

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2019, by and between VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service company (“DEV”) and \_\_\_\_\_, a \_\_\_\_\_ (“Company”). DEV and Company, individually, are each a Party, and collectively, they are the Parties.

### RECITALS

**WHEREAS**, Company intends to participate in DEV’s \_\_\_\_\_, 2019 Request for Proposals Solicitation for Solar and Onshore Wind Power Supply Generation (the “RFP”);

**WHEREAS**, the Parties need to exchange certain confidential and proprietary information (i) in order to analyze, evaluate and consummate the RFP; and (ii) in the event that Company’s RFP offer is ultimately selected, in order to perform under any resulting contract to provide New Photovoltaic Solar or Onshore Wind Power Supply Generation; and

**WHEREAS**, each Party is willing to make such disclosure only pursuant to the terms of this Agreement.

**NOW THEREFORE**, because of the above Recitals which are incorporated in this Agreement and as an inducement to and in consideration of the disclosure of such confidential, trade secret and proprietary information by one Party to the other, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Capitalized terms used in this Agreement but not defined herein shall have the meaning set forth in the RFP. For purposes of this Agreement:

- a. “**Disclosing Party**” shall mean the Party hereto that is disclosing Confidential Information to the other Party; and
- b. “**Receiving Party**” shall mean the Party hereto that is receiving Confidential Information from the other Party.

2. For purposes of this Agreement, “**Confidential Information**” shall mean any information or material that is owned or controlled by Disclosing Party (together with all reports, analyses, compilations or other documents or materials prepared by Receiving Party or its Representatives (defined below) that contain or otherwise reflect or are based on any Confidential Information). It also includes information of third parties in possession of Disclosing Party that Disclosing Party is obligated to maintain in confidence. Confidential Information subject to this Agreement may be in intangible form, such as unrecorded knowledge, ideas or conceptions or information communicated orally or by visual observation, or may be embodied in tangible form, such as a document. The term “document” includes written memoranda, drawings, training materials, specifications, notebook entries, photographs, graphic representations, firmware, computer information or software, information communicated by other electronic or magnetic media, or models. Confidential Information shall **not** include information that:

- a. is already in the public domain or becomes available to the public other than through a breach of this Agreement or negligent act or omission or willful misconduct of the Receiving Party or its Representatives;
- b. is acquired in good faith from a third party and at the time of acquisition the Receiving Party has no knowledge or reason to believe that such information was wrongfully obtained or disclosed by the third party;
- c. is independently developed by Receiving Party from information not defined as “Confidential Information” in this Agreement, as evidenced by Receiving Party’s written records; or
- d. is disclosed to Receiving Party by Disclosing Party and, at the time of such disclosure (or thereafter) Disclosing Party states in writing that it is not “Confidential Information”.

3. In consideration of the disclosure of the Confidential Information by Disclosing Party to Receiving Party, except as otherwise provided in this Agreement, Receiving Party agrees that the Confidential Information shall be kept strictly confidential, shall be used solely with respect to the RFP and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy or other reproduction or electronic transmission (including facsimile transmissions, whether written or electronic), without the Disclosing Party's prior written consent. The Receiving Party shall promptly notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of any Confidential Information.

4. Receiving Party agrees that it will disclose, use or permit the use of the Confidential Information of Disclosing Party only for the purpose of evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP, and/or performing under any resulting contract to provide New Photovoltaic Solar or Onshore Wind Power Supply Generation and associated products (the “**Project**”), and for no other purpose, unless consented to in writing by the Disclosing Party. In addition, Company agrees that, without the written consent of DEV, Company and its affiliates will not, directly or indirectly, consult or hold discussions with or share Confidential Information with, or enter into any agreement, arrangement or understanding with any co-investor or source of equity financing regarding the RFP. Company further agrees that neither Company nor any of its Representatives will, without the prior written consent of DEV, directly or indirectly enter into any agreement, arrangement or understanding with any other person that has or would have the effect of requiring such person to provide Company with financing, other potential sources of capital, or financial advisory or other services on a basis that would exclude such other person from providing similar services to any person in connection with a possible transaction involving the RFP.

5. Notwithstanding anything in this Agreement to the contrary, Receiving Party may disclose Confidential Information without Disclosing Party's prior written consent under the following circumstances and no others:

a. when such disclosure by Receiving Party is required under applicable law, governmental proceedings or by a valid subpoena or other court or governmental order, decree, regulation or rule or applicable stock exchange rule; provided, however, that if disclosure is required under this provision, Receiving Party shall advise, if permitted, Disclosing Party of the requirement to disclose Confidential Information prior to such disclosure and as soon as reasonably practicable after Receiving Party becomes aware of such required disclosure; and further provided that upon the request of the Disclosing Party, the Receiving Party agrees to cooperate in good faith with and at the expense of the Disclosing Party in any reasonable and lawful actions which the Disclosing Party takes to resist such disclosure, limit the information to be disclosed or limit the extent to which the information so disclosed may be used or made available to third parties.

b. when such disclosure is made to the Receiving Party and its affiliates and their respective officers, directors, employees, attorneys, advisors, subcontractors, vendors, financing parties, accountants and consultants who have a need to know to assist the Receiving Party in assessing the Project (collectively and including the Receiving Party's affiliates, the "**Representatives**"). For purposes of this Agreement, "affiliate" shall mean any person or entity controlling, controlled by or under common control with Receiving Party.

c. when such disclosure is made to any governmental or quasi-governmental authority (including, without limitation, the State Corporation Commission of Virginia, the public advocate and similar stakeholders), whether through regulatory proceedings or other communications and such information is clearly identified and prominently labeled as "Confidential Information," or "Extraordinarily Sensitive Information" as to competitively sensitive information, in accordance with this Agreement. In the context of a regulatory proceeding, the Receiving Party shall not disclose Confidential Information to any formal party to the proceeding without an applicable protective ruling or order issued by the presiding governmental or quasi-governmental authority in place.

6. Receiving Party agrees that it shall be responsible for ensuring that its Representatives to whom the Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or in any unauthorized manner. Receiving Party shall be liable to Disclosing Party for any breach of the terms and conditions hereof by its Representatives. Receiving Party also agrees that it shall be responsible for ensuring that its Representatives to whom the Confidential Information is disclosed under this Agreement return such information to the Disclosing Party or destroy it in accordance with the terms of this Agreement. Receiving Party acknowledges that it is aware, and

will advise its Representatives of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities, which may include certain portions of Confidential Information, and on the communication of such information to any other person.

7. Nothing contained in this Agreement shall be construed as granting or conferring any right or license, express or implied, in or to any Confidential Information disclosed to the Receiving Party, including without limitation any patent, trademark and/or copyright. No disclosure of any Confidential Information hereunder shall be construed as a public disclosure of such information by either Party for any purpose whatsoever.

8. Receiving Party acknowledges that there is no obligation for Disclosing Party to provide Confidential Information to Receiving Party. The Confidential Information shall remain the property of the Disclosing Party, and the Disclosing Party may request the return or destruction thereof at any time upon giving written notice to the Receiving Party. Within 30 days of the receipt of such notice, the Receiving Party shall return or destroy all of the original Confidential Information that was provided in written or document form and shall destroy or cause the destruction of all copies and reproductions (both written and electronic) of such information in its possession and in the possession of all persons to whom it was disclosed by Receiving Party except those specified in Sections 5(a) or (c) of this Agreement. Receiving Party also shall destroy or cause the destruction of abstracts, notes, memoranda or other documents containing, in whole or in part, any Confidential Information. Notwithstanding the foregoing, nothing in this Agreement shall in any way prohibit or restrict the Receiving Party or its Representatives from retaining in its legal archives copies of Confidential Information solely for the purpose of complying with its regulatory recordkeeping requirements; provided that the Receiving Party and such Representatives shall continue to keep such information confidential in accordance with the terms of this Agreement.

9. The Parties acknowledge that the Confidential Information is valuable and unique and that disclosure in breach of this Confidentiality Agreement will result in irreparable injury to Disclosing Party. The Parties agree that, in the event of a breach or threatened breach of the terms of this Agreement by Receiving Party, Disclosing Party shall be entitled to seek relief both at law and in equity, including injunctive relief and specific performance to enforce the terms of this Agreement, without proof of any actual or special damages and without the requirement that the Disclosing Party post a bond or surety in connection with any such injunctive relief. In addition to injunctive relief, Disclosing Party shall have all other rights and remedies afforded it by law; ***provided, however***, that notwithstanding the foregoing or any other provision to the contrary in this Agreement, neither Party shall be liable to the other Party for indirect, incidental, special, punitive or consequential damages (including, without limitation, lost profits) under, arising out of, or due to or in connection with such Party's performance or non-performance of this Agreement or any of its obligations herein, whether based in contract, tort (including without limitation, negligence), strict liability, warranty or otherwise.

10. Disclosing Party makes no representations or warranties, express or implied, as to the quality, accuracy, completeness or reliability of the Confidential Information disclosed to the Receiving Party. Disclosing Party, its directors, officers and employees (nor those of its Representatives) shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Receiving Party.

11. With the exception of the restrictions in Section 4, nothing in this Agreement nor the furnishing of Confidential Information pursuant hereto shall be construed in any way as obligating either Party to enter into any further agreement, negotiation or transaction with the other or to refrain from entering into an agreement, negotiation or transaction with any other person, including without limitation any person engaged in the same or similar line of business as the other Party hereto. Furthermore, nothing in this Agreement creates or shall be deemed to create (i) any employment, joint venture or agency relationship between the Parties, (ii) a requirement to disclose Confidential Information or (iii) any duties other than those expressly set forth herein.

12. Company agrees and covenants that, in further consideration of the collective benefit to all persons participating in the RFP process of finality in that process, whether or not Company's RFP offer is selected by DEV, Company will not, nor will it permit its Representatives to, without the prior written consent of DEV, oppose or take any other action adverse to, the issuance by any governmental agency of any consent or approval, or the granting of any other consent or approval, required for, or sought in connection with, the consummation of any transactions related to the RFP.

13. Either Party may terminate this Agreement by providing written notice to the other. Notwithstanding any such termination, all rights and obligations hereunder shall survive for a period of three (3) years with respect to the Confidential Information disclosed prior to the date of such termination.

14. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any assignment of this Agreement by Company without DEV's prior written consent shall be null and void and of no effect.

15. Except as may be required by law, neither Party hereto nor their Representatives will disclose to any person either the fact that discussions or negotiations are taking place between them nor any terms, conditions or other facts with respect to any transaction that may be proposed or undertaken, including the status thereof.

16. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia, without regard to the conflicts of law principles thereof. This Agreement represents the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information; and it supersedes and cancels all prior communications, understandings and agreements between the Parties with respect to the disclosure of Confidential Information for the Project, whether oral, expressed or implied.

17. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by email or facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

*[Signature Page Follows]*

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

**VIRGINIA ELECTRIC AND POWER COMPANY**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_