices required by Federal Power Act, section 215(a)(4).

“Governmental Authority” means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over any Party regarding any matter relating to this Agreement.

“Hazardous Substance” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

“Incidental Expenses” mean those expenses incidental to the performance of construction pursuant to this Agreement, including, but not limited to, the expense of temporary construction power, telecommunications charges, DEV expenses associated with, but not limited to, document preparation, design review, installation, monitoring, and construction-related operations and maintenance for the Facilities identified under this Agreement.

“Interconnection Request” means a Generation Interconnection Request by a Generation Project Developer pursuant to the PJM OATT, Part VII, Subpart C, section 306(A)(1) to interconnect a generating unit with the DEV Transmission System.

“Investment Grade Credit Rating” means a long-term, senior unsecured credit rating or an equivalent rating of at least BBB- by S&P and Baa3 by Moody’s and not subject to a negative watch by either S&P or Moody’s; provided, that if an entity is rated by only S&P or Moody’s, as

applicable, then such credit rating shall be at least the rating stated above by S&P or Moody's, as applicable, and not subject to a negative watch by either S&P or Moody's.

“Milestones” means the deadlines for activities set forth on the Schedule of Work.

“Network Upgrades” means modifications or additions to transmission-related facilities that are integrated with and support the PJM Transmission System for the general benefit of all users of the PJM Transmission System.

“PJM” means PJM Interconnection, L.L.C. or any successor organization.

“PJM Open Access Transmission Tariff (PJM OATT)” means the tariff, including all schedules, exhibits, appendices, addenda or supplements thereto, on file with and made effective by FERC, that governs, *inter alia*, the provision of transmission and interconnection service on the PJM Transmission System, as it may be amended from time-to-time.

“PJM Operating Agreement” means the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. dated as of April 1, 1997 and as amended and restated as of June 2, 1997, including all schedules, exhibits, appendices, addenda or supplements thereto, on file with and made effective by FERC, as it may be amended from time-to-time.

“PJM Transmission System” means the facilities controlled or operated by PJM within the PJM Region that are used to provide transmission services under the PJM Tariff, Part II and Part III.

“PJM Region” has the meaning set forth in the PJM Operating Agreement.

“Point of Change of Ownership” means the point, as set forth in Appendix A, where Project Developer's Interconnection Facilities connect to DEV's Interconnection Facilities.

“Point of Interconnection” means the point or points, as set forth in Appendix A, where the Project Developer transmission facilities interconnect with the DEV Transmission System.

“Project Developer Facility” means Project Developer's generating facility that seeks to be interconnected to the DEV Transmission System pursuant to this Agreement.

“Project Developer Interconnection Facilities” means all facilities and equipment owned and/or controlled, operated and maintained by Project Developer on Project Developer's side of the Point of Change of Ownership identified in Appendix A of this Agreement, including any modifications, additions, or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Project Developer Facility with the DEV Transmission System.

“Project Developer Study” means the interconnection facilities study Project Developer requested that DEV perform to assess interconnecting the proposed Project Development Facility with the DEV Transmission System.

“Project Finance Entity” means (a) a holder, trustee or agent for holders, of any component of Project Financing; or (b) any purchaser of capacity and/or energy produced by the Project Developer Facility to which Project Developer has granted a mortgage or other lien as security for some or all of Project Developer’s obligations under the corresponding power purchase agreement.

“Project Financing” means (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Project Developer Facility, any alteration, expansion or improvement to the Project Developer Facility, the purchase and sale of the Project Developer Facility or the operation of the Project Developer Facility; (b) a power purchase agreement pursuant to which Project Developer’s obligations are secured by a mortgage or other lien on the Project Developer Facility; or (c) loans and/or debt issues secured by the Project Developer Facility.

“Reasonable Efforts” means such efforts as are timely and consistent with Good Utility Practice and with efforts that such Party would undertake for the protection of its own interests.

“Schedule of Work” means the schedule included as Appendix C to this Agreement setting forth the timing of work to be performed by the Party pursuant to this Agreement.

“Scope of Work” means that scope of the work attached as Appendix B to this Agreement and to be performed by the Party(ies).

“Security” has the meaning set forth in Section 5.1 of this Agreement.

“Site” means all of the real property, including but not limited to any owned or leased real property, bodies of water and/or submerged land, and easements, or other forms of property rights acceptable to PJM, on which the Project Developer Facility is situated and/or on which the Project Developer Interconnection Facilities are to be located.

“System Impact Study” has the meaning set forth in the PJM OATT.

“Termination Costs” mean costs and liabilities incurred in connection with: (a) cancellation of supplier and contractor written orders and agreements entered into to design, construct and install Facilities identified pursuant to this Agreement, and/or (b) completion of some or all of these required Facilities or specific unfinished portions of the Facilities and/or removal of any or all of such Facilities which have been installed in order to leave the Facilities or the DEV Transmission System in a state that ensures both physical safety of persons and the reliable operation of all Facilities and/or the DEV Transmission System.

ARTICLE II – TERM

2.1 Effective Date

This Agreement is effective on the Effective Date specified by FERC. DEV shall have no obligation to begin construction or preparation for construction of the DEV Interconnection Facilities until the Agreement has been filed with and accepted by FERC.

2.2 Term

This Agreement continues in full force and effect from the Effective Date until the termination thereof pursuant to Article X of this Agreement.

2.3 Survival

This Agreement continues in effect after termination to the extent necessary to provide for final billings and payments, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while the Agreement was in effect.

ARTICLE III – CONSTRUCTION OBLIGATIONS

3.1 Project Developer Obligations

3.1.1 Generally

3.1.1.1 Project Developer shall, at its sole cost and expense, (i) design, procure, construct, dismantle, demolish, own and install the Project Developer Facility and the Project Developer Interconnection Facilities set forth in Appendices A and B, in accordance with this Agreement, Applicable Standards, Applicable Laws and Regulations, Good Utility Practice, the Scope of Work and (ii) remain active in the PJM interconnection queue. If Project Developer ultimately determines not to interconnect the Project Developer Facility to the PJM Transmission System or not to take transmission service pursuant to the terms of a transmission service agreement, Project Developer shall remain responsible, at its sole expense, to perform the requirements in this Section 3.1.1.1 to the extent required, at DEV's sole determination, to ensure the safe and reliable operation of the DEV Transmission System in accordance with the requirements in Sections 10.3.1 and 10.3.2 to this Agreement.

3.1.1.2 Project Developer acknowledges and accepts that (i) it is entering into this Agreement, and committing to constructing Facilities, and the payment of costs referenced herein, before PJM has made a final determination of what Facilities and upgrades are needed to the PJM Transmission System or for the Project Developer Facility, and (ii) PJM could ultimately determine that some of the Facilities indicated herein require additions, modifications, or are not needed to interconnect the Project Developer Facility to the PJM Transmission System or that additional Facilities not included herein are required.

3.1.2 Project Developer Drawings

On or before the applicable date specified in the Milestones of the Agreement, Project Developer shall submit to DEV initial drawings, certified by a professional engineer, of the Project

Developer Interconnection Facilities. DEV shall review the drawings to assess the viability and reliability of Project Developer's design of the Project Developer Interconnection Facilities, and whether the design is consistent with DEV technical and design requirements. DEV shall provide comments on the drawings to Project Developer within sixty (60) days after its receipt thereof, after which time any drawings not subject to comment shall be deemed to be approved. All drawings provided hereunder shall be deemed to be Confidential Information.

3.1.3 Effect of Review

DEV's reviews of Project Developer's initial drawings of the Project Developer Interconnection Facilities shall not be construed as confirming, endorsing or providing a warranty as to the fitness, safety, durability or reliability of such facilities or the design thereof. At its sole cost and expense, Project Developer shall make such changes to the design of the Project Developer Interconnection Facilities as may reasonably be required by DEV to ensure that the Project Developer Interconnection Facilities meet Applicable Standards and, to the extent that design of the Project Developer Interconnection Facilities is included in the PJM Construction Service Agreement or Generation Interconnection Agreement, to ensure that such facilities conform with the PJM Construction Service Agreement or Generation Interconnection Agreement.

3.2 DEV Obligations

3.2.1 Generally

DEV is responsible for using Reasonable Efforts in designing and constructing the DEV Interconnection Facilities set forth in Appendices A and B. All such Facilities shall be designed, procured, installed and constructed in accordance with this Agreement, Applicable Laws and Regulations, Good Utility Practice, and the PJM Construction Service Agreement or Generation Interconnection Agreement, if applicable. DEV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ALL SIMILAR WARRANTIES.

3.2.2 Cost Responsibility

Project Developer acknowledges that it shall bear sole responsibility for paying the costs of all Facilities designed and constructed by DEV in accordance with Section 3.2.1 of this Agreement, whether greater or lesser than the amount of the Security provided in Section 5.1. Project Developer shall bear all risks of added costs for the design and construction (including the procurement of any materials needed for such construction) of modifications or other changes or additions to the Project Developer Facility, or to the Project Developer Interconnection Facilities or DEV Interconnection Facilities constructed pursuant to this Agreement and/or a PJM Construction Service Agreement. If Project Developer ultimately determines not to interconnect the Project Developer Facility to the PJM Transmission System or not to take transmission service pursuant to the terms of a transmission service agreement, Project Developer shall remain responsible for the costs of DEV's work in accordance with Section 3.2.1 of this Agreement to the extent required, at DEV's sole determination, to ensure the safe and reliable operation of the DEV

Transmission System in accordance with the requirements in Sections 10.3.1 and 10.3.2 to this Agreement.

3.2.3 No Commencement of Work Prior to Provision of Security

DEV has no obligation to commence any work under this Agreement, including preparation, procurement, construction or installation work, unless Project Developer has provided the total amount of Security to cover the full estimated cost of the work to be performed by DEV in accordance with Section 5.1.

3.3 Ownership

Project Developer shall own and be responsible for operating and maintaining all Project Developer Interconnection Facilities. DEV shall own and be responsible for operating and maintaining all DEV Interconnection Facilities that it constructs or has arranged to have constructed pursuant to this Agreement.

3.4 Scope of Applicable Technical Requirements and Standards

Applicable Technical Requirements and Standards shall apply to the design, procurement, construction and installation of the facilities identified pursuant to this Agreement only to the extent that the provisions thereof relate to the design, procurement, construction and/or installation of such facilities. Such provisions relating to the design, procurement, construction and/or installation of facilities are appended to this Agreement in Appendix D. In the event of any conflict between the provisions of the Applicable Technical Requirements and Standards that are appended to this Agreement and any later-modified provisions that are stated in the pertinent PJM Manual, the provisions appended to this Agreement shall control.

3.5 Safety

3.5.1 Generally

Each Party shall perform all work hereunder that may reasonably be expected to affect any other Party in accordance with Good Utility Practice, Applicable Standards and Applicable Laws and Regulations pertaining to the safety of persons or property. A Party performing work within an area controlled by another Party must abide by the safety rules applicable to the area.

3.5.2 Environmental Releases

Each Party shall notify each other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Project Developer Facility or the Facilities, any of which may reasonably be expected to affect another Party. The notifying Party shall (i) provide the notice as soon as possible, (ii) make a good faith effort to provide the notice within twenty-four hours after the Party becomes aware of the occurrence, and (iii) promptly furnish to each other Party copies of any publicly available reports filed with any governmental agencies addressing such events.

3.6 Access Rights

DEV and Project Developer herein grant each other at no charge such rights of access to areas that it owns or otherwise controls as may be necessary for performance of their respective obligations, and exercise of their respective rights, pursuant to this Agreement, provided that either of them performing the construction will abide by the safety, security and work rules applicable to the area where construction activity is occurring.

3.7 Coordination

DEV and Project Developer shall communicate and coordinate their activities as necessary to satisfy their obligations under this Agreement.

3.8 Revisions to Schedule of Work

The Schedule of Work may be revised by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.

3.9 Suspension

3.9.1 Generally

Project Developer shall not have the right to suspend at any time any work by DEV associated with the construction and/or installation of the Facilities identified in this Agreement.

3.9.2 Suspension of Work Upon Default

Upon the occurrence of a Default by Project Developer as defined in Article IX of this Agreement, DEV may by written notice to Project Developer suspend further work associated with the preparation, procurement, construction and/or installation of the Facilities that DEV is responsible for constructing. Such suspension shall not constitute a waiver of any termination rights under this Agreement. In the event of a suspension by DEV in accordance with this Section 3.9.2, Project Developer shall be responsible for the Costs incurred in connection with any suspension hereunder.

3.10 Construction Reports

Each Party shall issue reports to each other Party on a monthly basis, and at such other times as reasonably requested, regarding the status of the preparation, procurement, construction and installation of the Facilities. Each Party shall promptly identify, and shall notify each other Party of, any event that the Party reasonably expects may delay completion, or may significantly increase the cost, of the facilities identified under this Agreement. Should a Party report such an event, DEV shall, within fifteen days of such notification, convene a technical meeting of the Parties to evaluate schedule alternatives.

3.11 Inspection and Testing of Facilities

3.11.1 Coordination

DEV and Project Developer shall coordinate the timing and schedule of all inspection and testing of Project Developer Interconnection Facilities identified and constructed pursuant to this Agreement.

3.11.2 Inspection and Testing

Each Party shall cause inspection and testing of the Project Developer Interconnection Facilities in accordance with the provisions of this section. The Parties acknowledge and agree that inspection and testing of Project Developer Interconnection Facilities may be undertaken as Project Developer Interconnection Facilities are completed and need not await completion of all of the Project Developer Interconnection Facilities that the Project Developer is building.

3.11.3 Review of Inspection and Testing Results

In the event that the written report, or the observation of either Party of the inspection and/or testing pursuant to this Section 3.11 reasonably leads either DEV or the Project Developer to believe that the inspection and/or testing of some or all of the Project Developer Interconnection Facilities constructed pursuant to this Agreement was inadequate or otherwise deficient, the relevant Party may, within 20 days after its receipt of the results of inspection or testing and upon reasonable notice to the other Party, perform its own inspection and/or testing of such facilities to determine whether the facilities are acceptable for energization, which determination shall not be unreasonably delayed, withheld or conditioned.

3.12 Notification and Correction of Defects

If either Party, based on inspection or testing pursuant to this Article III, identifies any defects or failures to comply with Applicable Standards in the Project Developer Interconnection Facilities, the inspecting Party shall notify the other Party of such defects or failures within 20 days after the inspecting Party's receipt of the results of such inspection or testing. Project Developer shall take appropriate actions to correct any such defects or failure at its sole cost and expense and shall obtain DEV's acceptance of the corrections, which acceptance shall not be unreasonably delayed, withheld or conditioned.

3.13 Notification of Acceptable Results

Within 10 days after satisfactory inspection and/or testing of Project Developer Interconnection Facilities constructed pursuant to this Agreement (including, if applicable, inspection and/or testing after correction of defects or failures), the inspecting Party shall confirm in writing to the other Party that the successfully inspected and tested Project Developer Interconnection Facilities are acceptable for energization.

3.14 Energization of Completed Facilities

3.14.1 Generally

Energization shall consist of energization of the Facilities constructed under this Agreement, but shall not include energization of the Project Developer Facility, unless needed by the Project Developer to test the Project Developer Facility and perform pre-commissioning activities and pursuant to any required retail service agreement. Notwithstanding the foregoing, Project Developer shall not inject any incremental power from the Project Developer Facility to the DEV Interconnection Facilities or DEV Transmission System. Before energization, Project Developer shall provide a mark-up of construction drawings to DEV to show the “as-built” condition of all Project Developer Interconnection Facilities.

3.14.2 Defects Discovered During Energization

To the extent defects in any Facilities constructed pursuant to this Agreement are identified during the energization process, the energization will not be deemed successful. In that event, the Party shall take action to correct such defects in any Facilities that it built as promptly as practical after the defects are identified. The affected Party shall so notify the other Party when it has corrected any such defects, and the Parties shall recommence efforts, within 10 days thereafter, to energize the appropriate facilities in accordance with Section 3.14.1; provided that DEV may, in the reasonable exercise of its discretion, require that further inspection and testing be performed.

3.15 Outages

The Parties acknowledge and agree that certain outages of transmission facilities owned by DEV, as more specifically detailed in the Scope of Work, may be necessary in order to complete the process of constructing and installing all facilities identified pursuant to this Agreement. The Parties further acknowledge and agree that they will coordinate any such outages by mutual agreement, which shall not be unreasonably withheld or delayed.

3.16 Transmission Service

This Agreement does not entitle Project Developer to take transmission service under the PJM OATT. DEV shall provide transmission service to Project Developer pursuant to a separate service agreement by and between Project Developer and PJM dated as of the same effective date of a PJM Construction Service Agreement, if applicable.

3.17 Interconnection Service

Project Developer and DEV agree that this Agreement shall not provide for or authorize Interconnection Service or rights associated therewith for the Project Developer. The fully executed Generation Interconnection Agreement and/or Construction Service Agreement may further provide for construction of, and payment for, transmission facilities additional to those identified herein and/or in the Appendices.

ARTICLE IV – LAND AND LAND RIGHTS

4.1 Grant of Easements and Other Land Rights

Project Developer, at its sole cost and expense, shall grant such easements and other land rights to DEV over the Site at such times and in such a manner as DEV may reasonably require to perform its obligations under this Agreement. Such easements and other land rights shall be in the form and of the scope commonly acquired by DEV for comparable projects. To the extent that DEV is required to construct and install any DEV Interconnection Facilities on land owned by Project Developer, then Project Developer, at its sole cost and expense, shall legally transfer to DEV all easements and other land rights required pursuant to this Section 4.1 prior to the commencement of such construction and installation.

4.2 Third Parties

If any of the easements and other land rights described in this Article IV must be obtained from a third party, DEV's obligation for completing its construction, operation, testing, inspection, maintenance, replacement and removal responsibilities in accordance with the Schedule of Work, to the extent easements and land rights are necessary for the Facilities for which DEV is responsible for constructing, shall be subject to Project Developer's acquisition of such easements and other land rights at such times and in such manner as DEV may reasonably require to perform its obligations under this Agreement. The terms of easements and land rights acquired by Project Developer shall be in the form and of the scope commonly acquired by DEV for comparable projects and shall not unreasonably impede DEV's timely completion of construction of the affected facilities.

4.3 Documentation

Project Developer shall prepare, execute and file such documentation as DEV may reasonably require to memorialize any easements and other land rights granted pursuant to this Article IV. Documentation of such easements and other land rights, and any associated filings, shall be in a form acceptable to DEV.

4.4 Liens

Project Developer shall take all reasonable steps to ensure that, at the time of transfer of title in any land rights or Facilities built by the Project Developer to DEV, those land rights or Facilities shall be free and clear of any and all liens and encumbrances, including mechanics' liens.

4.5 Permits, Zoning and Land Use

Project Developer shall obtain, maintain, and/or cause to be maintained at its own expense, all permits, licenses and other authorizations as may be required to develop, construct and/or maintain all facilities connecting to the Project Developer Interconnection Facilities and the points of delivery and, upon reasonable request from DEV, shall provide DEV copies of such permits, licenses and other authorizations at Project Developer's expense.

4.6 Environmental Issues

Project Developer shall assume and discharge any liabilities and obligations whatsoever arising under any Environmental Law relating to the ownership, operation or condition of the Site and shall be responsible for any environmental conditions existing on the Site. Project Developer agrees to assume the cost and expense for any and all remediation that may be required, including, without limitation, any federal or state court, any federal, state or local agency with jurisdiction over the Site, for any and all materials, pollutants, irritants, contaminants and hazardous materials existing in, on, under, or emanating from the soil, surface water, groundwater or subsurface at the Site, in each case that existed at the Site prior to or after the effective date of this Agreement.

4.7 Grading

Project Developer shall be solely responsible for grading the Site according to DEV's requirements therefor.

ARTICLE V – PAYMENTS

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this Article V shall be applicable.

5.1 Security

Simultaneous with its execution of this Agreement and its submission of this Agreement to DEV for signature, Project Developer will provide DEV with Security in the amount set forth in Appendix E hereto in the form of cash to cover the estimated costs, determined by DEV in the Project Developer Study, of the work to be performed under this Agreement. DEV will not execute this Agreement if it has not received this Security. The Security provided by Project Developer shall be adjusted, as necessary, to reflect additional work to be performed by Project Developer or DEV, as reflected in adjustments to the Scope of Work agreed to by the Parties, or work that has already been performed by DEV. If Project Developer fails to provide such security in the amount, in the time or in the form required, this Agreement shall terminate immediately. Project Developer acknowledges that the payment of Security under this Section 5.1 does not include any additional amounts that it will owe in the event it executes a PJM Generation Interconnection Agreement or PJM Construction Services Agreement.

DEV will retain any Security not deducted by DEV pursuant to Section 5.2 until all work required under this Agreement has been completed. If this Agreement is terminated because it is superseded by the full execution of a PJM Construction Service Agreement entered into between DEV, Project Developer and PJM for the Facilities, DEV will true-up costs incurred within one hundred twenty (120) days of the effective date of the PJM Construction Service Agreement, and will refund any remaining Security to Project Developer.

DEV shall not commence any work or undertake any action under this Agreement until after receipt of the required Security.

5.2 Invoices

DEV shall provide Project Developer with an invoice each quarter reflecting DEV's scheduled expenditures during the next three months for the design, planning, engineering, procurement, installation, and/or for other charges related to, construction of the DEV Interconnection Facilities including but not limited to administrative and oversight costs for which DEV may recover Costs under this Agreement. The amount due under the invoice will first be deducted from the Security that the Project Developer provided. Should the amount of the posted Security not be sufficient to cover all of the estimated costs reflected in that invoice, Project Developer shall remit payment for each invoice within twenty (20) days after receipt thereof. If payment is not received by the invoice due date, a late payment charge of 1.5% will apply.

5.3 Final Invoice

Within one hundred twenty (120) days after DEV completes construction and installation of the DEV Interconnection Facilities, DEV shall provide Project Developer with an accounting of any difference between (a) Project Developer's responsibility under this Agreement for the actual Cost of such Facilities, and (b) Project Developer's previous aggregate payments to DEV for the Costs of such Facilities. Project Developer shall pay this difference to the extent that Project Developer's responsibility under this Agreement for the actual Cost of such Facilities exceeds Project Developer's previous aggregate payments to DEV for the Costs of such Facilities. DEV shall pay Project Developer for this difference to the extent that Project Developer's previous aggregate payments to DEV exceed Project Developer's responsibility under this Agreement for the cost of such Facilities. If payment is not received by the invoice due date, a late payment charge of 1.5% will apply.

5.4 Disputes

In the event of a billing dispute between the Parties, Project Developer and DEV shall continue to perform their respective obligations pursuant to this Agreement so long as (a) Project Developer continues to make all payments not in dispute, and (b) the Security provided to DEV by the Project Developer while the dispute is pending exceeds the amount in dispute, or (c) Project Developer pays to DEV or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute.

5.5 Interest

Interest on any unpaid, delinquent amounts shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. Section 35.19a(a)(2)(iii) and shall apply from the due date of the bill to the date of payment.

5.6 No Waiver

Payment of an invoice shall not relieve Project Developer from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

ARTICLE VI – ASSIGNMENT

6.1 Assignment with Prior Consent

Except as provided in Section 6.2 below, no Party shall assign its rights or delegate its duties, or any part of such rights or duties, under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void. A Party may make an assignment in connection with the sale, merger, or transfer of a substantial portion or all of its properties, including the Facilities which it will own, so long as the assignee in such a sale, merger, or transfer assumes in writing all rights, duties and obligations arising under this Agreement. In addition, DEV shall be entitled, subject to Applicable Laws and Regulations, to assign the Agreement to any Affiliate or successor that owns and operates all or a substantial portion of DEV's transmission or distribution facilities.

6.2 Assignment Without Prior Consent

6.2.1 Assignment to Owners

Project Developer may assign the Agreement without DEV's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Project Developer Facility and the Project Developer Interconnection Facilities, provided that prior to the effective date of any such assignment, the assignee shall demonstrate that, as of the effective date of the assignment, the assignee has the technical competence to comply with the requirements of this Agreement and assumes in a writing provided to DEV all rights, duties, and obligations of Project Developer arising under this Agreement. However, any assignment described herein shall not relieve or discharge the Project Developer from any of its obligations hereunder absent the written consent of DEV, such consent not to be unreasonably withheld, conditioned or delayed.

6.2.2 Assignment to Lenders

Project Developer may, without the consent of DEV, assign the Agreement to any Project Finance Entity(ies), provided that such assignment shall not alter or diminish Project Developer's duties and obligations under this Agreement. If Project Developer provides DEV with notice of an assignment to any Project Finance Entity(ies) and identifies such Project Finance Entity(ies) as contacts for notice purposes pursuant to this Agreement, DEV shall provide notice and reasonable opportunity for such entity(ies) to cure any Breach in accordance with this Agreement. DEV shall, if requested by such lenders, provide such customary and reasonable documents, including consents to assignment, as may be reasonably requested with respect to the assignment and status of the Agreement, provided that such documents do not alter or diminish the rights of DEV under this Agreement, except with respect to providing notice of Breach to a Project Finance Entity. Upon presentation of DEV's invoice therefor, Project Developer shall pay DEV's reasonable documented cost of providing such documents and certificates. Any assignment described herein shall not relieve or discharge the Project Developer from any of its obligations hereunder absent the written consent of DEV.

6.3 Successors and Assigns

This Agreement and all of its provisions are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE VII – INSURANCE

7.1 Required Coverages if Project Developer Facility Is More Than 20 Megawatts

Each Party shall maintain, at its own expense, insurance as described in paragraphs (a) through (e) below. All insurance shall be procured from insurance companies rated “A-,” VII or better by AM Best and authorized to do business in a state or states in which the facilities will be located. Failure to maintain required insurance shall be a Breach of the Agreement.

(a) Workers Compensation Insurance with statutory limits, as required by the state and/or jurisdiction in which the work is to be performed, and employer’s liability insurance with limits of not less than one million dollars (\$1,000,000).

(b) Commercial General Liability Insurance and/or Excess Liability Insurance covering liability arising out of premises, operations, personal injury, advertising , products and completed operations coverage, independent contractors coverage, liability assumed under an insured contract, coverage for pollution to the extent normally available and punitive damages to the extent allowable under applicable law, with limits of not less than two million dollars (\$2,000,000) per occurrence/two million dollars (\$2,000,000) general aggregate/one million dollars (\$1,000,000) products and completed operations aggregate.

(c) Business/Commercial Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of not less than two million dollars (\$2,000,000) each accident for bodily injury, including death, and property damage.

(d) Excess and/or Umbrella Liability Insurance with a limit of liability of twenty million dollars (\$20,000,000) per occurrence. These limits apply in excess of the employer’s liability, commercial general liability and business/commercial automobile liability coverages described above. This requirement can be met alone or via a combination of primary, excess and/or umbrella insurance.

(e) Professional Liability, including Contractors Legal Liability, providing errors, omissions and/or malpractice coverage. Coverage shall be provided for the Party’s duties, responsibilities and performance outlined in this Agreement, with limits of liability as follows:

\$10,000,000 each occurrence
\$10,000,000 aggregate

A Party may meet the Professional Liability Insurance requirements by requiring third-party

contractors, designers, or engineers, or other parties that are responsible for design work associated with the facilities to be constructed under this Agreement to procure professional liability insurance in the amounts and upon the terms prescribed by this Article 7.1(e), and providing evidence of such insurance to the other Party. Such insurance shall be procured from companies rated “A-,” VII or better by AM Best and authorized to do business in a state or states in which the facilities are located. Nothing in this section relieves the Interconnected Entity from complying with the insurance requirements. In the event that the policies of the designers, engineers, or other parties used to satisfy the Interconnected Entity’s insurance obligations under this section become invalid for any reason, including but not limited to, (i) the policy(ies) lapsing or otherwise terminating or expiring; (ii) the coverage limits of such policy(ies) are decreased; or (iii) the policy(ies) do not comply with the terms and conditions of the Tariff; Interconnected Entity shall be required to procure insurance sufficient to meet the requirements of this section, such that there is no lapse in insurance coverage.

7.2 Required Coverages if Project Developer Facility Is 20 Megawatts Or Less

Each Party shall maintain the types of insurance as described in Section 7.1(a) through (e) above in an amount sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. Additional insurance may be required by the Project Developer, as a function of owning and operating a Generating Facility. All insurance shall be procured from insurance companies rated “A-,” VII or better by AM Best and authorized to do business in a state or states in which the Facilities are located. Failure to maintain required insurance shall be a Breach of the Agreement.

7.3 Additional Insureds

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this section 7.3 shall be applicable.

The Commercial General Liability, Business/Commercial Automobile Liability and Excess and/or Umbrella Liability policies procured by each Party (the “Insuring Party”) shall include each other Party (the “Insured Party”), its officers, agents and employees as additional insureds, providing all standard coverages and covering liability of the Insured Party arising out of bodily injury and/or property damage (including loss of use) in any way connected with the operations, performance, or lack of performance under this Agreement.

7.4 Other Required Terms

The above-mentioned insurance policies (except workers’ compensation) shall provide the following:

(a) Each policy shall contain provisions that specify that it is primary and non-contributory for any liability arising out of that party’s negligence and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer’s liability

shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Insuring Party shall be responsible for its respective deductibles or retentions.

(b) If any coverage is written on a Claims First Made Basis, continuous coverage shall be maintained for an extended discovery period of not less than two (2) years after termination of the Agreement.

(c) Provide for a waiver of all rights of subrogation which the Insuring Party's insurance carrier might exercise against the Insured Party.

7.5 No Limitation of Liability

The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under the Agreement.

7.6 Self-Insurance

Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of this Article VII to the extent it maintains a self-insurance program; provided that such Party's Issuer Rating is Investment Grade or better at Standard & Poor's or Moody's and its self-insurance program meets the minimum insurance requirements of this Article VII. For any period of time that a Party's Issuer Rating is less than Investment Grade at Standard & Poor's or Moody's, it shall comply with the insurance requirements applicable to it under this Article VII. In the event that a Party is permitted to self-insure pursuant to this section, it shall notify the other Construction Entities that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Section 7.5.

7.7 Notices; Certificates of Insurance

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this section 7.7 shall be applicable.

Prior to the commencement of work pursuant to this Agreement, each Party agrees to furnish the other Party with certificates of insurance evidencing the insurance coverage obtained in accordance with this Article VII. All certificates of insurance shall indicate that the certificate holder is included as an additional insured under the Commercial General Liability, Business/Commercial Automobile Liability and Excess and/or Umbrella Liability coverages, and that this insurance is primary with a waiver of subrogation in favor of the other Interconnected Entities. All policies of insurance shall provide for thirty days prior written notice of termination or material adverse change. If the policies of insurance do not or cannot be endorsed to provide thirty days prior written notice of termination or material adverse change, each Party shall provide the other Party with thirty days prior written notice of termination or material adverse change to any of the insurance required in this Agreement.

7.8 Subcontractor Insurance

In accord with Good Utility Practice, each Party shall require each of its subcontractors to maintain and provide evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding of contractors or subcontractors shall be at the hiring Party's discretion, but regardless of bonding, the hiring principal shall be responsible for the performance or non-performance of any contractor or subcontractor it hires. Project Developer shall provide DEV with copies of certificates of insurance provided by each of its contractors and subcontractors naming DEV as an additional insured.

7.9 Reporting Incidents

The Parties shall report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of the Agreement.

ARTICLE VIII – INDEMNIFICATION

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this Article VIII shall be applicable.

8.1 Indemnity

Each Party shall indemnify and hold harmless the other Party, and the other Party's officers, shareholders, stakeholders, members, managers, representatives, directors, agents and employees, and Affiliates, from and against any and all loss, liability, damage, cost or expense to third parties, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorneys' fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's breach of any of the representations or warranties made in, or failure of the indemnifying Party or any of its subcontractors to perform any of its obligations under, this Agreement, or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors; provided, however, that neither Party shall have any indemnification obligations under this Section 8.1 in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

8.2 Indemnity Procedures

Promptly after receipt by a person entitled to indemnity ("Indemnified Person") of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 8.1 above may apply, the

Indemnified Person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party. The Indemnified Person shall cooperate with the indemnifying Party with respect to the matter for which indemnification is claimed. The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Party, in such event the indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

8.3 Indemnified Person

If an Indemnified Person is entitled to indemnification under this Article VIII as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 8.2, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.4 Amount Owing

If an indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article VIII, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

8.5 Limitation on Damages

Except pursuant to a Party's indemnification obligations under this Article VIII, the liability of a Party under this Agreement shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential

damages, including lost profits. The limitations on damages specified in this Section 8.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. This limitation on damages shall not affect any Party's rights to obtain equitable relief as otherwise provided in this Agreement. The provisions of this Article VIII shall survive the termination or expiration of the Agreement.

8.6 Limitation of Liability in Event of Breach

A Party ("Breaching Party") shall have no liability hereunder to any other Party, and each other Party hereby releases the Breaching Party, for all claims or damages it incurs that are associated with any interruption in the availability of the Project Developer Facility, the Interconnection Facilities, Transmission System or damages to a Party's facilities, except to the extent such interruption or damage is caused by the Breaching Party's gross negligence or willful misconduct in the performance of its obligations under this Agreement.

8.7 Limited Liability in Emergency Conditions

No Party shall be liable to any other Party for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice and is not contrary to the directives of DEV with respect to such Emergency Condition. Notwithstanding the above, Project Developer shall be liable in the event that it fails to comply with any instructions of DEV related to an Emergency Condition.

DEV shall not be liable to Project Developer for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice and is not contrary to the directives of PJM with respect to such Emergency Condition.

ARTICLE IX – BREACH

9.1 Breach

A Breach of the Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement including but not limited to any material breach of a representation, warranty or covenant (other than in Sections 9.1(a) and (c)-(e) hereof) made in this Agreement;
- (c) Assignment of the Agreement in a manner inconsistent with the terms of this Agreement;
- (d) Failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are provided under this Agreement; or

(e) Failure of any Party to provide information or data required to be provided to another Party under this Agreement for such other Party to satisfy its obligations under this Agreement.

9.2 Notice of Breach

A Party not in Breach of this Agreement shall give written notice of an event of Breach to the Breaching Party, and to any other persons that the Breaching Party identifies in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. In the event of a Breach by Project Developer, DEV agrees to provide notice of such Breach, at the same time and in the same manner as its or their notice to Project Developer, to any Project Finance Entity, provided that the Project Developer has provided DEV with notice of an assignment to such Project Finance Entity(ies) and has identified such Project Finance Entities as contacts for notice purposes.

9.3 Cure and Default

A Party that commits a Breach and does not take steps to cure the Breach pursuant to this Section 9.3 is in Default of this Agreement.

9.3.1 Cure of Breach

The Breaching Party (a) may cure the Breach within thirty days from the receipt of such notice; or, (b) if the Breach cannot be cured within thirty days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day time period and thereafter diligently pursue such action to completion.

9.4 Right to Compel Performance

Upon the occurrence of an event of Default, a non-Defaulting Party shall be entitled to (a) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, (b) withhold payments, (c) suspend performance hereunder, and (d) exercise such other rights and remedies as it may have in equity or at law.

9.5 Remedies Cumulative

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE X – TERMINATION

10.1 Termination Upon Completion of Construction or Due to Superseding PJM Construction Services Agreement

Unless earlier terminated in accordance with this Agreement, this Agreement shall terminate upon the later of the (i) completion of construction of all Facilities; (ii) final payment of all Costs due and owing under this Agreement; (iii) transfer of title of the Project Developer Facilities to DEV, and (iv) the delivery to DEV of final “as-built” drawings of any facilities built by Project Developer; provided, however, if DEV and Project Developer enter into a PJM Construction Service Agreement with PJM in connection with the Project Developer Facility, then as of the effective date thereof, the PJM Construction Service Agreement shall supersede this Agreement for the performance of any remaining engineering, procurement, and construction work for the Facilities that has not yet been completed under this Agreement, and this Agreement shall be deemed terminated, except with respect to any ongoing payment, refund or other obligation as set out herein, including any resulting audit obligation (including over or under payment settlement) as set out in Article XIV, which will be carried over to and will remain an obligation to each respective Party under the PJM Construction Service Agreement, as applicable.

10.2 Termination Upon Default by Either Party

Either Party may terminate its obligations hereunder in the event of a Default by the other Party as defined in Section 9.3 of this Agreement, subject to its payment of any Termination Costs as explained in Section 10.3 below.

10.3 Termination by Project Developer

Project Developer may terminate this Agreement at any time by providing written notice of termination to DEV. Project Developer’s notice of termination shall become effective sixty (60) calendar days after DEV receives such notice. The following provisions of Sections 10.3.1 and 10.3.2 shall survive and shall apply in the event that Project Developer terminates the Agreement pursuant to this Section 10.3.

10.3.1 Termination Cost Responsibility

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this section shall be applicable. Upon the termination of the Agreement by Project Developer, the Project Developer shall be liable to pay to DEV all Termination Costs in connection with engineering, procurement, removal and/or construction for Project Developer pursuant to this Agreement. In the event DEV incurs Termination Costs, it shall provide Project Developer with a written demand for payment and with reasonable documentation of such Termination Costs. The Project Developer shall pay DEV each bill for Termination Costs within thirty (30) days after DEV’s presentation to Project Developer of written demand therefor, provided that such demand includes reasonable documentation of the Termination Costs that the invoicing party seeks to collect.

10.3.2 Disposition of Facilities Upon Termination

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this section shall be applicable. Upon termination of the Agreement by Project Developer, DEV may, at the sole cost and expense of Project Developer, (a) cancel supplier and contractor orders and agreements entered into by DEV to design, construct, install, operate, maintain and own facilities identified pursuant to this Agreement, provided, however, that Project Developer shall have the right to choose to take delivery of any equipment ordered by DEV; (b) remove any DEV Interconnection Facilities built by DEV; (c) partially or entirely complete the DEV Interconnection Facilities as necessary to preserve the integrity or reliability of the PJM Transmission System and/or the DEV Transmission System; and/or (d) undo any of the changes to the PJM Transmission System and/or DEV Transmission System that were made pursuant to this Agreement. To the extent that Project Developer has fully paid for equipment that is unused upon termination or which is removed pursuant to subsection (b) above, the Project Developer shall have the right to take back title to such equipment; alternatively, in the event that the Project Developer does not wish to take back title, DEV may elect to pay the Project Developer a mutually agreed amount to acquire and own such equipment. Otherwise, disposition of the Facilities related to this Agreement after receipt of Project Developer's notice of its determination not to interconnect shall be as directed by DEV, in its sole discretion.

Project Developer shall be responsible for the Costs incurred pursuant to this Agreement by DEV (1) on or before the date of such notice, and (2) after the date of such notice, if the Costs could not reasonably be avoided despite, or were incurred by reason of, Project Developer's determination not to interconnect. Project Developer's liability under the preceding sentence shall include all Termination Costs in connection with this Agreement. In the event DEV incurs Termination Costs, it shall provide the Project Developer with a written demand for payment and with reasonable documentation of such Termination Costs. Within sixty (60) days after the date of Project Developer's notice, DEV shall provide an accounting of, and the appropriate party shall make any payment to the other that is necessary to resolve, any difference between (i) Project Developer's cost responsibility under this Agreement for Costs, including Termination Costs, of the Facilities and (ii) Project Developer's previous payments under this Agreement. This Agreement shall be deemed to be terminated upon completion of all payments required under this paragraph.

10.4 Project Developer Cost Obligations Due to Termination

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this section shall be applicable. In the event that Project Developer exercises its right to terminate under this Agreement, and notwithstanding any other provision of this Agreement, Project Developer shall be liable for payment of DEV's Costs incurred up to the date of Project Developer's notice of termination and the costs of completion of some or all of the DEV Interconnection Facilities or specific unfinished portions thereof, and/or removal of any or all of such facilities which have been installed, to the extent that DEV determines such completion or removal to be required for DEV to maintain reliability and/or safety of the relevant construction site; provided, however, that Project Developer's payment of such costs shall be without prejudice to any remedies that otherwise may be available to it under this Agreement for the Default of DEV.

10.5 Termination by DEV

In addition to its termination rights specified above, DEV may terminate this Agreement by providing written notice to Project Developer if Project Developer or PJM withdraws the queue position for the Project Developer Facility from the PJM interconnection queue.

Should Project Developer fail to enter into a Generation Interconnection Agreement or Construction Service Agreement (or, alternatively, to initiate dispute resolution or request in writing that the agreement be filed with the FERC unexecuted) within the time prescribed by the PJM OATT, DEV shall have the right, upon providing written notice to Project Developer, to terminate this Agreement.

The provisions of Sections 10.3.1 and 10.3.2 shall survive and shall apply in the event that DEV terminates the Agreement pursuant to this Section 10.5.

10.6 Survival of Rights

The obligations of the Parties hereunder with respect to payments, costs, warranties, liability and indemnification shall survive termination to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while the Agreement was in effect. In addition, applicable provisions of this Agreement will continue in effect after expiration, termination or termination to the extent necessary to provide for final billings, payments, and billing adjustments.

ARTICLE XI – FORCE MAJEURE

11.1 Notice

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify each other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.

11.2 Duration of Force Majeure

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any non-performance, any interruption or failure of service, deficiency in the quality or quantity of service, or any other failure to perform any obligation hereunder to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to each other Party.

11.3 Obligation to Make Payments

Any Party's obligation to make payments for services shall not be suspended by Force Majeure.

ARTICLE XII – SUBCONTRACTORS

12.1 Use of Subcontractors

Nothing in this Agreement shall prevent the Parties from utilizing the services of subcontractors as they deem appropriate to perform their respective obligations hereunder, provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services.

12.2 Responsibility of Principal

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. Each Party shall be fully responsible to each other Party for the acts and/or omissions of any subcontractor it hires as if no subcontract had been made.

12.3 Indemnification by Subcontractors

To the fullest extent permitted by law, a Party that uses a subcontractor to carry out any of the Party's obligations under this Agreement shall require each of its subcontractors to indemnify, hold harmless and defend each other Party, its representatives and assigns from and against any and all claims and/or liability for damage to property, injury to or death of any person, including the employees of any Party or of any Affiliate of any Party, or any other liability incurred by another Party or any of its Affiliates, including all expenses, legal or otherwise, to the extent caused by any act or omission, negligent or otherwise, by such subcontractor and/or its officers, directors, employees, agents and assigns, that arises out of or is connected with the design, procurement, construction or installation of the facilities of either Party described in this Agreement; provided, however, that no Party or Affiliate thereof shall be entitled to indemnity under this Section 12.3 in respect of any injury, loss, or damage to the extent that such loss, injury, or damage results from the negligence or willful misconduct of the Party or Affiliate seeking indemnity.

12.4 Subcontractors Not Beneficiaries

No subcontractor is intended to be, or shall be deemed to be, a third-party beneficiary of the Agreement.

ARTICLE XIII – CONFIDENTIALITY

13.1 Confidentiality

Information is Confidential Information only (i) if it is clearly designated or marked in writing as confidential on the face of the document at the time of disclosure, or (ii) if the Party receiving the information knew or should have known, based on the contents of the information, that the information was confidential. If requested by any Party, the disclosing Party shall provide

in writing the basis for asserting that the information referred to in this section warrants confidential treatment, and the requesting Party may disclose such writing to an appropriate Governmental Authority. Any Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.2 Term

During the term of the Agreement, and for a period of three (3) years after the expiration or termination of the Agreement, except as otherwise provided in this Article XIII, each Party shall hold in confidence, and shall not disclose to any person, Confidential Information provided to it by any other Party.

13.3 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement; or (vi) is required, in accordance with Article XIII of this Agreement, to be disclosed to any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.4 Rights

Each Party retains all rights, title, and interest in the Confidential Information that it discloses to any other Party. A Party's disclosure to another Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.5 No Warranties

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to any other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.6 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as the Party uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or to comply with Applicable Laws and Regulations.

13.7 Order of Disclosure

If a Governmental Authority with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the Party that provided the information with prompt prior notice of such request(s) or requirement(s) so that the providing Party may seek an appropriate protective order, or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order, or agreement, or waiver, the Party subjected to the request or order may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.8 Termination of Agreement

Upon termination of the Agreement for any reason, each Party shall, within ten (10) calendar days of receipt of a written request from another party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure and deletion certified in writing to the requesting party) or to return to the requesting party, without retaining copies thereof, any and all written or electronic Confidential Information received from the requesting party.

13.9 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article XIII. Each Party accordingly agrees that each other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article XIII, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Article XIII, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, consequential, or punitive damages of any nature or kind resulting from or arising in connection with a Breach of any obligation under this Article XIII.

13.10 Disclosure to FERC or its Staff

Notwithstanding anything in this Article XIII to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information

from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party, shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.122, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. A Party is prohibited from notifying the other Party to the Agreement prior to the release of the Confidential Information to FERC or its staff. A Party shall notify the other Party when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

13.11 Disclosure

Subject to the exception in Section 13.10, no Party shall disclose Confidential Information of another Party to any person not employed or retained by the disclosing Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the Party that provided such Confidential Information, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or applicable NERC standards. Prior to any disclosures of another Party's Confidential Information under this subparagraph, the disclosing Party shall promptly notify the other Party in writing and shall assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

13.12 Return or Destruction of Confidential Information

If any Party provides any Confidential Information to another Party in the course of an audit or inspection, the providing Party may request the other party to return or destroy such Confidential Information after the termination of the audit period and the resolution of all matters relating to that audit. Each Party shall make Reasonable Efforts to comply with any such requests for return or destruction within ten days after receiving the request and shall certify in writing to the requesting Party that it has complied with such request.

ARTICLE XIV – INFORMATION ACCESS AND AUDIT RIGHTS

14.1 Information Access

Subject to Applicable Laws and Regulations, each Party shall make available to each other Party information necessary (i) to verify the costs incurred by the other Party for which the requesting Party is responsible under the Agreement, and (ii) to carry out obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Section 14.1 and to enforce their rights under this Agreement.

14.2 Reporting of Non-Force Majeure Events

Each Party shall notify each other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than an event of force majeure as defined in this Agreement. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the receiving Party to allege a cause of action for anticipatory breach of this Agreement.

14.3 Audit Rights

Subject to the requirements of confidentiality under Article XIII of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the pertinent Party, to audit at its own expense the other Party's accounts and records pertaining to such Party's performance and/or satisfaction of obligations arising under this Agreement. Any audit authorized by this Section shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement. Any request for audit shall be presented to the other Party not later than twenty-four months after the event as to which the audit is sought. Each Party shall preserve all records held by it for the duration of the audit period.

ARTICLE XV – DISPUTES

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this Article XV shall be applicable.

15.1 Dispute Resolution

Any dispute between DEV and Project Developer under the Agreement shall first be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days (or such other period as the Parties to the dispute may agree upon) by mutual agreement, such dispute may be submitted to FERC for alternative dispute resolution and resolved in accordance with FERC's arbitration procedures.

The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Agreement and shall have no power to modify or change any provision of the Agreement in any manner. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

Each Party shall be responsible for its own costs incurred during the arbitration process and for a proportionate share of the cost of the arbitrator(s) chosen by the Parties.

15.2 Rights Under the Federal Power Act

Nothing in this Agreement shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

15.3 Equitable Remedies

Nothing in this Agreement shall prevent any Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations.

ARTICLE XVI – NOTICES

16.1 General

Any notice, demand or request required or permitted to be given by either Party to another and any instrument required or permitted to be tendered or delivered by either Party in writing to another may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address specified in the Agreement. If agreed to in advance by the Parties, notices may be communicated via electronic means, so long as there is e-mail confirmation of delivery.

DEV:

Virginia Electric and Power Company
Attn: Director-ET Project Management Organization
10900 Nuckols Rd #400
Glen Allen, VA 23060
ETRegulatoryConstruction@dominionenergy.com

Project Developer:

[insert company name]

Attn: _____

[insert address]

[insert email address]

16.2 Operational Contacts

Each Party shall designate, and shall provide to each other Party contact information concerning, a representative to be responsible for addressing and resolving operational issues as they arise during the term of the Agreement.

ARTICLE XVII – MISCELLANEOUS

17.1 Regulatory Filing

DEV shall file the executed Agreement at FERC pursuant to Section 205 of the Federal Power Act. Project Developer shall provide any information reasonably required to assist with the filing. Project Developer may request that any information so provided be subject to the confidentiality provisions of Article XIII of this Agreement.

17.2 Waiver

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter. Any waiver of this Agreement shall, if requested, be provided in writing.

17.3 Amendments and Rights under the Federal Power Act

Except as set forth in this provision, this Agreement may be amended, modified, or supplemented only by written agreement of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as affecting in any way any of the rights of any Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Party under Section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder. The terms and conditions of this Agreement and every appendix referred to therein shall be amended, as mutually agreed by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.

17.4 Binding Effect

This Agreement, including the rights and obligations incorporated by reference therein from this Agreement, shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Parties.

17.5 Regulatory Requirements

Each Party's performance of any obligation under this Agreement for which such party requires approval or authorization of any Governmental Authority shall be subject to its receipt of such required approval or authorization in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek, and shall use Reasonable Efforts to obtain, such required authorizations or approvals as soon as reasonably practicable.

17.5 Third Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the

Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest, and, where and as permitted their assigns.

17.6 Severability

If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other governmental authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

17.7 Counterparties

This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

17.8 No Partnership

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit

ARTICLE XVIII – REPRESENTATIONS AND WARRANTIES

18.1 General

Each Party hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Party during the full time the Agreement is effective:

18.1.1 Good Standing

Such Party is duly organized or formed, as applicable, validly existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) in which it is incorporated and operates as stated in the preamble of the Agreement.

18.1.2 Authority

Such Party has the right, power and authority to enter into the Agreement, to become a party thereto and to perform its obligations thereunder. The Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

18.1.3 No Conflict

The execution, delivery and performance of the Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

18.1.4 Consent and Approval

Such Party has sought or obtained, or, in accordance with the Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of such Agreement and it will provide to any Governmental Authority notice of any actions under such Agreement that are required by Applicable Laws and Regulations.

18.1.5 Choice of Law; Choice of Forum

This Agreement, and all amendments and modifications hereof, and all documents and instruments executed and delivered hereto or in connection herewith, shall be governed by and construed and enforced in accordance with the internal Applicable Laws and Regulations of the Commonwealth of Virginia, without regard to its principles of conflict of laws, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed by the laws of the Commonwealth of Virginia, without regard to its principles of conflict of laws. All judicial actions or proceedings brought against any Party with respect to this Agreement shall be brought in any state or federal court of competent jurisdiction in the Commonwealth of Virginia; provided, however, that if a federal court in the United States Court for the Eastern District of the Commonwealth of Virginia has and accepts jurisdiction over the matter at issue, the judicial action or proceeding shall be brought in such federal court. Each Party by its execution and delivery of this Agreement, each Party accepts, generally and unconditionally, the exclusive jurisdiction of the aforesaid state and federal courts. Each Party irrevocably waives any objection (including any objection based upon the grounds of “*forum non conveniens*”) that it now or hereafter may have to the bringing or prosecution of any such action or proceeding with respect to this Agreement or the documents and instruments contemplated hereby in the Commonwealth of Virginia.

18.1.6 Waiver of Jury Law

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RESULTING FROM, ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY

ARTICLE XIX - TAX LIABILITY

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of this Article XIX shall be applicable.

19.1 IRS Safe Harbor Provisions for Non-Taxable Status

To the extent required, this Agreement shall set forth the Project Developer's agreement to conform with all requirements of the Internal Revenue Service ("IRS") (e.g., the "safe harbor" section 118(a) and 118(b) of the Internal Revenue Code of 1986, as amended and interpreted by Notice 2016-36, 2016-25 I.R.B. (6/20/2016)) that would confer nontaxable status on some or all of the transfer of property, including money, by Project Developer to DEV for payment of the Costs of construction of the Project Developer Interconnection Facilities, DEV, based on such agreement and on current law, shall treat such transfer of property to it as nontaxable income and, except as provided in Section 19.4.2 below, shall not include income taxes in the Costs of Project Developer Interconnection Facilities that are payable by Project Developer under the Generation Interconnection Agreement or this Agreement. Project Developer shall document its agreement to conform to IRS requirements for such non-taxable status in the Generation Interconnection Agreement or this Agreement.

19.2 Tax Indemnity

If Project Developer is an entity other than Virginia Electric and Power Company, Project Developer shall indemnify DEV for any Costs that DEV incurs in the event that the IRS and/or a state department of revenue ("State") determines that the property, including money, transferred by Project Developer to DEV with respect to the construction of the Project Developer Interconnection Facilities is taxable income to DEV. Project Developer shall pay to DEV, on demand, the amount of any income taxes that the IRS or a State assesses to DEV in connection with such transfer of property and/or money, plus any applicable interest and/or penalty charged to DEV. In the event that DEV chooses to contest such assessment, either at the request of Project Developer or on its own behalf, and prevails in reducing or eliminating the tax, interest and/or penalty assessed against it, DEV shall refund to Project Developer the excess of its demand payment made to DEV over the amount of the tax, interest and penalty for which DEV is finally determined to be liable. Project Developer's tax indemnification obligation under this section shall survive any termination of the Generation Interconnection Agreement or this Agreement.

19.3 Taxes Other Than Income Taxes

Upon the timely request by Project Developer, and at Project Developer's sole expense, DEV shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against DEV for which Project Developer may be required to reimburse DEV under the terms of this Agreement. Project Developer shall pay to DEV on a periodic basis, as invoiced by DEV, DEV's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Project Developer and DEV shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Project Developer to DEV for such contested taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due

and payable after appeal, Project Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by DEV.

19.4 Income Tax Gross-Up.

If Project Developer is an entity other than Virginia Electric and Power Company, the provisions of section 19.4 shall be applicable.

19.4.1 Additional Security

In the event that Project Developer does not provide the safe harbor documentation required under Section 19.1 prior to execution of the Generation Interconnection Agreement or this Agreement, within the later of 15 days after execution of the Generation Interconnection Agreement or this Agreement, DEV shall notify Project Developer in writing of the amount of additional Security that Project Developer must provide. The amount of Security that Project Developer must provide initially pursuant to the Generation Interconnection Agreement or this Agreement shall include any amounts described as additional Security under this Section 19.4 regarding income tax gross-up.

19.4.2 Amount

The required additional Security shall be in an amount equal to the amount necessary to gross up fully for currently applicable federal and state income taxes the estimated costs of any Project Developer Interconnection Facilities for which Project Developer previously provided Security. Accordingly, the additional Security shall equal the amount necessary to increase the total Security provided to the amount that would be sufficient to permit DEV to receive and retain, after the payment of all applicable income taxes (“Current Taxes”) and taking into account the present value of future tax deductions for depreciation that would be available as a result of the anticipated payments or property transfers (the “Present Value Depreciation Amount”), an amount equal to the estimated costs of the Project Developer Interconnection Facilities for which Project Developer is responsible under the Generation Interconnection Agreement or this Agreement. For this purpose, Current Taxes shall be computed based on the composite federal and state income tax rates applicable to DEV at the time the additional Security is received, determined using the highest marginal rates in effect at that time (the “Current Tax Rate”); and the Present Value Depreciation Amount shall be computed by discounting DEV’s anticipated tax depreciation deductions associated with such payments or property transfers by its current weighted average cost of capital.

19.4.3 Time for Payment

Project Developer must provide the additional Security, in a form and with terms as required by this Agreement, within 15 days after its receipt of DEV’s notice under this section.

19.5 Tax Status

Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in the Generation Interconnection Agreement, this Agreement or the Construction Service Agreement is intended to adversely affect DEV's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, DEV and Project Developer have caused this Agreement to be executed by their respective authorized officials.

(PJM Queue #____)

**Project Developer: [If third party is Project Developer: Name of Project Developer]
[If VEPCO is Project Developer: Virginia Electric and Power Company d/b/a Dominion Energy Virginia (Power Generation)]**

By: _____
Print Name: _____ Title _____ Date _____

DEV: Virginia Electric and Power Company d/b/a Dominion Energy Virginia (Electric Transmission)

By: _____
Print Name: _____ Title _____ Date _____

APPENDIX A

FACILITIES

PROJECT DEVELOPER INTERCONNECTION FACILITIES

[insert description]

DEV INTERCONNECTION FACILITIES

[insert description]

Point of Interconnection (POI) and Point of Change of Ownership (PCO)

[Insert description of POI and PCO]

APPENDIX B

SCOPE OF WORK

A. Facilities to be Built by DEV

[Specify Facilities To Be Constructed or state “None”]

B. Facilities to be Built by Project Developer.

Project Developer is hereby permitted to build in accordance with and subject to the conditions and limitations set forth in this Agreement, the following Facilities:

[Specify Facilities to Be Constructed or state “None”]

APPENDIX C

SCHEDULE OF WORK

[insert]

APPENDIX D

APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS

APPENDIX E

SECURITY

[If third party is Project Developer: The amount of cash Security due under this Agreement shall be \$ _____, payable upon submission of this Agreement to DEV for execution.]

[If VEPCO is the Project Developer: The amount of cash Security due under this Agreement shall be \$0.00 as DEV and Project Developer are the same entity. *See Pacific Gas and Electric Co.*, 128 FERC ¶ 61,175 (2009); *Midcontinent Independent System Operator*, 156 FERC ¶ 61,166 (2016).]

This Appendix E shall control and shall supersede any conflicting or inconsistent estimates reflected in the Project Developer Study.