

NC

18-1374-EL-AGG 51

Ohio Public Utilities Commission

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Date Received	Case Number	Version
	- EL-AGG	May 2016

INITIAL CERTIFICATION APPLICATION FOR ELECTRIC AGGREGATORS/ POWER BROKERS

Please print or type all required information. Identify all attachments with an exhibit label and title (Example: Exhibit A-12 Company History). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division; 180 East Broad Street, Columbus, Ohio 43215-3793.

This PDF form is designed so that you may input information directly onto the form. You may also download the form, by saving it to your local disk, for later use.

A. APPLICANT INFORMATION

A-1 Applicant intends to be certified as: (check all that apply)

Power Broker Aggregator

A-2 Applicant's legal name, address, telephone number and web site address

Legal Name Ameresco, inc.
Address 111 Speen St.
Telephone # (866) 263-7372 Web site address (if any) www.ameresco.com

A-3 List name, address, telephone number and web site address under which Applicant will do business in Ohio

Legal Name Ameresco, Inc.
Address 111 Speen St.
Telephone # (866) 263-7372 Web site address (if any) www.ameresco.com

A-4 List all names under which the applicant does business in North America

<https://www.sec.gov/Archives/edgar/data/1488139/000148813917000008/ex211q416.htm>

These are all Ameresco affiliates.

A-5 Contact person for regulatory or emergency matters

Name Kathy Abernethy
Title Director of Generation Markets Management

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This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician MM Date Processed 08/31/18

Business address 5550 77 Center Dr. , Suite 380
 Telephone # (704) 916-3531 Fax # (704) 916-3631
 E-mail address SM-Regulatory@ameresco.com

A-6 Contact person for Commission Staff use in investigating customer complaints

Name Kathy Abernethy
 Title Director, Generation Markets Management
 Business address 5550 77 Center Dr., Suite 380
 Telephone # (704) 916-3531 Fax # (704) 916-3631
 E-mail address kabernethy@ameresco.com

A-7 Applicant's address and toll-free number for customer service and complaints

Customer Service address 5550 77 Center Dr., Suite 380
 Toll-free Telephone # (866) 263-7372 Fax # (704) 916-3631
 E-mail address SM-Regulatory@ameresco.com

A-8 Applicant's federal employer identification number # 43512838

A-9 Applicant's form of ownership (check one)

- Sole Proprietorship
- Limited Liability Partnership (LLP)
- Corporation
- Partnership
- Limited Liability Company (LLC)
- Other _____

A-10 (Check all that apply) Identify each electric distribution utility certified territory in which the applicant intends to provide service, including identification of each customer class that the applicant intends to serve, for example, residential, small commercial, mercantile commercial, and industrial. (A mercantile customer, as defined in (A) (19) of Section 4928.01 of the Revised Code, is a commercial customer who consumes more than 700,000 kWh/year or is part of a national account in one or more states).

- | | | | | |
|--|--------------------------------------|--|--|--|
| <input checked="" type="checkbox"/> First Energy | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input type="checkbox"/> Ohio Edison | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input type="checkbox"/> Toledo Edison | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input type="checkbox"/> Cleveland Electric Illuminating | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input checked="" type="checkbox"/> Duke Energy | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input checked="" type="checkbox"/> Monongahela Power | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input checked="" type="checkbox"/> American Electric Power | | | | |
| <input type="checkbox"/> Ohio Power | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input type="checkbox"/> Columbus Southern Power | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |
| <input checked="" type="checkbox"/> Dayton Power and Light | <input type="checkbox"/> Residential | <input checked="" type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Mercantile | <input checked="" type="checkbox"/> Industrial |

A-11 Provide the approximate start date that the applicant proposes to begin delivering services

October 1, 2018

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

A-12 Exhibit A-12 "Principal Officers, Directors & Partners" provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.

A-13 Exhibit A-13 "Company History," provide a concise description of the applicant's company history and principal business interests.

A-14 Exhibit A-14 "Articles of Incorporation and Bylaws," if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the Applicant is incorporated and any amendments thereto.

A-15 Exhibit A-15 "Secretary of State," provide evidence that the applicant has registered with the Ohio Secretary of the State.

B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

B-1 Exhibit B-1 "Jurisdictions of Operation," provide a list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail or wholesale electric services including aggregation services.

B-2 Exhibit B-2 "Experience & Plans," provide a description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4928.10 of the Revised Code.

B-3 **Exhibit B-3 "Summary of Experience,"** provide a concise summary of the applicant's experience in providing aggregation service(s) including contracting with customers to combine electric load and representing customers in the purchase of retail electric services. (e.g. number and types of customers served, utility service areas, amount of load, etc.).

B-4 **Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

B-5 Disclose whether the applicant, a predecessor of the applicant, or any principal officer of the applicant have ever been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.
 No Yes

If yes, provide a separate attachment labeled as **Exhibit B-5 "Disclosure of Consumer Protection Violations"** detailing such violation(s) and providing all relevant documents.

B-6 Disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail or wholesale electric service including aggregation service denied, curtailed, suspended, revoked, or cancelled within the past two years.
 No Yes

If yes, provide a separate attachment labeled as **Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation"** detailing such action(s) and providing all relevant documents.

C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

C-1 **Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information in Exhibit C-1 or indicate that Exhibit C-1 is not applicable and why. (This is generally only applicable to publicly traded companies who publish annual reports)

C-2 **Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If the applicant does not have such filings, it may submit those of its parent company. An applicant may submit a current link to the filings or provide them in paper form. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 that the applicant is not required to file with the SEC and why.

C-3 Exhibit C-3 “Financial Statements,” provide copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer certified financial statements covering the life of the business. If the applicant does not have a balance sheet, income statement, and cash flow statement, the applicant may provide a copy of its two most recent years of tax returns (with social security numbers and account numbers redacted).

C-4 Exhibit C-4 “Financial Arrangements,” provide copies of the applicant's financial to satisfy collateral requirements to conduct retail electric/gas business activity (e.g., parental or third party guarantees, contractual arrangements, credit agreements, etc.,).

Renewal applicants can fulfill the requirements of Exhibit C-4 by providing a current statement from an Ohio local distribution utility (LDU) that shows that the applicant meets the LDU’s collateral requirements.

First time applicants or applicants whose certificate has expired as well as renewal applicants can meet the requirement by one of the following methods:

1. The applicant itself stating that it is investment grade rated by Moody’s, Standard & Poor’s or Fitch and provide evidence of rating from the rating agencies.
2. Have a parent company or third party that is investment grade rated by Moody’s, Standard & Poor’s or Fitch guarantee the financial obligations of the applicant to the LDU(s).
3. Have a parent company or third party that is not investment grade rated by Moody’s, Standard & Poor’s or Fitch but has substantial financial wherewithal in the opinion of the Staff reviewer to guarantee the financial obligations of the applicant to the LDU(s). The guarantor company’s financials must be included in the application if the applicant is relying on this option.
4. Posting a Letter of Credit with the LDU(s) as the beneficiary.

If the applicant is not taking title to the electricity or natural gas, enter “N/A” in Exhibit C-4. An N/A response is only applicable for applicants seeking to be certified as an aggregator or broker.

C-5 Exhibit C-5 “Forecasted Financial Statements,” provide two years of forecasted income statements for the applicant’s **ELECTRIC related business activities in the state of Ohio Only**, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer. The forecasts should be in an annualized format for the two years succeeding the Application year.

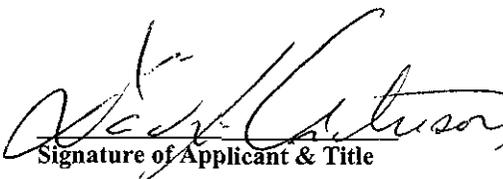
- C-6 **Exhibit C-6 “Credit Rating.”** provide a statement disclosing the applicant’s credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody’s Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant’s parent or affiliate organization that guarantees the obligations of the applicant. If an applicant or its parent does not have such a credit rating, enter “N/A” in Exhibit C-6.

- C-7 **Exhibit C-7 “Credit Report.”** provide a copy of the applicant’s credit report from Experion, Dun and Bradstreet or a similar organization. An applicant that provides an investment grade credit rating for Exhibit C-6 may enter “N/A” for Exhibit C-7.

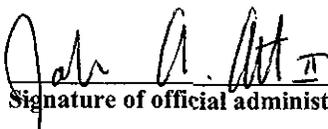
- C-8 **Exhibit C-8 “Bankruptcy Information.”** provide a list and description of any reorganizations, protection from creditors or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or within the two most recent years preceding the application.

- C-9 **Exhibit C-9 “Merger Information.”** provide a statement describing any dissolution or merger or acquisition of the applicant within the two most recent years preceding the application.

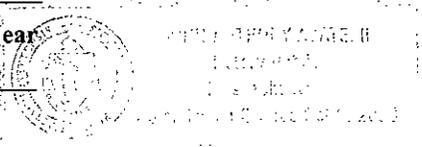
- C-10 **Exhibit C-10 “Corporate Structure.”** provide a description of the applicant’s corporate structure, not an internal organizational chart, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale electricity or natural gas to customers in North America. If the applicant is a stand-alone entity, then no graphical depiction is required and applicant may respond by stating that they are a stand-alone entity with no affiliate or subsidiary companies.


 Signature of Applicant & Title *EXECUTIVE VICE PRESIDENT*

Sworn and subscribed before me this 22ND day of AUGUST, 2018


 Signature of official administering oath

Month Year
JOHN A. ABATE II
 Print Name and Title



My commission expires on OCTOBER 2, 2020

AFFIDAVIT

State of Massachusetts

Framingham
(Town)

County of Middlesex

David J Anderson, Affiant, being duly sworn/affirmed according to law, deposes and says that:

He/She is the Executive Vice Pres (Office of Affiant) of Ameresco, Inc. (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant,

1. The Applicant herein, attests under penalty of false statement that all statements made in the application for certification are true and complete and that it will amend its application while the application is pending if any substantial changes occur regarding the information provided in the application.
2. The Applicant herein, attests it will timely file an annual report with the Public Utilities Commission of Ohio of its intrastate gross receipts, gross earnings, and sales of kilowatt-hours of electricity pursuant to Division (A) of Section 4905.10, Division (A) of Section 4911.18, and Division (F) of Section 4928.06 of the Revised Code.
3. The Applicant herein, attests that it will timely pay any assessments made pursuant to Sections 4905.10, 4911.18, or Division F of Section 4928.06 of the Revised Code.
4. The Applicant herein, attests that it will comply with all Public Utilities Commission of Ohio rules or orders as adopted pursuant to Chapter 4928 of the Revised Code.
5. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, and its Staff on any utility matter including the investigation of any consumer complaint regarding any service offered or provided by the Applicant.
6. The Applicant herein, attests that it will fully comply with Section 4928.09 of the Revised Code regarding consent to the jurisdiction of Ohio Courts and the service of process.
7. The Applicant herein, attests that it will comply with all state and/or federal rules and regulations concerning consumer protection, the environment, and advertising/promotions.
8. The Applicant herein, attests that it will use its best efforts to verify that any entity with whom it has a contractual relationship to purchase power is in compliance with all applicable licensing requirements of the Federal Energy Regulatory Commission and the Public Utilities Commission of Ohio.
9. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, the electric distribution companies, the regional transmission entities, and other electric suppliers in the event of an emergency condition that may jeopardize the safety and reliability of the electric service in accordance with the emergency plans and other procedures as may be determined appropriate by the Commission.
10. If applicable to the service(s) the Applicant will provide, the Applicant herein, attests that it will adhere to the reliability standards of (1) the North American Electric Reliability Council (NERC), (2) the appropriate regional reliability council(s), and (3) the Public Utilities Commission of Ohio. (Only applicable if pertains to the services the Applicant is offering)

11. The Applicant herein, attests that it will inform the Commission of any material change to the information supplied in the application within 30 days of such material change, including any change in contact person for regulatory purposes or contact person for Staff use in investigating customer complaints.

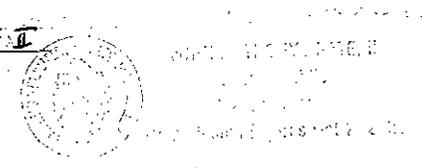
That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

[Handwritten Signature], EXECUTIVE VICE PRESIDENT
Signature of Affiant & Title

Sworn and subscribed before me this 22ND day of AUGUST, 2018
Month Year

[Handwritten Signature]
Signature of official administering oath

JOHN A. ABATE II
Print Name and Title



My commission expires on OCTOBER 2, 2020

OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.
ATTACHMENT A-12
Principals, Officers, Director & Partners

George P Sakellaris
Chairman of the Board of Directors, President and Chief Executive Officer
111 Speen Street, Framingham, MA 01701
508-661-2200

David J. Anderson
Executive Vice President and Director
111 Speen Street, Framingham, MA 01701
508-661-2200

Michael T. Bakas
Executive Vice President, Distributed Energy Systems
111 Speen Street, Framingham, MA 01701
508-661-2200

Nicole A Bugarino
Executive Vice President, General Manager, Federal Solutions
111 Speen Street, Framingham, MA 01701
508-661-2200

Davis Corrsin
Executive Vice President, General Counsel and Secretary and Director
111 Speen Street, Framingham, MA 01701
508-661-2200

Joseph P. DeManche
Executive Vice President, Engineering and Operations
111 Speen Street, Framingham, MA 01701
508-661-2200

Louis P. Maltezos
Executive Vice President
111 Speen Street, Framingham, MA 01701
508-661-2200

John R. Granara, III
Executive Vice President, Chief Financial Officer and Treasurer
111 Speen Street, Framingham, MA 01701
508-661-2200

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT A-13
Company History**

Ameresco, Inc. was incorporated on April 25, 2000 in the State of Delaware and became a publicly traded company in 2010 on the NYSE under the symbol AMRC.

With its corporate headquarters in Framingham, MA, Ameresco has more than 1,000 employees in over 70 offices providing local expertise in the United States, Canada, and the United Kingdom. Part of the company's growth over the last 18 years can be attributed to the acquisition of energy services companies that have complimented and enabled the company to broaden its offerings, expand its geographical reach, and accelerate growth.

In 2017, Ameresco experienced the following year over year growth:

- 2017 Revenues of \$717.2 million, compared to 2016 of \$651.2 million, up 10%
- Net income attributable to common shareholders of \$37.5 million, compared to \$12.0 million
- Net income per diluted share of \$0.82, compared to \$0.26
- Net income includes a benefit of \$14 million or \$0.30 per diluted share related to the Tax Cuts and Jobs Act
- Adjusted EBITDA of \$63.3 million, compared to \$56.2 million, up 13%
- Non-GAAP EPS of \$0.76, compared to \$0.36
- Record high project backlog of \$1.77 billion, compared to \$1.49 billion up 19%

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT A-14
Articles of Incorporation and Bylaws**

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AMERESCO, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JULY, A.D. 2010, AT 11:23 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

3216839 8100

100775284

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8135911

DATE: 07-27-10

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:32 AM 07/27/2010
FILED 11:23 AM 07/27/2010
SRV 100775284 - 3216839 FILE

RESTATED CERTIFICATE OF INCORPORATION

OF

AMERESCO, INC.

(originally incorporated on April 25, 2000)

FIRST: The name of the Corporation is Ameresco, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent. The name of its registered agent at that address is National Registered Agents, Inc.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 649,000,000 shares, consisting of (i) 500,000,000 shares of Class A Common Stock, \$.0001 par value per share ("Class A Common Stock"), (ii) 144,000,000 shares of Class B Common Stock, \$.0001 par value per share ("Class B Common Stock"), and (iii) 5,000,000 shares of Preferred Stock, \$.0001 par value per share ("Preferred Stock").

The term "Common Stock" as used herein shall refer collectively to the Class A Common Stock and the Class B Common Stock.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. Except as expressly provided in this Article Fourth, Class A Common Stock and Class B Common Stock shall have the same rights and privileges and rank equally, share ratably and be identical in all respects as to all matters. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting Rights.

(a) Except as otherwise provided herein or by applicable law, the holders of shares of Class A Common Stock and Class B Common Stock shall at all times vote together as one class on all matters (including the election of directors) submitted to a vote or for the consent of the stockholders of the Corporation. Each holder of shares of Class A Common Stock shall be entitled to one vote for each share of Class A Common Stock held as of the

applicable record date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation. Each holder of shares of Class B Common Stock shall be entitled to five votes for each share of Class B Common Stock held as of the applicable record date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

(b) The number of authorized shares of Class A Common Stock or Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware. Except as otherwise provided herein or by applicable law, the holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation. There shall be no cumulative voting.

3. Dividends. The holders of shares of Class A Common Stock and the holders of shares of Class B Common Stock shall be entitled to share equally, on a per-share basis, in such dividends and other distributions of cash, property or shares of stock of the Corporation as may be declared by the Board of Directors from time to time with respect to the Common Stock out of assets or funds of the Corporation legally available therefor, *provided, however*, that in the event that such dividend is paid in the form of shares of Common Stock or rights to acquire Common Stock, the holders of shares of Class A Common Stock shall receive shares of Class A Common Stock or rights to acquire shares of Class A Common Stock, as the case may be, and the holders of shares of Class B Common Stock shall receive shares of Class B Common Stock or rights to acquire shares of Class B Common Stock, as the case may be.

4. Liquidation. In the event of the voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, the holders of Class A Common Stock and the holders of Class B Common Stock shall be entitled to share equally, on a per-share basis, in all assets of the Corporation of whatever kind available for distribution to the holders of Common Stock.

5. Subdivision or Combinations. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock will be subdivided or combined in the same manner.

6. Conversion.

(a) As used in this Section A of Article Fourth, the following terms shall have the following meanings:

(i) A "Descendant" shall mean a lineal descendant of a Class B Holder (including relationships by legal adoption) or the spouse of such lineal descendant.

(ii) A "Class B Holder" shall mean a holder of shares of Class B Common Stock immediately following the IPO Effective Time.

(iii) A "Class B Holder Controlled Entity" shall mean a corporation, partnership, limited liability company, limited liability partnership or similar entity of which more than a majority of the voting stock, voting partnership interests, voting membership interests or similar voting interests are held directly or indirectly by one or more of (i) a Class B Holder, (ii) the spouse of a Class B Holder, (iii) a Descendant, (iv) a Class B Holder Trust or (v) a Class B Holder Charitable Organization.

(iv) A "Class B Holder Trust" shall mean a trust for the benefit of one or more of (i) a Class B Holder, (ii) the spouse of a Class B Holder, (iii) a Descendant, or (iv) the parents of either, a Class B Holder, a Descendant or the spouse of a Class B Holder; provided, however, that the beneficiaries of such trust may also include (x) individuals or entities entitled to specific cash distributions or specific items of property (other than Class B Common Stock) and (y) one or more charitable organizations, contributions to which are deductible for federal income, estate or gift tax purposes.

(v) A "Class B Holder Charitable Organization" shall mean a charitable organization established by one or more of (i) a Class B Holder, (ii) the spouse of a Class B Holder or (iii) a Descendant, contributions to which are deductible for federal income, estate or gift tax purposes.

(vi) "IPO Effective Time" shall mean the closing of the sale of shares of Class A Common Stock in a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$40,000,000 of gross proceeds to the Corporation.

(vii) A "Permitted Transferee" shall mean (i) a Class B Holder, (ii) the spouse or parents of a Class B Holder, (iii) a Descendant, (iv) the executor or administrator of the estate of a Class B Holder, the spouse of a Class B Holder or a Descendant (but solely in the context of executing or administering such estate), (v) a Class B Holder Controlled Entity, (vi) a Class B Holder Trust or (vii) a Class B Holder Charitable Organization.

(viii) "Transfer" shall mean any sale, assignment, transfer, pledge, conveyance, hypothecation or other transfer or disposition of such share, whether or not for value and whether voluntary or involuntary.

(b) Each share of Class B Common Stock shall be convertible into one fully paid and nonassessable share of Class A Common Stock at the option of the holder thereof at any time.

(c) Each share of Class B Common Stock shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock upon the receipt by the Corporation of a written instrument, executed by the holders of a majority of the shares of Class B Common Stock then outstanding, electing to convert all outstanding shares of Class B Common Stock into Class A Common Stock.

(d) Each share of Class B Common Stock shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock at such time as the number of outstanding shares of Class B Common Stock is less than 20% of the total number of shares of Class A Common Stock and Class B Common Stock then outstanding. The Corporation shall, as promptly as practicable, give notice of the conversion of shares of Class B Common Stock into Class A Common Stock to all record holders of Class B Common Stock pursuant to this subsection (d); provided that no delay or failure to give such notice shall invalidate or otherwise affect such conversion.

(e) Each share of Class B Common Stock shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock upon the Transfer by a holder of such share of Class B Common Stock other than a Transfer to:

(i) a Permitted Transferee; *provided, however*, that, notwithstanding this clause (i), each share of Class B Common Stock shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock upon the Transfer of such share of Class B Common Stock in a "brokers' transaction", a transaction directly with a "market maker" or a "riskless principal transaction" (each as defined for purposes of Rule 144 of the Securities Act of 1933, as amended), or any similar open market transaction on any securities exchange, national quotation system or over-the-counter market;

(ii) a pledgee of such holder of shares of Class B Common Stock pursuant to a bona fide pledge of such shares as collateral security for indebtedness due to the pledgee; *provided, however*, that such shares shall not be transferred to, registered in the name of, or voted by the pledgee; and, *provided, further*, that in the event of foreclosure or other similar action by the pledgee, such pledged shares of Class B Common Stock shall automatically, without any further action, convert into shares of Class A Common Stock pursuant to this subsection (e); or

(iii) a nominee of such holder of shares of Class B Common Stock (without any change in beneficial ownership, as such term is defined under Section 13(d) of the Securities Exchange Act of 1934, as amended).

In the event of an automatic conversion of any shares of Class B Common Stock into shares of Class A Common Stock pursuant to this subsection (e), such conversion shall be deemed to have been made at the time that the Transfer of such shares occurred.

(f) The Corporation may, from time to time, establish such policies and procedures relating to the conversion of the shares of Class B Common Stock into shares of Class A Common Stock and the general administration of this dual class common stock structure, including the issuance of separate stock certificates with respect thereto, as it may deem necessary or advisable, and may request that holders of shares of Class B Common Stock furnish affidavits or other proof to the Corporation as it deems necessary to verify the ownership of shares of Class B Common Stock, to determine whether a Transfer of shares of Class B Common Stock will result in a conversion to shares of Class A Common Stock, and to otherwise

confirm that a conversion to shares of Class A Common Stock has not occurred. A determination by the Secretary of the Corporation that a Transfer of shares of Class B Common Stock results in a conversion to shares of Class A Common Stock shall be conclusive.

(g) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock into shares of Class A Common Stock.

(h) Upon any conversion of Class B Common Stock into Class A Common Stock, all rights of the holder of shares of Class B Common Stock shall cease, and the person or persons in whose names or names the certificate or certificates representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of shares of Class A Common Stock. If any shares of Class B Common Stock shall be converted pursuant to this Section 6, the shares so converted shall be retired and cancelled and may not be reissued as shares of Class B Common Stock.

7. Mergers, Consolidation or Other Combination Transactions. In the event that the Corporation shall be a party to any merger, consolidation, business combination or other transaction in which shares of Common Stock are exchanged for or converted into stock or securities of another entity, or the right to receive cash or any other property, then, and in such event, the shares of Class A Common Stock and Class B Common Stock shall be entitled to be exchanged for or converted into the same kind and amount of stock, securities, cash or other property, as the case may be, into which or for which each share of the other class of Common Stock is exchanged or converted. Notwithstanding the foregoing sentence, if the shares of Common Stock of the Corporation outstanding immediately prior to such merger, consolidation, business combination or other transaction continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (without giving effect to any differences in the voting rights of the stock or securities of the surviving or resulting entity to be received by holders of shares of Class A Common Stock and Class B Common Stock), then the holders of shares of Class A Common Stock and Class B Common Stock shall be entitled to receive stock or securities of the surviving or resulting entity that differ with respect to voting rights and conversion rights in a similar manner to which the shares of Class A Common Stock and Class B Common Stock differ under this Certificate of Incorporation.

8. Restrictions on Issuance. Following the IPO Effective Time, the Corporation shall not issue or sell any shares of Class B Common Stock or any securities (including, without limitation, any rights, options, warrants or other securities) convertible into or exercisable or exchangeable for shares of Class B Common Stock. Notwithstanding the foregoing sentence, the Corporation may issue shares of Class B Common Stock pursuant to stock splits, stock dividends, subdivisions, combinations, recapitalizations or similar transactions with respect to the Class B Common Stock.

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the General Corporation Law of the State of Delaware, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

FIFTH: Except as otherwise provided herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

SIXTH: In furtherance and not in limitation of the powers conferred upon it by the General Corporation Law of the State of Delaware, and subject to the terms of any series of Preferred Stock, the Board of Directors shall have the power to adopt, amend, alter or repeal the By-laws of the Corporation by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present. The stockholders may not adopt, amend, alter or repeal the By-laws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by this Certificate of Incorporation, by the affirmative vote of the holders of shares representing at least two-thirds of the votes that all the stockholders would be entitled to cast in any annual election of directors or class of directors. Notwithstanding any other provisions of law, this Certificate of Incorporation or the By-laws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of shares

representing at least two-thirds of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article SIXTH.

SEVENTH: Except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

EIGHTH: The Corporation shall provide indemnification as follows:

1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974), and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity

with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware or such other court shall deem proper.

3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article EIGHTH, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article EIGHTH, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe his or her conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee

in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article EIGHTH. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article EIGHTH for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

5. Advance of Expenses. Subject to the provisions of Section 6 of this Article EIGHTH, in the event of any threatened or pending action, suit, proceeding or investigation of which the Corporation receives notice under this Article EIGHTH, any expenses (including attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article EIGHTH; and provided further that no such advancement of expenses shall be made under this Article EIGHTH if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

6. Procedure for Indemnification and Advancement of Expenses. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article EIGHTH, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (i) the Corporation has assumed the defense pursuant to Section 4 of this Article EIGHTH (and none of the circumstances described in Section 4 of this Article EIGHTH that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (ii) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article EIGHTH, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the

Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

7. Remedies. The right to indemnification or advancement of expenses granted by this Article EIGHTH shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 of this Article EIGHTH that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation. Notwithstanding the foregoing, in any suit brought by Indemnitee to enforce a right to indemnification hereunder it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in the General Corporation Law of the State of Delaware.

8. Limitations. Notwithstanding anything to the contrary in this Article EIGHTH, except as set forth in Section 7 of this Article EIGHTH, the Corporation shall not indemnify an Indemnitee pursuant to this Article EIGHTH in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article EIGHTH, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification payments to the Corporation to the extent of such insurance reimbursement.

9. Subsequent Amendment. No amendment, termination or repeal of this Article EIGHTH or of the relevant provisions of the General Corporation Law of the State of Delaware or any other applicable laws shall adversely affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

10. Other Rights. The indemnification and advancement of expenses provided by this Article EIGHTH shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators

of Indemnitee. Nothing contained in this Article EIGHTH shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article EIGHTH. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article EIGHTH.

11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article EIGHTH to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement to which Indemnitee is entitled.

12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

13. Savings Clause. If this Article EIGHTH or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article EIGHTH that shall not have been invalidated and to the fullest extent permitted by applicable law.

14. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the General Corporation Law of the State of Delaware shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

NINTH: This Article NINTH is inserted for the management of the business and for the conduct of the affairs of the Corporation.

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

2. Number of Directors; Election of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established by the Board of Directors. Election of directors need not be by written ballot, except as and to the extent provided in the By-laws of the Corporation.

3. Classes of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Board of Directors shall be and is divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III at the time such classification becomes effective.

4. Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; provided that each director initially assigned to Class I shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2011; each director initially assigned to Class II shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2012; and each director initially assigned to Class III shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2013; provided further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

5. Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2 of this Article NINTH shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

6. Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by law or by this Certificate of Incorporation.

7. Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed only for cause and only by the affirmative vote of the holders of shares representing at least two-thirds of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors.

8. Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorship in the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of his or her successor and to such director's earlier death, resignation or removal.

9. Stockholder Nominations and Introduction of Business, Etc. Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the By-laws of the Corporation.

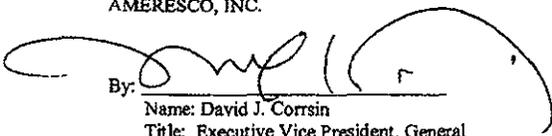
10. Amendments to Article. Notwithstanding any other provisions of law, this Certificate of Incorporation or the By-laws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of shares representing at least two-thirds of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH: Stockholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the By-laws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of shares representing at least two-thirds of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TENTH.

ELEVENTH: Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board of Directors, the Chairman of the Board or the Chief Executive Officer, and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the By-laws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of shares representing at least two-thirds of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article ELEVENTH.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates, integrates and amends the certificate of incorporation of the Corporation, and which has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, has been executed by its duly authorized officer this 27th day of July, 2010.

AMERESCO, INC.

By: 

Name: David J. Corrsin

Title: Executive Vice President, General
Counsel and Secretary

4/27/00

BY-LAWS

OF

AMERESCO, INC.

BY-LAWS

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BY-LAWS
OF
AMERESCO, INC.

ARTICLE I - Stockholders

1.1 Place of Meetings. All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board of Directors or the President or, if not so designated, at the registered office of the corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Board of Directors or the President (which date shall not be a legal holiday in the place where the meeting is to be held) at the time and place to be fixed by the Board of Directors or the President and stated in the notice of the meeting. If no annual meeting is held in accordance with the foregoing provisions, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient. If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these By-laws to the annual meeting of the stockholders shall be deemed to refer to such special meeting.

1.3 Special Meetings. Special meetings of stockholders may be called at any time by the President or by the Board of Directors. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of all meetings shall state the place, date and hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

1.5 Voting List. The officer who has charge of the stock ledger of the corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, at a place within the city where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business.

1.7 Adjournments. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these By-laws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as Secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock, entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided in the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may vote or express such consent or dissent in person or may authorize another person or persons to vote or act for him by written proxy executed by the stockholder or his authorized agent and delivered to the Secretary of the corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, the holders of shares of stock representing a majority of the votes cast on a matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, the holders of shares of stock of that class representing a majority of the votes cast on a matter) shall decide any matter to be voted upon by the stockholders at such meeting, except when a different vote is required by express provision of law, the Certificate of Incorporation or these By-Laws. When a quorum is present at any meeting, any election by stockholders shall be determined by a plurality of the votes cast on the election.

1.10 Action without Meeting. Except as otherwise provided by law or the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders of the corporation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to

authorize or take such action at a meeting at which all shares entitled to vote on such action were present and voted. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE 2 - Directors

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

2.2 Number, Election and Qualification. The number of directors which shall constitute the whole Board of Directors shall be determined by resolution of the stockholders or the Board of Directors, but in no event shall be less than one. The number of directors may be decreased at any time and from time to time either by the stockholders or by a majority of the directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Directors need not be stockholders of the corporation.

2.3 Enlargement of the Board. The number of directors may be increased at any time and from time to time by the stockholders or by a majority of the directors then in office.

2.4 Tenure. Each director shall hold office until the next annual meeting and until his successor is elected and qualified, or until his earlier death, resignation or removal.

2.5 Vacancies. Unless and until filled by the stockholders, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified, or until his earlier death, resignation or removal.

2.6 Resignation. Any director may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.7 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting

of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.8 Special Meetings. Special meetings of the Board of Directors may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of the Board, President, two or more directors, or by one director in the event that there is only a single director in office.

2.9 Notice of Special Meetings. Notice of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone at least 48 hours in advance of the meeting, (ii) by sending a telegram or telefax, or delivering written notice by hand, to his last known business or home address at least 48 hours in advance of the meeting, or (iii) by mailing written notice to his last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.10 Meetings by Telephone Conference Calls. Directors or any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.11 Quorum. A majority of the total number of the whole Board of Directors shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.12 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

2.13 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing, and the written consents are filed with the minutes of proceedings of the Board or committee.

2.14 Removal. Except as otherwise provided by the General Corporation Law of Delaware, any one or more or all of the directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except that the

directors elected by the holders of a particular class or series of stock may be removed without cause only by vote of the holders of a majority of the outstanding shares of such class or series.

2.15 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the Board of Directors.

2.16 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

ARTICLE 3 - Officers

3.1 Enumeration. The officers of the corporation shall consist of a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including a Chairman of the Board, a Vice-Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election. The President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws, each officer shall hold office until his successor is elected and qualified,

unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Any officer may be removed at any time, with or without cause, by vote of a majority of the entire number of directors then in office.

Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the corporation.

3.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of his predecessor and until his successor is elected and qualified, or until his earlier death, resignation or removal.

3.7 Chairman of the Board and Vice-Chairman of the Board. The Board of Directors may appoint a Chairman of the Board and may designate the Chairman of the Board as Chief Executive Officer. If the Board of Directors appoints a Chairman of the Board, he shall perform such duties and possess such powers as are assigned to him by the Board of Directors. If the Board of Directors appoints a Vice-Chairman of the Board, he shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be vested in him by the Board of Directors.

3.8 President. The President shall, subject to the direction of the Board of Directors, have general charge and supervision of the business of the corporation. Unless otherwise provided by the Board of Directors, he shall preside at all meetings of the stockholders and, if he is a director, at all meetings of the Board of Directors. Unless the Board of Directors has designated the Chairman of the Board or another officer as Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The President shall perform such other duties and shall have such other powers as the Board of Directors may from time to time prescribe.

3.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall

perform the duties of the President and when so performing shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary, (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned to him by the Board of Directors or the President. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these By-laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer, (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.12 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

ARTICLE 4 - Capital Stock

4.1 Issuance of Stock. Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2 Certificates of Stock. Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice-Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-laws, applicable securities laws or any agreement among any number of shareholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been

transferred on the books of the corporation in accordance with the requirements of these By-laws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 10 days after the date of adoption of a record date for a written consent without a meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is properly delivered to the corporation. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE 5 - General Provisions

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January in each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these By-laws, a waiver of such notice either in

writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice.

5.4 Voting of Securities. Except as the directors may otherwise designate, the President or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these By-laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Transactions with Interested Parties. No contract or transaction between the corporation and one or more of the directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(1) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(2) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee of the Board of Directors, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

5.8 Severability. Any determination that any provision of these By-laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-laws.

5.9 Pronouns. All pronouns used in these By-laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE 6 - Amendments

6.1 By the Board of Directors. These By-laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2 By the Stockholders. These By-laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any regular meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new by-laws shall have been stated in the notice of such special meeting.

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT A-15
Secretary of State**

							
DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
06/22/2001	200117201692	FOREIGN LICENSE/FOR-PROFIT (FLP)	100.00	.00	.00	.00	.00

Receipt
This is not a bill. Please do not remit payment.

AMERESCO
111 SPEEN STREET, SUITE 410
FRAMINGHAM, MA 01701

STATE OF OHIO

Ohio Secretary of State, J. Kenneth Blackwell

1237412

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

AMERESCO, INC.

and, that said business records show the filing and recording of:

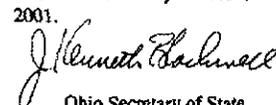
Document(s)	Document No(s):
FOREIGN LICENSE/FOR-PROFIT	200117201692

Authorization to transact business in Ohio is hereby given, until surrender, expiration or cancellation of this license.



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 14th day of June, A.D.
2001.



Ohio Secretary of State

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT B-1
Jurisdiction of Operation**

Ameresco is authorized to operate as a energy broker in the states listed below. It does not include states that do not require a license.

MA
RI
ME
NH
DE
DC
MD
NJ
IL
PA

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT B-2
Experience & Plans**

Ameresco is not subject to Section 4928.10 as we will not take title to electricity or be responsible for billing customers.

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT B-3
Summary of Experience**

Ameresco has no experience in providing aggregation services at this time. We do not expect to become an aggregator in OH until we establish our broker business in OH.

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**ATTACHMENT B-4
Disclosure of Liabilities and Investigations**

There are no claims, actions, suits, investigations, or other proceedings pending or, to the knowledge, of Ameresco, threatened, against or relating to Ameresco, or before or by a federal, state, or local, court, governmental department, agency or instrumentality, or arbitrator, arbitration panel, mediator, or mediation panel, or other alternative dispute resolution person, body or panel, which, if adversely decided would prevent or impair, the financial position or Ameresco's ability to honor its contractual commitments.

**OH Public Utilities Commission
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Ameresco, Inc.**

**Exhibit C-1
Annual Reports**

Annual Reports for Ameresco, Inc. are online at <https://ameresco.gcs-web.com/annual-reports> .

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**Exhibit C-2
SEC Filings**

SEC filings for Ameresco, Inc. are online at <https://ameresco.gcs-web.com/sec-filings>

**OH Public Utilities Commission
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Ameresco, Inc.**

**Exhibit C-4
Financial Arrangements**

N/A

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**Exhibit C-6
Credit Rating**

N/A - Ameresco has never issued long-term debt to the public and thus Ameresco has never had a business purpose to secure a credit rating.

**OH Public Utilities Commission
Initial Certification Application For Electric Power Broker
Ameresco, Inc.**

**Exhibit C-8
Bankruptcy Information**

Neither Ameresco, Inc. or any of its affiliates have filed for any bankruptcy proceedings that guarantees the obligations of Ameresco, Inc. or any officer in the current year and within the two most recent years preceding this application.

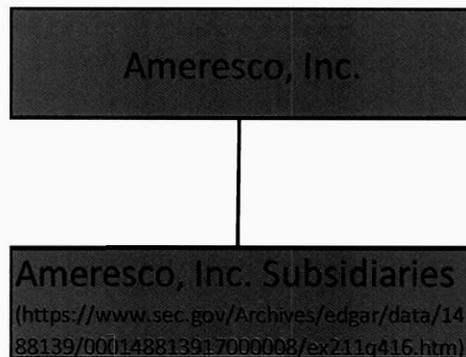
**OH Public Utilities Commission
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**Exhibit C-9
Merger Information**

There has not been any dissolution or merger or acquisition for Ameresco, Inc. within the two most recent years.

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Ameresco, Inc.**

**Exhibit C-10
Corporate Structure**



Ameresco, Inc. is a publicly traded corporation that has many subsidiaries. Ameresco, Inc has no subsidiary or affiliate companies that supply wholesale electricity or natural gas to customers in North America.