

**PARTICIPATION AGREEMENT**  
**TEXAS-NEW MEXICO POWER COMPANY RESIDENTIAL AND HARD-TO-REACH**  
**STANDARD OFFER PROGRAMS**  
**IMPLEMENTED BY FRONTIER ENERGY**  
**PROGRAM YEAR 2021**

1.0 This Participation Agreement is between Frontier Energy, Inc., hereinafter known as Frontier, and \_\_\_\_\_, hereinafter known as Project Sponsor (each, the “Party”, together, the “Parties”), who seeks to participate in the 2021 Texas-New Mexico Power Company Residential and Hard-to-Reach Standard Offer Programs (the “Programs”).

Whereas Frontier has been engaged by Texas-New Mexico Power Company (TNMP), to deliver energy efficiency services to qualified TNMP electric distribution customers via the Programs; and

Whereas, Frontier has an existing contract (the “Contract”) with TNMP; and

Whereas, Frontier desires to provide Project Sponsor with incentive payments for eligible energy efficiency measures and services installed or performed at eligible residential properties (“Eligible Premises”) as described in the current Program Manual, and Project Sponsor desires access to such incentives:

2.0 Referenced Documents. All Work shall be accomplished in accordance with this Participation Agreement, the current Program Manual and all other program information, documents, forms, websites, online tracking systems, updates provided by Frontier or TNMP staff to Project Sponsor, and the current version of the Texas TRM.

3.0 Term. The term of this Agreement shall end on December 31, 2021, unless extended per mutual written consent by Frontier and Project Sponsor. All Authorized Work shall be completed by November 30, 2021, unless a modified timetable is agreed to in writing by the Parties.

4.0 Frontier Energy. Frontier is solely responsible for directing Project Sponsor for all services required for the implementation of the Programs in conformance with established guidelines (“Authorized Work”) and may, at its sole discretion, adjust any compensation requested to comply with the Program guidelines.

5.0 Definitions:

5.1 “Affiliate” – The following definition of "Affiliate" is adapted from Public Utility Commission Substantive Rule §25.181(c)(1) should be used to determine whether an affiliate relationship exists between a Project Sponsor and any other business or organization. An "Affiliate" is defined as:

- A person who directly or indirectly owns or holds at least 5.0% of the voting securities of another business or organization;
- A person in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization;
- A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by another business or organization;
- A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

- A person who directly or indirectly owns or controls at least 5.0% of the voting securities of another business or organization; or
  - A person in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization; or
- A person who is an officer or director of another business or organization in a chain of successive ownership of at least 5.0% of the voting securities of another business or organization;
  - A person who exercises substantial influence or control over the policies and actions of another business or organization;
  - A person over which another business or organization exercises the control described in subparagraph (F) of this paragraph;
  - A person who exercises common control over another business or organization, where "exercising common control over another business or organization" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of another business or organization, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
  - A person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of another business or organization even though neither person may qualify as an affiliate individually.
- 5.2 “Authorized Work” - All services performed by the Project Sponsor at an Eligible Premise after authorization by Frontier and required for the implementation of the Programs in conformance with established guidelines.
- 5.3 “Baseline” means, for the purposes of determining Peak Demand Savings and Energy Savings for equipment replacement projects implemented under the SOP, the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflects current market conditions. Baseline is defined as a relevant condition that would have existed in the absence of the energy efficiency project or Programs being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related Peak Demand Savings and Energy Savings. Baselines can be defined as either project- specific baselines or performance Baselines for residential measures are defined in the Technical Reference Manual (the “TRM”).
- 5.4 “Contract Documents” shall mean i) Project Sponsor's approved Enrollment Application; ii) the current Program Manual; iii) a copy of the Project Sponsor’s current insurance certificate; iv) the Project Sponsor’s Vendor Certification Form, W-9 Form, and ACH setup form/cancelled check; v) this Agreement; and any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 5.5 “Customer Acknowledgments or Certificates” must be included in each monthly report submitted by the Project Sponsor. Among other things, the certification provides the Project Sponsor with a release for TNMP, allowing energy use and billing information to be provided to the Project Sponsor and provides TNMP with permission to inspect installations.

- 5.6 “Deemed Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings and Energy Savings attributable to a Measure in a particular type of application, as filed in the current version of the Technical Reference Manual (the “TRM”).
- 5.7 “Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 5.8 “Estimated Useful Life” (“EUL”) – The average amount of time in years that an Eligible Energy Efficiency Measure is estimated to function when installed new and assuming routine maintenance is practiced, as defined in the current version of the Texas TRM.
- 5.9 “Hard-to-Reach Customers” shall mean customers with an annual household income at or below 200% of the poverty guidelines, and who have properly completed a Public Utility Commission of Texas approved income verification form.
- 5.10 “Host Customer” shall mean a residential distribution system customer of TNMP that owns or leases facilities at a Project Site or sites and that has entered into a Host Customer Agreement with the Project Sponsor or is acting as its own Project Sponsor for the installation of Measures as a part of the Project. For the purposes of this Agreement, a residential customer shall mean a TNMP distribution customer with one or more metered facilities, none individually exceeding 100 kW demand nor together exceeding 250 kW demand in the aggregate; a customer’s load within a service territory that is under common ownership shall be combined.
- 5.11 “Host Customer Agreement” shall mean the agreement between the Host Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures and other related and/or unrelated matters at the Project Site. In the case of a multifamily project, the agreement is between the Project Sponsor and the property management/owner.
- 5.12 “Measure” shall mean equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.
- 5.13 “Peak Demand Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application, as filed in the TRM.
- 5.14 “Project” shall mean an energy efficiency measure or combination of measures installed under this Agreement that results in both a reduction in customers’ electric energy consumption and peak demand, and energy costs.
- 5.15 “Project Application” – A set of Eligible Energy Efficiency Measures proposed for installation and payment of incentives.
- 5.16 “Project Site” shall mean the location of a Host Customer's facilities where approved Measures will be installed and from which Peak Demand Savings and Energy Savings will be obtained.
- 5.17 “Project Sponsor” shall mean any organization, group, or individual who contracts with Frontier to provide Peak Demand Savings and Energy Savings under the SOP.
- 5.18 “Prudent Electrical Practices” shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a

conflict, the applicable federal, state or local code shall govern.

5.19 “Technical Reference Manual” or “TRM” refers to the current version of the common reference document for estimating Peak Demand Savings and Energy Savings resulting from the installation of energy efficiency measures installed. This document is a compilation of deemed savings values approved by the Public Utility Commission of Texas.

5.20 Texas TRM – The current version of the Texas Technical Reference Manual as published and approved by the Public Utility Commission of Texas.

6.0 Project Sponsor Acknowledgements: By executing this Agreement, the Project Sponsor acknowledges:

6.1 That it has become familiar with all Program rules and information and all applicable laws and regulations prior to submission of its Initial Application;

6.2 That it meets or exceeds all of the following qualifications required for participation in the Programs, including that the Project Sponsor:

6.2.1 Possesses and can demonstrate experience relevant to program participation and to implementation of Authorized Work at Eligible Premises;

6.2.2 Can produce evidence of a good credit rating;

6.2.3 Can produce evidence of financial strength and capability through SEC form 10-K or financial statements;

6.2.4 Can produce evidence of possession of all applicable licenses required under state law and local building codes for performing Authorized Work;

6.2.5 Can produce evidence of possession of all building permits required by governing jurisdictions related to the performance of Authorized Work; and,

6.2.6 Can produce the proof of insurance required by this Agreement.

6.3 Project Sponsor acknowledges that all Authorized Work will meet all regulatory requirements, including:

6.3.1 The Authorized Work results in a reduction in purchased energy consumption and/or peak demand for the end-use customer;

6.3.2 The Authorized Work will result in consistent and predictable Peak Demand Savings and/or Energy Savings over the EUL of the energy efficiency measures installed;

6.3.3 The Authorized Work discloses any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;

6.3.4 The Authorized Work does not achieve demand reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to locations outside of the facility or area served by TNMP;

6.3.5 Measures installed pursuant to the Authorized Work would not be installed in the absence of the Programs and the incentives offered;

6.3.6 The Authorized Work does not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials; and

- 6.3.7 The Authorized Work does not involve the installation of self-generation or cogeneration equipment, but may involve renewable DSM technologies.
- 6.4 Project Sponsor acknowledges that it received a copy of the Program Manual prior to submission of any Project Application, that the Program Manual constitutes a part of this Agreement, and that the terms of the Program Manual are incorporated into this Agreement as if set forth herein. Project Sponsor represents and affirms that its participation in the SOP has at all times been in compliance with the procedures and conditions set forth in the Program Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the Programs as described in the Program Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 6.5 Procedures or conditions set forth in the Program Manual may only be waived or modified by written agreement of the parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.
- 6.6 Host Customer Agreement and Customer Acknowledgement. The Project Sponsor is solely responsible for entering into a Host Customer Agreement(s) with the Host Customer(s) as appropriate for implementation of the Project. The Host Customer must execute a Host Customer Agreement prior to Project Sponsor beginning installation of Measures at the Project Site.
  - 6.6.1 Incentive payments will not be authorized without proper completion of the Host Customer Agreement as provided for in the Contract Documents.
  - 6.6.2 To the extent possible, Host Customer Agreements will be kept confidential.
  - 6.6.3 The Project Sponsor shall execute the standard Host Customer Agreement, which is available on the program website.
  - 6.6.4 After installation of Measures, Project Sponsor must obtain an acknowledgement from each Host Customer indicating that the Measures contracted for were actually installed at the Project Site. The acknowledgement should be in the form of the Customer Acknowledgement set forth on the TNMP website ([www.tnmpefficiency.com](http://www.tnmpefficiency.com)). The Customer Acknowledgement(s) should be submitted along with other required documentation. If a Host Customer refuses to sign the Customer Acknowledgement, Project Sponsor may request, at Project Sponsor's expense, that Frontier perform an inspection of the Project Site. Frontier shall not make final payment of incentives unless and until all documentation has been captured in accordance with the terms of the Contract Documents.
- 6.7 Project Implementation. Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents.
  - 6.7.1 Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.
  - 6.7.2 Project Sponsors treating multiple Project Sites must complete and submit projects and all required documentation to Frontier in a timely manner.

- 6.7.3 Project Sponsor shall notify TNMP of homes that measures are to be installed by submitting the home information into the Work Schedule. Each project submitted into the Work Schedule is subject to a pre-inspection by Frontier or its agent(s). Once a project has been input into the database, Project Sponsor will be contacted to schedule pre-installation inspections. During the program year, Frontier will monitor the number of projects implemented by each Project Sponsor, and will attempt to conduct a sufficient number of inspections to maintain a targeted percentage.
- 6.7.4 Project Sponsor shall notify TNMP of Measure installation at each Project Site by submitting the project documenting the Measures installed at the Project Site. Each project must be submitted electronically along with all required forms, photos, and other documentation. Within forty-five (45) days of receipt of the submitted project, Frontier may complete a random sample inspection of the Measure installations at the Project Site(s). This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If TNMP and Frontier reasonably determine that the Measures at the Project Site(s) have been installed, tested and inspected to the extent required by TNMP and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the invoice will be paid as submitted. The savings attributable to the Measures documented in the approved invoice will be used for purposes of calculating the Incentive Payment.
- 6.7.5 Frontier or a third-party evaluator may inspect measures or a sample of measures installed as part of a Project. These inspections shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If Frontier determines that the Measures at the Project Site have been installed, tested and inspected to the extent required and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the project will be approved as submitted. If Frontier determines that any of the Measures installed at the Project Site are not capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, a reduction of savings may be required for purposes of calculating the Incentive Payment.
- 6.7.6 Any review, inspection, or acceptance by Frontier, its designee or any third-party evaluator of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of Frontier and TNMP. In performing any such inspection or review or in accepting the Measures, Frontier makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
- 6.7.7 Project Sponsors must utilize their own resources to identify eligible customers, and shall verify income eligibility of Hard-to-Reach customers by using eligibility verification procedures required by the Public Utility Commission of Texas.
- 6.7.8 Project Sponsor shall verify that the customer premise is in the electric distribution service territory of TNMP by obtaining the ESI ID number or meter

ID number from the customer and inputting this number into the Program database.

- 6.7.9 Project Sponsor will enter all required customer information, including income eligibility information in the case of Hard-to-Reach program participants, into the Program database, as well as any notes or comments from the screening process, to create a Project Application, into the Program database.
- 6.7.10 Project Sponsor will contact customer to inform them to expect communication from various persons or entities that will assess the home for eligible Measures, install Measures, and perform post-installation inspection. In addition, Project Sponsor will facilitate scheduling of assessments, installations, or inspections if necessary.
- 6.7.11 Project Sponsor shall conduct pre- and post- blower door and/or duct blaster testing in support of applicable Measures, and shall be required to submit current (within 2 years) manufacturer's calibration certificates for blower door equipment.
- 6.7.12 Project Sponsor is responsible for verifying that the health and safety of customers will not be impacted by the installation of any of the above measures. This may include, but is not limited to, verifying carbon monoxide levels and minimum required ventilation rates.
- 6.7.13 Project Sponsor shall update Measure installation data, a copy of the Customer Acknowledgement Form, and all other supporting data, pre- and post- photos, and other documentation required, using the Program database for each home as soon as Measures are installed.

7.0 Incentives. Incentives available are as listed in the current Program Manual.

8.0 Incentive Budget Limits. Each Project Sponsor will be limited to capturing a portion of the total incentive budget available to all Project Sponsors. These limits will be posted on the online platform operated by Frontier, and may be updated over the program year by Frontier based on contractor performance and other factors.

9.0 Payment of Incentives. Frontier will pay Project Sponsors for approved incentives within 30 days after a project is completed and approved by program staff. Any amounts over or underpaid to Project Sponsors will be subject to reconciliation on the next invoice, or in the case of work completed near the end of Agreement Term, within 30 days, after a project is completed and inspected, or after Frontier receives reimbursement from TNMP.

10.0 Sales Taxes. Participating Project Sponsors are responsible for payment of all sales taxes. Applicable state and local sales tax should be added to the prices submitted for all measures and services.

11.0 Reconciliation of Payment. Frontier shall reconcile the total amount due on the monthly report against any adjustments to amounts payable for previous invoices. Any amount previously over or under paid shall be credited against or added to the amount requested on the current invoice, or in the case of an invoice submitted near the end of Agreement Term, within thirty (30) calendar days, after a project is completed and inspected, or after Frontier receives reimbursement from TNMP.

12.0 Independence of Project Sponsors. Project Sponsor shall be fully responsible for its own acts and omissions in addition to the acts and omissions of its affiliates, directors, officers, employees, and subcontractors, and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Participation Agreement requirements.

Frontier shall not be responsible for the payment of any sums to any of the Project Sponsor's subcontractors or suppliers.

- 13.0 Standards, Codes, Laws and Regulations. Project Sponsors shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Agreement.
- 14.0 Background Checks. Project Sponsors shall be responsible for conducting criminal background checks on all personnel who will be working in the home or on the property of any TNMP customer who is participating in the Programs. Any records matching any assigned personnel to the Texas Department of Public Safety criminal history file, sex offender registration or other name- based files shall be reported immediately to Frontier and TNMP. Prior to engaging in any work on the Programs, Project Sponsors shall provide a copy of all assigned personnel's Texas Driver's License or other government-issued photo identification to Frontier.
- 15.0 Insurance. Project Sponsor represents and agrees that it and its subcontractors will carry all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees; and all insurance required by Exhibit A, which is attached hereto and incorporated herein for all purposes.
- 15.1 Prior to commencement of installation, Project Sponsor shall have their insurance agent mail and/or email to Frontier Energy and TNMP a certificate or certificates of insurance indicating Project Sponsor's compliance with this paragraph and stating that the insurance described therein shall not be canceled or terminated except on thirty (30) days written notice in the format shown in Exhibit A.
- 15.2 Additionally, the Project Sponsor represents and agrees that:
- Frontier Energy and TNMP shall be named as an additional insured on all policies (except worker's compensation) in the amounts of coverage therein stated.
  - All policies will include a waiver of subrogation naming TNMP, with the appropriate certificates of insurance evidencing that TNMP has been named as an additional insured on such policies and that such policies include a waiver of subrogation naming TNMP.
  - The Project Sponsor shall furnish evidence that such policies have been issued in accordance with the requirements of this paragraph by furnishing copies of such for Frontier Energy's or TNMP's inspection.
- 16.0 Termination for Cause. If Project Sponsor fails to perform a material term or condition of this Agreement, and fails to cure such default within 30 calendar days after receipt of written Notice of Default and Termination from Frontier, Frontier may declare this Agreement terminated, effective on the last day of said notice period ("Termination Date"). Project Sponsor shall be paid for all undisputed work performed prior to the Termination Date, which payment shall not be unreasonably withheld. Grounds for termination for cause include, but are not limited, to the following situations:
- the failure, refusal or inability of the Project Sponsor to perform any material aspect of the Authorized Work in accordance with the Scope of Work (except as specified in Section 32, "Force Majeure"); or
  - Project Sponsor has become insolvent, has exhibited a pattern of failure to pay its bills, or has had checks for payment of its bills returned from suppliers and subcontractors due to insufficient funds; or
  - a court of law has enjoined Project Sponsor from performing the Authorized Work; or

- In Frontier's reasonable judgment, the Authorized Work will not be completed within the specified time and/or budget and Frontier has reasonably requested Project Sponsor to take steps necessary to accomplish the required progress and completion and/or cost containment, and Project Sponsor has failed to do so; or
- Project Sponsor has misused the corporate name, brand, or logo associated with TNMP or Frontier.

17.0 Termination for Convenience. Notwithstanding anything to the contrary, Frontier reserves the right to terminate or suspend this contract at any time, for any reason. If, however, after consulting with Frontier, it is Project Sponsor's opinion that any of the Work is in a state such that interruption thereof would result in substantially increased costs upon resumption of the Work, Project Sponsor, with Frontier's written concurrence, may complete that portion of the Work.

Project Sponsor shall resume any of the Work so interrupted, suspended or delayed when directed to do so by Frontier, provided, however, that the schedule and the time for performance shall be revised by a period of time reasonably necessary to overcome the effect of the interruption, suspension or delay. Other provisions of this Agreement, such as the delivery dates and terms of payment, will also be adjusted if necessary and as appropriate. Project Sponsor shall make every reasonable effort to minimize any additional expense pursuant to this Section.

Project Sponsor may terminate the terms of this agreement without cause upon forty-five (45) days written notice to Frontier. Failure to provide such notice will maintain the agreement in full effect with all provisions included herein.

18.0 Reporting. Project Sponsor will provide data and required documentation, either by inputting or uploading required documents to the Program database, as specified in the Scope of Work.

19.0 Records and Audit. Project Sponsor's records, correspondence, procedures and practices and any other supporting evidence relating to this Agreement (all of the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Frontier or its authorized representative to the extent necessary to adequately permit evaluation and verification of customer eligibility forms, income documentation, customer agreement, and other Program documentation. Frontier or its authorized representative shall have access to said Records from the effective date of this Agreement, for the duration of the Work and until three (3) years after the date of final payment by Frontier to Project Sponsor pursuant to this Agreement.

20.0 Use of Name. Project Sponsor may not use TNMP's or Frontier's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers for participation in its project, without TNMP's or Frontier's prior written consent.

21.0 Publicity. Information relating to this Agreement may be released for publication and/or advertising only with the prior written approval of Frontier. Project Sponsor is expressly prohibited from using TNMP's or Frontier's name in any publication, advertising, or promotion without written approval TNMP's and Frontier's prior written consent.

22.0 Indemnity. Project Sponsor and any lower-tier subcontractor agrees to indemnify, defend, and hold harmless, Frontier and TNMP, their officers, directors, employees, agents and independent contractors, and each of Frontier's and TNMP's affiliates and each of their respective officers, directors, employees, agents and independent contractors from and against any and all liabilities resulting from third party claims for loss, damage, or injury to persons or property ("Liabilities") arising from the negligence or misconduct of Project Sponsor, its affiliates, directors, officers, employees, and subcontractors.

23.0 Infringement Protection. Project Sponsor represents to Frontier and TNMP that the material prepared under this Agreement will not infringe on the copyright, patent, or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Project Sponsor agrees to indemnify and hold Frontier and TNMP, harmless from and against all liabilities, costs and damages arising out of such infringement, as well as claims of infringement. Project Sponsor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by Frontier or TNMP in defense of such a suit.

24.0 Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Frontier:

Project Sponsor:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Frontier Energy

Company: \_\_\_\_\_

1515 S Capital of Texas Hwy

Street Address 1: \_\_\_\_\_

Ste. 110

Street Address 2: \_\_\_\_\_

Austin, TX 78746-6544

City/State/ZIP: \_\_\_\_\_

Such information may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

25.0 Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the Authorized Work, and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. There are no oral representations or agreements between the parties.

26.0 Time is of the Essence. The Parties hereby acknowledge that time is of the essence in performing the duties under this Agreement. Failure to comply with stated deadlines or milestones may result in termination of this Agreement, payments being withheld, or other contractual modifications.

27.0 No Waiver. The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

28.0 Applicable Law. This Agreement shall be governed by the laws of the State of Texas, without application of its conflict of laws provisions. Venue shall lie exclusively in the state courts of Harris County, Texas, unless such cause of action is within the jurisdiction of the Public Utility Commission of Texas (PUCT), in which case the proper venue and jurisdiction will be at the PUCT.

29.0 Assignment Prohibited. This Agreement may not be assigned without the written consent of Frontier. Arrangements between Project Sponsors and subcontractors which result in the assumption of substantial contractual obligations by the Project Sponsor shall be considered as an assignment, and shall be subject to the provisions of this paragraph.

30.0 Modification. This Agreement may not be modified except by written agreement.

31.0 Severability. If any term or provision of this Participation Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Participation Agreement

shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

- 32.0 Force Majeure. Neither Party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by “Force Majeure.” As used in this Section, Force Majeure is defined as: Acts of war and acts of God such as earthquakes, floods and other natural disasters, or actions of others, including but not limited to strikes, lockouts or other industrial disturbance, not within the control or arising from the fault of the Party claiming Force Majeure.
- 33.0 No Joint Enterprise. Each party shall perform its obligations under this Agreement as an independent Project Sponsor, and nothing contained herein shall be deemed to create, nor does it create, any association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties, or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party.
- 34.0 Attorney’s Fees. In the event of any legal action or other proceeding between the Parties arising out of this Agreement or the transactions contemplated herein, the prevailing Party in such legal action or proceeding shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable in-house and outside attorneys' fees.

AGREED as of \_\_\_\_\_ (date).

Frontier Energy, Inc.

Project Sponsor

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

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

Name: Steve Wiese

Name: \_\_\_\_\_

Title: Director, Implementation Services

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

## EXHIBIT A –INSURANCE REQUIREMENTS

NOTE: Each policy shall include a Waiver of Subrogation in favor of Texas-New Mexico Power Company (TNMP), and shall provide for 30 days prior written notice of cancellation.

### TYPE/COVERAGE LIMITS OF LIABILITY

WORKERS' COMPENSATION

Statutory

EMPLOYERS' LIABILITY

\$100,000. Each Accident  
\$500,000. Disease Policy Limit  
\$100,000. Disease Employee Limit

### COMMERCIAL GENERAL LIABILITY, OCCURRENCE FORM

Bodily Injury & Property Damage Combined with the following coverages included (not excluded):

- Premises/Operations Each Occurrence: \$1,000,000
- Underground Explosion and Collapse Hazard General Aggregate: \$1,000,000
- Products/Completed Operations Hazard Products Comp/Ops. Aggregate: \$1,000,000
- Contractual Insurance (applicable to indemnity clause contained in contract(s))
- Independent Contractors
- Broad Form Property Damage
- Personal Injury

AUTOMOBILE LIABILITY, with coverage applicable to all owned, hired, and non-owned vehicles:

- BI and PD Combined: Each Accident: \$1,000,000  
OR: Evidence of Self-Insurance

### INFORMATION FOR PROJECT SPONSOR:

- Insurance provided by Project Sponsor must be maintained in effect during the entire term of this Agreement.
- A copy of this sheet and a copy of this Agreement should be furnished to Project Sponsor's Insurance Agent.
- Amendment or waiver of the insurance requirements will only be valid if prior written consent is received.

### INFORMATION FOR INSURANCE AGENTS:

- Policies written on a claims-made basis shall be maintained for five years after performance of the Agreement is completed.
- Required insurance should be certified using the ACCORD CERTIFICATE OF INSURANCE, or a form similar thereto.
- Project Sponsor's insurance agent is responsible to list on CERTIFICATE OF INSURANCE all endorsements which eliminate any required coverages.
- Project Sponsor's insurance agent is responsible to state on the CERTIFICATE OF INSURANCE that all policies of insurance include Waiver of Subrogation in favor of TNMP.
- CERTIFICATE OF INSURANCE must be dated and signed by insurance agent or authorized representative.
- CERTIFICATE HOLDER must be shown as:
  - Frontier Energy Attn. Rob Lovenguth, 1515 S Capital of Texas Hwy, Suite 110, Austin TX 78746
  - Texas-New Mexico Power Company (TNMP) Attn: Stefani Case, 577 N. Garden Ridge Blvd., Lewisville, TX 75067.
- The original CERTIFICATE OF INSURANCE must be forwarded to the CERTIFICATE HOLDER.