

IMPLEMENTING AGREEMENT

by and between

DOMINION VIRGINIA POWER

and the

U.S. FISH AND WILDLIFE SERVICE

This IMPLEMENTING AGREEMENT (“IA”), which implements the Madison Cave Isopod (*Antrolana lira*), Low-Effect Habitat Conservation Plan (“Plan”), is entered into as of the date of last signature below by the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (“USFWS”), and Virginia Electric and Power Company, d/b/a Dominion Virginia Power (“DVP”), hereinafter collectively called the “Parties” and individually, a “Party.”

1.0 RECITALS

The Parties have entered into this IA in consideration of the following facts:

1.1 The USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the Endangered Species Act (“ESA”) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (“MBTA”) (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (“BGEPA”) (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

1.2 The ESA prohibits the “take” of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the USFWS may issue permits authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit (“ITP”), the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate the maximum extent practicable the impact of such take. DVP submitted its application for an ITP to the USFWS on July 1, 2011, amended the application in response to comments from the USFWS on July 14, 2011;

1.3 DVP plans to construct the Warren County Power Station Project (“the Project”), located in Warren County, Virginia, as more fully described in Section 3.0 of the Plan;

1.4 DVP owns the Covered Lands upon which the Project is located. Warren County owns the Covered Lands protected by the Deed of Open Space Land Designation described in § 5.3 of the Plan;

1.5 DVP, with technical assistance from the USFWS, has prepared the Plan and related documents covering certain listed "Covered Species" under the jurisdiction of USFWS (as further defined below);

1.6 DVP has developed a series of conservation measures to conserve listed species and to meet other applicable requirements of the ESA to support issuance of ITP by USFWS pursuant to Section 10(a)(1)(B) of the ESA for the permit term described in Section 6.0 herein;

1.7 DVP has developed the Plan, which is designed to substantively address effects to Covered Species and benefit their local and regional populations; the Plan causes DVP to, among other things, (a) engage in certain habitat enhancement actions for certain Covered Species; (b) adjust Project construction to implement certain conservation actions; and (c) implement specified conservation actions;

1.8 The IA defines the Parties' roles and responsibilities and provides a common understanding of actions that will be undertaken under the Plan and ITP, among other things, to minimize and mitigate the take of Covered Species (described in Section 5 of the Plan) from Covered Activities (described in Section 3 of the Plan) within the Covered Lands (described in Section 1.2, Section 2 and Section 5.3 of the Plan); and

1.9 Adequate consideration supports this Agreement. DVP is agreeing to substantial commitments of financial resources, human resources, and other assets to conserve and manage the Covered Species and their habitats in accordance with the Plan and ITP, in exchange for the assurances provided by the USFWS in the ITP and this Agreement.

THEREFORE, the Parties hereto hereby agree as follows:

2.0 TERMS USED

Terms defined and used in this IA shall have the same meaning as those terms are defined in the Plan, the ESA, and USFWS' implementing regulations, except where specifically noted in Section 3.0. herein.

3.0 DEFINITIONS

The following terms shall have the following meanings for all purposes of this IA:

2.1 "IA" means this Implementing Agreement as the same may be amended from time to time.

2.1 "Covered Activities" means those activities specified in Section 3 of the Plan for which incidental take coverage under the ESA is authorized in the ITP.

2.2 "Covered Lands" means the geographic area described in Section 1.2, Section 2 and Section 5.3 of the Plan in which Covered Activities will occur and is synonymous with the property as described on Exhibit A to the Plan, as it may be modified from time to time in accordance with the terms hereof.

2.3 “Covered Species” means the Madison Cave Isopod (*Antrolana lira*) (“MCI”).

2.4 “ESA” means the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, as the same may be amended or reauthorized from time to time and any successor statute or statutes.

2.5 “ITP” means the incidental take permit to be issued by the USFWS to DVP as provided in this IA as the same may be amended or assigned from time to time in accordance with the terms hereof.

2.6 “Plan” means the Madison Cave Isopod (*Antrolana lira*), Low-Effect Habitat Conservation Plan dated June 2011, prepared by GAI Consultants Inc., and submitted by DVP to the USFWS.

4.0 RELATIONSHIP BETWEEN THE PLAN AND THE IA

The Plan and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this IA and the Plan, the terms of this IA will control only for the purposes of interpreting this IA. The provisions of the Plan, ITP, and this IA shall be interpreted to be consistent with and complementary to each other. This IA is not intended to negate or nullify any provision of the ITP and/or the Plan.

5.0 PURPOSES

The purposes of this IA are:

5.1 To ensure implementation of the terms of the Plan and ITP;

5.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the Plan, ITP and IA; and

5.3 Provide assurances to DVP in the case of changed or unforeseen circumstances that, as long as the terms of the Plan and the ITP issued pursuant to the Plan and this IA are fully and faithfully performed, no additional mitigation will be required with respect to Covered Species except as provided for in the Plan, ITP, this IA, or as otherwise required by law (see 50 C.F.R. § 17.22(b)(5)).

6.0 TERM

6.1 Initial ITP Term. This IA shall become operative on the effective date of the ITP and shall be effective for the duration of the ITP (nine years), except for any continuing obligation that survive ITP termination, suspension or revocation as stated herein.

6.2 Renewal. Renewal of the ITP pursuant to the USFWS regulations in effect of the time of renewal shall constitute an extension of the Plan, and this IA may be amended and renewed for the same period of time as the amended and renewed ITP.

7.0 FUNDING

7.1 In General. DVP warrants that it has, and shall expend, such funds as may be necessary to fulfill its obligations under the ITP, the Plan, and this IA. DVP shall promptly notify USFWS of any material change in DVP's financial ability to fulfill its obligations under the Plan, ITP, and this IA.

7.2 Financial Assurance for Monitoring. To ensure full performance of the monitoring obligations contained in Section 6 of the Plan and the financial assurance obligations contained in Section 8 of the Plan, DVP shall, upon receipt of the ITP, execute the Research Monitoring Contract with DCR described in Section 6.0 of the Plan to fund eight years of additional MCI research and water monitoring to end on January 1, 2020. Coverage under the ITP will not begin until such Research and Monitoring Contract is executed, thereby precluding the need for further funding assurances. During the additional eight years of monitoring, invoices submitted by DCR for the previous year's work will be paid in full by Dominion.

7.3 Financial Assurance for Off-site Mitigation. To ensure full performance of off-site mitigation obligations contained in Section 5.3 of the Plan, DVP shall, upon receipt of the ITP, ensure the proper recordation of the Deed of Designation described in Section 5.3 of the Plan. Coverage under the ITP will not begin until such Deed of Designation is recorded, thereby precluding the need for further funding assurances.

8.0 RESPONSIBILITIES OF THE PARTIES

8.1 DVP's Responsibilities. In consideration of the issuance of an ITP authorizing any incidental take which may result from activities conducted in accordance with the Plan, and in consideration of the assurances provided by the ITP, the USFWS regulations and IA, DVP agrees to:

(a) Fully and faithfully perform all obligations in the Plan, the ITP and this IA, including, but not limited to, all the conservation management and monitoring measures, maintaining and operating the Project's upgraded stormwater treatment system as described in Section 5.2 of the Plan, as well as those measures deemed necessary for Adaptive Management or to respond Changed Circumstances as identified through processes described in the Plan.

(b) Fully fund all costs needed to perform its affirmative obligations under the ITP and the Plan, including but not limited to costs associated with (i) conducting quarterly collection of data including temperature, conductivity, and water levels at Brother Dave's Cave and Power Plant Pit and Madison Saltpeter Cave in Augusta County as a reference site for an eight year period as described in Section 6 of the Plan; (ii) maintaining and operating the Project's upgraded stormwater treatment system as described in Section 5.2 of the Plan; and (iii) preserving high quality MCI habitat as described in Section 5.3 of the Plan.

(c) Promptly notify USFWS if, for any reason (including, but not limited to, court rulings or lack of sufficient funds), DVP has or is likely to become unable to fulfill any obligation required by the Plan, the ITP or IA.

(d) Promptly respond to all notices from USFWS in accordance with the Plan, ITP or IA, and inquiries from USFWS regarding the same.

(e) Promptly notify USFWS of any lawsuits filed against DVP or written notices or letters expressing intent to file suit challenging the issuance of or compliance with the ITP.

(f) Notify USFWS in writing within ten (10) days of the occurrence of any of the following: (1) any change in the registered name of DVP (2) the dissolution of DVP (3) the sale or conveyance of DVP (4) bankruptcy proceedings by DVP as well as whether DVP is in receivership; (5) when DVP will no longer perform the Covered Activities in the Covered Lands; (6) the revocation or suspension of DVP's corporate authorization to do business in the state or states in which it is registered to do business and, (7) DVP is disqualified from performing Covered Activities under the ITP for either of the disqualifying factors circumstances listed in 50 C.F.R. § 13.21(c) and (d), as may be amended, or under any future USFWS regulation.

8.2 USFWS' Responsibilities. USFWS agrees pursuant to its authorities to:

(a) Fully and faithfully perform all obligations required under this IA, the Plan and ITP; in particular, upon execution of the IA, and satisfaction of all other applicable legal requirements, issue an ITP to DVP authorizing specified incidental take of Covered Species which may result from activities conducted in accordance with the Plan. The ITP will include the no surprises assurances set forth in 50 C.F.R. § 17.22(b)(5) and articulated in the Plan at Section 10.

(b) As of the effective date of the ITP, and provided there are no conditions in the ITP that must be satisfied prior to DVP engaging in an authorized take, DVP may take the Covered Species while carrying out Covered Activities in the Covered Lands, as authorized by and subject to the conditions of the ITP and the Plan.

(c) Cooperate with and provide technical assistance to DVP as well as attend meetings requested by DVP to consider matters relevant to the Project, the Plan, and the ITP, or any of the operations or other activities contemplated there-under; promptly respond to all notices received from DVP in accordance with the Plan, ITP and IA.

(d) Promptly notify DVP if, for any reason (court ruling or lack of appropriated funds), USFWS is unable to fulfill any obligation associated with the Plan, ITP or this IA.

(e) Promptly notify DVP of any lawsuits filed against USFWS, requests for disclosures of documents received under the Freedom of Information Act pertaining to the ITP, or written notices or letters expressing an intent to file suit against USFWS challenging the issuance of, or DVP's compliance with, the ITP or any federal law relating to the ITP.

9.0 CHANGED CIRCUMSTANCES AND ADAPTIVE MANAGEMENT

9.1 Changed Circumstances and Adaptive Management Provided for in the Plan. Section 7 of the Plan contains the complete list of Changed Circumstances and adaptive management and describes those specific conservation and mitigation measures that DVP agrees to implement where, pursuant to the Plan, they are deemed necessary to respond to the Changed Circumstances. Any revisions or amendments to the Plan or ITP will be determined on a case-by-case basis, and undertaken in accordance with Amendment Process in Section 11 of the Plan, and referenced in Section 15 of this IA.

9.2 Changed Circumstances Not Provided for in the Plan. If additional conservation and mitigation measures beyond those provided for in the Plan are deemed necessary to respond to Changed Circumstances, USFWS may not require any such additional conservation and mitigation measures without DVP's consent, provided that the Plan is being properly implemented.

10.0 REPORTING, INSPECTIONS AND MONITORING

10.1 Reporting. DVP will provide USFWS with the reports described in Section 6.0 of the Plan at the notice address then in effect for USFWS, and will provide any available information reasonably requested by USFWS to verify the information contained in such reports. DVP will provide USFWS, within thirty (30) calendar days, any additional information requested to determine whether DVP is in compliance with the ITP, Plan and IA.

10.2 Certification of Reports. All reports shall include the following certification by a responsible company official who supervised or directed preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

10.3 Inspections. USFWS may inspect the Covered Lands in accordance with its applicable regulations and law. Except where USFWS has reason to believe that DVP may be acting in violation of applicable laws or regulations or in material violation of the ITP or this IA, USFWS will provide reasonable advance notice of its inspection and will allow DVP's representatives to accompany USFWS' representatives making such inspection. For the purpose of this paragraph, USFWS is intended to mean agency employees and law enforcement agents.

11.0 SUSPENSION OF THE ITP

11.1 In General. In accordance with the process contained in applicable regulations, USFWS may suspend the ITP for any material violation by DVP of the ITP, the Plan, or this IA, or any other basis for suspension expressly provided for in a USFWS regulation. The USFWS permit suspension regulation is currently 50 C.F.R. § 13.27. The procedures for requesting reconsideration of the USFWS' decision to suspend an ITP are currently 50 C.F.R. § 13.29.

11.2 Process for Suspension. The ITP may be suspended in whole or in part, i.e., only to Covered Species, portions of the Covered Lands, or certain Covered Activities. In deciding whether to suspend the ITP, USFWS shall apply the governing regulatory requirements. Such suspension shall remain in effect until the USFWS determines that DVP has corrected the deficiencies. The USFWS agrees to act expeditiously in making such determinations.

When USFWS finds that there are valid grounds for suspending the ITP, it shall notify DVP in writing of the proposed suspension by certified or registered mail. The notice, which may be amended by USFWS at any time, will identify the ITP; the reason(s) for the suspension; if a partial suspension, the Covered Activities and Take Species as to which the suspension applies; and the actions necessary to correct the deficiencies and will inform DVP of its right to object to the proposed suspension pursuant to regulation. Upon receipt of the proposed notice,

DVP may file a written objection to the proposed action within forty-five (45) calendar days of the date of the receipt of the notice providing DVP's reasons for objecting to the proposed suspension as well as any supporting documentation. USFWS will issue a written decision on the suspension within forty-five (45) calendar days after the end of the objection period, which will include its decision and its reasons for such as well as information concerning DVP's right to request reconsideration of the decision and the procedures for doing so.

Upon notification that the ITP has been suspended and after all appeal procedures and periods have been exhausted, DVP may be required to surrender the ITP to USFWS. Notwithstanding suspension, DVP shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and other such continued monitoring explicitly required by the Plan or the ITP.

13.0 RIGHTS TO TERMINATE, RELINQUISH, AND REVOKE THE ITP

13.1 Rights of DVP to Terminate the ITP. DVP reserves the right to relinquish the ITP prior to expiration by providing thirty (30) days advance written notice to the USFWS as provided by 50 C.F.R. § 13.24, or whatever successor regulations exist at the time DVP elects to terminate. DVP may surrender the ITP by returning it to the USFWS along with a written statement of its intent to surrender and cancel the ITP. The ITP shall be deemed void and canceled upon receipt of the permit and notice by the USFWS. No refund of any fees paid for issuance of the ITP or of any other fees or costs associated with the Covered Activities shall be made when the ITP is surrendered for cancellation for any reason prior to the expiration date stated on the face of the ITP. Notwithstanding any surrender of the ITP, DVP shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such monitoring, or other measures as may be required pursuant the Plan, or the ITP. The ITP shall be deemed canceled only upon a determination by the USFWS that any outstanding monitoring, minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP. Surrender of the ITP does not relieve DVP of its obligation to comply with the ESA.

13.2 Rights of USFWS to revoke the ITP. The ITP may be revoked by USFWS only in accordance with 50 C.F.R. §§ 13.28 and 17.22(b)(8). In accordance with 50 C.F.R. § 13.28, USFWS may revoke the ITP in whole or in part if DVP willfully violates any Federal or State statute or regulation, Indian tribal law or regulation, or any law or regulation of a foreign country that involves a violation of the conditions of the ITP or of the laws or regulations governing the Covered Activities. The ITP also may be revoked if DVP fails within sixty (60) days to correct deficiencies that were the cause of suspension of the ITP unless USFWS determines and notifies DVP in writing that a longer period of time is necessary to correct the deficiencies; becomes disqualified under 50 C.F.R. § 13.21(c); or a change occurs in the statute or regulation authorizing the ITP that prohibits continuation of the ITP. Pursuant to 50 C.F.R. §§17.22(b)(8) and 17.32(b)(8), the ITP also may be revoked if continuation of the Covered Activities would be inconsistent with the criterion set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

When USFWS believes there are valid grounds for revoking the ITP, it will notify DVP in writing of the proposed revocation by certified or registered mail. The notice, which may be amended by USFWS at any time, will identify the ITP, whether the revocation is as to part or all of the ITP, the Covered Activities and Take Species as to which the revocation applies, the reason(s) for the revocation, the proposed disposition of the wildlife, if any. The notice also shall inform DVP of its right to object to the proposed revocation. Upon receipt of the proposed notice, DVP may file a written objection to the proposed action within forty-five (45) calendar days of the date of the notice providing its reasons for objecting to the proposed revocation as well as any supporting documentation.

USFWS will issue a written decision on the revocation within forty-five (45) days after the end of the objection period. The written decision will include USFWS' decision and its reasons for such as well as information concerning DVP's right to request reconsideration of the decision under 50 C.F.R. § 13.29 and the procedures for doing so. Upon notification that the ITP has been revoked and after all appeal procedures have been exhausted, DVP may be required to surrender the ITP to USFWS. Notwithstanding revocation, DVP shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such monitoring or other required by the Plan, or the ITP. The ITP shall be deemed canceled only upon a determination by USFWS that such minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP.

13.3 Effect of Suspension, Termination, and Revocation. Any termination, relinquishment, or revocation of an ITP automatically terminates the Plan and this IA as between DVP and USFWS. Activities thereafter conducted on the Project will be subject to all applicable provisions of the ESA and related regulations as if the ITP had never been issued. A suspension, termination or revocation by USFWS limited to one or more species but less than all of the species then provided for in the ITP shall apply only to the affected species. The ITP and this IA shall continue in full force and effect as to all other Covered Species.

13.4 Post-Termination Mitigation. The Parties acknowledge that DVP's compliance with the ITP, the Plan and this IA will result in DVP having fully mitigated for any incidental take of any Covered Species prior to the occurrence of such take. Therefore, if DVP is in compliance with the terms of this IA, upon termination, relinquishment, or revocation of the ITP, DVP shall have no further obligations hereunder or under the ESA with regard to Covered Species or Covered Lands.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In General. Except as set forth below, each Party shall have all remedies otherwise available (including specific performance and injunctive relief) to enforce the terms of this IA, the ITP, and the Plan.

14.2 No Monetary Damages. No Party shall be liable in damages to any other Party for any breach of this IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this IA or any other cause of action arising from this IA.

14.3 Enforcement Authority of the United States. Nothing contained in this IA is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

14.5 Dispute Resolution. The Parties recognize that good faith disputes concerning implementation of, or compliance with, or suspension, revocation or termination of this IA, the Plan or the ITP may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the dispute resolution procedures set forth in this Paragraph or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete dispute resolution. If USFWS has reason to believe that DVP may have violated the ITP, the Plan or this IA with respect to any Covered Species, it will notify DVP in writing of the specific provisions which may have been violated, the reasons USFWS believes DVP may have violated them, and the remedy the USFWS proposes to impose to correct or compensate for the alleged violation. DVP will then have sixty (60) days, or such longer time as may be mutually acceptable, to respond. If any issues cannot be resolved within thirty (30) days, or such longer time as may be mutually acceptable, after DVP's response is due, the Parties will consider non-binding mediation and other alternative dispute resolution processes. The Parties reserve the right, at any time without completing informal dispute resolution, to use whatever enforcement powers and remedies are available by law or regulation, including but not limited to, in the case of the USFWS, suspension or revocation of the ITP and civil or criminal penalties.

15.0 LIMITATIONS, EXTENT OF ENFORCEABILITY, SURVIVAL

15.1 No Surprises Assurances. Pursuant to Section 8.2(a), herein, USFWS is obligated to issue the ITP with the regulatory assurances described more fully in Section 10 of the Plan (the Federal "No Surprises" Rule, 63 Fed. Reg. 8859 (Feb. 23, 1998) (codified at 50 C.F.R. §§ 17.3, 17.22(b)(5), 17.32(b)(5))). As further detailed in the rule, so long as DVP is properly implementing the Plan, the IA, and the ITP, no additional commitment of land, water, or financial compensation will be required with respect to Covered Species, and no restrictions on the use of land, water, or other natural resources will be imposed beyond those specified in the Plan without the consent of DVP. Application of the rule to changed circumstances is described herein at Section 9.0. With respect to unforeseen circumstances, USFWS bears the burden of demonstrating that they exist using the best available scientific and commercial data available while considering certain factors. (50 C.F.R. §§ 17.22(b)(5)(iii)(C)).

In negotiating unforeseen circumstances, the USFWS will not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources beyond the level otherwise agreed upon for the species covered by the Plan without the consent of DVP. (50 C.F.R. §§ 17.22(b)(5)(iii)(A)). If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, USFWS may require additional measures of DVP where the Plan is being properly implemented only if such measures are limited to modifications within conserved habitat areas, if any, or to the Plan's operating conservation program for the affected species, and maintain the original terms of the plan to the maximum extent possible. (50 C.F.R. §§ 17.22(b)(5)(iii)(B)). Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the

use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of DVP.

Notwithstanding these assurances, nothing in the “No Surprises” Rule “will be construed to limit or constrain the [USFWS], any Federal agency, or a private entity, from taking additional actions, at its own expense, to protect or conserve a species included in a conservation plan.” (50 C.F.R. §§ 17.22(b)(6)).

15.2 Survival. The Parties recognize that certain obligations shall survive the termination, suspension or revocation of the underlying ITP and this IA. In particular, the Parties agree that DVP shall have an ongoing duty to: complete and provide USFWS any outstanding monitoring reports; permit access to covered lands and data collected in performance of the ITP. DVP also agrees to maintain the stormwater detention basins its Warren County Power Station as described in Section 5.2 of the Plan, consistent with the terms of any state or local water permits or approvals, so long as the Station is in operation.

16.0 MODIFICATIONS AND AMENDMENTS

16.1 Modifications to this IA. This IA may be amended only with the written consent of each of the Parties hereto. Either Party may object to any amendment proposed by the other upon any reasonable basis.

16.2 Amendment or Modification of the Plan. Any amendment or modification of the Plan shall follow the procedures described in Section 11.0 of the Plan.

16.3 Amendment or Modification of the ITP. The ITP may be amended in accordance with Section 11.0 of the Plan, 50 C.F.R. § 13.23, the provisions of the ITP, and all applicable legal requirements, including but not limited to the ESA, NEPA, and the Service’s implementing regulations.

17.0 MISCELLANEOUS PROVISIONS

17.1 No Partnership. Neither this IA nor the Plan shall make or be deemed to make any Party to this IA the agent or partner of another Party.

17.2 Severability. If any provision of this IA or the Plan is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provisions.

17.3 Successors, Assigns and Transfers. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITP shall be governed by the federal regulations located at 50 C.F.R. §§ 13.23(c) and 13.25.

(a) Transfer of ITP by DVP. In accordance with 50 C.F.R. § 13.25, the Parties agree that the ITP may be transferred in whole or in part to a new party through a joint submission by DVP and the new party to the USFWS field office responsible for administering the ITP describing (1) each party’s role and responsibility in implementing the Plan; (2) each party’s role

in funding the implementation of the Plan; and (3) any proposed changes to the Plan or IA reasonably necessary to effectuate the transfer and implement the ITP.

(b) Approval of Transfer by USFWS. USFWS may approve a proposed transfer of the ITP in whole or in part to a new party, which approval shall not be unreasonably withheld or delayed, provided that the USFWS field office responsible for administering the ITP determines that (1) the proposed transferee meets all of the qualifications to hold an ITP under 50 C.F.R. § 13.21; (2) the proposed transferee provides adequate written assurances that it will provide sufficient funding for the Plan, and that the proposed transferee will implement the terms and conditions of the ITP; and (3) the proposed transferee has provided such other information that the USFWS determines reasonably necessary to assess the transferee's ability to implement the ITP.

17.4 Notice. Any notice permitted or required by this IA shall be in writing, delivered personally to the persons listed below, or shall be deemed to be given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such notices shall thereafter be deemed effective upon receipt.

DVP:

Dominion Virginia Power
Director of Environmental Support
Electric Environmental Services
5000 Dominion Boulevard
Glen Allen, Virginia 23060

USFWS:

Field Office Supervisor
Virginia Field Office
US Fish & Wildlife Service
6669 Short Lane
Gloucester, VA 23061

17.5 Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

17.6 Availability of Funds. Implementation of this IA by USFWS is subject to the requirements of the Anti Deficiency Act (31 U.S.C. § 1341) and the availability of appropriated funds. Nothing in this IA shall be construed by the Parties to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the USFWS shall not be required under this IA to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

17.7 No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this IA shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The duties, obligations, and responsibilities of the Parties to this IA with respect to third parties shall remain as imposed under existing law.

17.8 Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit the authority of USFWS to seek civil or criminal penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government. Nothing in this IA shall limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of DVP under the Plan, ITP, and this IA shall be considered in any consultation concerning DVP's use of the Covered Lands.

17.9 References to Regulations. Any reference in this IA, the Plan or the ITP to any regulation or rule of the USFWS shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken, except that DVP may rely on federal regulations in effect at the time this IA became effective to protect its rights under this IA.

17.10 Applicable Laws. All activities undertaken pursuant to this IA, the Plan or the ITP must be in compliance with all applicable state and federal laws and regulations.

17.11 Terms Do Not Run With the Land. The terms hereof are not intended to run with the land and will not bind the existing owners of Covered Lands or subsequent purchasers of the Project or Covered Lands unless such parties agree in writing to become bound by the Plan, ITP and this IA in accordance with Section 17.3 of this IA. Such parties that are not bound the ITP shall not benefit from USFWS' authorization of incidental take coverage or assurances.

17.12 Entire Agreement. This IA, together with the Plan and the ITP, constitute the entire agreement among the Parties. Excepting the Plan and ITP, the terms contained in this IA supersede any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

17.13 Counterparts. This IA may be executed in counterparts. This IA shall become operative as soon as one counterpart has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

14.13 Due Authorization. Each Party warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

IN WITNESS WHEREOF the Parties hereto have caused this IA to be executed as of the date of last signature below.

U.S. FISH AND WILDLIFE SERVICE

By Sherry H. Morgan

Its Acting Regional Director

Date: 11/30/2011

VIRGINIA ELECTRIC AND POWER
COMPANY D/B/A DOMINION VIRGINIA
POWER

By _____

Its _____

Date: _____

