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**Filing Instructions for Retail Electric Generation Providers and  
Power Marketers**

**I. Where to File:** Applications should be sent to: Public Utilities Commission of Ohio, Docketing Division 13<sup>th</sup> Floor, 180 East Broad Street, Columbus Ohio 43215-3793.

**II. What to File:** Applicant must submit one original notarized application signed by a principal officer and ten copies including all exhibits, affidavits, and other attachments. All attachments, affidavits, and exhibits should be clearly identified. For example, Exhibit A-12 should be marked "Exhibit A-12 'Corporate Structure.'" All pages should be numbered and attached in a sequential order.

**III. Which Forms to File:** In order to supply competitive retail electric service (CRES), all providers are required to become certified by the Public Utilities Commission of Ohio. The information one must file, however, differs depending on the type of CRES that the applicant will provide. For example, a power marketer applicant will not file the same information as an aggregator. The summary below of CRES provider definitions (from the Commission's certification rules) should help applicants determine which application form to use. There are three application forms to choose from including an aggregator/broker form, a governmental aggregator form, and a generation provider, power marketer, and power broker form.

**Aggregation** - combining the electric load of multiple retail customers through an agreement with the customers or formation of a governmental aggregation pursuant to Section 4928.20 of the Revised Code for the purpose of purchasing retail electric generation service on an aggregated basis.

**Aggregator** - a person who contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis. The term does not include a governmental aggregator.

**Governmental Aggregator** - the legislative authority of a municipal corporation, the board of township trustees of a township, or a board of county commissioners of a county that aggregates the citizens of a municipal corporation, township, or unincorporated areas of a county in accordance with Section 4928.20 of the Revised Code for the purpose of purchasing retail electric generation service on an aggregated basis.

**Power Broker** - a person who assumes the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer without taking title to the power supplied.

**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.**

JUL 10 2012

**Power Marketer** - a person who assumes the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer who had title to the electric power provided at some point during the transaction.

**IV. Application Form:** The application is available on the Commission's web site, [www.puco.ohio.gov](http://www.puco.ohio.gov) or directly from the Commission at: Public Utilities Commission of Ohio, Docketing Division 13<sup>th</sup> Floor, 180 East Broad Street, Columbus Ohio 43215-3793.

**V. Confidentiality:** If any of an applicant's answers require the applicant to disclose what the applicant believes to be privileged or confidential information not otherwise available to the public, the applicant should designate at each point in the application that the answer requires the applicant to disclose privileged and confidential information. Applicant must fully support its request to maintain confidentiality for the information it believes to be confidential or proprietary in a motion for protective order filed pursuant to Rule 4901-1-24 of the Ohio Administrative Code.

**VI. Commission Process for Approval:** An application for certification shall be made on forms approved and supplied by the Commission. The applicant shall complete the appropriate application form in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed. The Commission certification process begins when the Commission's Docketing Division receives and time/date stamps the application. An incomplete application may be suspended or rejected. An application that has been suspended as incomplete may cause delay in certification.

The Commission may approve, suspend, or deny an application within 30 days. If the Commission does not act within 30 days, the application is deemed automatically approved on the 31<sup>st</sup> day after the official filing date. If the Commission suspends the application, the Commission shall notify the applicant of the reasons for such suspension and may direct the applicant to furnish additional information. The Commission shall act to approve or deny a suspended application within 90 days of the date that the application was suspended. Upon Commission approval, the applicant shall receive notification of approval and a numbered certificate that specifies the service(s) for which the applicant is certified and the dates for which the certificate is valid.

Unless otherwise specified by the Commission, a competitive retail electric service provider's certificate is valid for a period of two years, beginning and ending on the dates specified on the certificate. The applicant may renew its certificate in accordance with Rule 4901:1-24-09 of the Ohio Administrative Code.

CRES (competitive retail electric service) providers shall inform the Commission of any material change to the information supplied in a certification application within thirty days of such material change in accordance with Rule 4901:1-24-10 of the Ohio Administrative Code.

**VII. Contractual Arrangements for Capability Standards:** If the applicant is relying upon contractual arrangements with a third-party(ies) to meet any of the certification requirements, the applicant must provide with its application all of the following:

- The legal name of the party(ies) it is contracting with;

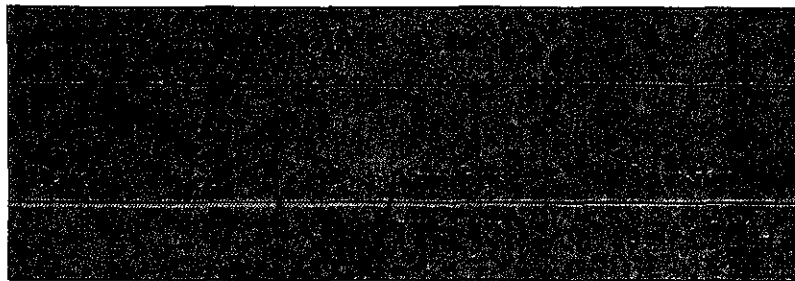
- A statement that a valid contract exists between the applicant and the third-party(ies);
- A detailed summary of the contract(s) including all services provided thereunder;
- The documentation and evidence to demonstrate the contracting entity's capability to meet the requirements as if the contracting entity was the applicant.

**VIII. Questions:** Questions regarding filing procedures should be directed to Tamara Turkenton at (614) 995-7096 or [Tammy.Turkenton@puc.state.oh.us](mailto:Tammy.Turkenton@puc.state.oh.us). or Chuck Stockhausen at (614) 728-5049 or [Charles.Stockhausen@puc.state.oh.us](mailto:Charles.Stockhausen@puc.state.oh.us).

**IX. Governing Law:** The certification of competitive retail electric suppliers is governed by Chapter 4901:1-24 of the Ohio Administrative Code, Chapter 4901:1-21 of the Ohio Administrative Code, and Section 4928.08 of the Ohio Revised Code.



*The Public Utilities Commission of Ohio*



## **CERTIFICATION APPLICATION FOR RETAIL GENERATION PROVIDERS AND POWER MARKETERS**

Please print or type all required information. Identify all attachments with an exhibit label and title (Example: Exhibit A-13 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)**

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> Retail Generation Provider | <input type="checkbox"/> Power Broker |
| <input checked="" type="checkbox"/> Power Marketer  | <input type="checkbox"/> Aggregator   |

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

Legal Name Phalanx Energy Services, LLC  
Address 1193 Chersonese Round, Mount Pleasant, SC 29464  
Telephone # 8438812343 Web site address (if any) www.phalanxenergy.com

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

Legal Name CSC-Lawyers Incorporating Service  
Address 50 West Broad Street, Suite 1800  
Telephone # 8009279800 Web site address (if any) \_\_\_\_\_

#### **A-4 List all names under which the applicant does business in North America** Phalanx Energy Services, LLC

_____	_____
_____	_____
_____	_____

**A-5 Contact person for regulatory or emergency matters**

Name Frank P. Wilbourne, III  
Title Managing Member & CEO  
Business address PO Box 20339 Charleston, SC 29413  
Telephone # 8438812343 Fax # 8007896292  
E-mail address (if any) frank.wilbourne@phalanxenergy.com

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

Name Emily Wilbourne  
Title Corporate Communications Director  
Business address PO Box 20339 Charleston, SC 29413  
Telephone # 8438812343 Fax # 8007896292  
E-mail address (if any) emily.wilbourne@phalanxenergy.com

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

Customer Service address 160 State Street, 10th Floor  
Toll-free Telephone # 8778181011 Fax # 6175954427  
E-mail address (if any) \_\_\_\_\_

**A-8 Applicant's federal employer identification number # 27-5431295**

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

- |  |  |
|--|--|
| <input type="checkbox"/> Sole Proprietorship                 | <input type="checkbox"/> Partnership                     |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation                         | <input type="checkbox"/> 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"/> Ohio Edison                     | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Toledo Edison                   | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Cleveland Electric Illuminating | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Cincinnati Gas & Electric       | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Monongahela Power               | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> American Electric Power         |                                      |                                     |                                     |                                     |
| <input type="checkbox"/> Ohio Power                      | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |

<input checked="" type="checkbox"/> Columbus Southern Power	<input type="checkbox"/> Residential	<input type="checkbox"/> Commercial	<input type="checkbox"/> Mercantile	<input type="checkbox"/> Industrial
<input checked="" type="checkbox"/> Dayton Power and Light	<input type="checkbox"/> Residential	<input type="checkbox"/> Commercial	<input type="checkbox"/> Mercantile	<input type="checkbox"/> Industrial

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

1 September 2012

**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 "Corporate Structure,"** provide a description of the applicant's corporate structure, 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.
- A-14 **Exhibit A-14 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-15 **Exhibit A-15 "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-16 **Exhibit A-16 "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.
- 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 the service(s) it is seeking to be certified to provide (e.g. number and types of customers served, utility service areas, amount of load, etc.).
- B-4** **Exhibit B-4 "Environmental Disclosure,"** provide a detailed description of how the applicant intends to determine its (a) generation resource mix, and (b) environmental characteristics, including air emissions and radioactive waste. This information shall include sufficient discussion so as to detail both the annual projection methodology and the proposed approach to compiling the quarterly actual environmental disclosure data. Additional details on this requirement may be obtained by referring to 4901:1-21-09.
- B-5** **Exhibit B-5 "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-6** 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-6 "Disclosure of Consumer Protection Violations"** detailing such violation(s) and providing all relevant documents.
- B-7** Disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail or wholesale electric service denied, curtailed, suspended, revoked, or cancelled within the past two years.  
☒ No ☐ Yes
- If yes, provide a separate attachment labeled as **Exhibit B-7 "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.

- C-2** **Exhibit C-2 “SEC Filings,”** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. 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.
- C-4** **Exhibit C-4 “Financial Arrangements,”** provide copies of the applicant's financial arrangements to conduct CRES as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.,).
- C-5** **Exhibit C-5 “Forecasted Financial Statements,”** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant’s CRES operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.
- 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.
- C-7** **Exhibit C-7 “Credit Report,”** provide a copy of the applicant’s credit report from Experian, Dun and Bradstreet or a similar organization.
- 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 five most recent years preceding the application.

#### D. APPLICANT TECHNICAL CAPABILITY

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

- D-1 Exhibit D-1 "Operations" provide a written description of the operational nature of the applicant's business. Please include whether the applicant's operations will include the generation of power for retail sales, the scheduling of retail power for transmission and delivery, the provision of retail ancillary services as well as other services used to arrange for the purchase and delivery of electricity to retail customers.
- D-2 Exhibit D-2 "Operations Expertise," given the operational nature of the applicant's business, provide evidence of the applicant's experience and technical expertise in performing such operations.
- D-3 Exhibit D-3 "Key Technical Personnel," provide the names, titles, e-mail addresses, telephone numbers, and the background of key personnel involved in the operational aspects of the applicant's business.
- D-4 Exhibit D-4 "FERC Power Marketer License Number," provide a statement disclosing the applicant's FERC Power Marketer License number. (Power Marketers only)

  
Signature of Applicant and Title

Sworn and subscribed before me this 3 day of July, 2012  
Month Year

  
Signature of official administering oath

Notary Public - Landon Davis  
Print Name and Title

My commission expires on 2/3/12

# **AFFIDAVIT**

State of South Carolina

M.T. Pleasant  
(Town)

County of Charleston :

FRANK P. WILBOURNE III, Affiant, being duly sworn/affirmed according to law, deposes and says that:

He/She is the CEO (Office of Affiant) of PHALANX ENERGY SERVICES, LLC (Name of Applicant);

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

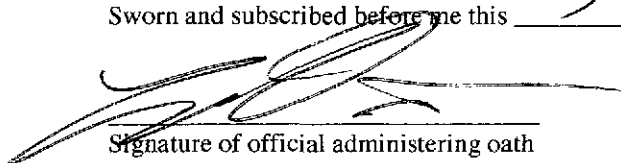
1. The Applicant herein, attests under penalty of false statement that all statements made in the application for certification are true and complete and that it will amend its application while the application is pending if any substantial changes occur regarding the information provided in the application.
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.

  
Signature of Affiant & Title

Sworn and subscribed before me this 3 day of July, 2012  
Month Year

  
Signature of official administering oath

Notary Public - Landon Davis  
Print Name and Title

My commission expires on 2/3/12

**Exhibit A-12 "Principal Officers, Directors & Partners"**

**PHALANX ENERGY SERVICES, LLC**

**Officers:**

***Frank P. Wilbourne, III***

Managing Member and CEO

1193 Chersonese Round

Mount Pleasant, SC 29464

Phone: 843.881.2343

Fax: 800.789.6292

[frank.wilbourne@phalanxenergy.com](mailto:frank.wilbourne@phalanxenergy.com)

**Jay H. Van Dyne**

Managing Member and COO

1193 Chersonese Round

Mount Pleasant, SC 29464

Phone: 843.881.2343

Fax: 800.789.6292

[jay.vandyne@phalanxenergy.com](mailto:jay.vandyne@phalanxenergy.com)

**Randall J. Bitsky**

VP Origination & Structuring

1193 Chersonese Round

Mount Pleasant, SC 29464

Phone: 843.881.2343

Fax: 800.789.6292

[randy.bitsky@phalanxenergy.com](mailto:randy.bitsky@phalanxenergy.com)

**Emily E. Wilbourne**

Corporate Communications Director

1193 Chersonese Round

Mount Pleasant, SC 29464

Phone: 843.881.2343

Fax: 800.789.6292

[emily.wilbourne@phalanxenergy.com](mailto:emily.wilbourne@phalanxenergy.com)

## **Exhibit A-13 “Corporate Structure**

Phalanx Energy Services

Organizational Chart

### **Phalanx Energy Services, LLC Team Portfolio Management Experience Overview**

- More than 88 years combined experience in the generation and power markets.
- Managed a combined portfolio of over 16,000 MWs of retail supply load serving obligations in 17 states and two Canadian Provinces.
- Developed and implemented complex financial and physical power pricing models; Monte Carlo simulations to assist in pricing and hedging contracts; market volatility; customer usage forecasting; energy budget-at-risk scenarios; and renewable energy credit valuation and procurement.
- Managed over 10,000 MWs of generating assets in the PJM, NYISO, ISO-NE, ERCOT and CA-ISO markets.

SEE ATTACHED ORGANIZATIONAL CHART

PHALANX ENERGY SERVICES, LLC  
CORPORATE STRUCTURE

CEO  
Frank P. Wilbourne, III

External Legal &  
Governmental Affairs

COO  
Jay H. Van Dyne

Corporate Operations &  
Administration

VP  
Origination & Structuring  
Randall J. Bitzky

CFO  
Risk Manager

Portfolio Managers

External Accounting  
Ernst & Young

Operations & Trading  
Senior Manager  
Mike Constantine

Lead Portfolio  
Manager  
Chris Kavanaugh

Real Time Trading  
Anthony Teixeira

Load Management  
Chad Brown

## **Exhibit A-14 "Company History"**

### **Phalanx Energy Services, LLC**

Phalanx Energy Services, LLC formed in 2011 under the laws of the State of Delaware, is a Service-Disabled Veteran Owned Small Business seeking to do business as a Power Marketer for the State of Ohio focused on Defense and GSA electric supply solicitations (industrial and commercial accounts only). Phalanx Energy Services, LLC is currently licensed as a Power Marketer and Power Supplier in the State of Maryland and The District of Columbia, and most recently a member of the PJM Interconnection; and by the end of June 2012 it will have committed more than \$1.0 million to the regulatory licensing and membership process in PJM and MISO [RTO and states].

Phalanx Energy Services, LLC is 100% unconditionally owned by two combat service disabled veterans of the United States Marine Corps.

Phalanx Energy Services, LLC, as a relatively new concern, has amalgamated an impressive array of employees and contracted technical representatives ("Tech Reps") who possess 88 cumulative years of experience in energy portfolio management, which has provided firm supply (utilizing firm transmission) of electricity to multiple account customers that readily exceeds 15,000 kw. Phalanx Energy Services, LLC with the dedicated experienced Tech Reps will monitor and administer awarded contracts on a 24-hour basis.

The General Services Administration and Defense Logistics Agency has accepted the technical qualifications of Phalanx Energy Services, LLC for forthcoming electric power solicitations.

**Exhibit A-15 “Articles of Incorporation and Bylaws”**

Attached herein are Phalanx Energy Services, LLC’s corporate records, filings, certificates of good standings, operating agreements, et.al.



**\*201215000012\***

DATE: 05/29/2012	DOCUMENT ID 201215000012	DESCRIPTION REG. OF FOR. PROFIT LIM. LIAB. CO. (LFP)	FILING 125.00	EXPED 100.00	PENALTY .00	CERT .00	COPY .00
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**Receipt**

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

Exhibit A-15

"Articles of Incorporation and Bylaws"

DIAMOND ACCESS  
ATTN: LISA VAIDO  
887 SOUTH HIGH STREET  
COLUMBUS, OH 43206

**STATE OF OHIO  
CERTIFICATE**

**Ohio Secretary of State, Jon Husted**

**2109762**

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

**PHALANX ENERGY SERVICES, LLC**

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

Document(s)

**REG. OF FOR. PROFIT LIM. LIAB. CO.**

Document No(s):

**201215000012**



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 24th day of May, A.D. 2012.

A handwritten signature in cursive script that reads "Jon Husted".

Ohio Secretary of State



www.sos.state.oh.us  
e-mail: busserv@sos.state.oh.us

Prescribed by:  
The Ohio Secretary of State  
Central Ohio: (614) 466-3910  
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

<b>Expedite this Form: (Select One)</b>	
<b>Mail Form to one of the Following:</b>	
<input type="radio"/> Expedite	PO Box 1390 Columbus, OH 43216
*** Requires an additional fee of \$100***	
<input type="radio"/> Non Expedite	PO Box 670 Columbus, OH 43216

**REGISTRATION OF A FOREIGN  
LIMITED LIABILITY COMPANY**  
Filing Fee \$125.00

THE UNDERSIGNED DESIRING TO FILE A:

**(CHECK ONLY ONE (1) BOX)**

<b>(1) <input checked="" type="checkbox"/> Registration of a Foreign For-Profit Limited Liability Company</b> (106-LFA) ORC 1705  State of Organization <u>Delaware</u>  Date of Formation <u>03/09/2011</u>	<b>(2) <input type="checkbox"/> Registration of a Foreign Nonprofit Limited Liability Company</b> (106-LFA) ORC 1705  State of Organization _____  Date of Formation _____
--	--

RECEIVED  
SECRETARY OF STATE  
2012 MAY 24 PM 4:33  
CLIENT SERVICE CENTER

Name of limited liability company in its state of organization: <u>Phalanx Energy Services, LLC</u>					
Name under which the foreign limited liability company desires to transact business in Ohio (if different from its home-state name) is:  _____ <small>Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "LLC," "Ltd.," or "Ltd."</small>					
<input type="checkbox"/> Check here if additional provisions are attached					
The address to which interested persons may direct requests for copies of the limited liability company's operating agreement, bylaws, or other charter documents of the company is:  <u>Phalanx Energy Services, LLC - Attention Frank P. Wilbourne, III</u> Name <u>Post Office Box 20339</u> Street Address / P.O. Box Address <table><tr><td><u>Charleston</u> City</td><td><u>SC</u> State</td><td><u>29413</u> Zip code</td></tr></table>			<u>Charleston</u> City	<u>SC</u> State	<u>29413</u> Zip code
<u>Charleston</u> City	<u>SC</u> State	<u>29413</u> Zip code			

The limited liability company hereby appoints the following as its agent upon whom process against the limited liability company may be served in the state of Ohio. The name and complete address of the agent is:

CSC-Lawyers Incorporating Service (Corporation Service Company)

Name

50 West Broad Street, Suite 1800

Mailing Address

Columbus

City

Ohio

State

43215

Zip Code

☐ If the agent is an individual and using a P.O. Box, check this box to certify the agent is a resident of the state of Ohio.

The limited liability company irrevocably consents to service of process on the agent listed above as long as the authority of the agent continues, and to service of process upon the OHIO SECRETARY OF STATE if:

- a. an agent is not appointed, or
- b. an agent is appointed but the authority of that agent has been revoked, or
- c. the agent cannot be found or served after the exercise of reasonable diligence.

**REQUIRED**

Articles and original appointment of agent must be (signed) by a member, manager or other representative.



Signature

22 May 2012

Date

Frank P. Wilbourne, III

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

# Delaware

PAGE 1

## The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "PHALANX ENERGY SERVICES, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTH DAY OF APRIL, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "PHALANX ENERGY SERVICES, LLC" WAS FORMED ON THE NINTH DAY OF MARCH, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

4951070 8300

110376251

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8669444

DATE: 04-04-11

# 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 CERTIFICATE OF FORMATION OF "PHALANX ENERGY SERVICES, LLC", FILED IN THIS OFFICE ON THE NINTH DAY OF MARCH, A.D. 2011, AT 11:48 O'CLOCK A.M.



4951070 8100

110277827

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8611099

DATE: 03-09-11

CERTIFICATE OF FORMATION  
OF  
LIMITED LIABILITY COMPANY

FIRST: The name of the limited liability company is PHALANX ENERGY SERVICES, LLC

SECOND: The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, DE 19808. The name of its Registered Agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation of PHALANX ENERGY SERVICES, LLC this 9<sup>th</sup> day of March, 2011.

Corporation Service Company, Organizer

BY /s/ Amy L. Cleaver  
Amy L. Cleaver  
Assistant Secretary

**STATE OF MARYLAND**  
**Department of Assessments and Taxation**

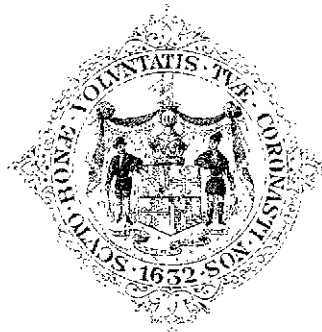
I, PAUL B. ANDERSON OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE DEPARTMENT, BY LAWS OF THE STATE, IS THE CUSTODIAN OF THE RECORDS OF THIS STATE RELATING TO LIMITED LIABILITY COMPANIES, OR THE RIGHTS OF LIMITED LIABILITY COMPANIES TO TRANSACT BUSINESS IN THIS STATE, AND THAT I AM THE PROPER OFFICER TO EXECUTE THIS CERTIFICATE.

I FURTHER CERTIFY THAT PHALANX ENERGY SERVICES LLC, REGISTERED MAY 03, 2011, IS A LIMITED LIABILITY COMPANY EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF DELAWARE, AND THAT THE LIMITED LIABILITY COMPANY IS AT THE TIME OF THIS CERTIFICATE IN GOOD STANDING TO TRANSACT BUSINESS.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY SIGNATURE AND AFFIXED THE SEAL OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND AT BALTIMORE ON THIS APRIL 02, 2012.



Paul B. Anderson  
Charter Division



301 West Preston Street, Baltimore, Maryland 21201  
Telephone Balto. Metro (410) 767-1340 / Outside Balto. Metro (888) 246-5941  
MRS (Maryland Relay Service) (800) 735-2258 TT/Voice  
Fax (410) 333-7097

*file copy*

**OWNERSHIP STRUCTURE  
with  
STOCKHOLDER OWNERSHIP PERCENTAGES**

<b><u>Entity</u></b>	<b><u>Owner/Ownership Percentage</u></b>
<b>Phalanx Energy Services, LLC</b>	<b>Jay H. Van Dyne        -   50%</b>
	<b>Frank P. Wilbourne, III - <u>50%</u></b>
	<b>100%</b>

**Phalanx Energy Services, LLC is a limited liability company wholly-owned by two Vietnamese War veterans. Each of the principles have multiple combat- related wounds which have resulted in varying degrees of disability ratings by the U.S. Department of Veteran Affairs. Consequently Phalanx Energy Services, LLC can be designated as a Service Disabled- Veteran Owned Small Business.**



**PHALANX ENERGY SERVICES, LLC**  
**OPERATING AGREEMENT**  
**DATED AS OF**  
**MARCH 9, 2011**

**PHALANX ENERGY SERVICES, LLC**

**OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** (this "**Agreement**") of **PHALANX ENERGY SERVICES, LLC** (the "Company") organized pursuant to Delaware Limited Liability Company Act, is made and effective as of March 9, 2011, by and between the Company and the Persons executing this Agreement as initial Members (as defined below, together with any Person who shall hereafter be admitted as a Member pursuant to **Section 9.4**.

**WITNESSETH:**

**WHEREAS**, the Company was formed as a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C., § 18-101, et seq. (the "**Act**") by the filing of a Certificate of Formation with the Secretary of State of the State of Delaware on March 9, 2011 for the specific purposes hereinafter provided.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

**ARTICLE I**

**GENERAL**

**1.1 Formation; Members.** The Members acknowledge that the Company was formed as a Delaware limited liability company on March 9, 2011 by the filing of the certificate of formation (the "**Certificate**") pursuant to the Act. Those persons identified on **Exhibit A** who execute and deliver this Agreement, together with all Persons who are hereafter admitted as a Member pursuant to **Section 9.3** shall constitute the members of the Company pursuant to the Act (collectively "**Members**").

**1.2 Name.** The name of the Company is, and the business of the Company shall be conducted under the name: Phalanx Energy Services, LLC, unless the Board of Managers (as defined below) changes the Company's name or implements a different trade name for the business of the Company.

**1.3 Purposes of the Company.** The purposes of the Company are to engage in any activity permitted by the Act or otherwise to be engaged in by a limited liability company (the "**Business**"). The Company may engage in other activities and businesses incidental to the purposes of the Company as may be necessary or desirable, in the opinion of the Board of Managers, to promote and carry out the principal purposes of the Company.

**1.4 Offices.** The initial principal office of the Company is located in Charleston, South Carolina with formal notices to Post Office Box 20339, Charleston, SC, 29413. The Company's initial registered office in the State of Delaware is located at 2711

Centerville Road, Suite 400, City of Wilmington, New Castle County, Delaware 19808, and the Company's initial registered agent at such address is Corporation Service Company. The Board of Managers may designate a different principal office, registered office or registered agent for the Company. The Company may have additional offices at such other places as the Board of Managers shall deem advisable.

**1.5 Term.** The Company commenced on the date of the filing of the Certificate and shall continue until dissolved as hereinafter provided.

**1.6 Conflict of Interest Transactions.** No transaction effected or proposed to be effected by the Company (or a Person in which the Company has a controlling interest) may be enjoined, set aside, or give issue to an award of damages or other sanctions, in an action by a Member, the Board of Managers, or by or in the right of the Company, on the ground of a conflicting interest in the transaction of a Member, the Board of Managers or any other Person with whom or which he or it has a personal economic or other association; provided that this **Section 1.6** shall not be construed to eliminate or limit the liability of the Board of Managers for loss or damage resulting from intentional misconduct, knowing violation of law, gross negligence or a transaction from which the Board of Managers received a personal benefit in violation or breach of the provisions of this Agreement or its obligations to the Company.

## ARTICLE II

### **AUTHORIZED UNITS, UNIT CERTIFICATES; STATUS OF MEMBERS**

**2.1 Units.** All interests in the Company, including a Member's distributive share of the capital, profits and losses of the Company and the right to receive distribution of property of the Company, shall be as set forth in this Agreement. All such interests shall, for certain purposes as indicated in this Agreement, be represented by units (such units being referred to herein as "**Units**"). The Company may issue a maximum number of 1,000 Units. Subject to the limitations set forth herein, the Board of Managers shall have the authority without Member action to issue all authorized but unissued Units to any Person for such consideration as the Board of Managers deems appropriate.

**2.2 Unit Certificates; Legend.** (a) The Company shall evidence all interests in the Company by numbered Unit certificates in the form of **Exhibit B** to this Agreement or such other form as the Board of Managers shall approve, signed by two of the members of the Board of Managers.

(b) The Company shall include the following legend on each Unit certificate:

"THE INTERESTS (THE "UNITS") IN PHALANX ENERGY SERVICES, LLC (THE "COMPANY") HAVE NOT BEEN REGISTERED UNDER THE DELAWARE SECURITIES ACT, 6 DEL. CODE §§ 7301 ET SEQ., AS AMENDED (THE "DELAWARE ACT") IN RELIANCE UPON THE EXEMPTIONS PROVIDED BY THE DELAWARE ACT, INCLUDING 6 DEL. CODE § 7309(B)(9), UNDER ANY

OTHER STATE SECURITIES LAWS (THE "STATE LAWS"), OR UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "FEDERAL ACT"). THE UNITS HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED, NOR WILL ANY ASSIGNEE OR TRANSFEREE OF ANY UNITS BE RECOGNIZED BY THE COMPANY AS HAVING ANY INTEREST IN THE COMPANY IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT WITH RESPECT TO THE UNITS UNDER THE FEDERAL ACT, THE DELAWARE ACT AND ANY APPLICABLE STATE LAWS OR AN OPINION OF COUNSEL, WHICH OPINION AND COUNSEL SHALL BE SATISFACTORY TO THE COMPANY, THAT NO SUCH REGISTRATION IS REQUIRED.

THE TRANSFER OF UNITS IN THE COMPANY IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THAT CERTAIN PHALANX ENERGY SERVICES, LLC OPERATING AGREEMENT DATED MARCH 9, 2011 (THE "OPERATING AGREEMENT"), A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. ANY PURPORTED TRANSFER OF UNITS NOT EXPRESSLY PERMITTED BY THE OPERATING AGREEMENT WILL NOT BE RECOGNIZED BY THE COMPANY, NOR WILL ANY ASSIGNEE OR TRANSFEREE OF ALL OR ANY UNITS BE RECOGNIZED AS HAVING ANY INTEREST IN THE COMPANY."

**2.3 Unit Register; Registration of Transfer.** (a) The Company shall keep at its principal office a register for the registration and registration of transfers of Units. The name and address of each Member of one or more Units, each transfer thereof and the name and address of each transferee of one or more Units shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Unit shall be registered (each a "**Member**") shall be deemed and treated as the owner and Member thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary.

(b) Subject to the limitations on the transfer of Units set forth in this Agreement, the Company shall reflect transfers of Units on the Unit register of the Company by the transferring Member in person or by power of attorney, upon surrender of the old certificate evidencing the Units to be transferred, duly assigned to the transferee, and only upon compliance with the provisions of this Agreement.

**2.4 Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to

receive payment of any distribution, or in order to make a determination of Members or Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of a Member or Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this **Section 2.4**, such determination shall apply to any adjournment of such meeting.

**2.5 Status of Units Purchased by Company.** Units acquired by the Company pursuant hereto shall not be outstanding and shall become authorized and unissued Units.

### ARTICLE III

#### **CAPITAL CONTRIBUTIONS AND LOANS**

**3.1 Required Capital Contributions; Issuance of Units.** Each Member identified on **Exhibit A** to this Agreement shall make a contribution to the capital of the Company (a "**Capital Contribution**") in the amount, if any, set forth on **Exhibit A** with respect to such Member. All or any portion of such Capital Contribution shall be paid to the Company within 10 days after the date of a notice from the Board of Managers requesting such Capital Contribution. Each Person who thereafter acquires Units from the Company shall make a Capital Contribution to the Company in an amount determined by the Board of Managers, and the Board of Managers shall amend **Exhibit A** from time to time to reflect the Capital Contributions made and the Units issued.

**3.2 Discretionary Capital.** Except as set forth in **Section 3.1**, no Member shall have any obligation to make any Capital Contributions to the Company or otherwise to invest any funds in, or make any loan or advance to, the Company. From time to time Members may make Capital Contributions in addition to those provided for above or loans if and to the extent they so desire, and if the Board of Managers determines that such additional Capital Contributions or loans are necessary or appropriate in connection with the conduct of the Company's Business (including, expansion or diversification). The Board of Managers shall amend **Exhibit A** to reflect Capital Contributions made by a Member pursuant to this **Section 3.2**.

**3.3 No Interest on Contributions.** No Member shall have any right or entitlement to receive interest on any Capital Contribution.

**3.4 Loans to or by Members.** (a) In the event that the Board of Managers determines that the Company requires funds in excess of amounts available on hand and amounts expected to be received from operations, the Company may borrow such funds from any Person, including one or more of the Members, the Board of Managers or any member of the Board of Managers, as the Board of Managers shall determine in its sole discretion.

(b) If, in connection with the management and operation of the Company for the purposes authorized hereunder, the Company shall borrow money from any Member or any member of the Board of Managers, such loan shall bear interest at a commercially reasonable

rate. The Company shall pay all principal and interest of the loan payable pursuant to the terms thereof before making any distribution to the Members under the provisions of this Agreement. If any funds are available for payment of amounts due pursuant to loans from Members or any member of the Board of Managers, but such funds are not adequate to pay all such amounts due in full, payment shall be made pro rata according to the respective amounts due (including both principal and interest) on all Members or members of the Board of Managers loans. Except as otherwise provided in this Agreement, any member of the Board of Managers or any Member who lends money to the Company hereunder shall be deemed a general creditor of the Company and not a Member for the purpose of paying principal and interest of any such loan.

(c) The Company shall not make loans or advances to Members or any member of the Board of Managers except upon commercially reasonable terms and approved by the Board of Managers.

## ARTICLE IV

### DISTRIBUTIONS

**4.1 Distributions of Available Cash.** The Company shall distribute some or all of any Available Cash from time to time as determined by the Board of Managers, to the Members in proportion to their respective Percentage Interests. The Board of Managers shall be guided by a provision to maintain an operating reserve for future contingencies.

**4.2 No Other Distributions.** Prior to the dissolution of the Company, the Company shall not distribute property other than Available Cash to any Members unless such distribution is approved by all Members.

**4.3 Distributions upon Dissolution.** Upon the dissolution of the Company, the Company shall distribute its assets, including the proceeds from the liquidation of its assets pursuant to **Section 14.1**, after payment or provision for amounts described in **Section 14.1(c)(i)** and **Section 14.1(c)(ii)**, to the Members in proportion to their respective Percentage Interests.

**4.4 Withholding from Distributions.** The Company may withhold from distributions or with respect to allocations and pay over to any federal, state or local government any amount required to be withheld pursuant to the Code or any provision of any other federal, state, or local law and may allocate any such amounts among the Members in any manner that is in accordance with applicable law. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or to the Members shall be treated as amounts distributed to the Members pursuant to this **ARTICLE IV** for all purposes of the Agreement.

## ARTICLE V

### BOARD OF MANAGERS

**5.1 Board of Managers.** (a) The management of the business and affairs of the Company shall be vested in a Board of Managers (the "**Board**"), having up to three (3)

members (each, a "**Manager**"). Each Manager will be a manager of the Company for purposes of the Act. The Managers shall be Persons designated from time to time in accordance with **Section 5.2**. There shall be initially only one Manager of the Company who shall be Frank. P. Wilbourne, III. A Manager does not need to be a Member.

(b) Except for situations in which the approval of the Members is expressly required by this Agreement or non-waivable provisions of applicable law, the Board shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, and to exercise all powers of the Company, whether or not apparently for the carrying on in the usual way of the business or affairs of the Company. The Board may delegate the day-to-day management of the Company to one or more officers appointed pursuant to or in accordance with **Article VI**, and may exercise any of its authority or powers through agents selected by the Board, and may fix the compensation (if any) of such agents.

(c) Except to the extent expressly authorized by the Board in the specific circumstance, the Managers shall function collectively as a Board, and no Manager, acting individually and solely in his or her capacity as a Manager, shall be, or hold himself as, the agent of the Company or have any power or authority to act on behalf of or bind the Company in any manner.

**5.2 Designation of Managers.** Managers shall be elected at the annual meeting of the Members holding a majority of the outstanding Units of the Company (except as otherwise provide for herein). Each Manager shall serve until the first to occur of the death, resignation, insolvency or removal of such Manager or until a successor to such Manager shall have been designated in accordance with this Agreement. A Manager may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt by the Company of such notice or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**5.3 Limitations on Authority of the Board.** Notwithstanding anything to the contrary set forth in this Agreement, without approval of the Members holding 2/3 of the then outstanding Units of the Company of the specific act, the Board shall have no authority to engage in the following matters:

- (a) the dissolution of the Company;
- (b) the merger of the Company; or
- (c) the sale, exchange, lease, or other transfer of all or substantially all of the assets of the Company. For purposes of this paragraph, assets shall be deemed to be less than all or substantially all of the Company's assets if the value of the assets does not exceed two-thirds of the value of all of the assets of the Company and the revenues represented or produced by such assets do not exceed two-thirds of the total revenues of the Company; provided, however, that this paragraph shall not create any inference that the sale, exchange, lease, or other transfer

of assets exceeding the amounts described in this paragraph is the sale of all or substantially all of the assets of the Company.

**5.4 Manner of Action: Quorum.** The Board shall not take any action permitted or required to be taken by it hereunder unless the Managers act at a regular or special meeting of the Board held in accordance with **Section 5.5** or by written consent in accordance with **Section 5.6**. The presence of at least two thirds (2/3) of the current Managers in person or by proxy shall constitute a quorum for the transaction of business at any meeting of the Board. All resolutions adopted and all business transacted by the Board at a meeting at which a quorum is present shall require the affirmative vote of two thirds (2/3) of the Managers present.

**5.5 Meetings.** (a) The Board shall meet annually. Subject to the foregoing, the Board may set any number of regular meetings by resolution. No notice need be given for any regularly scheduled meeting of the Board.

(b) Any two Managers may call at any time a special meeting of the Board, on three (3) days' written notice to each Manager, which notice shall specify the time and place of the meeting, which shall be held in the Wilmington, Delaware metropolitan area or at such other place as a majority of the Managers, may agree. Managers may waive notice of any such meeting by an instrument in writing executed before or after the meeting. Attendance in person or by proxy at any such meeting shall constitute a waiver of notice thereof.

(c) Managers may attend and participate in meetings either in person or by means of conference telephones or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by means of such communications equipment shall constitute presence in person at any meeting.

**5.6 Action in Lieu of Board Meeting.** Any action required to or that may be taken at a meeting of the Board may be taken without a meeting with the unanimous written consent of all Managers entitled to vote on the action, setting forth the action so taken, and any further requirements of law pertaining to such consents have been complied with.

**5.7 Authority of Board to Third Parties.** Any Person doing business with or otherwise dealing in any transaction whatsoever with the Company shall be entitled to rely fully on the power and authority of the Board or its designee to bind the Company in that business or transaction and shall not be required to determine the Board's authority to make any undertaking on behalf of the Company or to determine the application or distribution of revenues or proceeds paid to the Company pursuant to authorization by the Members. Nothing in this **Section 5.7** shall relieve the Board from obtaining approval before undertaking any action described in **Section 5.3**.

**5.8 Duties of Managers; Limitation of Liability.** No Manager shall have any liability to the Company, any other Manager, any Member or any Holder, or any other Person that is, or hereafter may be, a party to or otherwise bound by this Agreement, whether for breach of contract, breach of duty (including fiduciary duties), or otherwise for any loss arising out of any act or omission by such Manager, except loss or damage resulting from such Manager's breach of the implied contractual covenant of good faith and fair dealing, intentional



misconduct, a knowing violation of law, gross negligence, or a transaction for which the Manager received a personal benefit (unless such transaction was previously disclosed to the Board).

**5.9 Expenses of Managers.** The Company shall reimburse each Manager for all out-of-pocket costs and expenses reasonably paid or incurred by such Manager in the management of the Company, provided that such Manager incurs and accounts for such expenses in accordance with such written policies and directives as may be adopted by the Board from time to time. Unless otherwise unanimously approved by the Members, the Managers shall not be entitled to compensation solely for serving as Managers of the Company.

## ARTICLE VI

### OFFICERS

**6.1 General Provisions.** The Board may appoint such subordinate officers as the Board deems appropriate in its discretion to assist in the conduct of the Business, including a President, one or more Vice Presidents, a Secretary and a Treasurer (each, an "**Officer**"). Each such officer shall serve at the pleasure of the Board. The same individual may hold any two or more offices, provided that no officer shall execute any document, agreement, certificate or other instrument on behalf of the Company in more than one capacity. Officers may be, but need not be, Managers or Members.

**6.2 President.** The President shall be the chief executive officer and the principal officer responsible for carrying out the policies adopted by the Board and shall have general and active management of the operation of the Company, subject to the authority of the Board. The President shall be responsible for the administration of the Company, and may execute bonds, mortgages, contracts or other documents in the name and on behalf of the Company. The President shall not have the authority to enter into contracts or obligations that incur cost to the Company, contingent or otherwise, of more than \$250,000.00 without first obtaining approval from the Board.

**6.3 Vice President.** The Company may have one or more Vice Presidents, appointed by the Board, who shall perform such duties and have such powers as may be delegated by the Board or the President.

**6.4 Secretary.** If appointed, the Secretary shall keep minutes of all meetings of the Members and the Board and have charge of the minute books, and shall perform such other duties and have such other powers as may from time to time be delegated by the Board.

**6.5 Treasurer.** If appointed, the Treasurer shall be responsible for the management of the financial affairs of the Company, and shall perform such other duties and have such other powers as may from time to time be delegated by the Board.

**6.6 Duties of Officers; Limitation of Liability.** Each Officer shall act in a manner he or she believes in good faith to be in the best interest of the Company and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

No officer shall have any liability to the Company, any Member or Holder, or any other Person that is, or may hereafter be, a party to or bound by this Agreement, for any loss that arises out of any act or omission by the officer, if he or she performs his or her duty in compliance with the standard set forth in the immediately preceding sentence, except loss or damage resulting from intentional misconduct, a knowing violation of law, gross negligence, or a transaction for which the Officer received a personal benefit in violation or breach of the provisions of this Agreement or his obligations to the Company unless otherwise previously approved by the Board. Notwithstanding the foregoing, each Officer shall be fully protected, and shall have no liability in respect of, any action or omission taken in good faith reliance on any authorizing resolution or policy duly adopted by the Board.

## ARTICLE VII

### **POWERS, RIGHTS AND LIABILITIES OF MEMBERS**

**7.1 Management.** Except as expressly set forth in this Agreement, no Member shall take part in, or interfere in any manner with, the conduct or control of the Company's Business and no Member shall have any right or authority to act or sign for, or to obligate the Company, but a Member shall have all other rights of a "Member" required pursuant to the Act.

**7.2 No Withdrawals.** No Member shall at any time be entitled to withdraw any capital of the Company, whether resulting from a Capital Contribution or otherwise, except to the extent that such Member may be entitled to a distribution pursuant to the provisions of **ARTICLE IV** of this Agreement. The Members shall have no right to demand and receive any property other than cash in respect of or in connection with any return of their Capital Contributions, and prior to the dissolution of the Company pursuant to **ARTICLE XII**, they shall have no rights to receive distributions, except out of Available Cash pursuant to **Section 4.1**.

**7.3 Failure to Deliver Units to the Company.** If a Member (the "**Obligated Member**") becomes obligated to sell any Units to the Company or to the Members other than the Obligated Member (the "**Non-Obligated Members**") under this Agreement and fails to deliver such Units in accordance with the terms of this Agreement, the Company or such Non-Obligated Members may, in addition to all other remedies, tender to the Obligated Member, the purchase price for such Units as shall be specified in this Agreement, and, in the case of Units to be sold to the Company pursuant to this Agreement, cancel such Units on its books and records whereupon all of the Obligated Member's right, title, and interest in and to such Units shall terminate, and in the case of Units to be sold to a Non-Obligated Member under this Agreement, issue certificates representing such Units to the Non-Obligated Member and register the Non-Obligated Member on its Company's books and records as the record owner of the Units whereupon all of the Obligated Member's right, title, and interest in and to such Units shall terminate.

**7.4 Company's Inability to Purchase.** If the Company is entitled to purchase the Units of a Member pursuant to this Agreement and the Company at such time is unable to fulfill its obligations hereunder because of the Company's commitments to creditors or

because the Board of Managers has determined that the Company does not have the financial capacity to exercise such rights or to perform the obligations of the Company, the Company, with the consent of the other Members, may assign its rights or delegate its obligations hereunder to all other consenting Members (the "**Delegated Members**"). Each Delegated Member shall have the right to purchase up to such Member's pro rata share of any such Units, with the pro rata share of any Delegated Member not purchasing a pro rata Unit made available on a pro rata basis, to the Delegated Members who did purchase a pro rata allocation. The Delegated Members may then perform all of the obligations of the Company, and exercise all rights of the Company, with respect to the purchase of such Units.

**7.5 Other Activities of Members.** The Members acknowledge that a Member may be or may become in the future engaged or associated in some other manner with other businesses and activities that might be similar to or competitive with the Business of the Company. Each Member may engage in all such other businesses and activities, and any other business of any nature or description, independently or with others. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement or any status as a Member in or to such independent businesses or activities or to the income or profits derived from such independent businesses or activities.

**7.6 No Appraisal Rights.** Section 18-210 (and any successor or similar provisions) of the Act shall not apply to the Company, and no Member or Member shall have any right to dissent from, and obtain payment of the fair value of his or her membership interest in the event of, any action of the Company.

## ARTICLE VIII

### MEETINGS OF MEMBERS; VOTING

**8.1 Special Meetings.** The Board of Managers may call special meetings of Members, for any purpose or purposes, unless otherwise prescribed by statute. The Board of Managers shall call a special meeting of the Members upon the written request of a Member or Members holding at least 40% of the then outstanding Units held by Members. The Members shall hold any special meetings at such time and place and on such date specified in the notice of the meeting.

**8.2 Place of Meetings.** Unless otherwise agreed by all Members, special meetings shall be held in the metropolitan Charleston, South Carolina area.

**8.3 Notice of Meetings.** The Company shall give written notice of annual or special meetings of Members stating the place, day, and hour of the meeting not less than 15 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Managers or Person calling or requiring the call of the meeting, to each Member entitled to vote at such meeting. Notice of a meeting may be waived by an instrument in writing executed before or after the meeting. The waiver need not specify the purpose of the meeting or the business transacted. Attendance at such meeting in person or by proxy shall constitute a waiver of notice thereof. Notice of any special meeting of Members shall state the purpose or purposes for which the meeting is called.

**8.4 Quorum.** At all meetings of Members, 100% of the outstanding Units held by Members represented at the meeting, in person or by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum at any such meeting, a majority of the Units so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. If at the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Units whose absence would cause less than a quorum to be present.

**8.5 Manner of Acting.** If a quorum is present, the affirmative vote of Members holding a majority of the Units represented at the meeting, in person or by proxy and entitled to vote shall be the act of the Members, unless the vote of a greater or lesser proportion or number shall be otherwise required by the Act, by the Articles, or by this Agreement. Unless otherwise expressly provided in this Agreement or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members. If at any time the Company has no Units issued and outstanding, the Members shall act by the affirmative vote of a majority of all Members.

**8.6 Amendment.** In addition to specific requirements for Member action elsewhere in this Agreement, the Members may amend this Agreement by vote of Members holding at least 66% of the Units held by all Members.

**8.7 Proxies.** At all meetings of Members, a Member may attend and vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**8.8 Action by Members without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the Members holding a majority of the outstanding Units held by Members, or such greater number as may be required to approve such action and delivered to the Board of Managers for inclusion in the minutes or for filing with the Company records with a copy of such consent transmitted to all Members within 10 days after such action becomes effective. Action taken under this **Section 8.8** shall be effective when the Members required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

**8.9 Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**8.10 Meeting by Telephone; Action by Consent.** Members may also meet by conference telephone call if all Members can hear one another on such call and the requisite notice is given or waived, and participation in a meeting by proxy or by means of such communications equipment shall constitute presence in person at any meeting. Attendance in person at such meeting shall constitute a waiver of notice thereof.

## ARTICLE IX

### TRANSFER AND ASSIGNMENT

**9.1 General Prohibition.** Except as expressly provided in this Agreement, no Holder shall assign, convey, sell, transfer, pledge, mortgage, hypothecate, encumber or in any way alienate all or any part of its Interest (each, a "**Transfer**"), without the prior written consent of 1) the Board of Managers and 2) the Members (other than the proposed transferor) representing a majority of the Percentage Interests of all Members (other than the proposed transferor and any Affiliates or Family Members as defined in **Section 9.2** of the proposed transferor), which consent may be withheld arbitrarily by each Member.

**9.2 Permitted Transfers.** Notwithstanding **Section 9.1** above, a Holder may (a) transfer or assign all or any portion of its Interest to a Member, or (b) subject to **Section 9.4**, transfer or assign all or any portion of its Interest to any of the Holder's spouse, ancestors, siblings, aunts, uncles, nieces, nephews or lineal descendants, or a trust for the benefit of any such Person(s) (collectively, "**Family Members**"), in each case without the prior written consent of any other Member.

**9.3 Right of First Refusal.** (a) Subject to the provisions of **Section 9.4**, and notwithstanding the provisions of **Section 9.1** above, any Holder who desires to sell all, but not less than all, of its Interest (a "**Selling Holder**") in a transaction not permitted by **Section 9.2**, shall first enter into a binding and legally enforceable agreement to sell such Interest for cash payable at the closing to a bona fide third party purchaser who will acquire such Interest as a Non-Member Transferee, as defined in **Section 9.4**, subject to the rights of the Company and the Members set forth herein. The agreement shall set forth a bona fide sale price and the terms and conditions of the sale and shall require the sale to be closed within ninety (90) days of the date of execution of such agreement.

(b) The Selling Holder shall promptly deliver to the Company and to each Member (other than the Selling Holder and any of its Affiliates or Family Members; such Members, the "**Eligible Members**") a copy of the agreement of purchase and sale, and shall offer in writing to sell the Interest covered by such agreement (the "**Notice of Offer**") to the Company and the Eligible Members at the price and on the other terms and conditions set forth in such agreement. As soon as reasonably practicable after any such offer shall have been received, the Board shall call a joint meeting of the Eligible Members and the Managers of the Company, at which the Board shall determine whether the Company will accept the offer in whole or in part, and the Eligible Members shall determine whether to acquire personally any portion of the offered Interest which the Board determines will not be acquired by the Company. As among the Eligible Members, each shall have the right to purchase the remaining offered Interest in the same proportion that the Percentage Interest of each such Eligible Member bears

to the Percentage Interests of all the Eligible Members, unless the Eligible Members agree upon a different proportion, or unless one or more of the Eligible Members declines to purchase, in which case their share shall be apportioned pro rata according to the Percentage Interests of the Eligible Members desiring to purchase or as such Eligible Members may otherwise agree. All action taken and all agreements reached at such meeting will be noted in the Company’s minutes.

(c) If the Company and the Eligible Members do not accept the offer to purchase as to all of the offered Interest within thirty (30) days after the date of the Notice of Offer from the Selling Holder, then the Selling Holder may, subject to **Section 9.4**, sell the offered Interest to such bona fide purchaser in strict compliance with the terms of the agreement of purchase and sale submitted to the Company and the Eligible Members and upon such bona fide purchaser’s cash payment in full of the sale price at the closing.

(d) If the Interest is not sold at the time and in strict compliance with the terms and conditions specified in the Notice of Offer to said bona fide purchaser, then all of the provisions of this Agreement shall again become applicable to the Interest of the Selling Holder, and any such Selling Holder must again comply with all of the terms and conditions of this **Section 9.3** with respect to any proposed transfer of an Interest owned by the Selling Holders.

(e) If the Eligible Members or the Company, or both, elect to purchase the offered Interest pursuant to the provisions of this **Section 9.3**, the Selling Holder shall deliver at the closing an assignment of the Interest to be sold, in form and substance acceptable to the Company. The purchase price and payment thereof shall be made by the purchasing Eligible Members or the Company in accordance with the terms and provisions of the Notice of Offer, or upon such other terms as may be unanimously agreed upon by the Selling Holder and purchasing Eligible Members, the Company, or both, as applicable. The Closing shall be conducted in accordance with the provisions of **Section 9.7** at a date and time designated by the Company or the purchasing Members, or both, as applicable.

**9.4 Non-Member Transferee.** (a) Upon a transfer of an Interest permitted by this Agreement, (i) the transferor shall (if it was a Member and such transfer is of its entire Interest) cease to be a Member for all purposes of this Agreement, and (ii) until such time as the transferee becomes a Member pursuant to **Section 9.4(b)**, the transferee shall be a Non-Member Transferee and shall be entitled to the rights and subject to the obligation of a Holder hereunder in respect of the Interest so transferred (a “**Non-Member Transferee**”), but the transferee shall not have any other rights of a Member pursuant to this Agreement or of a member under the Act or otherwise; including, without limitation, any rights to vote on any matter, or any right to information of the Company provided to the Members under this Agreement, unless and until admitted as a Member pursuant to **Section 9.4**. Prior to any such transfer, the Non-Member Transferee shall have executed a written agreement, in form and substance reasonably satisfactory to the Board, acknowledging its assumption of the duties and obligations of the transferor under this Agreement, making all of the representations and warranties set forth in **Section 10.1**, and acknowledging its agreement to be bound by and subject to all of the terms and conditions of this Agreement. Notwithstanding any failure by the Non-Member Transferee to execute the agreement required by the preceding sentence, any Non-Member Transferee shall take any Interest subject to all provisions of this Agreement, including, without limitation, transfer restrictions, as if such Interest were still held by the transferring or assigning Holder.

(b) No Non-Member Transferee acquiring any Interest in a transfer permitted under any provision of this Agreement shall become a Member except upon satisfaction of the following requirements:

- (i) execution of a subscription agreement, substantially in the form attached hereto as Exhibit D;
- (ii) the Non-Member Transferee shall have paid the reasonable expenses incurred by the Company and the other Members in connection with the admission of the Non-Member Transferee to the Company;
- (iii) all of the Members owning Interests (other than the transferor Member) shall consent to the admission of the Non-Member Transferee as a Member, which consent may be withheld for any reason or no reason; and
- (iv) satisfaction of Section 17.12.

**9.5 Repurchase Option of the Company.** (a) Within 120 days after the Company receives notice of the dissolution, liquidation, insolvency, death, or legal incapacity of a Holder or any other event giving rise to a Transfer of any Interest or any interest therein (including any thereof arising by operation of law), in each case, without compliance with **Section 9.1, 9.2 or 9.3**, or, if later, within ninety (90) days after the Company receives notice that a legal representative of the Holder, whose name and address shall appear in such notice, has been duly appointed and is then properly serving in such capacity, the Company shall, in each case, have the right (the "**Repurchase Option**"), but not the obligation, exercisable upon written notice, to purchase from such Holder or his legal representative, estate, heirs, successors, putative pledgees, mortgagees, vendees, assignees or transferees, or any other Person claiming any interest in and through such Holder (collectively "**Successor**"), and the Holder or Successor shall, upon receipt of such written notice, have the obligation to sell to the Company, all of the Interest (or any interest therein) owned (beneficially or of record) by such Holder or Successor at its Fair Market Value determined in accordance with **Section 9.5(b)** below. The closing shall be conducted in accordance with the provisions of **Section 9.6** of this Agreement and at a date and time designated by the Company, but not less than seven (7) days or more than thirty (30) days after the Company and the transferor determine the Fair Market Value of the subject Interest.

(b) As used herein, the "**Fair Market Value**" of an Interest shall mean the amount in cash that, at the time the Company exercises the Repurchase Option, a willing buyer under no compulsion to buy (and in possession of all information that such a buyer would reasonably deem material) would be willing to pay and that a willing seller under no compulsion to sell would be willing to accept for such Interest, taking into consideration a reasonable discount for illiquidity, as mutually agreed by the Company and the applicable Holder or Successor. If the Company and the applicable Holder or Successor fail to agree on the Fair Market Value of such Interest within thirty (30) days after the Company exercises the Repurchase Option, then the Fair Market Value of such Interest shall be determined by appraisal as follows:

(i) The transferring Holder or Successor and the Company shall designate an Independent Appraiser to determine conclusively the Fair Market Value of the subject Interest. An "**Independent Appraiser**" means a Person actively engaged in providing valuations of businesses, and which has not previously been employed by the Company or any party to this Agreement or any affiliate of such party, and which is not a competitor or known to be employed by a competitor of the Company. The transferring Holder or Successor and the Company shall bear the fees and expenses of the Independent Appraisers equally.

(ii) If the parties fail to designate an Independent Appraiser within ten (10) days after the Company exercises the Repurchase Option, then either such party may petition the courts to designate the Independent Appraiser, and the designation of said judge shall be conclusive and binding on the parties to the transaction.

(iii) Subject to reasonable restrictions imposed by the Company in order to protect the Company's business and confidential information, including, without limitation, compliance with confidentiality agreements to which the Company is a party, the Independent Appraisers shall have access to all books and records of the Company and shall have the right to examine all of the Company's accounts, securities, assets and equipment.

**9.6 Transfer Procedures.** (a) The closing of any purchase and sale of an Interest pursuant to this **Article IX** between the transferring Holder or Successor and the Company or any purchasing Members, as the case may be, shall be held at the principal offices of the Company or at such other place as the parties may agree.

(b) Each transferee shall pay to the transferor the aggregate purchase price for the Interest being purchased by it in cash, subject to the Company's right to deliver a promissory note. At its election, the Company may pay the transferring Holder or Successor the purchase price for the Interest by the delivery of an unsecured promissory note, payable in not more than five equal annual installments of principal and interest, with the first such installment being due and payable at the closing, provided that payment of principal and interest under such note is to be made only if, and to the extent that, payment of a distribution to the Members could then be made under the Act, each payment of principal or interest being treated as a distribution, the effect of which is to be measured on the date the payment is actually made. The outstanding principal amount of such note shall bear interest at the Applicable Federal Rate (determined in accordance with Section 1274 of the Internal Revenue Code of 1986, as amended) in effect as of the closing for instruments of a like duration and principal amount.

(c) A purchasing party shall be entitled to set-off against any purchase price otherwise payable under this Agreement to any transferring Holder or Successor the amount of any obligations owed by such transferor to such purchasing party on the closing date. If an obligation is owed to the Company by the transferor and the Interest is purchased by the other Members, the Company shall effect the set-off, and the purchasing Members shall pay such amount to the Company (and reduce the purchase price paid to the transferor by the amount so setoff).



**9.7 Power of Attorney.** Each Holder, for himself and his Successors, hereby constitutes and appoints each of the other Members as his agent and attorney-in-fact for the purpose of executing and delivering (upon such Holder's or Successor's refusal or failure to do so): (i) any and all documents necessary or convenient to convey his Interest pursuant to the provisions of **Article IX** of this Agreement, which conveyance shall divest the Holder whose interest is so conveyed of all right, title or equity in or to the Interest formerly owned by him, except as otherwise expressly provided herein, and (ii) any and all other documents, instruments, agreements, and writings necessary or convenient to effectuate the terms of this Agreement. The powers of attorney granted herein, being coupled with an interest, are irrevocable and shall not be revoked by the death, dissolution, liquidation, insolvency, divorce, or incapacity of any Holder or for any other reason. Each Holder hereby releases the other Members who convey his Interest or take other actions on his behalf as authorized in this Agreement from any and all claims or liabilities for or resulting from such conveyance or other action so authorized.

**9.8 Unauthorized Transfer.** (a) Any purported transfer of an Interest not expressly permitted by this **Article IX** or any other provision of this Agreement shall be null and void and of no effect whatsoever, provided that, (i) if a court of competent jurisdiction issues a final judgment requiring the Company to recognize such transfer, or (ii) if the Company in its sole discretion elects to recognize such transfer, the transferee shall have the rights of a Non-Member Transferee, as set forth in **Section 9.4** above.

(b) In the event of a transfer or purported transfer not permitted by this **Article IX** or any other provision of this Agreement, the transferor (or purported transferor) and the transferee (or purported transferee) shall indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of the Company or such Members may incur, including, without limitation, any incremental tax liability, or any professional fees and costs, as a result of such transfer or purported transfer and efforts to enforce this Agreement and this indemnity.

**9.9 Drag-Along Rights.** (a) If seventy-five percent (75%) or more of the Members approve ("Member Approval") a sale of their Units to any Person or Persons (an "**Approved Sale**"), each Holder shall sell all of its Units on the terms and conditions as the Approved Sale, provided that the terms and conditions of such Approved Sale shall not discriminate against any Holder in any material respect. Each Holder shall take all necessary and desirable actions in his capacity as a Holder in connection with the consummation of the Approved Sale as requested by the Members (including attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings).

(b) Each Holder shall bear his pro rata share (based upon the aggregate consideration to be received by such Holder in connection with such Approved Sale) of the costs of any Approved Sale to the extent such costs are incurred for the benefit of all Holders and are not otherwise paid by the Company or the acquiring party and shall be obligated to join on a pro rata basis (based upon the aggregate consideration to be received by such Holder in connection with such Approved Sale) in any indemnification or other obligations that the Members, acting by Member Approval, agree to provide in connection with such Approved Sale (provided that the Holder may be required to bear solely any such obligations that relate specifically to such

Holder or its Units, such as indemnification with respect to representations and warranties regarding such title to and ownership of Units).

## ARTICLE X

### REPRESENTATIONS OF HOLDERS

**10.1 Representations of Holders.** Each Holder hereby warrants and represents to, and agrees with, the Board, the other Holders and the Company, as follows:

(a) It acknowledges that the Interests are not being registered under the Securities Act of 1933, as amended, on the basis of the statutory exemption found in Sections 3(b) and 4(2) thereof, and regulations promulgated thereunder, relating to transactions not involving a public offering. It also understands that the Interests are not being registered under applicable United States state securities laws, but are being issued and sold in reliance on exemptions from registration set forth therein. It further acknowledges that the Company's reliance on such statutory exemptions is based in part on the representations made by such Holder in this Agreement.

(b) It is acquiring its Interest with the intent of holding the same for investment for its own account and without the intent of, or a view to, participating directly or indirectly in any distribution or resale of such Interest, and it does not intend to divide its participation with others, or to resell, assign or otherwise dispose of all or any part of its Interest. In making such representation, the Holder acknowledges that a purchase now with an intent to resell by reason of any foreseeable specific contingency, some predetermined event or an anticipated change in market value, or in the condition of the Company, or in connection with a contemplated liquidation or settlement of any loan obtained by such Holder for the acquisition of such Interest and for which such Interest may be pledged as security, would represent a purchase with an intent inconsistent with the foregoing representation.

(c) It acknowledges and agrees that: (i) the provisions of Rule 144 promulgated under the Securities Act of 1933 are not presently available for the resale of the Interest, and that it has no contract right for the registration under such Act of such Interest for public sale; and (ii) it must bear the economic risk of an investment in the Interest for an indefinite period of time because the Interest has not been registered under the Securities Act of 1933 nor under any applicable United States state securities laws, and, therefore, cannot be sold unless it is subsequently registered under the Securities Act of 1933 and under applicable United States state securities laws or an exemption from such registration is available. It further acknowledges and agrees that it cannot and will not sell or otherwise transfer its Interest except in a transaction which is exempt under the Securities Act of 1933 and all applicable United States state securities laws, or pursuant to an effective registration under such laws or in a transaction which is otherwise in compliance with such acts and laws.

(d) It has directly discussed the purchase of the Interest with the appropriate representatives of the Company, with whom it has been in personal contact, and has had the opportunity to ask questions and receive answers to inquiries relating to such purchase; it has

received answers to such inquiries and has obtained all additional information concerning the Company which the Holder has requested.

(e) It has not relied upon the Managers or any other representative or advisor of the Company with respect to making any evaluation of the income tax consequences of its investment in its Interest. Further, it has not based its decision to invest in an Interest upon income tax considerations.

(f) It has such knowledge and expertise in business, financial and tax matters sufficient for it to evaluate the merits and risks associated with investment in its Interest and to make an informed investment decision with respect thereto. It also has knowledge of finance, securities and investments generally and experience and skill in investments based on actual participation.

(g) It has a substantial net worth and is able to bear the economic risk of an investment in its Interest for an indefinite period. Its financial capacity is of such proportion that the total cost of its Interest is not material when compared with its total financial capacity.

(h) This Agreement is and will remain its valid and binding agreement, enforceable in accordance with its terms (subject, as to the enforcement of remedies, to any applicable bankruptcy, insolvency or other similar laws generally affecting the enforcement of creditors' rights).

(i) It will not take a position on its individual federal income tax return, on any claim for refund, or in any administrative or legal proceedings that is inconsistent with the provisions of this Agreement, without obtaining the prior written consent of the Board.

(j) Holder's title to and ownership of Interest.

## ARTICLE XI

### ACCOUNTING, BOOKS AND RECORDS

**11.1 Accounting Methods; Fiscal Year.** The Board of Managers shall determine whether the accounting for the Company shall be on a cash or accrual basis, and they may make any changes of accounting method that they shall deem advisable at any time and from time to time. The Company's Fiscal Year shall be the calendar year, unless the Board of Managers determines that another Fiscal Year is appropriate or unless another Fiscal Year is required by the Code.

**11.2 Books and Records.** The Company shall keep or cause to be kept, at Company expense, full, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, and receipts of the Company, the Capital Contributions of the Members, Profits, Losses, items of income, gain, loss and deduction, Available Cash, the respective Capital Accounts of the Members and such other matters as the Board of Managers shall deem appropriate. Such books of account shall be the property of the Company, shall be kept in accordance with sound accounting principles and procedures consistently applied, and

shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives. The books of account shall be maintained at the principal office of the Company.

**11.3 Financial Reports and Tax Returns.** As soon as practicable after the end of each Fiscal Year, the Company shall cause to be prepared a full, detailed and complete set of financial statements of the Company for such Fiscal Year, prepared in accordance with sound accounting principles consistently applied, as determined by the Board of Managers. The Company shall also cause the preparation of the Company's income tax returns. The Company shall deliver copies of such financial statements, Schedule K-1 of Form 1065 (or a comparable schedule) and tax returns to the Members as soon as practicable after they are completed after the end of each Fiscal Year.

**11.4 General Information.** The Company shall keep all of the Members informed generally of the Company's transactions and shall furnish to the Members, from time to time as the Board of Managers shall deem advisable, information regarding the activities and business of the Company.

**11.5 Tax Matters Partner.** Jay H. Van Dyne is hereby designated as the "tax matters partner," pursuant to Code Section 6231 and the Regulations thereunder. The tax matters partner shall represent the Company in all federal income tax matters, and the Company shall hire such attorneys, accountants and other professionals at Company expense, as the tax matters partner deems necessary to defend the positions taken by the Company for federal income tax purposes.

**11.6 Adjustment of Tax Basis.** In the event of a transfer of Units in accordance with the terms of this Agreement, upon the request of any Member, the Company shall elect, pursuant to Code Section 754 (the "**Section 754 Election**"), to adjust the basis of the Company property if (a) the effect of such adjustment is to increase the adjusted basis of Company property and (a) the requesting Member or the Member's transferee agrees to bear any additional expense attributable to accounting and recordkeeping required as a result of the Company's Section 754 Election. The Company may, but is not required to, make a Section 754 Election in any circumstance not described in the preceding sentence.

## ARTICLE XII

### **CAPITAL ACCOUNT MAINTENANCE**

**12.1 Maintenance of Capital Accounts.** The Company shall maintain a Capital Account for each Member as part of its books and records.

**12.2 Allocation of Profits and Losses.** After giving effect to the special allocations in **Section 12.3** of this Agreement, the Company shall allocate Profits or Losses for each Accounting Period to the Members in proportion to their respective Percentage Interests.

**12.3 Substitute Allocations.** (a) The Members acknowledge that the Company intends to determine and allocate each Member's distributive share of income, gain,

loss, deduction, or credit (or item thereof) consistently with the provisions of Code Section 704(b). If for any reason the Board of Managers deems it necessary in order to comply with Code, the Board of Managers may, and hereby is authorized and directed to, allocate income, gain, loss, deduction or credit (or items thereof arising in any year differently than as provided for in this **ARTICLE X** if, and to the extent, that allocating income, gain, loss, deduction or credit (or item thereof) pursuant to **Section 12.2** would cause the determinations and allocations of each Member's distributive share of income, gain, loss, deduction or credit (or item thereof) (i) not to be permitted by the Code and Regulations promulgated thereunder or (ii) be inconsistent with a Member's interest in the Company taking into consideration all facts and circumstances.

(b) The Members' acknowledge that a requirement of the Regulations pursuant to Code Section 704(b) is that liquidating distributions be made in accordance with the positive balances of the Members' respective Capital Accounts. If, upon the dissolution of the Company, the Members' Capital Account balances are not in the same proportion as the amount of distributions to which they are entitled pursuant to **Section 4.3** of this Agreement, the Company shall make Substitute Allocations in such manner so that the positive balances of the Members' Capital Accounts are equal, as closely as possible, to the amount of distributions the Members' are entitled to receive pursuant to **Section 4.3** if the Company sold its assets for the Gross Asset Value of the assets and applied the proceeds of such sale pursuant to this Agreement.

(c) Substitute Allocations shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement, and no further amendment of this Agreement or approval by any Member is required to effectuate such allocation. In making Substitute Allocations, the Board of Managers is authorized and directed to act in reliance upon advice of counsel to the Company or the Company's regular certified public accountants that, in their opinions after examining the relevant provisions of the Code and any current or future proposed or final Treasury Regulations thereunder, the Substitute Allocations are necessary in order to ensure that, in either the then-current Accounting Period or in any preceding Accounting Period, each Member's distributive share of income, gain, loss, deduction or credit (or items thereof) are determined and allocated in accordance with the Code and the Member's interests in the Company. Substitute Allocations made by the Board of Managers in reliance upon the advice of counsel and accountants as described above is deemed to be made in the best interests of the Company and all of the Members consistent with the duties of the Board of Managers hereunder, and any such Substitute Allocations shall not give rise to any claim or cause of action by any Member against the Company, the Board of Managers or any member of the Board of Managers.

**12.4 Tax Items; Contributed and Revalued Property.** (a) Except as provided in **Section 12.4(b)** of this Agreement, any allocation to a Member of a portion of the Profits, Losses or items of income, gain, loss or deduction for a Accounting Period is deemed to be an allocation to that Member of the same proportionate part of each item of income, gain, loss, deduction or credit that is earned, realized or available by or to the Company for federal income tax purposes.

(b) For federal income tax purposes, any income, gain, loss or deduction with respect to property contributed by a Member to the Company that has a fair market value different from its adjusted basis for federal income tax purposes is allocated among the Members in accordance with Code Section 704(c) and the Regulations Section 1.704-3, using any method prescribed in Regulations Section 1.704-3 determined by the Board of Managers. With respect to any Company asset that is revalued pursuant to the terms of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to the asset shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its fair market value at the time of revaluation in the same manner as under Code Section 704(c) and Regulations Section 1.704-3, using any method prescribed therein as determined by the Board of Managers.

### ARTICLE XIII

#### DEATH OR DISABILITY OF MEMBERS

**13.1 Member Death or Disability.** Upon the death or disability of any member (a "**Departing Member**"), the Departing Member's (or his successor-in-interest) voting rights shall be transferred to the successor-in-interest (beneficiary).

### ARTICLE XIV

#### DISSOLUTION OF COMPANY

**14.1 Events of Dissolution.** The Company shall dissolve upon the happening of any of the following events:

(a) the sale or other disposition of all or substantially all of the Company assets other than cash; or

(b) the election to dissolve the Company by Members owning at least seventy-five percent (75%) of the Units of all Members.

**14.2 No Action for Dissolution.** The Members acknowledge that the Company will suffer irreparable damage (on account of a premature liquidation of the Company's assets, loss of goodwill and reputation, and other factors) if any Member seeks to dissolve, terminate or liquidate the Company, by litigation or otherwise. The Members further acknowledge that the parties have drawn this Agreement carefully to provide fair treatment of all parties and equitable payments in liquidation of the Units of all Members, and that the Members entered into this Agreement with the intention that the Company continue until dissolved and liquidated in accordance with the terms of this Agreement. Accordingly, each Member hereby waives and renounces any right to dissolve, terminate, partition or liquidate the Company, or to obtain the appointment of a receiver or trustee to liquidate the Company, or to obtain partition of Company assets, except as specifically set forth in this Agreement.

## ARTICLE XV

### LIQUIDATION OF COMPANY

**15.1 Liquidation.** (a) Upon the dissolution of the Company, the Company immediately shall commence to wind-up its affairs. A reasonable period of time shall be allowed for the orderly termination of the Company's business, the discharge of its liabilities and the distribution or liquidation of its remaining assets so as to enable the Company to minimize the normal losses attendant to the liquidation process. A full accounting of the assets and liabilities of the Company shall be taken and a written statement thereof shall be furnished to each Member within a reasonable period after dissolution. The Board of Managers shall conduct the liquidation of the Company, including, the preparation of the accounting and statement, provided that the Board of Managers may agree to select a liquidating trustee to conduct the liquidation of the Company.

(b) In the event of a dissolution on account of a sale or other disposition of all or substantially all of the Company's assets other than cash, and payment of a portion of the proceeds from the sale or disposition is deferred through the Company receiving a purchase money note or otherwise, the Company shall not be finally liquidated until the deferred portion of the purchase price shall be collected in full (or deemed worthless by the Company), and the Company shall not be required to distribute the indebtedness representing the deferred portion of the purchase price to the Members. In the event that following a sale of all or substantially all of the Company's assets, the Company reacquires title to all or a portion of the assets, by foreclosure, sale under power of sale, deed in lieu thereof or otherwise, the Company shall be reformed and reinstated on the terms contained in this Agreement, notwithstanding the prior dissolution under **ARTICLE XII** of this Agreement.

(c) The Company shall apply its property and assets and the proceeds from the liquidation thereof in the following order of priority:

(i) payment of the debts and liabilities of the Company incurred in accordance with the terms of this Agreement, including, any debts to any Member, and payment of the expenses of liquidation;

(ii) establishment of reserves as the Board of Managers may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or any obligation or liability not then due and payable; provided, any unspent balance of the reserves shall be distributed in the manner hereinafter provided when deemed reasonably prudent by the Members or liquidating trustee; and

(iii) distribution to the Members pursuant to **Section 4.3**.

**15.2 No Further Claim.** Except as expressly provided in this Agreement, each Member shall look solely to the assets of the Company for the return of any investment of such Member in the Company (including Capital Contributions and loans from a Member to the Company), and no Member shall have any liability or obligation to the Company or to any other Member to repay any unreturned Capital Contributions or loans made by any Member to the Company.

## ARTICLE XVI

### DEFINITIONS

**16.1 Definitions In General.** This ARTICLE XIV sets forth the definitions of certain terms used in this Agreement. Terms defined elsewhere in this Agreement shall have for all purposes of this Agreement the meanings set forth elsewhere in this Agreement.

**16.2 Certain Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth in this Section 16.2.

(a) **"Accounting Period"** shall mean any period (i) beginning with the earlier of (A) the date of this Agreement or (A) the close of an Accounting Period and (i) ending with the earlier of (A) the close of a Fiscal Year of the Company, (A) a variation of the Members' interests in the Company, or (A) any other period for which the Board of Managers determines that a closing of the books of the Company is appropriate.

(b) **"Act"** shall have the meaning set forth in the recitals of this Agreement.

(c) **"Agreement"** shall have the meaning set forth in the preamble to this Agreement.

(d) **"Articles"** shall have the meaning set forth in the recitals of this Agreement.

(e) **"Available Cash"** shall mean cash or other assets that the Board of Managers determines exists for distribution after paying or providing for all current obligations of the Company and setting aside reasonable reserves for anticipated obligations or losses of the Company.

(f) **"Board of Managers"** shall have the meaning set forth in Section 1.3.

(g) **"Business"** shall have the meaning set forth in Section 1.4 of this Agreement.

(h) **"Capital Account"** shall mean, with respect to any Member, the account maintained by the Company for the Member in accordance with the following provisions:

(i) The Company shall credit to each Member's Capital Account (A) the amount of cash and the Gross Asset Value of property other than cash contributed by the Member to the Company as a Capital



Contribution, (A) the Member's distributive share of Profits and any items in the nature of income or gain that the Company specially allocates pursuant to **ARTICLE X** of this Agreement, and (A) the amount of any Company liabilities that the Member assumes or that any Company property distributed to the Member secures.

(ii) The Company shall debit to each Member's Capital Account (A) the amount of cash and the Gross Asset Value of property other than cash distributed by the Company to the Member pursuant to **ARTICLE IV** or **Section 15.1(c)** of this Agreement, (A) the Member's distributive share of Losses and any items in the nature of expenses or losses that the Company specially allocates pursuant to **ARTICLE X** of this Agreement, and (A) the amount of the Member's liabilities that the Company assumes or that any property contributed by the Member to the Company secure.

(iii) In the event that a Member transfers all or a portion of an Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that the Capital Account relates to the transferred Interest.

(iv) In determining the amount of any liability for purposes of computing a Member's Capital Account, the Company shall take into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The Company intends that the foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts comply with Regulations Section 1.704-1(b), and the Company shall interpret and apply such provisions in a manner consistent with such Regulations.

(i) "**Capital Contribution**" shall have the meaning set forth in **Section 3.1** of this Agreement.

(j) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(k) "**Company**" shall have the meaning set forth in set forth in the recitals of this Agreement.

(l) "**Depreciation**" shall mean for each Accounting Period or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for the Accounting Period; provided, however, that if the Gross Asset Value of an asset differs from that asset's adjusted basis for federal income tax purposes at the beginning of a Accounting Period, Depreciation shall be an amount that bears the same ratio to the beginning Gross Asset Value of such asset as the federal income tax depreciation, amortization or other cost recovery deduction for such Accounting Period bears to the beginning adjusted tax basis of such Accounting Period; provided, further,

that if the federal income tax depreciation, amortization or other cost recovery deduction for such period is zero, the Company shall determine Depreciation with reference to such beginning Gross Asset Value using a reasonable method selected by the Company.

(m) **"Disability"** shall have a meaning consistent with Section 22(e)(3) of the Code. The existence of disability shall be determined by the Board of Managers in good faith.

(n) **"Eligible Members"** shall have the meaning as set forth in Section 9.3 of this Agreement.

(o) **"Family Members"** shall have the meaning as set forth in Section 9.2 of this Agreement.

(p) **"Fair Market Value"** shall have the meaning as set forth in Section 9.5 of this Agreement.

(q) **"Fiscal Year"** shall mean the period determined pursuant to Section 11.1 of his Agreement.

(r) **"Gross Asset Value"** with respect to any Company asset shall mean the value placed on the asset in connection with the maintenance of Capital Accounts and shall be that asset's adjusted basis for federal income tax purposes except as follows:

(i) The initial Gross Asset Value of assets contributed to the capital of the Company by a Member shall be the gross fair market value of the contributed assets on the date of contribution.

(ii) The Company shall increase or decrease the Gross Asset Value of Company assets to reflect any adjustments to the adjusted basis of the assets pursuant to Code Section 734(b) or 743(b), but only to the extent that Company must take the adjustments into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that the Company shall not adjust the Gross Asset Values of Company assets pursuant to this paragraph to the extent that the Company determines that an adjustment pursuant to paragraph (iii) below is appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph;

(iii) The Company may adjust the Gross Asset Value of all Company assets to equal their respective gross fair market values upon the occurrence of any of the following events: (A) the acquisition of additional Units by any new or existing Member in exchange for more than a de minimis capital contribution; (A) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for all or a portion of a Member's Units; and, (A) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) The Gross Asset Value of any Company asset shall be adjusted by any Depreciation taken into account with respect to such Company asset for purposes of computing Profits and Losses; and

(v) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to the gross fair market value of the asset on the date of distribution.

For purposes of this definition, the Company shall determine the fair market value of Company assets by the agreement of the Board of Managers or by any method consented to by the Board of Managers.

(s) "**Holder**" means any Member or Non-Member Transferee.

"**Independent Appraiser**" shall have the meaning set forth in **Section 9.5** of this Agreement.

(t) "**Interest**" shall mean an equity interest in the Company, including the right to receive distributions and allocations in accordance with the provisions of this Agreement.

(u) "**Measurement Date**" shall mean the the Employee Member's first date of employment with the Company.

(v) "**Members**" shall have the meaning set forth in **Section 1.1** of this Agreement.

(w) "**Net Taxable Income**" shall have the meaning set forth in **Section 4.1** of this Agreement.

(x) "**Non-Member Transferee**" shall have the meaning set forth in **Section 13.1** of this Agreement.

(y) "**Non-Obligated Member**" shall have the meaning set forth in **Section 7.3** of this Agreement.

(z) "**Non-Voting Transferee**" shall have the meaning set forth in **Section 9.3** of this Agreement.

"**Notice of Offer**" shall have the meaning set forth in **Section 9.3** of this Agreement.

(aa) "**Obligated Member**" shall have the meaning set forth in **Section 7.3** of this Agreement.

(bb) "**Percentage Interest**" shall mean with respect to any Member the number of Units held by such Person divided by the total number of Units issued and outstanding.

(cc) "**Person**" shall mean an individual, partnership, joint venture, association, corporation, trust or any other legal entity.

(dd) "**Profits**" or "**Losses**" shall mean the Company's taxable income or loss determined in accordance with Code Section 703(a) for each of its Accounting Periods, with the following adjustments:

(i) The Company shall (A) add to its taxable income or loss any of its income that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses, and (A) subtract from its taxable income or loss any expenditures under Code Section 705(a)(2)(B) (or treated as such an expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in determining Profits or Losses.

(ii) In the event that the Company adjusts the Gross Asset Value of any Company asset pursuant to paragraph (ii), (iii) or (iv) of the definition of Gross Asset Value, the Company shall take into account the amount of such adjustment as gain or loss from the disposition of such asset for purposes of computing Profits or Losses.

(iii) The Company shall compute gain or loss resulting from any disposition of any Company asset with respect to which the Company recognizes gain or loss for federal income tax purposes by reference to the Gross Asset Value of the Company asset disposed of, notwithstanding that the adjusted tax basis of such Company asset differs from its Gross Asset Value.

(iv) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall take into account Depreciation for such Accounting Period.

(v) For purposes of computing Profits or Losses, to the extent that, as a result of a distribution to a Member other than in liquidation of the Member's Interest, Regulations Section 1.704-1(b)(2)(iv)(m)(4) requires an adjustment to the adjusted tax basis of any Company asset pursuant Code Section 734(b) or Code Section 743(b) to be taken into account in determining a Member's Capital Account, the Company shall treat the amount of the adjustment as an item of gain (to the extent the adjustment increases the tax basis of the asset) or loss (to the extent the adjustment decreases the tax basis of the asset) from the disposition of the asset.

Notwithstanding any other provision of this definition, in computing Profits or Losses, the Company shall not take into account any items of income, gain, expense or loss that it specially allocates pursuant to **Section 12.3** of this Agreement. The Company shall use rules analogous to those set forth in this definition to determine the amount items of income, gain, deduction or loss available for special allocation pursuant to **Section 12.3** of this Agreement.

(ee) "**Regulations**" shall mean Treasury Regulations promulgated under the Code, as such Regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

"**Repurchase Option**" shall have the meaning as set forth in **Section 9.5** of this Agreement.

(ff) "**Retirement**" shall mean retiring from employment with the Company or any parent, affiliate or subsidiary of the Company, pursuant to a policy or agreement approved by the Board of Managers.

"**Selling Holder**" shall have the meaning as set forth in **Section 9.3** of this Agreement.

(gg) "**Substitute Allocation**" shall mean any allocation made pursuant to **Section 12.3**.

"**Successor**" shall have the meaning as set forth in **Section 9.5** of this Agreement.

(hh) "**Transfer**" shall have the meaning set for in **Section 9.1** of this Agreement.

(ii) "**Units**" shall have the meaning set forth in **Section 2.1** of this Agreement.

## ARTICLE XVII

### **MISCELLANEOUS**

**17.1 Applicable Law.** This Agreement shall be governed by, construed under, and enforced and interpreted in accordance with, the laws of the State of Delaware.

**17.2 Notices.** Any notices required by this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered in person, (b) if mailed postage prepaid, by certified or registered mail with return receipt requested, (a) if transmitted by facsimile (with confirmation by regular U.S. Mail), (c) if sent by Federal Express or other nationally recognized overnight courier service or overnight express U.S. Mail, postage prepaid or (d) if sent by electronic mail (with confirmation by regular U.S. Mail), (x) to the Member at the address set forth below such Member's execution of this Agreement, or to such other address of which the Member subsequently notifies the Company and the other Members in writing, or (y) to the Company at the address of its initial principal office or to such other address of which the Company notifies the Members in writing. Notices personally delivered or transmitted by facsimile or electronic e-mail shall be deemed to have been given on the date so delivered or transmitted. Notices mailed shall be deemed to have been given on the date 3 business days after the date posted, and notices sent in accordance with (d) above shall be deemed to have been given on the next business day after delivery to the courier service or U.S. Mail (in time for next

day delivery). Failure to send or receive a confirmation by regular U.S. Mail of any notice requiring confirmation shall not affect the validity of the underlying notice hereunder.

**17.3 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement between them respecting the subject matter of this Agreement. There are no representations, arrangements, understandings or agreements, oral or written, between the parties hereto relating to the subject matter of this Agreement, except those fully expressed in this Agreement.

**17.4 No Partnership.** The Members intend that the Company be taxable as a partnership for federal and state income tax purposes. Certain of the definitions contained in this Agreement are a derivative of or refer to applicable partnership provisions of the Code and Regulations. In no event shall any such definition or any reference to any such provision give rise to an inference that the Company is not a limited liability company pursuant to the Act.

**17.5 Creditors Not Benefited.** Nothing contained in this Agreement shall be intended or shall be deemed to benefit any creditor of the Company or of any Member, and no creditor of the Company shall be entitled to require the Company or the Members to solicit or accept any Capital Contribution for the Company or to enforce any right which the Company or any Member may have against any Member under this Agreement or otherwise.

**17.6 Severability.** If any provision of this Agreement is held illegal or unenforceable, the Members hereby covenant and agree that such provision shall be absolutely and completely severable from all other provisions of this Agreement and such other provisions shall constitute the agreement of the Members with respect to the subject matter of this Agreement.

**17.7 Successors.** Subject to the provisions of this Agreement imposing limitations and conditions upon the transfer, sale or other disposition of the Units, all the provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, successors, legal representatives and assigns of the parties hereto.

**17.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement.

**17.9 Section Headings.** Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to define, interpret, describe or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

**17.10 Time.** Time is of the essence of this Agreement.

**17.11 Usage.** The use in this Agreement of the term "including" means "including, without limitation." The words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole, including the schedules and exhibits, as the same may from time to time be amended, modified, supplemented or restated, and not to any

particular section, subsection, paragraph, subparagraph or clause contained in this Agreement. All references to sections, paragraphs, schedules and exhibits mean the sections and paragraphs of this Agreement and the schedules and exhibits attached to this Agreement, except where otherwise stated. All references herein to any Person shall be deemed to include such Person's successors, transferees and assignees, but only, in the case of transferees and assignees of the Members, to the extent the applicable transfer or assignment complies with the provisions of this Agreement. All references to any applicable law specifically defined or referred to herein shall be deemed references to such applicable law as the same may be amended or supplemented from time to time. All references to any contract defined or referred to herein shall be deemed references to such contract (and, in the case of any instrument, any other instrument issued in substitution therefore) as the terms thereof may have been amended, supplemented, waived or otherwise modified from time to time. Whenever the context so requires, the neuter gender includes the masculine or feminine, and the singular number includes the plural, and vice versa. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Agreement has been chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. Unless expressly provided otherwise, the measure of a period of one month or year for purposes of this Agreement shall be that date of the following month or year corresponding to the starting date, provided that if no corresponding date exists, the measure shall be that date of the following month or year corresponding to the next day following the starting date. For example, one month following February 18 is March 18, and one month following March 31 is May 1. All references herein to funds, dollars or payments shall mean United States dollars.

**17.12 Accession of New Holders.** If any Person not already a party to this Agreement acquires an Interest in a transaction permitted hereby, such Person shall become a party to this Agreement as Member or Non-Member Transferee, as applicable, by executing an appropriately completed counterpart signature page to this Agreement in the form of Exhibit C attached hereto (which need not be signed or accepted by any party hereto other than the Company), and upon execution thereof such Person will be subject to all of the terms and provisions of this Agreement and entitled to all of the rights and preferences, and subject to all of the obligations of a party hereto as a Member, or (if the conditions of **Section 9.4** have not been fulfilled) a Non-Member Transferee, as applicable. No distribution under **Article IV** shall be made to any transferee of an Interest, and any distribution to which such transferee is entitled will be segregated and retained by the Company with no interest or accretion thereon, unless and until the Company receives the executed copy of the counterpart signature page from such Person adhering to this Agreement as a Member, or, if applicable, a Non-Member Transferee.

**17.13 Dispute Resolution.** The parties to this Agreement endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof (but excluding any dispute as to the Fair Market Value of an Interest pursuant to **Section 9.6**, which shall be settled solely in accordance with such Section), shall finally be settled by arbitration in accordance with the Commercial Arbitration Rules of the

American Arbitration Association. Unless otherwise agreed by the parties in writing, any arbitration proceeding shall take place in Charleston, South Carolina before a single arbitrator appointed in accordance with such rules. The arbitrator will not have the authority to award punitive damages. Each party to any arbitration shall bear its own expenses, but the parties will share equally the fees and expenses of the arbitrator and the American Arbitration Association. The decision of the arbitrator shall be in writing and shall state the reasons therefore. Judgment upon an arbitration award may be entered in any court of competent jurisdiction and shall be final, binding and non-appealable.

[Signature Page to Follow]



**IN WITNESS WHEREOF**, the undersigned have executed this Agreement effective as of the date first set forth above.

**MEMBERS**

  
\_\_\_\_\_  
PHALANX ENERGY SERVICES, LLC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**CAPITAL CONTRIBUTIONS; UNITS ISSUED**

<b>Member</b>	<b>Capital Contribution</b>	<b>Units Issued</b>
Jay H. Van Dyne	\$500.00	500
Frank P. Wilbourne, III	\$500.00	500

<b>Employee Member</b>	<b>Capital Contribution</b>	<b>Units Issued</b>

**EXHIBIT B**

**FORM OF UNIT CERTIFICATE**

THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE IS A SECURITY GOVERNED BY THE DELAWARE UNIFORM COMMERCIAL CODE.

THE INTERESTS (THE "UNITS") IN PHALANX ENERGY SERVICES, LLC (THE "COMPANY") HAVE NOT BEEN REGISTERED UNDER THE DELAWARE SECURITIES ACT, 6 DEL. CODE §§ 7301 ET SEQ., AS AMENDED (THE "DELAWARE ACT") IN RELIANCE UPON THE EXEMPTIONS PROVIDED BY THE DELAWARE ACT, INCLUDING 6 DEL. CODE § 7309(B)(9), UNDER ANY OTHER STATE SECURITIES LAWS (THE "STATE LAWS"), OR UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "FEDERAL ACT"). THE UNITS HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED, NOR WILL ANY ASSIGNEE OR TRANSFEREE OF ANY UNITS BE RECOGNIZED BY THE COMPANY AS HAVING ANY INTEREST IN THE COMPANY IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT WITH RESPECT TO THE UNITS UNDER THE FEDERAL ACT, THE DELAWARE ACT AND ANY APPLICABLE STATE LAWS OR AN OPINION OF COUNSEL, WHICH OPINION AND COUNSEL SHALL BE SATISFACTORY TO THE COMPANY, THAT NO SUCH REGISTRATION IS REQUIRED.

THE TRANSFER OF UNITS IN THE COMPANY IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THAT CERTAIN PHALANX ENERGY SERVICES, LLC OPERATING AGREEMENT DATED MARCH 9, 2011 (THE "OPERATING AGREEMENT"), A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. ANY PURPORTED TRANSFER OF UNITS NOT EXPRESSLY PERMITTED BY THE OPERATING AGREEMENT WILL NOT BE RECOGNIZED BY THE COMPANY, NOR WILL ANY ASSIGNEE OR TRANSFEREE OF ALL OR ANY UNITS BE RECOGNIZED AS HAVING ANY INTEREST IN THE COMPANY.

Certificate Number

Units

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LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST

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THIS CERTIFIES THAT [MEMBER] is the registered holder of  
«Written\_Out\_Shares» («Units») Units of

**PHALANX ENERGY SERVICES, LLC**

IN WITNESS WHEREOF, the said Limited Liability Company

Exhibit A-15  
"Articles of Incorporation and Bylaws"

has caused this Certificate to be signed by its Chairman  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

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

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

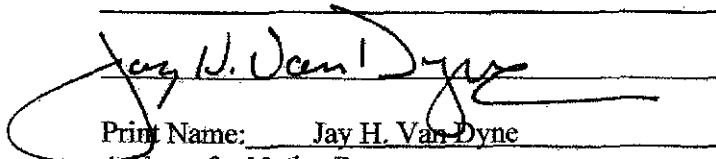
**EXHIBIT C**

**COUNTERPART SIGNATURE PAGE  
TO  
OPERATING AGREEMENT**

This Counterpart Signature Page is executed and delivered pursuant to **Section 17.12** of the Operating Agreement of PHALANX ENERGY SERVICES, LLC, effective as of March 9, 2011.

By executing and delivering this Counterpart Signature Page to the Company and to induce the Company to issue or permit the transfer of Interest to the undersigned, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to become a party to the Operating Agreement and to be subject to all of the terms and provisions thereof, to make all the representations in **Section 10.1** thereof, entitled to all the rights and preferences, and subject to all of the obligations, of a party and a Member/Non-Member Transferee thereunder.

IN WITNESS WHEREOF, the undersigned has caused this Counterpart Signature Page to be executed and delivered effective as of 9<sup>th</sup> March 2011.

  
Print Name: Jay H. Van Dyne  
Address for Notice Purposes: \_\_\_\_\_

**Accepted:**

**PHALANX ENERGY SERVICES, LLC**

By: Emily E. Wilbourne  
Name: Emily E. Wilbourne

**EXHIBIT C**

**COUNTERPART SIGNATURE PAGE  
TO  
OPERATING AGREEMENT**

This Counterpart Signature Page is executed and delivered pursuant to **Section 17.12** of the Operating Agreement of PHALANX ENERGY SERVICES, LLC, effective as of March 9, 2011.

By executing and delivering this Counterpart Signature Page to the Company and to induce the Company to issue or permit the transfer of Interest to the undersigned, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to become a party to the Operating Agreement and to be subject to all of the terms and provisions thereof, to make all the representations in **Section 10.1** thereof, entitled to all the rights and preferences, and subject to all of the obligations, of a party and a Member/Non-Member Transferee thereunder.

IN WITNESS WHEREOF, the undersigned has caused this Counterpart Signature Page to be executed and delivered effective as of 9th March, 2011.



Print Name: Frank P. Wilbourne, III

Address for Notice Purposes:

**Accepted:**

**PHALANX ENERGY SERVICES, LLC**

By: Emily E. Wilbourne  
Name: Emily E. Wilbourne

**EXHIBIT D**  
**SUBSCRIPTION AGREEMENT**

**Exhibit A-16 "Secretary of State"**

Phalanx Energy Services, LLC is registered with the State of Ohio and proof of the State of Ohio Secretary of State Certificate is attached herein.



**\*201215000012\***

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
05/29/2012	201215000012	REG. OF FOR. PROFIT LIM. LIAB. CO. (LFP)	125.00	100.00	.00	.00	.00

**Receipt**

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

Exhibit A-16  
"Secretary of State"

DIAMOND ACCESS  
ATTN: LISA VAIDO  
887 SOUTH HIGH STREET  
COLUMBUS, OH 43206

**STATE OF OHIO  
CERTIFICATE**

**Ohio Secretary of State, Jon Husted**

**2109762**

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

**PHALANX ENERGY SERVICES, LLC**

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

Document(s)  
**REG. OF FOR. PROFIT LIM. LIAB. CO.**

Document No(s):  
**201215000012**



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 24th day of May, A.D. 2012.

A handwritten signature in cursive script that reads "Jon Husted".

Ohio Secretary of State

### **Exhibit B-1 “Jurisdictions of Operation”**

Phalanx Energy Services, LLC, is a licensed electricity supplier in Maryland and the District of Columbia, and in the application process in Illinois. Copies of the licenses are included in Exhibit B-1. Phalanx Energy Services, LLC is licensed with FERC and is an approved member of PJM and currently in the process of becoming a member of MISO.

COMMISSIONERS

DOUGLAS R. M. NAZARIAN  
CHAIRMAN

HAROLD D. WILLIAMS  
LAWRENCE BRENNER  
KELLY SPEAKES-BACKMAN  
W. KEVIN HUGHES

STATE OF MARYLAND



PUBLIC SERVICE COMMISSION

#11, 5/2/12 AM; ML#s 130703, 138558 and 138645  
License Reference No.: IR-2310

May 2, 2012

Frank P. Wilbourne, III  
CEO and Management Member  
Phalanx Energy Services, LLC  
Post Office Box 20339  
Charleston, South Carolina 29413

Dear Mr. Wilbourne:

On April 21, 2012, Phalanx Energy Services, LLC ("Company") filed an Application for a license to supply electricity or electric generation services in Maryland under COMAR 20.51. Additional information was filed on April 17, 2012 and April 20, 2012. The Company proposes to provide electricity supplier services in Maryland for commercial and industrial customers as described in the application.

After considering this matter at the May 2, 2012 Administrative Meeting, the Commission granted the Company a license to supply electricity or electric generation services in Maryland in accordance with its Application (License Reference Number IR-2310). The license granted by the Commission under this Letter Order is limited solely to electricity supplier services to commercial and industrial customers. Additionally, the Company is directed to file marketing and training material specific to Maryland operations when materials become available.

Finally, the Company is reminded that it is under a continuing obligation to notify the Commission within 30 days of any changes to the information upon which the Commission relied in granting this license. A copy of the supplemental or updated information is required to be filed concurrently with the Office of People's Counsel.

By Direction of the Commission

A handwritten signature in dark ink, appearing to read "David J. Collins".

David J. Collins  
Executive Secretary

DJC/st  
cc: Phil Vanderheyden, Electricity Division

WILLIAM DONALD SCHAEFER TOWER • 6 ST. PAUL STREET • BALTIMORE, MARYLAND 21202-6806

410-767-8000

Toll Free: 1-800-492-0474

FAX: 410-333-6495

MDRS: 1-800-735-2258 (TTY/Voice)

Website: [www.psc.state.md.us/psc/](http://www.psc.state.md.us/psc/)

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET N.W., 2ND FLOOR, WEST TOWER  
WASHINGTON, D.C. 20005**

**ORDER**

June 6, 2012

**FORMAL CASE NO. EA 11-8 IN THE MATTER OF THE APPLICATION OF  
PHALANX ENERGY SERVICES, LLC FOR AN ELECTRICITY LICENSE,  
Order No. 16803**

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants a license to Phalanx Energy Services, LLC ("Phalanx Energy Services" or "Applicant") to function as an electricity supplier in the District of Columbia.<sup>1</sup> Specifically, Phalanx Energy Services intends to operate as a marketer of electricity for residential, commercial and industrial customers in the District of Columbia, pursuant to Section 34-1505 of the "Retail Electric Competition and Consumer Protection Act of 1999 ("Act")."<sup>2</sup>

2. On April 13, 2011, Phalanx Energy Services filed its license application.<sup>3</sup> Pursuant to the Commission's licensing requirements as set forth in Order No. 11796,<sup>4</sup> Phalanx Energy Services has provided the following information:

- a) Proof of technical and managerial competence;
- b) An affidavit of compliance with applicable Federal and District of Columbia environmental laws and regulations dated April 12, 2011;
- c) Proof of financial integrity to include financial statements;
- d) Proof that Phalanx Energy Services has registered with the Department of Consumer and Regulatory Affairs to do business in the District of Columbia;
- e) An affidavit that Phalanx Energy Services is subject to all applicable taxes;

<sup>1</sup> D.C. Official Code § 34-1501(17) (2010 Repl.) defines, in part, an electricity supplier as "a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale to customers."

<sup>2</sup> D.C. Official Code § 34-1505; see generally §§ 34-1501-1520.

<sup>3</sup> *Formal Case No. EA 11-8, In the Matter of the Application of Phalanx Energy Services, LLC for an Electricity License*, Application of Phalanx Energy, LLC filed April 13, 2011. Phalanx Energy, LLC filed supplemental information regarding its application on May 2, 2012.

<sup>4</sup> *Formal Case No. 945, In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, Order No. 11796 at Attachment C, rel. September 20, 2000.

Order No. 16803

Page No. 2

f) An affidavit dated April 12, 2011, stating that Phalanx Energy will comply with all the requirements of all orders and regulations of the Commission; and

g) Applicant's website address: <http://www.phalanxenergy.com/>.

3. After a complete review of the application, the Commission finds that granting the application of Phalanx Energy Services, LLC will serve the public interest. The information contained in its application demonstrates that the Applicant has the ability and the financial integrity to serve electricity customers in the District of Columbia.


**THEREFORE, IT IS ORDERED THAT:**

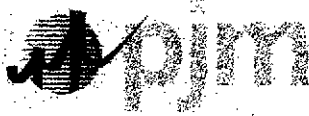
4. The application of Phalanx Energy Services, LLC for a license to conduct business in the District of Columbia as an electricity supplier is hereby **GRANTED**.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK:**

  
**BRINDA WESTBROOK-SEDGWICK**  
**COMMISSION SECRETARY**



955 Jefferson Ave.  
Valley Forge Corporate Center  
Norristown, PA 19403-2497

Exhibit B-1  
"Jurisdictions of Operation"

May 9, 2012

Mr. Frank Wilbourne, III  
Phalanx Energy Services, LLC  
983 Casseque Province  
Mount Pleasant, SC 29464

Dear Mr. Wilbourne,

Welcome to PJM!


As promised, enclosed are the signed membership agreements for your records. To ensure your needs are met, PJM has assigned Client Manager, Don Williams, as your primary point of contact. He can be contacted at [wiliid@pjm.com](mailto:wiliid@pjm.com) or 610-666-4644. You may also contact our Customer Service Center at 866-400-8980 should you have any questions as well.

Thank you,

A handwritten signature in black ink that reads "Amanda Egan". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Amanda Egan  
PJM Interconnection

Enclosures

<div>  <div> <b>Members Committee</b>  <b>Other Supplier - (OS)</b> </div> </div> <div>Revised: 05.19.2012</div>		
Member Contact Information		
<b>John Neeld</b> Project Design & Engineering <b>Penncat Corporation</b> 432 N Spring Garden St Ambler, PA 19002  <b>Fedex Address:</b> 432 N Spring Garden St Ambler, PA 19002	Office: (610) 272-0505 E-Mail: jneeld@penncat.com	<b>Penncat Corporation (OS)</b>  <u><b>Alternate Voting Member:</b></u> <b>John Neeld</b>
<b>David Pearsall</b> Chairman and CEO <b>People's Power &amp; Gas, LLC</b> 1217 East Cape Coral Parkway Suite 220 Cape Coral, FL 33904  <b>Fedex Address:</b> 1217 East Cape Coral Parkway Suite 220 Cape Coral, FL 33904	Office: (855) 857-6937 E-Mail: dpearsall@peoplespower.com	<b>People's Power &amp; Gas, LLC (OS)</b>  <u><b>Primary Voting Member:</b></u> <b>David Pearsall</b>
<b>Ashley Sansalone</b> President <b>Perspective Energy USA LLC</b> 86 Warwick Dr SW  <b>Fedex Address:</b>	Office: (403) 371-2504 E-Mail: penergyusa@hotmail.com	<b>Perspective Energy USA LLC (OS)</b>  <u><b>Primary Voting Member:</b></u> <b>Ashley Sansalone</b>
<b>Frank Wilbourne</b> <b>Phalanx Energy Services, LLC</b> 1193 Chersonese Round Mount Pleasant, SC 29464  <b>Fedex Address:</b> 1193 Chersonese Round Mount Pleasant, SC 29464	Office: (843) 881-2343 E-Mail: frank.wilbourne@phalanxenergy.com	<b>Phalanx Energy Services, LLC (OS)</b>  <u><b>Primary Voting Member:</b></u> <b>Frank Wilbourne</b>
<b>Jay Van Dyne</b> COO & Managing Member <b>Phalanx Energy Services, LLC</b> 983 Casseque Province Mount Pleasant, SC 29464  <b>Fedex Address:</b> 983 Casseque Province Mount Pleasant, SC 29464	Office: (404) 319-9910 E-Mail: jay.vandyne@phalanxenergy.com	<b>Phalanx Energy Services, LLC (OS)</b>  <u><b>Alternate Voting Member:</b></u> <b>Jay Van Dyne</b>

**ATTACHMENT F-1**

**Form of Umbrella Service Agreement for  
Network Integration Transmission Service  
Under State Required Retail Access Programs**

- 1.0 This Service Agreement dated as of 6/8/2012 including the Specifications For Network Integration Transmission Service Under State Required Retail Access Programs attached hereto and incorporated herein, is entered into, by and between PJM Interconnection, L.L.C. ("Transmission Provider") as administrator of the Tariff, PJM Settlement Inc. ("Counterparty") as the counterparty, and Phalanx Energy Services, LLC, a transmission customer participating in a state required retail access program and/or a program providing for the contractual provision of default service or provider of last resort service ("Network Customer").
- 2.0 The Network Customer has been determined by the Transmission Provider to have a valid request for Network Integration Transmission Service under the Tariff and to have satisfied the conditions for service imposed by the Tariff to the extent necessary to obtain service with respect to its participation in a state required retail access program.
- 3.0 Service under this Service Agreement shall commence on 6/8/2012, and shall terminate on such date as mutually agreed upon by the parties, unless state law or regulations specify a limited period for service or unless earlier terminated for default under Section 7.3 of the Tariff.
- 4.0 The Transmission Provider agrees to provide, and the Network Customer agrees to take, Network Integration Transmission Service in accordance with the Tariff, including the Operating Agreement of the PJM Interconnection, L.L.C. ("Operating Agreement") (which is the Network Operating Agreement under the Tariff and is incorporated herein by reference) and this Service Agreement, as they may be amended from time to time.
- 5.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

**Transmission Provider (on behalf of Transmission Provider and Counterparty)**

PJM Interconnection, L.L.C.  
955 Jefferson Avenue  
Valley Forge Corporate Center  
Norristown, PA 19403-2497



**Network Customer**

Phalanx Energy Services, LLC

983 Casseque Province

Mount Pleasant, SC 29464

IN WITNESS WHEREOF, the Transmission Provider and the Network Customer have caused this Service Agreement to be executed by their respective authorized officials.

**Transmission Provider**

By: [Signature] Sr. VP - Operations 12/8/2012  
Name Michael I. Kormos Title Date

**Counterparty:**

By: [Signature] President 12/8/2012  
Name Harry E. Dessender Title Date

**Network Customer**

By: FERRIS P. WILBOURN III CEO & Managing Mgr. 15 April 2011  
Name Title Date

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Phalanx Energy Services, LLC  
Docket No. ER11-3370-000

**May 23, 2011**

Mr. Neil L. Levy  
Attorney for Phalanx Energy Services, LLC  
King & Spalding LLP  
1700 Pennsylvania Avenue, N.W.  
Washington D.C. 20006

Reference: Market-Based Rate Authorization

Dear Mr. Levy:

On April 15, 2011, as supplemented on April 27, 2011, you filed on behalf of Phalanx Energy Services, LLC (Phalanx Energy) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> Phalanx Energy requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on April 18, 2011 and May 4, 2011, with comments, protests or interventions due on or before May 6, 2011 and May 9, 2011, respectively. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced docket are accepted for filing, effective May 1, 2011, as requested. Based on your

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<sup>1</sup> Phalanx Energy requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp. (CAISO), and Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Phalanx Energy also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

representations, Phalanx Energy meets the criteria for a Category 1 seller in all regions and is so designated.<sup>2</sup>

You state that Phalanx Energy’s principal place of business is in Charleston, South Carolina and Phalanx Energy intends to act as a power marketer. You further represent that Phalanx Energy is wholly owned by individuals and is not affiliated with any entity that owns or controls generation or transmission facilities. Further, you affirmatively state that Phalanx Energy has not erected barriers to entry and will not erect barriers to entry into the relevant market.

Phalanx Energy states that it meets the requirements for Category 1 status in all regions. You state that Phalanx Energy does not own or control and is not affiliated with any generation or transmission in any region. Further, you state Phalanx Energy is not affiliated with a franchised public utility, and does not raise other vertical market power issues.

### **Market-Based Rate Authorization**

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>3</sup>

Based on your representations, Phalanx Energy’s submittals satisfy the Commission’s requirements for market-based rate authority regarding horizontal and vertical market power.<sup>4</sup>

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<sup>2</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

<sup>3</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>4</sup> The next time you make a market-based rate filing with the Commission, you must include a revised tariff in compliance with Appendix C – Limitations and Exemptions Regarding Market-Based Rate Authority to include appropriate citations. *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8. *See also*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

Phalanx Energy's request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is granted. Phalanx Energy's request for waiver of Part 41, Part 101, and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.<sup>5</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Phalanx Energy is expected to keep its accounting records in accordance with generally accepted accounting principles.

Phalanx Energy requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None was filed. Phalanx Energy is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Phalanx Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>6</sup>

Phalanx Energy must file electronically with the Commission Electric Quarterly Reports.<sup>7</sup> Phalanx Energy further must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority in accordance with Order No. 697.<sup>8</sup>

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<sup>5</sup> *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

<sup>6</sup> *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

<sup>7</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>8</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2010).

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission  
Attn: Ryan Anderson  
Phone: (202) 502-8122  
Office of Energy Market Regulation  
888 First Street, N.E.  
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West

## **Exhibit B-2 "Experience and Plans"**

Phalanx Energy Services, LLC's contracting plan is based upon successful solicitation response to Request for Proposals (RFP) solicited periodically by federal state and municipal governmental agencies. Successful bid responses will award fixed price contracts under Federal Acquisition Regulation (FAR). Contracts will be issued by Contracting Offices utilizing Standard Form 1449 (example attached herein).

Phalanx Energy Services, LLC does not have a customer contract since it is not a requirement.

An operations desk is available 24 hours a day. The number is 1-877-818-1011. Complaints from Energy Account Managers are consolidated with the specific Contracting Officer responsible for awarded supply contracts. These contracting officers will be in direct contact with Phalanx Energy Services, LLC's portfolio managers.

Exhibit B-2  
"Experience and Plans"



PHALANX

For billing and service information: (123) 456.7890  
or toll free: (888) 123.4567

For emergencies or service interruption : (888) 987.6543

CONTACT US	BILLING SUMMARY
Phalanx Energy Services, LLC	Invoice No: 333333
P.O. Box 20339	
Charleston, SC 29413	Invoice date: 07/XX/2012
For service beginning: 6/1/2012	
and ending: 6/30/2012	
For payment by wire transfer:	
First National Bank	Energy rate: \$0.0999/kWh
P.O. Box 1234	
Charleston, SC 29413	Current Energy Charges: \$999,999.99
ABA/Routing: XXXXXXXX	Gross Receipts Surcharge: \$99,999.99
Account No: XXXXXXXX	
	Current Invoice Total: \$999,999.99
	Due date: 07/XX/2012
	Payment late if not paid by: 07/XX/2012

CUSTOMER INFORMATION	ENERGY USE
[Customer Name]	
[Address line 1]	
[Address line 2]	[Insert Chart]

Phalanx Customer No: XXXXXX

Period	kWh	Days	kWh/day
Current	45,000,000	30	1,500,000.0
Previous	62,000,000	31	2,000,000.0
Same last year	51,000,000	30	1,700,000.0

ACCOUNT SUMMARY				
Invoice No	Invoice Date	Due Date	Invoice Amount	Payment Status
0	04/XX/2012	04/XX/2012	\$999,999.99	Paid – Thank You
111111	05/XX/2012	05/XX/2012	\$999,999.99	Paid – Thank You
222222	06/XX/2012	06/XX/2012	\$999,999.99	Paid – Thank You
Outstanding Balance:				\$0.00

MESSAGES	
<ul style="list-style-type: none"> <li>We appreciate your business!</li> <li>Any inquiry or complaint about this bill should be made prior to the due date, in order to avoid late charges.</li> </ul>	<ul style="list-style-type: none"> <li>Phalanx Energy Services, LLC is licensed by the [Public Service Commission of the District of Columbia. Lic. No. XXXXX]</li> </ul>

DC Public Service Commission  
1333 H Street, N.W., Suite 200, West Tower  
Washington, DC 20006  
Tel: (202) 626.5100

The Office of the People's Counsel  
1133 15<sup>th</sup> Street N.W., Suite 500  
Washington, DC 20005  
Tel: (202) 727.3071

Exhibit B-2  
"Experience and Plans"



Phalanx Energy Services, LLC  
P.O. Box XXXX, Mt. Pleasant, SC 29464

LDC Account Number  
Account Name  
Utility

Invoice 6/1/2012 - 6/30/2011

DATE & TIME	Retail Load	Energy	Transmission	Capacity	Ancillaries	Total
6/1/2012	2,500,450	\$ 215,038.70	\$ 8,309.76	\$ 25,354.08	\$ 7,538.80	\$ 256,241.34
6/1/12 0:00	101,310	\$ 8,712.66	\$ 346.24	\$ 1,056.42	\$ 348.00	\$ 10,463.32
6/1/12 1:00	105,990	\$ 9,115.14	\$ 346.24	\$ 1,056.42	\$ 213.50	\$ 10,731.30
6/1/12 2:00	101,860	\$ 8,759.96	\$ 346.24	\$ 1,056.42	\$ 210.00	\$ 10,372.62
6/1/12 3:00	104,670	\$ 9,001.62	\$ 346.24	\$ 1,056.42	\$ 468.00	\$ 10,872.28
6/1/12 4:00	106,210	\$ 9,134.06	\$ 346.24	\$ 1,056.42	\$ 141.00	\$ 10,677.72
6/1/12 5:00	108,190	\$ 9,304.34	\$ 346.24	\$ 1,056.42	\$ 461.00	\$ 11,168.00
6/1/12 6:00	108,170	\$ 9,302.62	\$ 346.24	\$ 1,056.42	\$ 252.50	\$ 10,957.78
6/1/12 7:00	101,480	\$ 8,727.28	\$ 346.24	\$ 1,056.42	\$ 180.50	\$ 10,310.44
6/1/12 8:00	100,730	\$ 8,662.78	\$ 346.24	\$ 1,056.42	\$ 322.50	\$ 10,387.94
6/1/12 9:00	109,610	\$ 9,426.46	\$ 346.24	\$ 1,056.42	\$ 476.50	\$ 11,305.62
6/1/12 10:00	102,920	\$ 8,851.12	\$ 346.24	\$ 1,056.42	\$ 130.50	\$ 10,384.28
6/1/12 11:00	105,170	\$ 9,044.62	\$ 346.24	\$ 1,056.42	\$ 260.00	\$ 10,707.28
6/1/12 12:00	100,950	\$ 8,681.70	\$ 346.24	\$ 1,056.42	\$ 389.50	\$ 10,473.86
6/1/12 13:00	103,690	\$ 8,917.34	\$ 346.24	\$ 1,056.42	\$ 96.50	\$ 10,416.50
6/1/12 14:00	104,210	\$ 8,962.06	\$ 346.24	\$ 1,056.42	\$ 299.00	\$ 10,663.72
6/1/12 15:00	104,880	\$ 9,019.68	\$ 346.24	\$ 1,056.42	\$ 293.00	\$ 10,715.34
6/1/12 16:00	108,110	\$ 9,297.46	\$ 346.24	\$ 1,056.42	\$ 209.50	\$ 10,909.62
6/1/12 17:00	102,600	\$ 8,823.60	\$ 346.24	\$ 1,056.42	\$ 344.80	\$ 10,571.06
6/1/12 18:00	102,770	\$ 8,838.22	\$ 346.24	\$ 1,056.42	\$ 459.50	\$ 10,700.38
6/1/12 19:00	108,070	\$ 9,294.02	\$ 346.24	\$ 1,056.42	\$ 329.00	\$ 11,025.68
6/1/12 20:00	104,520	\$ 8,988.72	\$ 346.24	\$ 1,056.42	\$ 426.50	\$ 10,817.88
6/1/12 21:00	101,560	\$ 8,734.16	\$ 346.24	\$ 1,056.42	\$ 486.50	\$ 10,623.32
6/1/12 22:00	100,690	\$ 8,659.34	\$ 346.24	\$ 1,056.42	\$ 321.50	\$ 10,383.50
6/1/12 23:00	102,090	\$ 8,779.74	\$ 346.24	\$ 1,056.42	\$ 419.50	\$ 10,601.90



Exhibit B-2  
 "Experience and Plans"

Phalanx Energy Services, LLC  
 P.O. Box XXXX, Mt. Pleasant, SC 29464

LDC Account Number  
 Account Name  
 Utility



PHALANX

Invoice 6/1/2012 - 6/30/2011

Date	Retail Load	Energy	Transmission	Capacity	Ancillaries	Total
6/1/2012	2,500,450	\$ 215,039	\$ 8,310	\$ 25,354	\$ 7,539	\$ 256,241
6/2/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
6/3/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
6/4/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
6/5/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
6/6/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
6/7/2012	2,500,450	215,039	8,310	25,354	7,539	256,241
....						
Grand Total	17,503,150	1,505,271	58,168	177,479	52,772	1,793,689

<b>SOLICITATION/ORDER FOR COMMERCIAL ITEMS</b> <b>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER 1000001631		PAGE 1 OF 29					
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER SPE600-12-R-0407		6. SOLICITATION ISSUE DATE 2012 JUN 12			
7. FOR SOLICITATION INFORMATION CALL:				a. NAME Donette Lowe PVEFEAQ		b. TELEPHONE NUMBER (No Collect calls) Phone: 703-767-9431		8. OFFER DUE DATE/LOCAL TIME 2012 JUL 24 12:00 PM			
9. ISSUED BY DLA ENERGY 8725 JOHN J KINGMAN RD STE 4950 FT BELVOIR VA 22060-6222 USA				CODE SPE600		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: NAICS: 221112 <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS SIZE STANDARD: 4 MILLION <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A)					
11. DELIVERY/FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFD <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP					
15. DELIVER TO SEE SCHEDULE				CODE		16. ADMINISTERED BY PAS: None					
17a. CONTRACTOR/OFFEROR CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE							
TELEPHONE NO.				17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>							
18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				19. ITEM NO.							
20. SCHEDULE OF SUPPLIES/SERVICES See Schedule (Use Reverse and/or Attach Additional Sheets as Necessary)				21. QUANTITY		22. UNIT		23. UNIT PRICE		24. AMOUNT	
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)					
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 62.212-1, 52.212-4, FAR 62.212-3 AND 62.212-5 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED						<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 62.212-4, FAR 62.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED					
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED						<input type="checkbox"/> 29. AWARD OF CONTRACT: REF _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:					
30a. SIGNATURE OF OFFEROR/CONTRACTOR						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)					
30b. NAME AND TITLE OF SIGNER (Type or Print)				30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or Print)				31c. DATE SIGNED	

Exhibit B-2  
"Experience and Plans"

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED    ☐ INSPECTED    ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32c. DATE

32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER

34. VOUCHER NUMBER

35. AMOUNT VERIFIED  
CORRECT FOR

36. PAYMENT

37. CHECK NUMBER

☐ PARTIAL    ☐ FINAL

☐ COMPLETE    ☐ PARTIAL    ☐ FINAL

38. S/R ACCOUNT NO.

39. S/R VOUCHER NUMBER

40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

42a. RECEIVED BY (Print)

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

41c. DATE

42b. RECEIVED AT (Location)

42c. DATE REC'D (YY/MM/DD)

42d. TOTAL CONTAINERS

## **Exhibit B-3 “Summary of Experience”**

### **Phalanx Energy Services, LLC**

#### ***Frank P. Wilbourne, III, Managing Member and CEO***

Frank Wilbourne leads Phalanx Energy Services, LLC as Chief Executive Officer and Managing Member responsible for strategic direction, organizational development and tactical execution of the strategic partner and governmental agency relations. As one of the founding members of the firm, his diverse military service over nearly three decades encompassed domestic and foreign combat command. Thrice wounded in close combat, his Department of Veterans Affairs disability rating, together with Colonel Van Dyne's similar combat related rating, allows PESV to be designated as a SDVO small business. Later from 1990 to present, Mr. Wilbourne's experience includes direct management of more than 1000 civilian employees and annual operating budgets of more than \$100 million in the pharmaceutical, high-rise construction, and defense supply industries. He holds a bachelors degree from The Citadel and has attended American and Allied Command and Staff War colleges.

#### ***Jay H. Van Dyne, Managing Member and COO***

Jay Van Dyne is one of the founding members of Phalanx Energy Services and like his counterpart, brings a long military service and civilian career, which is now manifested as a SDVO small business due to his disability rating. Prior to forming Phalanx Energy Services, LLC, he spent 15 years in diverse logistics management positions with Shaw Industries Group, a Berkshire Hathaway company. This culminated annually in an average \$75 million logistics operation with 135 employees nationwide. As Chief Operating Officer, Mr. Van Dyne will constructively supervise energy operations co-ordination, contract accounting and contract oversight. Active in Veteran Affairs, he has the primary responsibility for human resource recruitment, training and integration of Service Disabled (Wounded Warrior) and veteran personnel to the Company's work force. Mr. Van Dyne holds a Bachelors of Science degree from Salem College.

#### ***Randall J. Bitsky – Vice President Origination and Structuring***

Randy Bitsky is Vice President of Phalanx Energy Services, LLC and is responsible for originating and structuring all electric power, natural gas and liquid fuel purchasing and sale contractual functions. Mr. Bitsky is an industry - recognized leader in power and gas fundamentals whose proven history of profitable strategies amount to millions of dollars of gross margin. Prior to joining Phalanx Energy Services, LLC, Mr. Bitsky successfully created sales and marketing desks for Constellation Energy Group, Kansas Energy, NRS and CMS Energy. With over 18 years of trading and daily optimization of power and natural gas contract valuation and management, he has a track record of consistent portfolio gains from \$9 million to \$20 million annually. With a Bachelor of Arts degree in Economics from the University of Louisville, Mr. Bitsky is professionally licensed as a Registered Commodity and Investment Representative and conducts market strategy seminars and webinars for large institutional clients and energy marketing firms.

### **TrueLight Energy, LLC**

#### ***Mike Constantine, Chief Executive Officer***

Mr. Constantine oversees all aspects of the day-to-day operations of TrueLight Energy, LLC. Mr. Constantine is the former VP, Market Operations and Trading at Constellation Commodities, NewEnergy Division, leading the electricity and gas portfolio management groups in 15 states, Washington D.C. and two Canadian provinces that supplied more than 15,500MW of peak load. While at Constellation, he had

management responsibility for all renewable portfolios, the wholesale market technical sales force, wholesale back-office functions, settlements and other roles. Most recently, Mr. Constantine was Managing Director of Portfolio Management at Edison International; where he developed innovative portfolio management strategies, market execution, risk management, and where he was responsible for one of the largest renewable generation portfolios in the US. Mr. Constantine began his career in wholesale power trading on the 24-hour real-time trading desk at New Energy Ventures. Mr. Constantine previously was in the financial services sector with Fidelity Investments and Eaton Vance.

***Gustav Beerel, Quantitative Analytics and Product Development***

Dr. Beerel heads the strategy, quantitative analytics and product development teams for TrueLight Energy, LLC. He has extensive experience in risk management and portfolio optimization strategies, as well as in applied mathematics, modeling and simulation. Dr. Beerel is a leading innovator and serial entrepreneur who has been in the forefront of energy and evolving energy trading markets, and instrumental in defining, applying and developing strategies for new business development in the power sector for more than 25 years. Most recently, he was founder and CEO of EnvaPower, a real-time market intelligence business serving US-based power marketers that was acquired by Genscape in 2007. Previously, he was a co-founder and Corporate Senior Vice President of New Energy Ventures, which ultimately became Constellation NewEnergy, running the supply and trading groups. Prior to retail power market deregulation, Dr. Beerel developed the Retail Electricity Business and Risk Management Strategy for Enron Capital & Trade.

***Chris Kavanagh, Managing Director Portfolio Management***

Mr. Kavanagh is a lead portfolio manager for TrueLight Energy, LLC, where he has responsibility for day-to-day trading activity and execution strategy in the North American deregulated wholesale electricity markets, as well as portfolio execution and optimization. Mr. Kavanagh is a former portfolio manager at International Power and previously at NewEnergy Ventures, where in each case his responsibilities included electricity and gas portfolio management. His responsibilities have included daily management of more than 3,000MW of generation assets in the ISO-NE and ERCOT control areas. Mr. Kavanagh's experience includes executing short-term power transactions and hedges, risk management, FTR and virtual bidding strategies.

***Chad Brown, Portfolio Manager***

Mr. Brown is a portfolio manager for TrueLight Energy, LLC with responsibility for daily pricing activity, load management and ISO interaction. He previously was a Senior Financial Analyst at Brookfield Asset Management, providing analysis and modeling for more than 2GW of electricity operations. Prior to this, Mr. Brown held a Principal Financial Analyst position with NextEra Energy Power Marketing, supporting marketing efforts and long-term sales of electric power and structured energy products within ERCOT, ISO-NE, PJM, NYISO and MISO. Mr. Brown also had previous experience in the financial services and consulting industries.

***Anthony Teixeira, Portfolio Manager***

Mr. Teixeira is a portfolio manager for TrueLight Energy, LLC and manages its 24-hour real-time trading activities in the wholesale electricity markets. Mr. Teixeira is a former portfolio manager and real-time desk trader at International Power, with expertise in the short-term physical power markets. His responsibilities have included daily market monitoring and generation scheduling in the US regional power markets.

## "Summary of Experience"

**Experience with End users**

Please submit the information for government and non-government contracts or subcontracts held (not to exceed two years since completion) for retail electricity including those in progress. The references you list below must have received supply from your company for **at least twelve (12) continuous months or be a current customer with contract duration of at least 12 months**. Information should be submitted in this table but the offeror is not limited to use of just one table. Make copies of this form for submission of additional information.

Company Name	Responsible Contract Administrator	Telephone Number	Fax Number	Total Retail Contract MWs	ISO/RTO	Local Utility	Contract Start Date/End Date
Enterprise Products	Rayborn Reader	713-381-4093		500 MW	ERCOT	Reliant	2007-2012
Chaparral Steel	Dave Forsyth	905-665-3731		400 MW	ERCOT, PJM	TXU, JCPL	2008-2012
Gulf Oil, LP	Peter A. Duprey	Office: (508) 270-8336 Mobile: (617) 777-2093		25 MW	ISO-NE	CP&L, NSTAR, National Grid	2011 - 2012
Structural Group, Inc.	Ken Chodnicki	Office: (410) 850-7000 Mobile: (410) 456-3312		1 MW	PJM	Baltimore Gas & Electric	2000-2007
JP Morgan Chase	Stu Rubenstein	Mobile: (443) 799-5511		100 MW (Peak)	All Deregulated load serving markets in North America*	All Deregulated load serving markets in North America*	2000-2009
Constellation Energy	Mark Huston	Mobile: (443) 520-5618		16,000 MW (Peak)	All Deregulated load serving markets in North America*	All Deregulated load serving markets in North America*	2000-2009

\*includes 55 electric utilities and 8 ISO's in the U.S. and Canada including ISO-NE, NYISO, PJM, CAISO, MISO, ERCOT, Alberta and Ontario.

#### **B-4 “Environmental Disclosures”**

Phalanx Energy Services, LLC will purchase electricity from a wide range of generators and from PJM or MISO, depending on the geographical location of the utility served. Phalanx Energy Services, LLC will comply with the necessary reporting outlined in Section 4901:1-21-09 of the Revised Code by providing the generation resource mix and environmental characteristics, including air emissions and radioactive waste, based on publications provided by PJM, MISO and independent generators with whom Phalanx Energy Services, LLC has purchased energy supply contracts.

## **B-5 “Disclosure of Liabilities and Investigations”**

Phalanx Energy Services, LLC does not have any current ruling, judgment, contingent liabilities, revocation of authority, regulatory investigations, or any other matters that could adversely impact their financial or operational status or ability to provide the services it is seeking to be certified to provide, nor have they had any such problem in the past.



### **Exhibit C-1 “Annual Reports”**

Phalanx Energy Services is a privately held company and does not publish an annual report to shareholders.

## **Exhibit C-2 “SEC Filings”**

Phalanx Energy Services, LLC is not a publicly held company and accordingly is not required to submit 10-k or 8-k filings to the SEC.

### **Exhibit C-3 "Financial Statements"**

This section is provided in a separate package under a confidential seal. We respectfully require confidential treatment by PUCO of the Financial Statements, as Phalanx Energy Services, LLC is a private company. Information about these Financial Statements is not publicly available and disclosure of these documents would cause Phalanx Energy Services, LLC hardship.

I, Frank P. Wilbourne, III, am Managing Member and CEO of Phalanx Energy Services, LLC. Phalanx Energy Services, LLC is a recently formed company and attached is the Exhibit C-3 "Financial Statements" spreadsheet that I prepared to report Phalanx Energy Services, LLC's initial funding.

#### **Exhibit C-4 “Financial Arrangements”**

This section is provided in a separate package under a confidential seal. We respectfully require confidential treatment by PUCO of the Financial Statements, as Phalanx Energy Services, LLC is a private company. Information about these Financial Statements is not publicly available and disclosure of these documents would cause Phalanx Energy Services, LLC hardship.

Phalanx Energy Services, LLC has not completed the registration process with FirstEnergy, American Electric Power (AEP) and Duke Power Ohio service territories, but has provided an irrevocable letter of credit to FirstEnergy for it's Maryland service territories. Provided for review please see Exhibit C-4.

### **Exhibit C-5 “Forecasted Financial Statements”**

This section is provided in a separate package under a confidential seal. We respectfully require confidential treatment by PUCO of the Financial Statements, as Phalanx Energy Services, LLC is a private company. Information about these Financial Statements is not publicly available and disclosure of these documents would cause Phalanx Energy Services, LLC hardship.

The business of the company is bidding primarily on federal Defense and General Services Administration (GSA) solicitations for electric power. These solicitations encompass numerous agencies, facilities and bases in more than one state. Consequently it is not reasonable to create financial projections for a single base in Ohio (e.g. Defense Supply Facility, Columbus). Therefore the Applicant has provided financial projections based upon multiple solicitations and awards for a period of five years.

Preparer: Lewis A. Reynolds  
Title: Chief Financial Officer  
Telephone: 843.881.2343  
Email: [lewis.reynolds@phalanxenergy.com](mailto:lewis.reynolds@phalanxenergy.com)

**Exhibit C-6 "Credit Rating"**

Phalanx Energy Services, LLC has not yet received a credit rating from any of the aforementioned entities listed in the Section C-6 of the PUCO Certification Application.

### **Exhibit C-7 "Credit Report"**

As the applicant is a newly formed entity, it does not have a credit report from Dun & Bradstreet or any other similar rating entities.

**Exhibit C-8 “Bankruptcy Information”**

Neither Phalanx Energy Services, LLC nor its officers have filed for reorganization protection for creditors or any other form of bankruptcy during the current year or within the two most recent years preceding the date of this application.



**Exhibit C-9 “Merger Information”**

Phalanx Energy Services, LLC has not been a part of a merger or acquisition since its inception.

### **Exhibit D-1 “Operations”**

Upon being granted certification by PUCO, Phalanx Energy Services, LLC will commence the bid process for federal, state and municipal agencies under periodic RFP promulgated by the Defense Logistics Agency (DLA) and the General Services Administration (GSA). If successfully awarded supply contracts Phalanx Energy Services, LLC with its management team would schedule retail power for transmission and delivery to its customers located in the FirstEnergy, AEP, AES/Dayton Power and Light, and Duke service territories. Phalanx Energy Services, LLC will purchase energy, capacity, and ancillary services via the PJM market, as it does not have any of its own generation facilities. These purchases will take the form of day ahead and bilateral contracts.

Phalanx Energy Services, LLC currently utilizes and manages the EDI process as we interact with multiple utilities throughout the PJM RTO states.

### **Exhibit D-2 “Operations Expertise”**

Phalanx Energy Services, LLC has entered into a services agreement with Energy Services Group, Inc. (ESG) to provide EDI services to load serving utilities in Ohio as well as manage the load scheduling and settlement with PJM. This agreement will allow management to focus on the bid process and servicing new customers.

Phalanx Energy Services, LLC will primarily rely on rate ready and bill ready option available from the EDCs in Ohio to reduce the complexity of billing and collection activities.

### **Exhibit D-3 “Key Technical Personnel”**

The Key Technical Personnel responsible for the portfolio management of each electricity supply contract rests with the technical representatives listed below:

Technical Personnel’s background information is previously outlined in Exhibit B-3.

**Randall J. Bitsky**

VP Origination & Structuring  
1193 Chersonese Round  
Mount Pleasant, SC 29464  
Phone: 843.881.2343  
Fax: 800.789.6292  
[randy.bitsky@phalanxenergy.com](mailto:randy.bitsky@phalanxenergy.com)

**Chad Brown**

Load Manager  
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**Mike Constantine**

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**Anthony Teixeira**

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**Exhibit D-4 "FERC Power Marketer License Number"**

<b>Regulatory Body</b>	<b>License/Holder</b>	<b>Name/Type</b>	<b>Docket Number</b>	<b>Effective Date</b>
FERC	Phalanx Energy Services, LLC	Market Based Rate Authorization	ER11-3370-000	May 1, 2011

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Phalanx Energy Services, LLC  
Docket No. ER11-3370-000

**May 23, 2011**

Mr. Neil L. Levy  
Attorney for Phalanx Energy Services, LLC  
King & Spalding LLP  
1700 Pennsylvania Avenue, N.W.  
Washington D.C. 20006

Reference: Market-Based Rate Authorization

Dear Mr. Levy:

On April 15, 2011, as supplemented on April 27, 2011, you filed on behalf of Phalanx Energy Services, LLC (Phalanx Energy) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> Phalanx Energy requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on April 18, 2011 and May 4, 2011, with comments, protests or interventions due on or before May 6, 2011 and May 9, 2011, respectively. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced docket are accepted for filing, effective May 1, 2011, as requested. Based on your

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<sup>1</sup> Phalanx Energy requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp. (CAISO), and Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Phalanx Energy also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

representations, Phalanx Energy meets the criteria for a Category 1 seller in all regions and is so designated.<sup>2</sup>

You state that Phalanx Energy’s principal place of business is in Charleston, South Carolina and Phalanx Energy intends to act as a power marketer. You further represent that Phalanx Energy is wholly owned by individuals and is not affiliated with any entity that owns or controls generation or transmission facilities. Further, you affirmatively state that Phalanx Energy has not erected barriers to entry and will not erect barriers to entry into the relevant market.

Phalanx Energy states that it meets the requirements for Category 1 status in all regions. You state that Phalanx Energy does not own or control and is not affiliated with any generation or transmission in any region. Further, you state Phalanx Energy is not affiliated with a franchised public utility, and does not raise other vertical market power issues.

### **Market-Based Rate Authorization**

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>3</sup>

Based on your representations, Phalanx Energy’s submittals satisfy the Commission’s requirements for market-based rate authority regarding horizontal and vertical market power.<sup>4</sup>

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<sup>2</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

<sup>3</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>4</sup> The next time you make a market-based rate filing with the Commission, you must include a revised tariff in compliance with Appendix C – Limitations and Exemptions Regarding Market-Based Rate Authority to include appropriate citations. *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8. *See also*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

Phalanx Energy's request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is granted. Phalanx Energy's request for waiver of Part 41, Part 101, and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.<sup>5</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Phalanx Energy is expected to keep its accounting records in accordance with generally accepted accounting principles.

Phalanx Energy requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None was filed. Phalanx Energy is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Phalanx Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>6</sup>

Phalanx Energy must file electronically with the Commission Electric Quarterly Reports.<sup>7</sup> Phalanx Energy further must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority in accordance with Order No. 697.<sup>8</sup>

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<sup>5</sup> *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

<sup>6</sup> *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

<sup>7</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>8</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2010).



This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission  
Attn: Ryan Anderson  
Phone: (202) 502-8122  
Office of Energy Market Regulation  
888 First Street, N.E.  
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West