

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0302-19

**DATE:** September 23, 2019

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; RESTATING THAT RESOLUTION NOS. CD-60-13 AND CAP-13-15, WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC SPECIFICALLY APPLIED ONLY TO THE NAVAJO MINE PURCHASE

**PURPOSE:** The purpose of the resolution is to restate that the limited waiver of sovereign immunity and the general indemnity agreements and sureties approved in Resolution CAP-13-15 apply only to the NTEC transactions, specifically identified in CAP-13-15 and CD-60-13, involving the purchase of the Navajo Mine and do not extend to any subsequent purchase or transactions of NTEC.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 280x  
Website Posting Time/Date: 4:23pm 10-2-19  
Posting End Date: 10/07/19  
Eligible for Action: 10/08/19

Resources & Development Committee  
Thence  
Budget & Finance Committee  
Thence  
Naabik'iyati Committee  
Thence  
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24<sup>TH</sup> NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY



(Prime Sponsor)



TRACKING NO. 0302-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND  
FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO  
NATION COUNCIL; RESTATING THAT RESOLUTION NOS. CD-60-13 AND CAP-  
13-15, WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY  
AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO  
TRANSITIONAL ENERGY COMPANY, LLC SPECIFICALLY APPLIED ONLY TO  
THE NAVAJO MINE PURCHASE

BE IT ENACTED:

**Section One. Authority**

- A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. § 102 (A).
- B. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee before it is heard by the Navajo Nation Council.
- C. Pursuant to 2 N.N.C. § 300 (C)(1)(3) and (4) the Budget and Finance Committee is authorized to recommend adoption of resolutions related to the expenditure of the Nation's financial resources.

1 D. Pursuant to 2 N.N.C. § 500 (C), the Resources and Development Committee has  
2 oversight authority over land issues.

3  
4 **Section Two. Findings**

5 A. On April 30, 2013, by Resolution No. CAP-20-13, as amended, the Navajo Nation Council  
6 approved the creation of the Navajo Transitional Energy Company, LLC ("NTEC") for the  
7 primary purpose of purchasing the Navajo Mine from BHP Billiton New Mexico Coal  
8 Company.

9  
10 B. In order for the Navajo Nation to obtain the performance and reclamation bonds (the  
11 "Bonds") required to complete the transactions for the purchase of the Navajo Mine by  
12 NTEC and comply with federal law, the Navajo Nation Council pursuant to Resolution No.  
13 CD-60-13 (Dec. 27, 2013) approved by a 2/3 majority vote a limited waiver of the Nation's  
14 sovereign immunity and the execution of General Indemnity Agreements with the Zurich  
15 American Insurance Company ("Zurich") and Arch Insurance Company. Such limited waiver  
16 of sovereign immunity provided for binding arbitration and an alternative state court forum  
17 for enforcement of binding arbitration and any ancillary proceedings, including for exigent  
18 and emergency equitable relief, such forum to be the First Judicial District Court of the State  
19 of New Mexico, or if the First Judicial District Court lacked proper jurisdiction or was  
20 otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Resolution No.  
21 CD-60-13 was signed into law by President Ben Shelly on December 27, 2014.

22  
23 C. Resolution No. CAP-13-15 signed into law on May 4, 2015 amended Resolution No.  
24 CD-60-13 to extend the same limited waiver of sovereign immunity for binding  
25 arbitration and an alternative state court forum for enforcement of binding arbitration  
26 and any ancillary proceedings, and the same form of General Indemnity Agreement,  
27 as were approved pursuant to Resolution No. CD-60-13 for Zurich, additionally  
28 Approved Sureties. Resolution CAP-13-15 is attached as **Exhibit 1**.



1 D. The Navajo Nation Sovereign Immunity Act, 1 N.N.C. §554 (D) states: "... Nor does  
2 any liability assumed by the Navajo Nation pursuant to this Act extend to any party or  
3 parties as third party beneficiary or otherwise, other than the party or parties whom  
4 such liability is expressly assumed, an only to the extent, circumstances and  
5 conditions specified thereby."

6  
7 E. Resolutions CD-60-13 and CAP-13-15 are specifically limited to the NTEC transactions  
8 involving the purchase of the Navajo Mine. There is no waiver of Navajo Nation sovereign  
9 immunity for general indemnity agreement involving any parties or transactions not  
10 specifically identified in CD-10-13 and CAP-13-15.

11  
12 **Section Three. Restating that CD-60-13 and CAP-13-15 are limited to the specific**  
13 **transactions listed in those resolutions**

14  
15 The Navajo Nation Council hereby restates that the limited waiver of sovereign  
16 immunity and the general indemnity agreements and sureties approved in Resolution  
17 CAP-13-15 apply only to the NTEC transactions, specifically identified in CAP-13-  
18 15 and CD-60-13, involving the purchase of the Navajo Mine and do not extend to  
19 any subsequent purchase or transactions of NTEC.  
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CAP-13-15

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- First Year, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING RESOLUTION NO. CD-60-13 A RESOLUTION WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

BE IT ENACTED:

Section One. Findings and Purposes

- A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. § 102(A).
- B. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee before it is heard by the Navajo Nation Council.
- C. Pursuant to 2 N.N.C. § 300 (C)(1)(3) and (4) the Budget and Finance Committee is authorized to recommend adoption of resolutions related to the expenditure of the Nation's financial resources.
- D. Pursuant to 2 N.N.C. § 500 (C), the Resources and Development Committee has oversight authority over land issues.
- E. On April 30, 2013, by Resolution No. CAP-20-13, as amended, the Navajo Nation Council approved the creation of the Navajo Transitional Energy Company, LLC ("NTEC") for the primary purpose of purchasing the Navajo Mine from BHP Billiton New Mexico Coal Company.
- F. In order for the Navajo Nation to obtain the performance and reclamation bonds (the "Bonds") required to complete the transactions for the purchase of the Navajo Mine by NTEC and comply with federal law, the Navajo Nation Council pursuant

to Resolution No. CD-60-13 (Dec. 27, 2013) approved by a 2/3 majority vote a limited waiver of the Nation's sovereign immunity and the execution of General Indemnity Agreements with the Zurich American Insurance Company ("Zurich") and Arch Insurance Company. Such limited waiver of sovereign immunity provides for binding arbitration and an alternative state court forum for enforcement of binding arbitration and any ancillary proceedings, including for exigent and emergency equitable relief, such forum to be the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Resolution No. CD-60-13 was signed into law by President Ben Shelly on December 27, 2014, a copy of which is attached hereto as Exhibit "A."

- G. After Arch withdrew its bond offer, Zurich underwrote the entire amount of the Bonds in the amount of \$463 million, and is the sole surety on the Bonds. A copy of the General Indemnity Agreement with Zurich is attached hereto as Exhibit "B."
- H. In order for the Navajo Nation's insurance broker, Marsh USA ("Marsh"), to competitively market the Bonds to other top tier U.S. sureties, to secure a lower Bond rate and save NTEC a substantial amount in annual Bond premiums, such other top tier U.S. sureties will require the same limited waiver of sovereign immunity and form of General Indemnity Agreement from the Navajo Nation as Zurich requires and which the Navajo Nation Council has already approved for Zurich pursuant to Resolution No. CD-60-13.
- I. To secure such a competitive market, the Navajo Nation Council finds that it is in the best interest of NTEC, and in the best interest of the Navajo Nation as NTEC's sole Member, for the Council to amend Resolution No. CD-60-13 to extend the same limited waiver of sovereign immunity and form of General Indemnity Agreement, attached hereto as Exhibit "B," which were approved by Resolution No. CD-60-13, for Zurich, for the following eight additional sureties, identified as a result of NTEC researching the United States sureties market: (1) Argonaut Insurance Company and its subsidiaries, affiliates and associated companies ("Argonaut"); (2) CNA Surety and its



subsidiaries, affiliates and associated companies ("CNA"); (3) *Liberty Mutual Insurance Company* and its subsidiaries, affiliates and associated companies ("Liberty"); (4) *ACE USA/ACE Surety* and its subsidiaries, affiliates and associated companies ("ACE"); (5) *Chubb Group of Insurance Company* and its subsidiaries, affiliates and associated companies ("Chubb"); (6) *the Hanover Insurance Company* and its subsidiaries, affiliates and associated companies ("Hanover"); (7) *One Beacon Surety Group* and its subsidiaries, affiliates and associated companies ("One Beacon"); and (8) *Travelers Casualty and Surety of America* and its subsidiaries, affiliates and associated companies ("Travelers") (collectively the "Approved Sureties"), the form of General Indemnity Agreements with the Approved Sureties which are attached hereto, respectively, as Exhibits "C" through "J."

## Section Two. Approvals, Authorizations and Directives

- A. The Navajo Nation Council hereby amends Resolution No. CD-60-13 to extend the same limited waiver of sovereign immunity for binding arbitration and an alternative state court forum for enforcement of binding arbitration and any ancillary proceedings, including for exigent and emergency equitable relief, such forum to be the first Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona, and the same form of General Indemnity Agreement, attached hereto as Exhibit "B," as were approved pursuant to Resolution No. CD-60-13 for Zurich, for the Approved Sureties, which are attached hereto respectively as Exhibits "C" through "J."
- B. The Navajo Nation Council hereby authorizes the Navajo Nation Department of Justice and the Navajo Nation President to execute the form of General Indemnity Agreements attached hereto as Exhibits "C" through "J" with the Approved Sureties and to take such other steps as are reasonable and prudent to carry out the intent of this Resolution.
- C. Navajo Nation Council Resolution No. CD-60-13 is not otherwise amended hereby.



CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 18 in favor and 2 opposed, this 22<sup>nd</sup> day of April 2015.

  
Edmund Yazzie, Pro Tem Speaker  
Navajo Nation Council


04/24/15

Date

Motion: Honorable Davis Filfred  
Second: Honorable Seth Damon

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this \_\_\_\_\_ day of MAY 04 2015 2015.



Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2015 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President  
Navajo Nation



CD-60-13

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL -- THIRD YEAR, 2013

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND  
NAABIK'IYATI'; APPROVING AN ALTERNATIVE FORUM FOR ENFORCEMENT OF  
BINDING ARBITRATION AND ANCILLARY PROCEEDINGS BROUGHT PURSUANT TO  
THE NAVAJO NATION SOVEREIGN IMMUNITY ACT IN THE GENERAL INDEMNITY  
AGREEMENTS BETWEEN THE NAVAJO NATION AND 1) ZURICH AMERICAN  
INSURANCE COMPANY AND 2) ARCH INSURANCE COMPANY RELATED TO THE  
ISSUANCE OF PERFORMANCE AND RECLAMATION BONDS RELATED TO THE NAVAJO  
MINE

BE IT ENACTED:

Section One. Findings and Purposes

A. In order for the Navajo Nation to obtain the performance and  
reclamation bonds required to complete the transactions for the  
Navajo Mine, the Zurich American Insurance Company and Arch  
Insurance Company ("Sureties") are requiring the Navajo Nation to  
execute General Indemnification Agreements ("Agreements") with the  
Companies, attached hereto respectively as Exhibits "A" and "B",  
which require a limited waiver of the sovereign immunity of the  
Navajo Nation pursuant to those Agreements.

B. Pursuant to Council Resolution No. CJA-05-07 (Jan. 24, 2007),  
which amended the Sovereign Immunity Act, 1 N.N.C. § 551 et seq.,  
the Navajo Nation Council has already approved a limited waiver of  
the Nation's sovereign immunity for purposes of binding arbitration  
in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §  
1101 et seq., with ancillary litigation for enforceability to be  
exclusive to Navajo Courts.

C. The Sureties are requiring an alternative state court forum for  
enforcement of binding arbitration and any ancillary proceedings,  
including for exigent and emergency equitable relief, such forum as  
provided in the Agreements to be First Judicial District Court of  
the State of New Mexico, or if the First Judicial District Court  
lacks proper jurisdiction or is otherwise unavailable to the  
Parties, then in Superior Court, State of Arizona.



D. In order for the Agreements to be executed, and the transactions for the Navajo Mine to be completed, the Navajo Nation Council therefore has to approve the Nation using such alternative forum for enforcement of binding arbitration and for any ancillary proceedings, including for exigent and emergency equitable relief.

## Section Two. Approvals, Authorizations and Directives

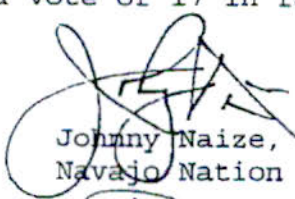
A. For the General Indemnity Agreements between the Navajo Nation and (1) Zurich American Insurance Company, and (2) Arch Insurance Company, attached hereto as Exhibits "A" and "B," respectively, the Navajo Nation hereby approves the alternative state forum as provided in Addendum No. 2 of the Agreements for enforcement of binding arbitration and ancillary proceedings, including for exigent and emergency equitable relief, in accordance with the New Mexico Uniform Arbitration Act, such forum to be the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona.

B. This legislation is strictly and expressly limited to the aforementioned Agreements attached hereto as Exhibits "A" and "B" and nothing herein shall otherwise be construed as an amendment, change, revision, repeal or any other modification of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, or the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*, or any other Navajo law, which remain as heretofore enacted by this Council.

C. Navajo Nation Council required a 2/3 majority vote of the full membership of the Navajo Nation Council.

## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 17 in favor and 5 opposed, this 27th day of December 2013.

  
Johnny Naize, Speaker  
Navajo Nation Council

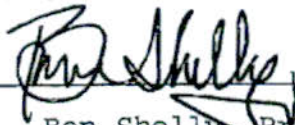
Dec 27, '13  
Date



Motion: Honorable Roscoe Smith  
Second: Honorable George Apachito

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 27<sup>th</sup> day of December 2013.



Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2013 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President  
Navajo Nation



## General Indemnity Agreement

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this 27th day of December 2013 by the undersigned (individually and collectively "Indemnitors") in favor of ZURICH AMERICAN INSURANCE COMPANY and its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY and ZURICH INSURANCE GROUP LTD., their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.
4. **PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.
5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.



7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: Zurich Surety, Red Brook Corporate Center, 600 Red Brook Blvd., 4th Floor, Owings Mills, Maryland 21117, Attention: Vice President, Commercial Surety.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.



16. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

#### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

1. Corporation: an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (i.e. Secretary, CFO, Treasurer) should sign;
2. Limited Liability Corporation (LLC): (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign.
3. Limited Partnership (LP): (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign.
4. Limited Liability Partnership (LLP): at least two partners should sign.
5. Trust: All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

#### INDEMNITOR:

NAVAJO TRANSITIONAL ENERGY COMPANY LLC  
P.O. Box 28280  
Scottsdale, Az 85255

LAST 4 DIGITS OF TIN:

9272

By:

  
Steve Gundersen

As Chair of NTEC Management Committee, NAVAJO TRANSITIONAL  
ENERGY COMPANY, LLC

Date: DECEMBER 27, 2013

#### NOTARIAL ACKNOWLEDGEMENT

STATE OF: Arizona

COUNTY OF: Apache

The following instrument was acknowledged before me this 27 day of December 2013 by:

[name of signatory] Steve Gundersen as [title of signatory] Chair of NTEC

of [name of entity] Navajo Transitional Energy Co. ("Entity"), on behalf of the Entity. He/She is personally known to me or has produced [form of identification] AZ DL as identification.

My commission expires:

Notary Seal

Coreta Keeto  
Notary Public Signature

10/9/16  
20  

Printed Name Coreta Keeto



CORETA KEETO  
NOTARY PUBLIC - ARIZONA  
APACHE COUNTY  
My Commission Expires  
October 09, 2016

(The remainder of this page is intentionally left blank)

[SIGNATURE PAGE FOR BUSINESS ENTITY WHERE EACH SIGNER WILL SIGN SEPARATELY]

INDEMNITOR:  
THE NAVAJO NATION  
P.O. Box 2010  
Old BIA Club Building  
Window Rock, AZ 86515

Signer #1

By:

Dana Bobroff

Dana Bobroff

As Deputy Attorney General of NAVAJO NATION DEPARTMENT OF JUSTICE

Date: December 27 2013

NOTARIAL ACKNOWLEDGEMENT

STATE OF: Arizona COUNTY OF: Apache

The following instrument was acknowledged before me this 27 day of December, 2013 by:

[name of signatory] Dana Bobroff as [title of signatory] Deputy Attorney General  
of [name of entity] Navajo Nation Dept. of Justice, ("Entity"), on behalf of the Entity. He/She is personally known to me or has  
produced [form of identification] AZ DL as identification.

My commission expires:

Notary Seal:

Coreta Keeto

Notary Public Signature

10/9/16

20

Printed Name Coreta Keeto



CORETA KEETO  
NOTARY PUBLIC - ARIZONA  
APACHE COUNTY  
My Commission Expires  
October 09, 2016

Signer #2

By:

Ben Shelly

Print Name Ben Shelly, President, The Navajo Nation Date: 5/16/14 2014  
As [Title] of [Name of Indemnitor #1]

NOTARIAL ACKNOWLEDGEMENT

STATE OF: Arizona COUNTY OF: Apache

The following instrument was acknowledged before me this 16th day of May, 2014 by:

[name of signatory] Ben Shelly President as [title of signatory] \_\_\_\_\_  
of [name of entity] The Navajo Nation, ("Entity"), on behalf of the Entity. He/She is personally known to me or has  
produced [form of identification] INM DL as identification.

My commission expires:

Notary Seal:

Coreta Keeto

Notary Public Signature

10/9/16

20

Printed Name Coreta Keeto



CORETA KEETO  
NOTARY PUBLIC - ARIZONA  
APACHE COUNTY  
My Commission Expires  
October 09, 2016

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**ADDENDUM No. 1**  
**PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT**

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

- I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:
  - A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.
  - B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:
    1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
    2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
    3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
    4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
    5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
    6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
      - a) Interpretation of this Agreement; or
      - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
      - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
    7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.
  - C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_.



- D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.
- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  - 1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  - 2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  - 3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  - 4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  - 5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  - 6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  - 7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  - 8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



panel. The arbitration panel is authorized to award monetary damages and equitable relief – specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.
2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed:

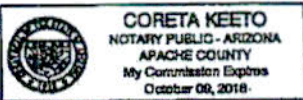
NAVAJO TRANSITIONAL ENERGY COMPANY LLC  
P.O. Box 28280  
Scottsdale, AZ 85255

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

Steve Gundersen

As Chair of NTEC Management Committee, NAVAJO TRANSITIONAL  
ENERGY COMPANY, LLC

Date: DECEMBER 27, 2013

NOTARIAL ACKNOWLEDGEMENT	
STATE OF: <u>Arizona</u>	COUNTY OF: <u>Apache</u>
The following instrument was acknowledged before me this <u>27</u> day of <u>December</u> , 20 <u>13</u> by:	
[name of signatory] <u>Steve Gundersen</u>	as [title of signatory] <u>Chair of NTEC</u>
of [name of entity] <u>Navajo Transitional Energy Co.</u> ("Entity"), on behalf of the Entity. He/She is personally known to me or has produced [form of identification] <u>AZDL</u> as identification.	
My commission expires: _____ Notary Seal	
<u>Coreta Keeto</u> Notary Public Signature	<u>10/9/16</u> 20 <u>16</u>
Printed Name <u>Coreta Keeto</u>	

(The remainder of this page is intentionally left blank)

[CONFIRM THE SIGNERS ARE APPROPRIATE TO EXECUTED LIMITED WAIVERS OF SI ON BEHALF OF THE NATION]

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed:

THE NAVAJO NATION  
P.O. Box 2010  
Old BIA Club Building  
Window Rock, AZ 86515

Signer #1

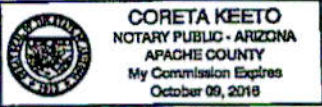
By:

Dana Bobroff

Dana Bobroff

As Deputy Attorney General of NAVAJO NATION DEPARTMENT OF JUSTICE

Date: December 27, 2013

NOTARIAL ACKNOWLEDGEMENT	
STATE OF: <u>Arizona</u>	COUNTY OF: <u>Apache</u>
The following instrument was acknowledged before me this <u>27</u> day of <u>December</u> , 20 <u>13</u> by:	
[name of signatory] <u>Dana Bobroff</u>	as [title of signatory] <u>Deputy Attorney General</u>
of [name of entity] <u>Navajo Nation Dept. of Justice</u> Entity, on behalf of the Entity. He/She is personally known to me or has produced [form of identification] <u>AZ DL</u> as identification.	
My commission expires:	Notary Seal:
<u>Coreta Keeto</u>	<u>10/9/16</u>
Notary Public Signature	20
Printed Name <u>Coreta Keeto</u>	

Signer #2

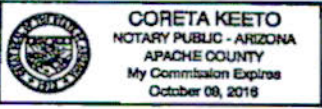
By:

Ben Shelly

Print Name Ben Shelly, President, The Navajo Nation

As [Title] of [Name of indemnitor #1]

Date: 5/16/14, 2014

NOTARIAL ACKNOWLEDGEMENT	
STATE OF: <u>Arizona</u>	COUNTY OF: <u>Apache</u>
The following instrument was acknowledged before me this <u>16th</u> day of <u>May</u> , 20 <u>14</u> by:	
[name of signatory] <u>Ben Shelly</u>	as [title of signatory] <u>President</u>
of [name of entity] <u>The Navajo Nation</u> ("Entity"), on behalf of the Entity. He/She is personally known to me or has produced [form of identification] <u>WM DL</u> as identification.	
My commission expires:	Notary Seal:
<u>Coreta Keeto</u>	<u>10/9/16</u>
Notary Public Signature	20
Printed Name <u>Coreta Keeto</u>	

(Resolution to follow this page)



## General Indemnity Agreement

### Argonaut Insurance Company

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_ by the undersigned (individually and collectively "Indemnitors") in favor of Argonaut Insurance Company its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Argonaut Insurance Company, their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT C

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: Argonaut Insurance Company, 225 W. Washington, 24<sup>th</sup> Floor, Chicago, IL 60606.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



## EXHIBIT C

and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

5. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

1 Corporation. an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.

2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign

3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign

4 Limited Liability Partnership (LLP) at least two partners should sign

5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

*(The remainder of this page is intentionally left blank)*

ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



ADDENDUM No. 2  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement;Or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



## EXHIBIT C

performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the

remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.

3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting

application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

**The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.**

(Resolution to follow this page)



## General Indemnity Agreement

### CNA Surety

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_ by the undersigned (individually and collectively "**Indemnitors**") in favor of CNA Surety and its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Continental Casualty Company; National Fire Insurance Company of Hartford; American Casualty Company of Reading, Pennsylvania; The Continental Insurance Company; Firemen's Insurance Company of Newark, New Jersey; Western Surety Company; Universal Surety of America; Surety Bonding Company of America, their respective successors and assigns (individually and collectively "**Surety**") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT D

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: **CNA Surety, 333 South Wabash, Chicago, IL 60604**  
**Attention: Vice President, Commercial Surety.**
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



## EXHIBIT D

and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation, an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign
- 4 Limited Liability Partnership (LLP) at least two partners should sign
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

*(The remainder of this page is intentionally left blank)*



ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

**II. Resolution of Disputes:**

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



## EXHIBIT D

panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.
2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.

(Resolution to follow this page)



## General Indemnity Agreement

### LIBERTY Bond Services

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this     day of     20\_\_ by the undersigned (individually and collectively "Indemnitors") in favor of Liberty Mutual Insurance Company, a Massachusetts corporation; its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Liberty Mutual Insurance Company, a Massachusetts corporation; LM Insurance Corporation, an Iowa corporation; The First Liberty Insurance Corporation, an Iowa corporation; Liberty Mutual Fire Insurance Company, a Massachusetts corporation; Liberty Insurance Corporation, a Vermont corporation, their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT E

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: **Liberty Bond Services, 1001 4<sup>th</sup> Avenue, Suite 1300, Seattle, WA 98154.**
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



## EXHIBIT E

and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation. an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign.
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign.
- 4 Limited Liability Partnership (LLP) at least two partners should sign.
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

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ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



## EXHIBIT E

panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.
2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.

(Resolution to follow this page)



## General Indemnity Agreement

### ACE USA/ACE SURETY

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_ by the undersigned (individually and collectively "Indemnitors") in favor of ACE USA/ACE Surety its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Insurance Company of North America, Pacific Employers Insurance Company, Westchester Fire Insurance Company and Indemnity Insurance Company of North America, their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
  2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
  3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.
- PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.
5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
  6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT F

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: ACE Bond Services, 436 Walnut Street, Philadelphia, PA 19106-3703.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



## EXHIBIT F

and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation, an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign
- 4 Limited Liability Partnership (LLP) at least two partners should sign
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

*(The remainder of this page is intentionally left blank)*



ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

## II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



## EXHIBIT F

panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

**1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper**

jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

**2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the**

remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.

**3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting**

application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

**The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.**

(Resolution to follow this page)



## General Indemnity Agreement

### CHUBB GROUP OF INSURANCE COMPANIES

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_ by the undersigned (individually and collectively "**Indemnitors**") in favor of Chubb Group of Insurance Company its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Federal Insurance Company, their respective successors and assigns (individually and collectively "**Surety**") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



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of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: Chubb Group of Insurance Companies, 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All



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information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

16. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation, an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC), (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign
- 4 Limited Liability Partnership (LLP) at least two partners should sign
- 5 Trust, All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

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ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_



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- D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.
- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

### II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  - 1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  - 2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  - 3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  - 4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  - 5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  - 6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  - 7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.



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8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration

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panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper

jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the

remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.

3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting

application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.

(Resolution to follow this page)



## General Indemnity Agreement

### THE HANOVER INSURANCE COMPANY

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_ by the undersigned (individually and collectively "Indemnitors") in favor of The Hanover Insurance Company its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to The Hanover Insurance Company, their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.  
  
**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.
5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT H

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: The Hanover Insurance Company, 5 Hutton Centre #1060, Santa Ana, CA 92707.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



## EXHIBIT H

and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation, an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign
- 4 Limited Liability Partnership (LLP) at least two partners should sign
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

*(The remainder of this page is intentionally left blank)*



**ADDENDUM No. 1**  
**PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT**

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) **Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;**
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



ADDENDUM No. 2  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement;

Or

  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

## II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  - 1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  - 2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  - 3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  - 4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  - 5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  - 6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  - 7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  - 8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



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panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.
2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.

(Resolution to follow this page)



## General Indemnity Agreement

### ONE BEACON SURETY GROUP

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this      day of      20\_\_\_\_ by the undersigned (individually and collectively "**Indemnitors**") in favor of One Beacon Surety Group its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Atlantic Specialty Insurance Company, their respective successors and assigns (individually and collectively "**Surety**") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.
6. **OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



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of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
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14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: One Beacon Surety Group, 6303 Owensmouth Ave., Suite 1010, Woodland Hills, CA 91367.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



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and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation. an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) if manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign.
- 3 Limited Partnership (LP) (a) if only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign.
- 4 Limited Liability Partnership (LLP) at least two partners should sign.
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

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ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



**ADDENDUM No. 2**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

**I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:**

A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
  2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
  3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
  4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
  5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
  6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
    - a) interpretation of this Agreement; or
    - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement;

Or

    - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
  7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.
- C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

## II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



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panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.
2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

**The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.**

(Resolution to follow this page)



## General Indemnity Agreement

### TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

THIS GENERAL INDEMNITY AGREEMENT ("Agreement"), dated this     day of     20\_\_ by the undersigned (individually and collectively "Indemnitors") in favor of Travelers Casualty and Surety Company of America, its subsidiaries, affiliates and associated companies in any jurisdiction, including but not limited to Travelers Casualty and Surety Company of America, their respective successors and assigns (individually and collectively "Surety") with respect to any bond, undertaking, and/or obligation of suretyship or guarantee executed, provided or procured ("issued") by Surety (whether as surety, co-surety, reinsurer or otherwise) whether issued before or after this Agreement, including all renewals, extensions, modifications and substitutions of Bonds ("Bonds" and individually "Bond"). Bonds may be issued in the name of or on behalf of (a) any Indemnitor, (b) any subsidiary or affiliate of any Indemnitor, (c) any joint venture, consortium or other economic enterprise in which any Indemnitor is or was a member at the time the Bond was issued and/or (d) any third party on request of any Indemnitor. Indemnitors' obligations under this Agreement are continuing, including obligations for Bonds issued for entities that may be sold, dissolved, otherwise disposed of, or for which ownership or management changes may occur in the future.

As an inducement to Surety, Indemnitors represent, covenant and agree for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **PREMIUMS:** Indemnitors shall promptly pay all premiums and charges of Surety for Bonds, at the current rate charged by Surety, until Surety has been provided satisfactory evidence that Bonds have been fully released and/or discharged.
2. **INDEMNITY:** Indemnitors, jointly and severally, shall exonerate, indemnify, and hold Surety harmless from any and all liability, loss, premiums, claims, damages, extra-contractual damages, court costs and expenses, attorneys' fees, consultant fees, interest, and all other costs and expenses that Surety incurs or sustains (all of the foregoing "Loss") arising from or related to: (a) the underwriting or issuance of any Bond, (b) any Claim, which means any notice, claim, demand, defense, counterclaim, setoff, lawsuit or proceeding or circumstance which may constitute, lead to or result in Loss, liability, or asserted liability in connection with any Bond or this Agreement, (c) any Indemnitor failing to timely and completely perform or comply with this Agreement, (d) Surety enforcing this Agreement or (e) any act of Surety to protect or procure any of Surety's rights, protect or preserve any of the Surety's interests, or to avoid or lessen Surety's liability or alleged liability. Indemnitors' liability to Surety includes all Loss, all payments made, and all actions taken by Surety under the Good Faith belief that Surety is, would be or was liable for the Loss, the amounts paid or the actions taken or that it was necessary or expedient to incur such Loss, make such payments or take such actions, whether or not such liability, necessity or expediency existed. Good Faith means, with respect to any act, exercise of discretion or omission by Surety, an absence of dishonesty, evil intent and actual malice toward Indemnitors. An itemized statement of Loss, sworn to by any officer of Surety, or vouchers, affidavits, or other evidence of payment by Surety, shall be *prima facie* evidence of Indemnitors' liability for such Loss.
3. **SURETY'S RIGHT TO SETTLE:** Surety has the absolute and unconditional right and is authorized but not required to pay, perform, settle, compromise, deny, litigate or otherwise resolve any Claim or pay any Loss under any Bonds. The Surety's decision shall be final, binding, and conclusive on the Indemnitors.

**PLACE IN FUNDS:** Indemnitors agree to promptly deposit with Surety, on demand, an amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss. Any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all Bonds.

5. **ISSUANCE OF BONDS:** Surety may decline to issue, execute, modify, procure, extend, or renew any bond and may cancel or terminate any Bond without incurring any liability whatsoever to Indemnitors or otherwise impairing its rights, however derived.

**OTHER SURETIES AS BENEFICIARIES:** If Surety procures the issuance of any Bond by other sureties, or issues any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then this Agreement shall inure to the benefit of such other sureties, co-sureties and/or reinsuring sureties, including the right to bring an action for enforcement



## EXHIBIT J

of this Agreement. Surety may share any information relevant to a Claim or underwriting of Bonds with co-sureties, fronting companies, and/or reinsurers.

7. **EVENT OF DEFAULT:** Indemnitors shall be in default of this Agreement if any of the following occur: (a) breach of any Bond; (b) failure to provide collateral in response to a demand made by Surety; (c) breach of any other provision of this Agreement; (d) Surety setting a reserve against Loss or incurring Loss; (e) any Indemnitor becomes the subject of a bankruptcy, ceases or threatens to cease to carry on business, or has any resolution passed or order made for its bankruptcy, winding-up, liquidation or dissolution, or has any resolution, ordinance, or law passed affecting the duties, responsibilities, or obligations under Addendum No. 2, Limited Waiver of Sovereign Immunity attached hereto; or (f) representations made to Surety by or on behalf of any Indemnitor prove to have been materially false or misleading when made.
8. **SURETY'S ADDITIONAL RIGHTS:** This Agreement is in addition to and not in lieu of all rights, powers, and remedies that Surety may have or acquire against Indemnitors or others, and does not waive, release or novate other agreements. Surety may make, consent to or decline to consent to changes in Bonds, may accept, modify or release any Indemnitor, and may accept, modify, subordinate or release any other indemnity, collateral, rights, real or personal property and/or security. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other and/or any principal until all obligations to Surety under this Agreement, at law or in equity, have been satisfied in full. Surety's forbearance or failure to act to enforce any right shall not waive or diminish any of its rights, which rights may be enforced at any time in Surety's sole discretion.
9. **WAIVER OF NOTICE:** Indemnitors waive notice of the issuance or cancellation of any Bond, any settlement or any act, fact or information concerning or affecting the rights and liabilities of the Surety or the rights or liabilities of Indemnitors under the Bonds or this Agreement, notwithstanding any notice of any kind to which Indemnitors might otherwise have been or be entitled, and notwithstanding any defenses they might have been or be entitled to assert.
10. **DISCHARGE:** Indemnitors shall promptly, on Surety's written demand, procure the full and complete discharge of Surety from all Bonds demanded by Surety and all liability in connection with such Bonds. If Indemnitors are unable to obtain such discharge within the time demanded, Indemnitors shall promptly deposit with Surety an amount of money that Surety determines is sufficient to collateralize or pay any outstanding bonded obligations, or otherwise make provisions acceptable to Surety for the funding of the bonded obligations.
11. **LAWSUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suits or the recovery of judgment on any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether arising before or after any other lawsuit or cause of action. Indemnitors are jointly and severally liable to Surety under this Agreement. Surety may enforce this Agreement against any Indemnitor without joining any other Indemnitor, person or entity.
12. **EXECUTION AND CHANGES:** This Agreement may be executed in counterparts, all of which taken together shall constitute the Agreement. This Agreement shall be effective and immediately binding as to each Indemnitor when that Indemnitor executes this Agreement, regardless of whether any other Indemnitor fails or refuses to execute this Agreement. This Agreement shall only be changed or modified in writing.
13. **SEVERABILITY:** If any provision in this Agreement is found to be contrary to any law applicable to any Indemnitor, or is otherwise found void or unenforceable, the remainder of this Agreement shall remain in full force and effect as to that Indemnitor, and the entire Agreement shall remain of full force and effect as to all other Indemnitors.
14. **TERMINATION OF INDEMNITY:** This Agreement remains in effect until terminated and released by Surety. Any Indemnitor may send written notice to Surety of that Indemnitor's intent to terminate its participation under this Agreement for Bonds issued after the Effective Date of the notice. Such termination of participation shall be effective twenty (20) days from Surety's receipt of the notice ("Effective Date"); however such termination of participation shall not terminate, reduce or discharge Indemnitor's obligations for Bonds issued prior to the Effective Date. The notice of intent to terminate, and any other notices to Surety, shall be addressed as follows: Travelers Casualty and Surety Company of America, One Tower Square, Hartford, CT 06183.
15. **REPRESENTATIONS AND WARRANTIES:** Each Indemnitor represents and warrants the following: (a) Indemnitor has a substantial, material, and/or beneficial interest in one or more Indemnitors or Principals obtaining Bonds or in Surety refraining from canceling Bonds; (b) Indemnitor has the full power and authority to execute and deliver this Agreement and to perform all obligations in this Agreement; (c) Indemnitor's execution and delivery of this Agreement and performance in accordance with its terms does not and will not conflict with, and will not result in a breach or violation of, any terms or conditions of any law, order, regulation or other agreement or obligation binding on Indemnitor; (d) All information provided to Surety by each Indemnitor prior to and after the execution of this Agreement is true, accurate



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and complete as of the time provided; and (e) each right, power and remedy given to Surety, under this Agreement or otherwise, forms a material part of Surety's consideration for Bonds.

6. **ADDENDUMS:** The Performance Addendum is attached as Addendum No. 1 and is incorporated herein by reference. The Limited Waiver of Sovereign Immunity is attached as Addendum No. 2 and is incorporated herein by reference.

### SIGNATURE INSTRUCTIONS

**All signatures should be notarized and dated.**

- 1 Corporation, an officer on the operational side (i.e. President, CEO, COO) and an officer on the finance side (re Secretary, CFO, Treasurer) should sign.
- 2 Limited Liability Corporation (LLC). (a) If manager-managed, and if only one manager, the manager should sign; if more than one manager, two managers should sign (b) if member-managed, two members should sign unless there is only one member, then the one member should sign, or (c) if the LLC has appointed officers to manage the LLC, an officer on the operational side and an officer on the finance side should sign.
- 3 Limited Partnership (LP) (a) If only one general partner, the general partner should sign; (b) if more than one general partner, two general partners should sign.
- 4 Limited Liability Partnership (LLP) at least two partners should sign.
- 5 Trust. All of the Trustee(s) should sign.

By signing below, each of the undersigned affirms to Surety that the undersigned is a duly authorized officer, manager, trustee, official or member of the entity for which the undersigned executes the foregoing Agreement. In such capacity the undersigned is familiar with all of the documents which establish the rights and which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) resolutions, (4) partnership, operating or limited liability agreements or (5) trust agreements of such entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned affirms that such entity has the power and authority to enter into such Agreement and that the undersigned is duly authorized to execute this Agreement on behalf of the entity and to bind the entity to its terms.

*(The remainder of this page is intentionally left blank)*



ADDENDUM No. 1  
PERFORMANCE ADDENDUM TO GENERAL INDEMNITY AGREEMENT

Surety may issue or refrain from cancelling Bonds with respect to contracts or other obligations referred to in any Bond or secured by any Bond (each a "Bonded Contract"). Indemnitors pledge, assign, transfer and set over to Surety the Collateral to secure the obligations in this Agreement, including a security interest in the Collateral. "Collateral" means all right, title and interest of one or more Indemnitors in the following: (a) all Bonded Contracts; (b) all sums which are or may become payable in connection with any Bonded Contract; and (c) any movable or immovable property, the construction, improvement or repair of which is secured by any Bond. This pledge and assignment becomes effective on the date of this Agreement or the earliest date allowable by law. The following are additional Events of Default under this Agreement: (a) a declaration of default with respect to a Bonded Contract; (b) an actual breach, default or abandonment of a Bonded Contract; and/or (c) an improper diversion of Bonded Contract funds or the Collateral.

Upon the occurrence of an Event of Default, the Surety shall have the right, in its sole discretion, to:

- i) Assert, prosecute and/or settle any claim relating to a Bonded Contract as Surety sees fit;
- ii) Execute in the name of one or more Indemnitors any instrument deemed necessary or desirable by Surety to: a) vest in Surety absolute title to any and all monies, property and rights pledged, assigned, transferred and/or set over in this Agreement and (b) provide the protection and rights to the Surety contemplated by all of the provisions of this Agreement. Indemnitors ratify and confirm all acts taken by Surety and its designees as their attorney-in-fact and agree to protect and hold harmless Surety and its designees for all such acts;
- iii) Take possession of Indemnitors' rights, title, and interest in the Collateral; and
- iv) Exercise its rights of subrogation to all rights, remedies, properties, funds, securities, and receivables of Indemnitors on Bonded Contracts.

This Agreement shall constitute a Security Agreement and Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and all similar statutes. The Agreement, or a photographic or other reproduction, may be filed by Surety without notice to perfect the security interest granted herein. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's rights of subrogation.

Indemnitors' obligations to Surety shall not be waived or reduced by any claim, setoff, defense, or other right or cause of action which Indemnitors and/or Surety may hold against or which may be asserted by any other Indemnitor, person or entity arising from or related to any Bond, this Agreement, other agreements, by law or otherwise.

The failure of Indemnitors, collectively or individually, to perform or comply with any provision of this Agreement shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. Surety shall be entitled to injunctive relief and/or specific performance, and Indemnitors waive any claims or defenses to the contrary.



ADDENDUM No. 2  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Indemnitors Navajo Transitional Energy Company LLC ("NTEC") and The Navajo Nation ("The Nation") (individually and collectively "Indemnitors") make this Limited Waiver of Sovereign Immunity as follows:

I. Limited Waiver of Sovereign Immunity; Forum Selection; Choice of Law:

- A. Indemnitors hereby expressly, unequivocally, and irrevocably, waive their sovereign immunity for purposes of the General Indemnity Agreement ("Agreement"), and in accordance with and as limited by the terms of this Agreement. The Agreement expressly includes this Addendum No. 2, Limited Waiver of Sovereign Immunity, which is incorporated into the Agreement.

B. Limited Waiver of Sovereign Immunity. Indemnitors waive their sovereign immunity from suit for the limited purposes described herein and in the following section for purposes of arbitration, litigation proceedings necessary to compel arbitration, to enforce an arbitration award pursuant to the terms and provisions of the Agreement, or for exigent or emergency equitable relief as allowed by the terms of the Agreement. Indemnitors represent and agree that:

1. Indemnitors expressly, unequivocally, and irrevocably waive immunity from suit and consent to the dispute resolution mechanisms stated in this Agreement, which include arbitration pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules, which arbitration shall be governed by the New Mexico Uniform Arbitration Act, in accordance with the clear and express terms of the Agreement, to permit enforcement of the terms and conditions of the Agreement, to compel or challenge arbitration, to enforce any award in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then the Arizona Superior Court, Navajo County;
2. Surety may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Indemnitors pursuant to and in accordance with the terms of this Agreement and Indemnitors waive any benefits, rights, immunities, privileges, or limitations under applicable Navajo Nation law, including but not limited to statutory, common, or fundamental law, that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies pursuant to the Agreement.
3. Indemnitors waive any right or claim of right to require exhaustion of tribal administrative or judicial remedies before any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created in favor of the parties' election to exercise the dispute resolution provisions of this Agreement, including arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award, and any action under exigent circumstances.
4. Indemnitors agree and expressly, unequivocally, and irrevocably waive their sovereign immunity, but only to Surety, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all assets, except such property held in trust by the United States.
5. Indemnitors and Surety agree that the express, unequivocal, and irrevocable waiver of sovereign immunity applies only to Surety and its successors and assigns, and exclusively for the purposes of this Amendment and shall not operate, apply, or inure to any other third-party (or non-Party) person or entity other than Surety and Surety's successors and assigns.
6. Indemnitors clearly, expressly, unequivocally, and irrevocably waive their sovereign immunity for Surety to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, a judge of the First Judicial District Court of the State of New Mexico, or a judge of the Superior Court, State of Arizona, for Surety to obtain one or more of the following:
  - a) interpretation of this Agreement; or
  - b) to require Indemnitors comply with the duties and obligations expressly agreed to within this Agreement; or
  - c) to make Indemnitors perform a specific action Indemnitors are obligated to perform pursuant to this Agreement, or to make Indemnitors discontinue some specific action Indemnitors are precluded from performing pursuant to this Agreement.
7. Indemnitors' Limited Waiver of Sovereign Immunity shall survive the termination or expiration of this Agreement and remains effective until any applicable statutes of limitations has run.

C. Indemnitors represent and warrant that this Limited Waiver of Sovereign Immunity has been ratified and approved by the Navajo Nation Council and the Department of Justice, and the Governing Board of NTEC, that all of the persons executing this Limited Waiver of Sovereign Immunity, and any related agreements necessary to effectuate them, are actually and properly authorized to execute this Limited Waiver of Sovereign Immunity with all authorities necessary to bind and obligate Indemnitors to the terms of this Limited Waiver of Sovereign Immunity. See attached Navajo Nation Council Resolution # \_\_\_\_\_ and NTEC's Governing Board Resolution # \_\_\_\_\_

D. NTEC expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by its Governing Board and by



Navajo Nation Council resolution, as required, provide all of the same limited waivers of sovereign immunity to Surety as those set forth herein.

- E. Indemnitors agree that to the extent any provisions of this Agreement might be rendered ineffective by any later changes in Navajo Nation Law, or subsequent resolution or ordinance passed or adopted by the Navajo Nation Council, any such change or action shall constitute a breach of the Agreement, which breach shall be actionable in accordance with Section II, Resolution of Disputes.

## II. Resolution of Disputes:

- A. Any dispute between one or more Indemnitors and Surety arising pursuant to, out of, or in connection with this Agreement, including the meaning, interpretation or application of any provision of the Agreement, shall be resolved as set forth in this section.
- B. Disputes that require exigent or emergency equitable relief may be brought in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction, or is otherwise unavailable to the Parties, then in the Superior Court, State of Arizona, Navajo County, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only for equitable relief in the form of specific performance and injunctive relief as set forth herein. The Parties hereby agree that such exigent or emergency equitable relief includes but is not limited to (i) the Surety's right to specific performance and injunctive relief, (ii) the Surety's right to be placed in funds pursuant to Paragraph 4 of the Agreement or under the Performance Addendum, and (iii) the Surety's right to be discharged and Indemnitors' obligations pursuant to Paragraph 10 of the Agreement.
- C. Binding Arbitration. The Parties shall submit all disputes (except those requiring exigent or emergency relief) to binding arbitration conducted pursuant to the AAA's Commercial Arbitration Rules and the New Mexico Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of New Mexico, subject to and conditioned by the following:
  1. Arbitration Notice. The demanding Party (the "Claimant") shall provide a notice of arbitration (the "Arbitration Notice") to the other Parties (the "Respondents"), which shall include a reasonably detailed statement of the facts and theories supporting that Party's claims. Claimant shall also provide a copy of the Arbitration Notice to the Attorney General of the Navajo Nation. Until Indemnitors otherwise retain alternate legal counsel and notifies Surety in writing, the Office of the Attorney General of the Navajo Nation shall serve as Indemnitors' legal counsel for purposes of this Agreement.
  2. Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), Respondent(s) shall provide the Claimant a Response to the Arbitration Notice, which shall include a reasonably detailed statement of the facts and theories supporting any defenses and counter-claims.
  3. Within thirty (30) days of the date of Respondent(s)' Response, each party shall designate an arbitrator. If one party names its arbitrator but the other party fails to designate its arbitrator within the thirty days, the AAA shall name the second arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety.
  4. Third Neutral Arbitrator. The two (2) Party arbitrators shall choose a third neutral arbitrator for the arbitration panel. If the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.
  5. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.
  6. Arbitration Panel and Arbitrator Authority to Issue Interim Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement. This ability shall not preclude resort to court under sub-section B.
  7. Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona. If the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be one of the following cities: Albuquerque, New Mexico; or Phoenix, Arizona.
  8. Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration



## EXHIBIT J

panel. The arbitration panel is authorized to award monetary damages and equitable relief — specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees.

**D. Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitration Award.**

1. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper

jurisdiction or is otherwise unavailable to the Parties, then the Superior Court of Arizona, Navajo County, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitration award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

2. Limitations on Judicial Review. The Parties' enforcement of an arbitration award shall be limited to the

remedy/award issued by the arbitration panel, and shall only be enforceable in the First Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction or is otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Neither Party shall petition, move, or otherwise request a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Judicial review of an arbitration award shall be strictly limited in the manner prescribed by the New Mexico Uniform Arbitration Act.

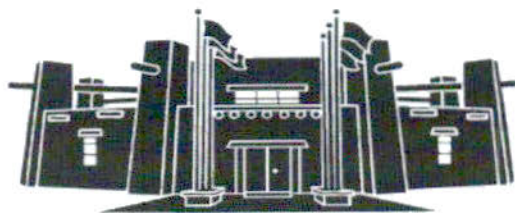
3. Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting

application of the law of the State of New Mexico whether in the context of an arbitration proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitration award, or to enforce an arbitration award, the New Mexico Uniform Arbitration Act, the laws of the State of New Mexico, and the AAA's Commercial Arbitration Rules only shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

The foregoing Limited Waiver of Sovereign Immunity is acknowledged, accepted and agreed.

(Resolution to follow this page)





## MEMORANDUM

TO: Honorable Eugenia Charles-Newton  
Shiprock Chapter

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: September 23, 2019

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; RESTATING THAT RESOLUTION NOS. CD-60-13 AND CAP-13-15, WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC SPECIFICALLY APPLIED ONLY TO THE NAVAJO MINE PURCHASE

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0302-19

SPONSOR: Eugenia Charles-Newton

**TITLE: An Action Relating To Resources and Development Committee, Budget And Finance Committee, NAABIK'IYATI Committee And The Navajo Nation Council; Restating That Resolution NOS. CD-60-13 And CAP-13-15, Which Approved A Limited Waiver Of Sovereign Immunity And General Indemnity Agreements For The Navajo Transitional Energy Company, LLC Specifically Applied Only To The Navajo Mine Purchase**

*Date posted:* October 2, 2019 at 4:23 PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

**Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.**

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0302-19

SPONSOR: Honorable Eugenia Charles-Newton


TITLE: An Action Relating to Resources and Development Committee, Budget and Finance Committee, Naabik'iyati Committee and the Navajo Nation Council; Restating that Resolution Nos. CD-60-13 and CAP-13-15, which approved a limited waiver of Sovereign Immunity and General Indemnity Agreements for the Navajo Transitional Energy Company, LLC specifically applied only to the Navajo Mine Purchase

Posted: October 02, 2019 at 04:23 PM

5 DAY Comment Period Ended: October 07, 2019

Digital Comments received:

Comments Supporting	1) Vincent Yazzie, Flagstaff, Arizona 2) Percy Deal, Big Mountain 3) Duane Chili Yazzie, Shiprock, New Mexico
Comments Opposing	<i>None</i>
Inconclusive Comments	1) Pearline Kirk, Office of the Controller

  
\_\_\_\_\_  
Legislative Tracking Secretary  
Office of Legislative Services

10/08/19 8:35 AM  
\_\_\_\_\_  
Date/Time



## Comments 0302-19

Vincent Yazzie <vinceyazzie@yahoo.com>

Thu 10/3/2019 11:51 PM

To: comments <comments@navajo-nsn.gov>;

Cc: BECENTI <rezztone@yahoo.com>; Nicole Horseherder <nhorseherder@gmail.com>; Lori Goodman <lgoodman89@gmail.com>; Nadine Narindrankura <nnarindrankura@gmail.com>; Marley Shebala <mshebala@gmail.com>; Percy Deal <deal.percy@gmail.com>; Adella Begaye <alleda.kay@gmail.com>;

1 attachment

M042118572879-rep-0210105627.pdf;

October 3, 2019

Vincent Yazzie  
10080 Palomino Road  
Flagstaff, AZ 86004

(928) 380-3198

e-mail: vinceyazzie@yahoo.com

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

Subject: Yes to 0302-19. Emergency pass immediately. Also put NTEC as not in Good Standing and notify the court. Also appeal the Sale Order and any other applicable Orders. Orders must be appealed within 10 days. One must registrar electronically with the court which can take a few days so time is of the essence.

Judge has approved the Sale of Cloud Peak Energy on October 2, 2019. Navajo Nation has to appeal immediately. Sale Order attached. Sale Order also includes clauses that NTEC is operating in good standing and that notice was given to the Navajo Nation on Waiver of Sovereign Immunity. The various orders passed on 10/2/2019 is

674

**Order (1) approving Sale of the Debtors' Assets Free and Clear of Liens, (II) Approving assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (related**



**document(s)52, 668) Order Signed on 10/2/2019. (Attachments: # 1 Exhibit A)**

Attachments: 1

Related: 52, 668

Prime Clerk

Email

10/02/2019673

**Order Approving Motion to Extend/Limit Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement(related document(s)629, 667) Order Signed on 10/2/2019.**

Attachments:

Related: 629, 667

Email

10/02/2019672

**Order Approving Motion of Debtors for Entry of an Order Extending the Deadline By Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real Property to Extend Time related document(s)630, 666) Order Signed on 10/2/2019.**

Attachments:

Related: 630, 666

Email

Can be found at <https://cases.primeclerk.com/cloudpeakenergy/Home-DocketInfo>



Yes to 0302-19 with amendments to put NTEC into Not in Good Standing and not following the laws of the Navajo Nation. Emergency pass as Sale Order was issued 10/2/2019. Sale Order must be appealed electronically. Use search feature in Adobe Acrobat to search on "Standing" and "Navajo"

Sincerely,

Vincent Yazzie



The Most Honorable Council Delegates  
6, 2019

October

Regard: Legislation 0302 – 19

Please accept my support for Legislation 0302 – 19 sponsored by Delegates Charles-Newton and Henio.

First, I want to thank them for their foresights in protecting the Navajo Nation and the Nation's sovereignty, the Nation's sovereignty is very sacred and never to be abuse, especially by non-Navajo governmental entities (enterprises, corporations, boards or commissions). Ahe' hee' nitsaago.

Second, I express my support for the legislation for the following reasons:

- It is not asking the Council to rescind NTEC's immunity or take away any authorization allowing NTEC to piggy-back on the Nation's indemnity. It simply puts very explicit boundaries on what was agreed to and approved in 2013.
- It reaffirms the limited waiver of liability and indemnity authorized for NTEC was limited exclusively for the purchase of Navajo Mine in 2013 and no other purpose.
- It also clarify the authorization was for use within the boundaries of the Navajo Nation.
- It also reminds NTEC their authorization includes researching and development of other energy sources other than coal.
- The above is for the sole purpose of protecting the Navajo Nation and the Nation's sovereignty. Protecting the people's property.
- And for other purposes.

Third, I also want to briefly outline a few objections I have with the current conduct of NTEC's purchase of bankrupt Cloud Peak Energy's three mines.

- NTEC now has no respect and appreciation for the Navajo Nation, a Nation that created it. Disregarding and abusing the 2013 Agreement with the Navajo Nation.
- The agreement states "prior approval of the Navajo Nation Council" is required when "before any act which would substantially change businesses of the company or make it difficult, not economically feasible or impossible to carry on". Going outside the Navajo reservation is "substantial" change.
- NTEC's lack of transparency.



- NTEC's deliberate plan to side step the Navajo Nation, the President, Speaker, Navajo Nation Council and Office of the Attorney General and the general public. Not letting AG's representative in a meeting set up by NTEC with the Council. Navajo Nation Council, individually or a whole is the client of the Attorney General.
- NTEC's secret way of coming in the back door of the Council, avoiding the President and the Attorney General to receive another financial backing to cover hundredth of millions of dollars (estimated: \$408M) in surety bonding liabilities. This is over and above the \$400M the Nation put up for surety bonding liabilities for Navajo Mine and 4CPP.
- The three NTEC executives, the three bilaagaanis are coming from failed coal mines where bankruptcy been declared, mines went under and they walked away with tens of millions of dollars. The Council needs to get rid of these three including those people they brought with them.
- They see the bankrupt Cloud Peak Energy mines as a perfect situation where bankruptcy is already in place and failure is all a sure thing and it's just a matter of time. They have their golden parachute ready.
- It's a major business risks in spite of the fact coal market are continually going down.
- NTEC's obligations are putting the Nation's resources and finances at great risk. Leaving next to nothing for the future generation.

I respectfully request members of the Navajo Nation Council to vote to clarify and reaffirm the 2013 agreement between the Navajo Nation and NTEC through Legislation 0302-19.

Most respectfully,

Percy Deal, Big Mountain.



0302-19

Duane Chili Yazzie <chili\_yazzie@hotmail.com>

Mon 10/7/2019 7:08 AM

To comments <comments@navajo-nsn.gov>;

ya'ateeh abini NNC members. we need to support this legislation 0302-19, it will set boundaries to prevent entities who do get limited waivers of Sovereignty from taking advantage of the generosity of the Navajo Nation. this rule needs to apply to all including Navajo Enterprises who do take advantage of the Nation. ahe'hee. Duane Yazzie C#27450, Shiprock, Navajo Nation



# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT   MYRON LIZER | VICE PRESIDENT



## Memorandum:

To:                      Honorable Delegates & 2 NNC '164 Reviewers  
Navajo Nation Government

A handwritten signature in black ink, appearing to read "Pearl Kirk".

From:                  Pearlline Kirk, Controller  
Office of the Controller

Date:                   October 7, 2019

Subject:                Legislation 0302-19-Restating that Resolution Nos. CD-60-13 and CAP 13-15, which approved a limited waiver of Sovereign Immunity and General Indemnity Agreements for the Navajo Transitional Energy Company, LLC specifically applied only to the Navajo Mine Purchase

Whether anyone looked out in the best interest of the Navajo Nation back in 2013 when the original Navajo Mine was purchased is now coming back to haunt the Nation. The documentation of the Navajo Mine transaction now poses enormous problems in 2019 and beyond for the Navajo People. Back when the original Navajo Mine was being purchased, the Navajo Nation agreed for a General Indemnity Agreement including the corresponding sovereign immunity waiver. This was a blank check for the performance and reclamation bonds valued at \$400M+ for NTEC.

What this blank check means is that should NTEC not have the ability to pay its liabilities then the surety companies front the money and will then look to the Nation for repayment. The assumption back then was that NTEC didn't have the balance sheet to stand on its own and the surety companies wanted someone else's deep pockets, namely the Navajo Nation's. In 2019, NTEC is now using such loose documents i.e., blank check to push its questionable and speculative venture and essentially strong arming the Nation into indemnifying risky business deals without the blessing of the Navajo leadership.

If you read the General Indemnity Agreement attached it is broadly written including the language i.e., "with respect to any bond, undertaking, an/or obligation of suretyship or guarantee executed, provided or procured by



Surety, whether issued before or after this Agreement, including all renewals, extensions, modifications, and substitutions of the Bonds.” NTEC is using this language and then some, to: 1) make a questionable bid of a bankrupt coal company and winning the bid based upon ability to obtain bonding and, 2) essentially following through with the new bonding required of this bid sale all without giving the courtesy to asking its owners for added indemnification.

One would think if the enterprise was adding on additional risk to the tune of an additional \$400+ million for a minimum total of \$800+ million onto its parent owners, NTEC should give the Nation the opportunity to consider ramifications of such transaction. Instead NTEC doesn’t have the decency to let the Nation know what they are doing and is strapping the Nation with unknown liabilities. NTEC is buying these coal mines after 50 or so years of environmental abuse by people and businesses far away from the Navajo lands.

NTEC will be left holding the bag but more precisely, the Navajo Nation will be left holding the bag. NTEC still does not have the financial ability to cover bonding on its own and the surety companies don’t care because they know the Nation has the deep pockets. Again, NTEC is strapping the Nation.

The risk is NTEC goes belly-up in a few years in this dying coal industry and is unable to pay its liabilities and whatever the surety companies pay, they will surely be looking to the Nation to be repaid. When that happens, not only will we be out of an enterprise, we’ll be taking a large hit on the Nation’s financials and assets. Rounding up the bonding capacity of \$800 million, that we know of, that is a third of the Nation’s Permanent Trust Fund, or 15% of the Nation’s total investment portfolio. All because NTEC is a rogue enterprise tying up the Nation’s assets with no care as to risk, not allowing the Nation to conduct its own due diligence and consideration for official action.

Leadership needs to take a hard stance because it has a fiduciary duty to its constituents by terminating the General Indemnity Agreement before it is too late and then make the blank check language not so wide open. Otherwise, the Nation is seen as not taking control of its own destiny which is something the Navajo People should be watching along with its stakeholders. This legislation is well intentioned by clarifying what was done in the past and is a step towards that end but even better is to terminate this blank check that is General Indemnity Agreement immediately. Terminating the General Indemnity Agreement will terminate any future bonds but will not affect the bonds for the Navajo Mines. The Nation just needs to react fast.



**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0302-19

**SPONSOR:** Honorable Eugenia Charles-Newton

**TITLE:** An Action Relating to Resources and Development Committee, Budget and Finance Committee, Naabik'iyati Committee and the Navajo Nation Council; Restating that Resolution Nos. CD-60-13 and CAP-13-15, which approved a limited waiver of Sovereign Immunity and General Indemnity Agreements for the Navajo Transitional Energy Company, LLC specifically applied only to the Navajo Mine Purchase

**Posted:** October 02, 2019 at 04:23 PM

**5 DAY Comment Period Ended:** October 07, 2019

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	1. Rose Grey
<b>Inconclusive Comments</b>	<i>None</i>

  
 Legislative Tracking Secretary  
 Office of Legislative Services

10/10/19      10:28 pm  
 Date/Time



## LEGISLATION NO: 0302-19

Rose Grey <rgrey@navajo-nsn.gov>

Wed 10/9/2019 3:56 PM

To: comments <comments@navajo-nsn.gov>;

Legislation No. 0302-19 is not necessary. The Navajo Nation Entities must grow and flourish, and eventually return some revenues to support our Navajo People. NTEC's revenue should raises the bar for all entities, no more 3 to 8 million dollars profits. Our leaderships both NN President & Council has not replace the 800 jobs that went away leading to separation of families, some elders or low income scrambling for heat sources this winter, and some of the general public is tired of this hatred towards NTEC! We want accountability on replacing the 800 jobs and the millions of dollar economy that was lost. We can't be begging the States & Federal government all the time.