

NEW APPLICATION

ORIGINAL



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Arizona Corporation Commission

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12 Attorneys for Arizona Public Service Company

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13 **BEFORE THE ARIZONA CORPORATION COMMISSION**

14 COMMISSIONERS

15 GARY PIERCE, Chairman  
16 BOB STUMP  
17 SANDRA D. KENNEDY  
18 PAUL NEWMAN  
19 BRENDA BURNS

E-01345A-11-0467

20 IN THE MATTER OF ARIZONA PUBLIC  
21 SERVICE COMPANY FOR A  
22 DECLARATORY ORDER THAT A.C.C.  
23 R14-2-804 DOES NOT APPLY TO THE  
24 TRANSACTION DESCRIBED HEREIN,  
25 OR ALTERNATIVELY A WAIVER OF  
26 SUCH REGULATION OR APPROVAL  
27 THEREUNDER.

DOCKET NO. E-01345A-11-  
28 **VERIFIED APPLICATION**

29 Arizona Public Service Company ("APS" or "Company") requests that the  
30 Arizona Corporation Commission ("Commission") confirm that the Affiliate Interest  
31 Rules in A.A.C. Ch.2, Article 8, Public Utility Holding Companies and Affiliated  
32 Interests ("Affiliate Interest Rules") do not apply to APS's plans to become a member of  
33 the STARS Alliance LLC ("STARS") because neither STARS, nor its subparts, are  
34 affiliates of APS. STARS is a proposed strategic alliance between the owners and  
35 operators of seven commercial nuclear power plants to engage in joint purchasing and  
36 resource sharing activities designed to decrease costs and improve operational  
37 efficiency. Put simply, STARS is akin to a cooperative or wholesale club through  
38 which its members may realize cost savings through joint purchasing and resource

1 sharing. STARS is not intended to make any profits and any savings will be passed on  
2 to members. As demonstrated below, APS by its participation in the STARS joint  
3 purchasing and resource sharing strategic alliance will not directly or indirectly control  
4 STARS, and thus STARS is not an affiliate of APS under the Affiliate Interest Rules.  
5 APS files this application in an abundance of caution to confirm its belief that its  
6 membership in STARS does not create an affiliate relationship.

7 Alternatively, APS petitions the Commission to either (i) approve the transaction  
8 consistent with A.C.C. R14-2-804(C) because it will improve APS's ability to provide  
9 safe, reasonable and adequate service without impairing APS's financial status or  
10 otherwise prevent it from attracting capital at fair and reasonable terms, or (ii) waive the  
11 Affiliate Interest Rules consistent with A.C.C. R14-2-806 because APS's involvement  
12 with STARS is in the public interest.

### 13 **I. THE HISTORY AND FORMATION OF STARS**

14 In June of 2011, seven nuclear power plant operators in the Midwest and  
15 Southwest U.S. began exploratory activities in furtherance of creating a joint purchasing  
16 entity and resource sharing organization to be called STARS Alliance, LLC ("STARS").  
17 The following seven entities propose to form STARS and will be participants of  
18 STARS:

- 19 • Union Electric Company, a Missouri corporation doing business as Ameren  
20 Missouri ("Ameren");
- 21 • Luminant Generation Company LLC, a Texas limited liability company  
22 ("Luminant");
- 23 • Pacific Gas and Electric Company, a California corporation ("PG&E");
- 24 • Arizona Public Service Company, an Arizona corporation ("APS");
- 25 • Southern California Edison Company, a California company ("SCE");
- 26 • STP Nuclear Operating Company, a Texas corporation ("STPNOC"); and

- 1 • Wolf Creek Nuclear Operating Corporation, a Delaware corporation  
2 (“WCNOC”).<sup>1</sup>

3 Each of the STARS Participants operates between one and three commercial  
4 nuclear power generating units at a single site. A list of each Participants’ plants is  
5 contained in Exhibit A. The STARS Participants each operate large (in excess of 1,000  
6 megawatts), pressurized water nuclear reactors that have similar nuclear steam supply  
7 systems and were designed by the same original equipment manufacturer. In addition,  
8 all STARS Participants were originally licensed by the Nuclear Regulatory Commission  
9 (“NRC”) within twelve years of each other and are located in NRC Region IV. Though  
10 spread across the western half of the country, the STARS sites are located in relatively  
11 close proximity to each other given the overall geographic distribution of U.S.  
12 commercial nuclear reactor sites. The seven STARS participants believe that, given the  
13 similarities and proximity of their respective generating plants and their relatively small  
14 operations (as compared to the large fleet operators),<sup>2</sup> they can realize cost savings and  
15 improved operational efficiency by forming STARS. Through the creation of STARS,  
16 the STARS Participants seek to have a position in the market for procurement of goods  
17 and services that is comparable to other large fleet operators.

18 Each STARS Participant is currently associated with Utilities Service Alliance,  
19 Inc. (“USA”), a strategic alliance of seventeen nuclear power plant owners and operators  
20 across the United States. STARS will be similar to and modeled after USA. USA is  
21 engaged in many of the same activities contemplated by STARS, namely sharing  
22 resources, including personnel, parts, equipment, tools, and expertise, and jointly  
23  
24

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25 <sup>1</sup> Each of these seven entities will be referred to herein as a “STARS Participant” or, where appropriate,  
26 by name. They will be referred to collectively as the “STARS Participants.”

27 <sup>2</sup> Over the past 15 years, there has been considerable consolidation in the ownership of nuclear reactors  
28 and operation of nuclear reactors by large nuclear “fleet” operators. The largest operators are Exelon  
Corporation (17 units), Entergy Corporation (12 units), NextEra Energy Resources, formerly known as  
Florida Power & Light (8 units), Dominion Resources, Inc. (7 units), Duke Energy (7 units), Southern  
Company (6 units), Tennessee Valley Authority (6 units), Constellation Energy (5 units) and Progress  
Energy (5 units). In comparison, the STARS Participants collectively operate 13 units.

1 procuring selected goods and services.<sup>3</sup> The STARS Participants are currently engaging  
2 in certain resource sharing, procurement and joint planning activities through USA and  
3 intend to continue those activities through the proposed STARS entity. Unlike USA,  
4 however, which serves operators of both pressurized water reactors and boiling water  
5 reactors of widely ranging ages, and which are located over a geographically dispersed  
6 area, STARS will focus exclusively on providing joint purchasing and resource sharing  
7 for the seven Participants, and its activities will be tailored to meet the needs of the  
8 Participants, who are single station operators with common nuclear steam supply  
9 systems.<sup>4</sup>

## 10 **II. THE BENEFITS TO APS AND THE RATEPAYERS OF APS'S** 11 **PARTICIPATION IN STARS**

12 The objectives of STARS are to achieve maximum efficiencies and the continued  
13 safe operation of nuclear power plants. The synergies gained through STARS are  
14 intended to reduce the cost to consumers of nuclear power generation, make nuclear  
15 power more cost-effective for customers of STARS Participants, enhance the ability of  
16 STARS Participants to efficiently coordinate purchasing and location of assets necessary  
17 to ensure effective responses to potential disruptions in operation, and encourage each  
18 Participant to achieve the highest levels of excellence in the safe and efficient generation  
19 of electricity from nuclear power for the long term by sharing best practices.

20 STARS will use the following strategies to achieve its objectives:  
21

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22 <sup>3</sup> The activities of USA were the subject of a Business Review Letter issued by the U.S. Department of  
23 Justice, Antitrust Division ("DOJ"), dated July 3, 1996, attached as Exhibit B. The DOJ concluded,  
24 "[t]o the extent that the proposed joint activities reduce the costs of producing electricity for USA's  
25 members and those savings are passed on to consumers, the proposed conduct could have a  
26 procompetitive effect." STARS has submitted a request for a Business Review Letter from DOJ to  
27 confirm its belief that STARS activities will be similarly procompetitive and not contrary to federal anti-  
28 trust laws. USA currently has 17 members. Upon separation from USA, the new STARS will consist of  
7 members and USA will consist of 10 members.

<sup>4</sup> USA offers a number of different membership options to utility operators. APS (as well as the other  
six Participants of STARS) have partial memberships in USA. Those memberships allow participants  
like APS to access certain services such as joint purchasing and employee sharing. But partial members  
have no ownership interest in USA and have no involvement whatsoever in the governance of USA.  
Therefore, neither APS, nor any of the other STARS Participants have previously sought approvals from  
their respective public utility commissions regarding their involvement with USA.

- 1 • Sharing existing resources, including personnel, parts, equipment, tools and  
2 expertise;
- 3 • Jointly procuring selected goods and services; and
- 4 • Coordinated joint planning and operational activities, such as:
  - 5 ○ Sharing best practices;
  - 6 ○ Sharing of project experience for significant plant modifications or  
7 licensing activities;
  - 8 ○ Joint contingency planning; and
  - 9 ○ Other joint operation of activities common to nuclear reactor operations at  
10 multiple sites.

11 The proposed coordinated activities of STARS will assist each Participant in  
12 reducing or avoiding operating costs and will not involve the purchase or sale of  
13 electricity.

14 **A. Sharing Joint Resources**

15 STARS Participants will share existing resources, including personnel, parts,  
16 equipment, tools and expertise. Each STARS Participant owns millions of dollars worth  
17 of highly specialized assets. The Participants are considering the use of a centralized  
18 computer network to request specialized resources (*e.g.* tools or equipment) from other  
19 Participants. If another Participant has suitable resources, the “loaning member” will  
20 provide the resources to the requestor pursuant to a reciprocal agreement. Participants  
21 will receive payments for resources they provide to other Participants and make  
22 payments for resources they borrow.

23 Participants will also be able to share/loan personnel to one another. In a typical  
24 provision of a loaned employee, the loaning Participant will retain responsibility for the  
25 base salary of the loaned employee, and the borrowing Participant will be responsible  
26 for paying to the Participant from which they are borrowing the loaned employee an  
27 agreed upon hourly rate, overtime rate, and per diem. This arrangement will give  
28

1 Participants the ability to access the skilled employees they need in a more cost effective  
2 and efficient manner and with less reliance on outside contractors.

3 **B. Joint Procurement**

4 By jointly procuring selected goods and services, STARS will be able to replicate  
5 the same economies of scale enjoyed by the many large nuclear fleet utilities that  
6 operate several reactors and have multiple sites. The seven STARS Participants each  
7 operate between one and three nuclear reactors at one site and, as such, individually do  
8 not wield the buying power that is enjoyed by larger fleet operators who have multiple  
9 reactors at multiple sites. The Participants intend for STARS to act as an agent for any  
10 two or more Participants who wish to obtain common goods or services. These joint  
11 procurements may include contracts for professional services or craft labor, the purchase  
12 of fuel, permanent plant parts or materials, or the purchase or lease of tools. Joint  
13 purchasing activities of STARS will be entirely voluntary for its Participants.

14 **C. Joint Planning and Operational Activities**

15 STARS also plans to engage in resource sharing activities focused on enhanced  
16 operational performance, which favors APS customers. For example, STARS  
17 Participants plan to coordinate the sharing of best practices relating to nuclear reactor  
18 plant operations for purposes of enhancing nuclear safety and plant performance.  
19 STARS will be focused on existing nuclear plants operated by the Participants. APS has  
20 no intent to expand existing nuclear plants. The sharing and implementation of best  
21 practices and operating experience between and among the nuclear industry is strongly  
22 encouraged by the Institute of Nuclear Power Operations ("INPO"), and is evaluated  
23 periodically by INPO. The STARS Participants intend to improve nuclear safety and  
24 attain more efficient plant operations at the sites operated by STARS Participants by  
25 concentrating and focusing their efforts on information sharing and performance  
26 improvement at the STARS Participants' specific sites.

27 STARS Participants also intend to share project experience for significant plant  
28 modifications or licensing activities, such as obtaining license renewal. The STARS

1 Participants were previously successful working collaboratively through USA to address  
2 plant aging management issues associated with NRC license renewal, and they hope to  
3 replicate this collaborative model to the extent practicable to address other issues or new  
4 issues that may arise.<sup>5</sup> This may include joint contingency planning, such as  
5 maintaining centralized inventory or spare parts for response to emergent needs or for  
6 purposes of enhancing emergency response capabilities. For example, STARS might  
7 acquire and maintain a centralized inventory of backup generators and other emergency  
8 safety equipment. It would also make plans for emergency deployment of such  
9 equipment for purposes of severe accident mitigation to provide rapid response  
10 following an event at a STARS Participant's site.

11 STARS also plans to identify other opportunities for joint operation of activities  
12 common to nuclear reactor operations at multiple sites. Such activities would be  
13 undertaken on a "not for profit" basis with a pass-through of costs and benefits from cost  
14 reduction. As such, these operational activities will only serve to enhance efficiency and  
15 reduce costs to consumers.

### 16 **III. THE STRUCTURE AND GOVERNANCE OF STARS**

17 The seven STARS Participants propose to form STARS as a Delaware limited  
18 liability company. APS and four other Participants will be equity members of the LLC.  
19 A summary of the key provisions of the STARS Limited Liability Company Agreement  
20 ("LLC Agreement") and the LLC Agreement are attached as Exhibits C and D. Two  
21 Participants (STPNOC and WCNO) will be non-equity members of STARS to assure  
22 compliance with state law requirements unique to their organizations.

23 STARS will be governed by a board of directors called the Series A Board. The  
24 Series A Board will be comprised of one representative from each of the seven  
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26 <sup>5</sup> The NRC has provided a preliminary schedule of the regulatory and rulemaking activities that it  
27 intends to pursue as a result of its review of the U.S. nuclear regulatory regime that was conducted  
28 following the tragic earthquake and tsunami that struck Japan in March 2011. Although it is difficult to  
currently predict the potential impact of those activities on APS, the Company believes that it would be  
beneficial to perform any regulatory-required actions in conjunction with other similarly situated and  
similarly interested nuclear plant operators. STARS provides such an opportunity.

1 Participants. Only the STARS Series A Board will have the power and authority to  
2 make decisions for STARS. Individual Participants, such as APS, will not have any  
3 ability to make decisions on behalf of STARS. Each Participant representative on the  
4 Series A Board will be entitled to one vote irrespective of the Participants status as an  
5 equity or non-equity member and the number of nuclear generating units that the  
6 Participant operates. *See* Exhibit D, §§ 8.1.1 and 8.1.3. Thus, while APS would have a  
7 20% equity interest in STARS, and would operate 3/13 (23%) of the STARS generating  
8 units, its voting power would be only 1/7 or 14%.

9 Decisions regarding management policy and other significant Series A Board  
10 decisions (*e.g.* approving budgets, admitting new Participants, expanding business  
11 activities) will require a unanimous vote of the Series A Board. *See* Exhibit D at § 8.1.5.  
12 Other significant actions (*e.g.* incurring expenses exceeding \$25,000 that had not been  
13 previously budgeted) will require a super majority vote, defined as 2/3 vote of the Series  
14 A Board. *Id.* at §§ 8.1.3 and 8.1.5.

15 The STARS LLC Agreement provides that additional series of membership may  
16 be created to govern Participants involvement in specific joint projects that involve less  
17 than all seven of the Series A Participants. Each additional Series would be limited to a  
18 specific activity that a subset of STARS Participants elects to pursue. For example, if  
19 five STARS Participants choose to jointly procure a major piece of equipment to share  
20 amongst themselves and two Participants decline to participate, the five Participants who  
21 want to jointly procure the equipment would seek authorization from the STARS Series  
22 A Participants to form a new Series for the express purpose of purchasing that  
23 equipment. Creation of the new Series will require unanimous approval of the Board.  
24 Only the five Participants joining the new Series would share in the costs of procuring  
25 the shared equipment. The two Series A Participants that did not join the new Series  
26 would not share in the costs of the new Series, *i.e.*, the costs to procure the shared  
27 equipment. This structure allows each STARS Participant to join only in those activities  
28

1 that are beneficial to it and its customers and ensures that each Participant shares only in  
2 the costs associated with the activities in which it elects to participate.

3 STARS is not intended to operate for the purpose of making a profit. Rather,  
4 STARS activities are intended to assist each Participant in reducing or avoiding  
5 operating costs. STARS will be set-up so that each Participant is obligated only to pay  
6 its fair proportionate share for STARS activities it elects to participate in and in  
7 exchange it will receive a fair proportionate share of the economic benefits relating to  
8 those activities.

9 The costs associated with APS's proposed participation in STARS are anticipated  
10 to be similar to what APS already incurs for its participation in USA, approximately  
11 \$100,000 per year<sup>6</sup> (exclusive of any optional equipment, supplies or loaned employee  
12 activities in which APS elects to participate). This amount includes APS's \$1,000  
13 capital contribution to STARS and APS's anticipated share of STARS common  
14 expenses, including the costs associated with what is defined in the LLC Agreement as  
15 "Company Loaned Employees."

16 The day-to-day business affairs of STARS will primarily be handled by Company  
17 Loaned Employees. Company Loaned Employees are individuals who are currently  
18 affiliated with a Participant (either as an employee or independent contractor) and who  
19 will be loaned to STARS or a Series of STARS for a limited time or purpose to provide  
20 joint services to STARS on behalf of all Participants. In other words, STARS does not  
21 intend to hire new employees, but will borrow employees from Participants and/or use  
22 local contract companies as needed. The Company Loaned Employee will maintain  
23 his/her affiliation with the Participant by which he or she is employed, but the costs  
24 associated with that person's temporary work for STARS will be shared equally by  
25 STARS Series Participants as a common expense. See Exhibit D at § 10.

26  
27  
28 <sup>6</sup> This application is not seeking a prudence determination or cost recovery and any such request would  
be addressed through the ratemaking process.

1 **IV. THE AFFILIATE INTEREST RULES DO NOT APPLY**

2 **A. The Purpose of the Affiliate Interest Rules Is Not Implicated by the**  
3 **Formation of STARS.**

4 The Affiliate Interest Rules were enacted to allow the Commission to regulate  
5 “transactions between a public service corporation and its affiliates that may  
6 significantly affect economic stability and thus impact rates charged by a public service  
7 corporation.” *Ariz. Corp. Commission v. Woods*, 171 Ariz. 286, 295, 830 P.2d 807, 816  
8 (1992). The purpose of the Affiliate Interest Rules is to “prevent utilities from  
9 endangering their assets through transactions with their affiliates” and to insulate  
10 ratepayers “from the dangers . . . inherent in holding structure and diversification.” *Id.*;  
11 Decision No. 67454, at \*14 (Jan. 4, 2005).

12 These purposes are not implicated by APS’s involvement in STARS. STARS is  
13 intended to engage in coordinated purchasing, planning and employee sharing activities  
14 that will enable APS to realize cost savings and greater efficiencies that will be passed  
15 on to the ratepayer. There is no risk that APS’s involvement in STARS will endanger its  
16 assets or affect its economic stability because of how STARS is structured and because  
17 STARS is merely a vehicle through which APS may jointly acquire—in a more cost  
18 effective manner—resources such as personnel, equipment and shared expertise that it  
19 would otherwise be acquiring independently. Indeed, APS has been engaging in similar  
20 activities through USA since 2001. Thus, APS’s participation in STARS will not have  
21 any material adverse affect upon the financial condition of APS and is in the public  
22 interest.

23 **B. STARS Is Not An Affiliate of APS Because APS Does Not Have**  
24 **“Control” over STARS.**

25 Under the Rules, an affiliate is “any other entity directly or indirectly controlling  
26 or controlled by, or under direct or indirect common control with, the public entity.”  
27 A.C.C. R14-2-801(1). Control is defined as “the power to direct the management  
28 policies . . . whether through ownership of voting securities, or by contract, or

1 otherwise.” A.C.C. R14-2-801(1). An analysis of the totality of the circumstances is  
2 necessary to determine whether the public utility has sufficient power to direct the  
3 management policies of the entity.

4 APS lacks power to direct the management policies of STARS because it only  
5 has a 14% voting interest in STARS and key decisions regarding management policies  
6 require the unanimous consent of all seven Participants. There are thus no indicia of  
7 control sufficient to create an affiliate relationship. In the proposed STARS transaction,  
8 APS will be a member of a limited liability company that is not a holding company or  
9 affiliate of APS or any other regulated entity. Rather, STARS will be an independent  
10 legal entity comprised of and jointly governed by member Participants—each of which  
11 are independent, unrelated regulated entities from different states working together for  
12 the express purpose of saving costs and increasing efficiency through joint purchasing,  
13 resource sharing and collaboration. Importantly, participation in joint activities of  
14 STARS is completely voluntary. Thus, APS can elect to participate in only those  
15 activities that are beneficial to it and its customers.

16 Neither APS nor any other regulated entity owns or controls STARS. STARS  
17 will be controlled by the seven member Series A Board, which is comprised of one  
18 representative from each of the seven Participants. Significant decisions by the Series A  
19 Board are made by unanimous vote (7/7 vote), or super majority vote (2/3 vote). APS  
20 has one seat on the seven member Series A Board and has only one vote. APS has only  
21 a 20% equity interest and an even smaller 14% voting interest. These factors are  
22 insufficient to establish control under the Rules. *See* Decision No. 54504 (April 29,  
23 1985) (determining in a decision during interim transition to the Affiliate Interest Rules  
24 that an affiliate means “a nonregulated corporation or partnership which is owned or  
25 controlled by the Holding Company or in which the Holding Company owns an equity  
26 interest exceeding 33%”).

1 **V. IF THE AFFILIATE RULES ARE FOUND TO APPLY TO THE**  
2 **PARTICIPATION OF APS IN STARS, EITHER APPROVAL SHOULD**  
3 **BE GRANTED OR THE APPLICABLE PROVISIONS OF SUCH RULES**  
4 **WAIVED.**

5 **A. APS's Proposed Participation in STARS Complies With A.C.C. R14-**  
6 **2-804(C).**

7 Under A.C.C. R14-2-804(B)(1), if the Commission determines that STARS is an  
8 affiliate of APS, APS may not consummate the transaction without Commission  
9 approval. The Commission reviews affiliate transactions "to determine if the  
10 transactions would impair the financial status of the public utility, otherwise prevent it  
11 from attracting capital at fair and reasonable terms, or impair the ability of the public  
12 utility to provide safe, reasonable and adequate service." A.C.C. R14-2-804(C). For the  
13 reasons explained above, the proposed STARS transaction will not have any adverse  
14 financial, safety or service effects and APS respectfully requests that the Commission  
15 approve its participation in STARS as outlined above.

16 First, the goods and services APS is likely to acquire through STARS are things  
17 that it would likely acquire irrespective of the STARS transaction. Thus, STARS will  
18 not create any substantial new additional costs for APS. Second, by purchasing through  
19 STARS, APS anticipates that it may be able to acquire certain goods and services  
20 cheaper than it would otherwise be able to acquire them on its own. Third, like USA,  
21 STARS is not designed to make a profit, but is merely a pass through entity in which  
22 Participants will pay their fair proportionate share of allocable costs for goods and  
23 services that they elect to purchase. Finally, the sharing of best practices among STARS  
24 members will provide opportunities for improved operational efficiency and safety that  
25 may improve APS's ability to provide safe, reasonable and reliable services.

26 Moreover, to the extent that STARS LLC enters into contractual relationships  
27 with a third-party supplier on behalf of the Participants, neither STARS LLC nor any  
28 Participant can compel APS to purchase goods and/or services from that supplier. A  
notional STARS LLC contract will merely give APS the option to purchase goods  
and/or services from a supplier who has contracted with STARS with the expectation

1 that it will potentially be able to sell its goods and/or services to seven customers as  
2 opposed to one customer. As such, and given the antitrust limitations placed on STARS  
3 and its Participants, APS would execute only those contracts where the value (measured  
4 in terms of price or other appropriate measure) of the STARS contract is greater than a  
5 contract that APS would enter into with that supplier on its own behalf.

6 **B. In Any Event, It Would Be In the Public Interest for the Commission**  
7 **to Waive Compliance Under A.C.C. R14-2-806.**

8 “The Commission may waive compliance with any of the provisions of [the  
9 Affiliate Interest Rules] upon a finding that such waiver is in the public interest.”  
10 A.C.C. R14-2-806. Alternatively, if the Commission concludes that STARS is an APS  
11 affiliate, and for the reasons explained above in Part IV.C., APS asks the Commission to  
12 waive the Affiliate Interest Rules because the STARS transaction will be beneficial to  
13 ratepayers and there is little or no risk of harm to APS customers.

14 **V. CONCLUSION**

15 The Company’s participation in STARS will benefit APS’s customers. Sharing  
16 resources and engaging in joint purchasing activity should lead to more efficient asset  
17 utilization and curtail increases in power production costs, which should result in  
18 savings that will ultimately benefit consumers of electric power.

19 For the above reasons, APS respectfully requests that the Commission issue an  
20 order confirming that the Affiliate Interest Rules do not apply to APS’s proposed  
21 participation in STARS. Alternatively, APS requests that the Commission issue an  
22 order approving the proposed STARS transaction and/or grant APS a waiver of  
23 compliance with the Affiliate Interest Rules.

24 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of December, 2011.

25  
26 By: Melissa M. Krueger  
27 Meghan H. Grabel  
28 Thomas L. Mumaw  
Melissa M. Krueger  
Attorneys for Arizona Public Service Company

1 ORIGINAL and thirteen (13) copies  
of the foregoing filed this 23<sup>rd</sup> day of December, 2011, with:

2  
3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
5 Phoenix, Arizona 85007  
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**VERIFICATION**

I, Michael S. Coppock, Nuclear Engineering Department Team Leader for Arizona Public Service Company's ("APS") Palo Verde Nuclear Generating Station ("Palo Verde"), who serves as the Palo Verde Management Council representative to the Strategic Teaming and Resource Sharing alliance within the Utilities Services Alliance ("USA"), have read and reviewed APS's Verified Application In the Matter of APS For a Declaratory Order that A.C.C. R14-2-804 Does Not Apply and verify that the information contained therein is true and correct.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
Michael S. Coppock

# Exhibit A

**Exhibit A**

**Nuclear Power Generating Units**  
**Operated by STARS Participants**

Ameren: 1 unit at the Callaway Energy Center;

Luminant: 2 units at the Comanche Peak Nuclear Power Plant;

PG&E: 2 units at the Diablo Canyon Power Plant;

APS: 3 units at the Palo Verde Nuclear Generating Station;

SCE: 2 units at the San Onofre Nuclear Generating Station;

STPNOC: 2 units at the South Texas Project; and

WCNOC: 1 unit at the Wolf Creek Generating Station.

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# Exhibit B



DEPARTMENT OF JUSTICE  
Antitrust Division

ANNE K. BINGAMAN  
*Assistant Attorney General*

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July 3, 1996

Ira H. Raphaelson, Esquire  
Shaw, Pittman, Potts & Trowbridge  
2300 N. Street, N.W.  
Washington, D.C. 20037-1128

Dear Mr. Raphaelson:

This is in response to the request of the Utilities Service Alliance ("USA"), on behalf of its member utilities, for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to the proposed formation of a joint-venture -- USA -- that would enable its nuclear power utility members to share existing resources, jointly procure goods and services, and consolidate selected internal functions and activities.

You indicate that recent economic developments are forcing electric utilities that operate nuclear plants to reduce production costs in order to remain competitive with other producers of electric power, and that the proposed activities of USA are viewed by its organizers as a means to that end. Membership will be limited to nuclear power generators. The eight initial utility members are geographically dispersed and account for about 7 percent of nuclear power in the U.S., whether measured by number of reactors or megawatt output, and about 2 percent of world-wide nuclear power production. Nuclear power plants, in turn, account for only about 21 percent of all electric power generated in the U.S.. Membership in USA is expected to grow; it will be open to any firm with an operating domestic nuclear power reactor until membership owns 38 nuclear reactors -- 35 percent of the 109 operating nuclear power reactors in the U.S. -- at which point membership will be closed.

The members propose to utilize USA to share existing resources, including personnel, parts, equipment, tools and expertise among its members. A computer system will be established through which a member could notify other members of its need for a particular type of skilled employee or equipment and other members could indicate their willingness to loan the needed resource. Compensation for the loaned resource would take the form of cash or credit in a computerized trading system in which the lender would be given credit against which it could draw when it needed to borrow a resource from another member. It is believed that USA members will be able to save considerable resources in this manner; they will be able to borrow personnel or equipment for temporary needs at considerably less than the cost of purchasing the equipment or hiring full-time employees or consultants.

USA's proposed joint procurement activities will be designed to give its members the ability to obtain economies of scale in purchasing. Members, however, will remain free to pursue any or all of their purchasing independently.

There are a number of internal functions that USA's members must engage in to operate electric power plants. Examples are accounting, materials management, and security and these functions may not vary much from one member's plant to another. USA plans to develop a menu of potential consolidation projects in which members could choose to participate on a voluntary basis.

On the basis of the information and assurances that you have provided us, the Department has no current intention of instituting antitrust enforcement action against USA's proposed operations. The fact that the initial members of USA account for only 7 percent of U.S. nuclear power generation and 2 percent of world production indicates that, as initially constituted, USA is not likely to be able to exercise monopsony power in the joint purchase of goods or services utilized in nuclear power production. The applicants estimate that they account for approximately 8 and 3 percent of U.S. and world-wide procurement by nuclear power producers. While membership may grow, it will not be allowed to result in a greater than 35 percent market share, the safe harbor criterion that the Antitrust Division has employed in reviewing joint-purchasing ventures. Moreover, even if one assumed that the initial members would do all their needed procurement jointly through USA, the common costs would constitute only 3 percent of finished product/service revenues, well below the 20 percent safe harbor employed by the Division in determining when joint-purchasing is likely to reduce competition amongst the joint purchasers in their sales markets.

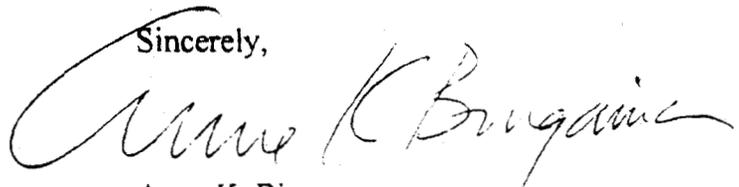
USA's Operating Agreement contains a number of provisions designed to prevent its activities from raising antitrust concerns. Membership is open until it accounts for 35 percent of nuclear power productions, and members retain the right to act independently in all respects. (¶ 1.1, 1.4 and 4.1). USA's Code of Conduct prohibits its members from exchanging or discussing any information about electric power pricing, the prices they would pay for goods and services outside their joint purchasing activities, or their marketing or output plans. Moreover, member-specific information as to costs or pricing will not be disclosed by USA. In view of these provisions, and the limited market shares of USA members, the proposed voluntary sharing of resources and consolidation of internal functions should not have any adverse effect on competition.

To the extent that the proposed joint activities reduce the costs of producing electricity for USA's members and those savings are passed on to consumers, the proposed conduct could have a procompetitive effect.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed joint and cooperative activities proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne K. Bingaman".

Anne K. Bingaman  
Assistant Attorney General

enclosures

# Exhibit C

**STARS ALLIANCE LLC LIMITED LIABILITY COMPANY AGREEMENT**  
**Summary of Material Terms**

**I. STARS PURPOSES (§ 4.1)** – The purpose and objective of STARS is to take the following actions:

- Procure goods and services from vendors and suppliers on behalf of STARS and its Participants;
- Facilitate the sharing of information, personnel, services, equipment, tools, and materials between and among STARS Participants;
- Collaborate on best practices to achieve operational excellence;
- Coordinate participation with nuclear industry groups;
- Coordinate joint and shared operational activities of the Participants; and
- Any other activity approved by unanimous consent of the Series A Board.

**II. OWNERSHIP AND MEMBERSHIP IN STARS**

**A. Multiple Series Structure (§ 4.5)**

- STARS will have multiple Series, each with its own profits, losses, assets and liabilities, and business purpose, and each governed by its own board of Series Directors.
- The purpose of the multiple Series structure is to allow a subset of Participants to enter into new business activities, without involving the other Participants. Creation of a New Series requires Unanimous Approval of the Series A Board.
- Each Series is similar to a separate entity, with liabilities of that Series not enforceable against any other Series or STARS generally.
- Each member of a Series is known as a “Participant” of the Series.

**B. Series A**

- Series A is formed as of the effective date of the agreement. All of the Participants are Participants of Series A.
- Every Participant of any Series must also be a Participant of Series A. This allows Series A to control new participation in STARS.
- Any action that relates to STARS as a whole, instead of just one Series, will be controlled by Series A.

**C. Classes of Participation (§ 4.8)** – Participation is divided into two classes of membership:

- Class E Participants own an equity interest in the Series. Class E Participants make nominal, \$1,000 capital contributions to the Series. APS and four other Participants will be Class E Participants
- Class NE Participants are members of a Series, without owning an equity interest in the Series.

- All Classes of Participants of a Series have equal rights with respect to governance of the Series.

### **III. FUNDING OF OPERATIONS; CAPITAL ACCOUNTS**

#### **A. Common Expense Budgeting (§ 10.2)**

- On or before June 30 of each year, the Budget for Common Expenses for the following calendar year will be presented to the Series Board.
- Within 60 days thereafter, the Series Board will approve a Budget by Unanimous Approval.
- If the Series Board cannot agree on a Budget by Unanimous Approval, the Budget will be the same as for the previous calendar year.

#### **B. Equal Sharing Through Services Agreements (§ 4.9)**

- Each Participant will fund an equal share of the Common Expenses of the Series under a Services Agreement with the Series.

#### **C. Class E Participant Capital Contributions (§ 6.1.3; § 6.2) – Each Class E Participant, including each new Class E Participant, will make a nominal capital contribution of \$1,000 to the Series.**

### **IV. MANAGEMENT OF THE COMPANY**

#### **A. Series Board of Directors (§ 8.1; § 8.2)**

- Each Participant will appoint one Series Director to the Series Board, and may appoint one or more Alternates.
- The Series Board will have control over the business and affairs of the applicable Series.
- Substantial majority of actions are taken upon Unanimous Approval or Super Majority Approval; those not specified for Unanimous Approval or Super Majority Approval are taken upon Majority Approval.

#### **B. Unanimous Approval Requirements (§ 8.1.5)**

- Unanimous Approval means approval of all of the Series Directors. The requirement is an absolute number requirement, and is not based on the number of Series Directors present at a meeting.
- Selected Unanimous Approval actions include: (1) adopting the annual Budget for Common Expenses; (2) entering into a new business activity; (3) borrowing money; (4) entering into contracts with Participants or their affiliates; (5) becoming an equity owner of another entity; and (6) fundamental business transactions such as bankruptcy, merger, sale of substantially all assets, etc.

#### **C. Super Majority Approval Requirements (§ 8.1.4)**

- Super Majority Approval means approval of 2/3 of the Series Directors. The requirement is an absolute number requirement, and is not based on the number of Series Directors present at a meeting.
- Selected Super Majority Approval actions include: (1) incurring unbudgeted Common Expenses in amounts above \$25,000; and (2) appointment of Officers of a Series.

**D. Company Loaned Employees (§ 10.1)**

- A Series may enter into one or more Company Loaned Employee Agreements under which a Participant agrees to provide the services of one of its employees to STARS.
- Compensation and other expenses associated with Company Loaned Employees will be Common Expenses, and will be borne equally by STARS (or applicable Series) Participants.

**V. LIMITATIONS OF LIABILITY (§ 9.1)**

- Each Participant waives liability against each other Participant, STARS and each Series, except for liability arising from breach of the agreement, or in the event of fraud or willful misconduct.
- No Series Director or Officer of a Series will have any liability to the Company or any Series except in the event of fraud or willful misconduct.

**VI. INDEMNIFICATION (§ 9.3)**

- STARS or the Series will indemnify each Series Director and each Officer of the Series for actions taken as a Series Director or Officer of the Series.
- Each Participant of a Series will indemnify each other Participant that does not belong to a Series if a claim is made against the other Participant based on claims against the Series to which the other Participant does not belong.

**VII. INSURANCE (§ 9.5)**

- STARS will purchase directors and officers insurance for the Directors and Officers of the Series.
- To the extent that multiple Series purchase such insurance, they will do so under the same policy and the fees will be equitably allocated by the Series A Board.

**VIII. BOOKS AND RECORDS (§ 11.6; § 13.11)**

- Each Participant will have full access to STAR's books and records.
- Series A will be audited at least once every two years.

# Exhibit D

**STARS ALLIANCE LLC**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
\_\_\_\_\_, 2012

THE COMPANY INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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# LIMITED LIABILITY COMPANY AGREEMENT

OF

## STARS ALLIANCE LLC

**THIS LIMITED LIABILITY COMPANY AGREEMENT** is made and entered into, effective for all purposes and in all respects, as of the [●] day of [●], 2012 by and among the undersigned parties.

**WHEREAS**, the Company was formed pursuant to the Act (as defined herein) and other relevant laws of the State of Delaware by filing the certificate of formation of the Company on the [●] day of [●], 2012; and

**WHEREAS**, the undersigned Participants wish to set forth their respective rights and obligations to each other and to the Company and desire to adopt this Agreement as their operating agreement as contemplated by the Act.

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants, rights and obligations set forth herein, the undersigned, intending legally to be bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS

1.1 **Definitions.** The following terms shall have the indicated meanings ascribed to them when used herein:

“**Act**” shall mean and refer to the Delaware Limited Liability Company Act (Delaware Code Annotated, Title 6, §§18-101 *et. seq.*), as the same may be amended from time to time, including any successor statute.

“**Agreement**” shall mean and refer to this Limited Liability Company Agreement and the exhibits attached hereto and made a part hereof, as originally executed and as may be amended from time to time.

“**Alternate**” shall mean a Person appointed by a Participant pursuant to Section 8.1.1 to act on its Series Director’s behalf in the event of the absence or unavailability of the Series Director appointed by that Participant.

“**Bankruptcy**” shall mean and refer to (i) an adjudication of bankruptcy under the Federal Bankruptcy Code, (ii) an assignment for the benefit of creditors that is not in the ordinary course of business, (iii) the application for, consent to or appointment of a receiver, custodian, examiner, liquidator or similar official and the failure to discharge same within sixty (60) days, or (iv) an adjudication of bankruptcy or insolvency under any state or local insolvency

statute or procedure or the occurrence of any other event of bankruptcy or insolvency under the Act.

“Book Value” means, with respect to any Series Asset, the Series Asset’s tax basis for federal income tax purposes, except as follows:

(a) the initial Book Value of any asset contributed by a Class E Participant to the Series shall be the gross Fair Market Value of that asset;

(b) the Book Value of all the assets of the applicable Series shall be adjusted to equal their respective gross Fair Market Values as of the following times: (a) the acquisition of any additional Class E Interest from the Company by any new or existing Class E Participant; (b) the distribution by the Series to a Class E Participant of more than a de minimis amount of property as consideration for a Class E Interest; and (c) the liquidation of the Series within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the applicable Series Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Class E Participant in the Series;

(c) the Book Value of any Series Asset distributed to any Class E Participant shall be the gross Fair Market Value of that asset on the date of distribution;

(d) if an election under Code Section 754 has been made, the Book Value of Series Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of the assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that those adjustments are taken into account in determining Series Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m); and

(e) if the Book Value of an asset has been determined or adjusted hereby, that Book Value shall thereafter be determined by taking into account all adjustments for Depreciation, if any, taken with respect to that asset for purposes of computing Series Profits and Series Losses.

“Budget” shall have the meaning ascribed to it in Section 10.2.1 of this Agreement.

“Capital Contribution” shall mean the total amount of cash and the Fair Market Value of property contributed and/or services to be rendered (to the extent rendered as capital contributions) to a Series by the Class E Participants of that Series.

“Certificate” shall mean and refer to that certain Certificate of Formation of the Company filed with the Office of the Secretary of State of Delaware, as the same may be amended, modified, supplemented and/or restated from time to time.

“Chairman” shall have the meaning ascribed to it in Section 8.2.6 of this Agreement.

“Class E Agreement” means an agreement between a Series and a Class E Participant in the form attached as Exhibit B or in such other form as is approved by Unanimous Approval of the applicable Series Board.

“Class E Interest” has the meaning set forth in Section 4.8.1.

“Class E Participant” shall mean and refer to a Participant in a Series of the Company that holds a Class E Interest in that Series as contemplated by Section 4.8.1.

“Class E Participant Nonrecourse Debt” shall have the meaning ascribed to the term “Partner Nonrecourse Debt” in Treasury Regulations Section 1.704-2(b)(4).

“Class NE Agreement” shall mean and refer to an agreement by and between a Series and a Class NE Participant in substantially the form attached as Exhibit C or in such other form as is approved by Unanimous Approval of the applicable Series Board.

“Class NE Participant” shall mean and refer to a Participant in a Series of the Company that is a member of the Series without holding a limited liability interest in the Series as contemplated by Section 4.8.2.

“Code” shall mean and refer to the Internal Revenue Code of 1986, as amended, or any similar Federal internal revenue law enacted in substitution thereof.

“Common Expenses” shall mean and refer to expenses incurred in the ordinary course of business that are allocable to all Participants pursuant to a Series’ financial policies and procedures, including but not limited to travel costs and expenses, membership fees, subscription fees, training costs and expenses, legal retainers, and meeting fees. Salaries (including employment benefits and the applicable overhead costs) of Company Loaned Employees and the cost and expenses of contractors may also be included if approved by the relevant Series Board. Common Expenses do not include expenses resulting from costs of settlements of disputes, payments of damages, fines, penalties or other expenses that are not in the ordinary course of business unless those expenses are allowed by the Series Board.

“Company” shall mean and refer to STARS Alliance LLC, a Delaware limited liability company formed under and pursuant to the Act and other relevant laws of the State of Delaware and operated pursuant to the terms of this Agreement.

“Company Loaned Employee” shall mean and refer to an individual that is employed by or contracted to a Participant or an affiliate of a Participant and who provides services to a Series pursuant to the terms of this Agreement and a Company Loaned Employee Agreement.

“Company Loaned Employee Agreement” shall mean and refer to an agreement between a Series and a Participant in the form approved by Unanimous Approval of the applicable Series Board under which the Participant will agree to provide a Company Loaned Employee to the Company or the Series, in exchange for which the Company or the Series will pay the costs of employment of that Company Loaned Employee. For the avoidance of doubt,

the Participants are not required to use the form of Company Loaned Employee Agreement for loaned employee agreements entered into among the Participants.

“Company Records” shall have the meaning ascribed to it in Section 11.6 of this Agreement.

“Covered Person” shall mean and refer to, with respect to any Series, the Officers of that Series and the Series Directors of that Series.

“Defaulting Participant” shall mean and refer to a Class E Participant of a Series that fails to make a contribution required by this Agreement or a Participant that fails to make a payment required under its Services Agreement.

“Depreciation” shall mean, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for that year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to that different Book Value (as originally computed) as the federal income tax depreciation, amortization, or other cost recovery deduction for that Fiscal Year or other period bears to the adjusted tax basis (as originally computed); provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for the applicable year or period is zero, Depreciation shall be determined with reference to the Book Value (as originally computed) using any reasonable method selected by the applicable Series Board.

“Distributable Cash” shall mean the amount of cash that a Series Board deems available for distributions to the Participants, taking into account all debts, liabilities, and obligations of the Series (including liabilities owed under a Services Agreement), as applicable, then due, and working capital and other amounts that the Series Board deems necessary for the business conducted by that Series or to place into reserves for customary and usual claims with respect to such business.

“DOE” shall have the meaning ascribed to such term in Section 11.7 of this Agreement.

“DOE-Controlled Nuclear Information” shall have the meaning ascribed to such term in Section 11.7 of this Agreement.

“Effective Date” shall mean and refer to the date of this Agreement.

“Event of Dissolution” shall have the meaning ascribed to such term in Section 15.1 of this Agreement.

“Exhibit A” shall mean and refer to Exhibit A to this Agreement, as amended and in effect from time to time, relating to the names, addresses, and Series and classes of membership of the Participants of each Series. The Participants acknowledge and agree that this exhibit shall reflect the name and address of each Participant. The Company shall revise

Exhibit A whenever the Participants in any Series change and any revision shall become effective on the effective date shown on the exhibit.

“Fair Market Value” shall have the meaning ascribed to it in Section 17.7 of this Agreement.

“Fiscal Year” shall have the meaning ascribed to it in Section 13.3 of this Agreement.

“Indemnification Amounts” shall have the meaning ascribed to such term in Section 9.3.1 of this Agreement.

“Initial Participants” shall mean and refer to the initial members of the Company, which are listed on Exhibit A as that exhibit exists on the Effective Date.

“Joinder and Ratification Agreement” means a joinder and ratification agreement executed by a new Participant in substantially the form attached as Exhibit D.

“Loaning Participant” shall mean and refer to the Participant who employs or contracts with a Loaned Employee or whose affiliate employs or contracts with a Loaned Employee.

“New Series” shall mean and refer to a Series that is established upon the Unanimous Approval of the Series A Board.

“Non-Participating Participant” shall mean and refer to a Participant who does not participate in any Series.

“Non-U.S. Persons” shall have the meaning ascribed to such term in Section 11.7 of this Agreement.

“Nonrecourse Liability” shall have the meaning set forth in Treasury Regulations Section 1.752-1(a)(2).

“Officer” shall mean and refer to those natural persons serving at any particular time as officers of a Series in accordance with the provisions of Article 8 (Management).

“Part 810” shall have the meaning ascribed to such term in Section 11.7 of this Agreement.

“Participant” shall mean and refer generally to a member of the Company, or, as the context requires, to a Class E Participant or Class NE Participant of a Series.

“Participation Fee” shall mean and refer to the fee that a new Participant of a Series may be required to pay as a condition to that new Participant joining that Series.

“Percentage Interest” of a Class E Participant with respect to any Series shall mean and refer to the amount, expressed as a percentage, equal to one divided by the total number of Class E Participants of that Series.

“Person” shall mean and refer to a natural person, a corporation, a limited liability company, a joint stock company, a partnership (general, limited or otherwise), an association, a trust, an unincorporated organization or other legal entity or group.

“President” shall have the meaning ascribed to such term in Section 8.3.1 of this Agreement.

“Proceeding” shall have the meaning ascribed to such term in Section 9.3.1 of this Agreement.

“Secretary” shall have the meaning ascribed to such term in Section 8.3.1 of this Agreement.

“Series” shall mean and refer to each separate Series of the Company.

“Series A” shall mean and refer to the initial Series of the Company, which is established as of the Effective Date.

“Series A Board” shall mean and refer to the Series Board of Series A.

“Series Assets” shall mean and refer to the assets or property (tangible or intangible, choate or inchoate, fixed or contingent) of any Series of the Company.

“Series Board” shall mean and refer to a board of managers consisting solely of Series Directors appointed with respect to a Series of the Company.

“Series Capital Account” shall mean with respect to any Class E Participant in a Series the capital account that the Series establishes and maintains for such Class E Participant pursuant to Section 17.1.

“Series Director” shall mean and refer to a manager appointed pursuant to Section 8.1.1 to serve on a Series Board by a Participant in a Series.

“Series Profits” and “Series Losses” shall mean for each Fiscal Year or other period, an amount equal to the Series’ taxable income or loss for that year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Series exempt from federal income tax not otherwise taken into account in computing Series Profits or Series Losses shall be added to that taxable income or loss;

(b) any expenditures of the Series described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), shall be subtracted from that taxable income or loss;

(c) in the event the Book Value of any Series Asset is adjusted as required by subsections (b) or (c) of the definition of Book Value, the amount of that adjustment shall be taken into account as gain or loss from the disposition of that asset (assuming the asset was disposed of just prior to the adjustment) for purposes of computing Series Profits or Series Losses in the Fiscal Year of adjustment;

(d) gain or loss resulting from any disposition of Series Assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the Series Assets disposed of, notwithstanding that the adjusted tax basis of those Assets may differ from their Book Values; and

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the taxable income or loss, there shall be taken into account the Depreciation for the Fiscal Year or other period.

Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 17.3.2 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 17.3.2 shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (e) above.

For the avoidance of doubt, amounts payable to and from Class NE Participants of a Series shall be reflected in the calculation of Series Profits and Series Losses of that Series.

“Services Agreement” shall mean and refer to, with respect to a Class E Participant, a Class E Agreement, and with respect to a Class NE Participant, a Class NE Agreement.

“Special Meeting” shall have the meaning ascribed to it in Section 8.2.2 of this Agreement.

“Super Majority Approval” shall mean and refer to the approval of two-thirds or more of the Series Directors of a Series or their Alternates. For the avoidance of doubt, Super Majority Approval requires the approval of two-thirds of all Series Directors of a Series or their Alternates, regardless of the number of Series Directors of a Series or their Alternates that are present at a meeting of the Series Board.

“Tax Matters Partner” shall have the meaning ascribed to it in Section 13.7 of this Agreement.

“Third Party” shall mean and refer to any Person that is not (i) a Person holding a position in the Company or any Series (irrespective of the Person’s status as an employee,

Company Loaned Employee, or contractor), including as a Participant, or (ii) a Series Director or an Officer of the Series.

“Transfer” shall have the meaning ascribed to such term in Section 14.1 of this Agreement.

“Treasurer” shall have the meaning ascribed to such term in Section 8.3.1 of this Agreement.

“Treasury Regulation” shall mean and refer to the temporary and final regulations promulgated under the Code, as the same may be amended from time to time, and including any corresponding provisions of succeeding regulations.

“Unanimous Approval” shall mean and refer to the approval of all of the Series Directors of a Series or their Alternates. For the avoidance of doubt, Unanimous Approval requires the approval of all Series Directors of a Series or their Alternates, regardless of the number of Series Directors of a Series or their Alternates present at a meeting of the Series Board.

“Unreturned Capital Balance” shall mean as to a Class E Participant and its Class E Interest in a particular Series, the Capital Contributions made with respect to such Series, thereafter reduced (but not below zero) by the aggregate amount of cash and the aggregate Book Value of any items of Company property distributed pursuant to Section 16.1(i) with respect to the Class E Participant’s Class E Interest in the particular Series. In the event that any Class E Participant of a Series transfers all or any part of Class E Interest in the Series in accordance with the terms of this Agreement, such Participant’s transferee shall succeed to such Participant’s Unreturned Capital Balance to the extent it relates to such transferred Class E Interest or portion thereof.

1.2 Interpretation. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa, to the extent necessary to give the terms defined in this Article 1 (Definitions) and the terms otherwise used in this Agreement their proper meanings.

1.3 Sole Discretion of Series Directors. Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by the Series Board shall mean and refer to such decision, determination, act, action, exercise or other procedure of the Series Board, in its sole and absolute discretion.

## ARTICLE 2

### NAME OF COMPANY

2.1 Name. The name of the Company shall be “STARS Alliance LLC”. The business of the Company may be conducted under any other name permitted by the Act that is deemed necessary or desirable by the Series A Board.

**ARTICLE 3**  
**FORMATION OF COMPANY**

3.1 Agreement is Controlling. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participants executing this Agreement hereby agree to the terms and conditions of this Agreement, as it may from time to time be amended according to its terms; except to the extent a provision of this Agreement expressly incorporates federal laws or regulations, or is expressly prohibited under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule.

3.2 Invalidity of Provisions Under Law. To the extent any provision of this Agreement is prohibited or found to be invalid under the Act or the applicable law, this Agreement shall be considered amended to the least degree possible in order to make this Agreement enforceable and valid. In the event the Act or the applicable law is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid, valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

3.3 Limitations of Liability and Obligations. The Participants hereby agree that each Participant shall be entitled to rely on the provisions of this Agreement, and no Participant shall be liable to the Company, any Series, or any other Participant for any action or refusal to act within the scope of and consistent with this Agreement, except in the event of a Participant's fraud or willful misconduct. The Participants and the Company hereby agree that the duties and obligations imposed on the Participants, any Series, or the Company shall be those set forth in this Agreement, which is intended to govern the relationship among the Participants, between the Participants and any Series, and between the Company and the Participants, notwithstanding any provision of the Act or common law to the contrary.

**ARTICLE 4**  
**COMPANY PURPOSES; POWERS; STRUCTURE**

4.1 Company Purposes. The general purposes and business objectives of the Company are to:

4.1.1. Procure or arrange for procurement of goods and/or services with vendors/suppliers on behalf of the Company, a Series, or a Participant or Participants thereof;

4.1.2. Facilitate the sharing of information, personnel, services, equipment, tools, and materials between and among the Company, a Series, or a Participant or Participants thereof;

4.1.3. Collaborate on the best practices of the Participants so as to achieve operational excellence for the Company, a Series, or the Participants;

4.1.4. Coordinate participation with nuclear industry groups such as the Nuclear Energy Institute, the Institute for Nuclear Power Operations, the World Association of Nuclear Operators, etc.;

4.1.5. Coordinate joint or shared operational activities of the Participants or provide services related to such operational activities; and

4.1.6. Any other activity approved by Unanimous Approval of the Series A Board and relating to the operation of nuclear power reactors.

4.2 Powers of the Company. Subject to all of the provisions of this Agreement and any written agreement between the Company and the Participants, or any Series and the Participants thereof, the Company shall have the power to do any and all acts and things necessary, appropriate, advisable or convenient for the furtherance and accomplishment of the purposes set forth herein, including, without limitation, to engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the purposes of the Company, so long as said activities and obligations may be lawfully engaged in or performed by a limited liability company under the Act. Neither the Company nor any Series shall have the power to do any acts or things other than those authorized under the previous sentence.

4.3 Accounts and Records. The Company shall establish and maintain separate accounts and records for each Participant.

4.4 Compliance with Laws. The Company and the Participants shall comply with all applicable laws, ordinances, rules, regulations, restrictions and requirements of all governmental authorities. The Company shall develop appropriate policies and procedures to implement the provisions of this section, including without limitation policies and procedures related to export controls, immigration, and the Foreign Corrupt Practices Act, within a reasonable period of time after formation of the Company.

4.5 Series.

4.5.1. The Company's affairs will be divided in a multiple series structure as contemplated by Section 18-215 of the Act.

4.5.2. Each Series will have separate rights, powers, and duties with respect to the property and obligations of the Company and profits and losses associated with specified property and obligations, and each Series will have a separate business purpose and objective, which purpose and objective will be consistent with the purposes and objectives of the Company as set forth in Section 4.1. None of the debts, liabilities, obligations or expenses incurred, contracted for or otherwise existing with respect to the Company generally or any Series thereof will be enforceable against the assets of another Series.

4.5.3. The records for each Series will account for the assets associated with such Series separately from the other assets of the Company, or any Series thereof, in accordance with the terms of Article 13 (Bank Accounts; Accounting and Records).

4.5.4. Any Series may be dissolved or terminated, subject to the requirements of this Agreement, without the dissolution or termination of any other Series or of the Company.

4.6 Series A. Series A is the initial Series of the Company, and is established as of the Effective Date. The purpose of Series A is to take all actions permitted under Section 4.1.

4.7 New Series.

4.7.1. Upon receipt of Unanimous Approval of the Series A Board, the Company will create a New Series, with the rights, powers and duties with respect to the property and obligations of the Company and profits and losses associated with such property and obligations, and with a separate business purpose and investment objective determined by the Series A Board consistent with the terms of this Agreement and the requirements of law.

4.7.2. Any Participant of any Series may elect to become a Participant of a New Series within 30 days after the approval of creation of that Series by the Series A Board. After the end of that 30-day period, the Series Directors of the Series must approve the admission of any Participants to that Series in the manner set forth in Section 6.1.

4.8 Classes of Participants; Nature of Membership. Each Series will have two classes of Participants, Class E Participants and Class NE Participants, as follows:

4.8.1. The Class E Participants will hold an equity ownership interest in the applicable Series of the Company (which shall be considered a "limited liability company interest" within the meaning of the Delaware Act and personal property for all purposes) and which shall entitle any record owner who is validly admitted as a Participant of the Series with respect to such interests, as provided herein, to the rights and privileges (and subject its holder to the burdens) associated with such interests as set forth in this Agreement (a "Class E Interest"). The Class E Participants will have the rights and obligations set forth in this Agreement and in the applicable Services Agreement.

4.8.2. The Class NE Participants will be admitted as members of a Series without acquiring a limited liability company interest in the Company or any Series, as contemplated by Sections 18-301(b) and 18-301(d) of the Act. The Class NE Participants will not hold an equity interest in any Series of the Company, and their rights will not be considered property rights. The Class NE Participants will have the rights and obligations set forth in this Agreement and in the applicable Services Agreement.

4.9 Services Agreements. Each Participant of a Series will enter into a Services Agreement with that Series.

4.10 Company Loaned Employee Agreement. Simultaneously with or within a reasonable period of time after the Effective Date, the Series A Board shall approve a form of Company Loaned Employee Agreement.

## ARTICLE 5

### PRINCIPAL OFFICE; REGISTERED OFFICE AND REGISTERED AGENT; FOREIGN AND OTHER QUALIFICATIONS

5.1 Principal Office; Registered Office and Registered Agent. The Company shall have its principal office at 1626 N. Litchfield Rd., Suite 230, Goodyear, Arizona. The Series A Board may change the principal office of the Company and establish additional offices of the Company, either within or without the State of Delaware, as the Series A Board may deem advisable. The registered office of the Company shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19801. The registered agent of the Company in the State of Delaware for service of process shall be The Corporation Trust Company. The Series A Board may change the registered agent of the Company to any Person who or which qualifies as a registered agent under the Act.

5.2 Foreign Qualifications. Prior to the Company's conducting business in any jurisdiction other than the State of Delaware, the Series A Board shall cause the Company to comply, to the extent procedures are available, with all requirements necessary to qualify the Company as a foreign limited liability company in such jurisdiction. The Series A Board shall execute, acknowledge, swear to and deliver all certificates and other instruments conforming to this Agreement that are necessary or appropriate to qualify, or, as appropriate, to continue or terminate such qualification of, the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

5.3 Regulatory Filings. In conjunction with its Participants, the Company shall make all necessary regulatory filings to permit the Company to operate in accordance with this Agreement.

## ARTICLE 6

### NEW PARTICIPANTS; CONTRIBUTIONS

#### 6.1 New Participants.

6.1.1. Any Person operating a nuclear power plant or one of its affiliates that it designates may become a Participant in the Company on the conditions set forth by the Unanimous Approval of the Series A Board. No Person may be admitted as a Participant of any Series unless that Person is also admitted (at the same time or before that time) as a Participant of Series A. Any Participant may be admitted to a Series upon the Unanimous Approval of the applicable Series Board.

6.1.2. The applicable Series Board may require a new Participant admitted to a Series to pay a Participation Fee to the Series in an amount determined by the Series Board as a condition of joining the Series. An equal portion of any Participation Fee will be distributed to each Participant of a Series, as follows: (i) with respect to each Class E Participant of the relevant Series, under the Services Agreement with that Class E Participant or as a distribution from the Series; and (ii) with respect to each Class NE

Participant of the Series, under the terms set forth in the Services Agreement with that Class NE Participant, if applicable.

6.1.3. In addition to the Participation Fee, each new Class E Participant of a Series shall make a Capital Contribution of \$1,000 to the New Series as of the date that the new Class E Participant joins the New Series.

6.1.4. Each new Participant of a Series that is not a Participant of another Series shall execute and deliver to the Company a Joinder and Ratification Agreement. Each new Participant of a Series will enter into a Services Agreement with the Series.

6.1.5. Certain potential new Participants may require regulatory approval or a waiver of regulatory requirements before becoming Participants in the Company or a Series. Presentation to the relevant Series Board of evidence of such required regulatory approval or waiver shall be a condition precedent for membership in the Company or a Series.

6.1.6. The rights and responsibilities of membership in the Company and the relevant Series shall vest only upon the fulfillment of all of the obligations set forth in the previous subsections of this Section 6.1, except for the obligations of the Company or a Series to distribute or pay any Participation Fee to the existing Participants of a Series.

6.2 Capital Contributions to Series A and Upon Formation of New Series. As of the Effective Date, each Class E Participant shall make a Capital Contribution of \$1,000 to Series A. Upon formation of a New Series, each Class E Participant of such New Series shall make a Capital Contribution of \$1,000 to the New Series as of the date of formation of the New Series.

6.3 Limitations on Contribution Obligations. No Participant shall be required to make any payment or contribution to the Company or any Series, except (i) for the Participation Fee, if applicable, (ii) the Capital Contributions expressly required under this Agreement, (iii) as required under a Services Agreement to which a Participant is a party or any other agreement between the Participant and the Series, or (iv) as approved by Unanimous Approval of the applicable Series Board. No Participant or its subsidiary or affiliate shall be required to provide any form of guarantee or other form of credit enhancement for the debt securities or other obligations of the Company or any Series. A Class E Participant's Capital Contributions and payments under its Services Agreement shall represent the only form of financial support required to be provided by a Class E Participant, and a Class NE Participant's payments under its Services Agreement shall represent the only form of financial support required to be provided by a Class NE Participant. This Section 6.3 does not limit a Participant's obligations under Article 9 (Limitations of Liability; Indemnification; Insurance).

6.4 Limitation on Overall Participants. Notwithstanding the foregoing, under no circumstances shall the Company add a new Participant if that addition results in the Participants collectively operating 35 percent (35%) or more of the nuclear power generating capacity in the United States, measured by combined electrical megawatt output.

## ARTICLE 7

### PARTICIPANT WITHDRAWAL, DEFAULT, BANKRUPTCY OR REMOVAL

7.1 Withdrawal of a Participant. Any Participant may withdraw voluntarily from a Series upon sixty days written notice to the Company and the Series Directors of that Series. A withdrawing Participant shall pay any amounts due under the Services Agreement of the withdrawing Participant and its share of the outstanding contractual obligations and other fees or charges with respect to that Series accrued through the end of the calendar year of withdrawal, and will be entitled to distributions with respect to the Series until the date of withdrawal. In the event of such an election to withdraw, if the withdrawing Participant is a Class E Participant, (a) the membership of such Participant shall be withdrawn in its entirety and the Fair Market Value of the Participant's Class E Interest will be determined as of the effective date of withdrawal, and a distribution will be made to the withdrawing Participant in an amount equal to the Fair Market Value of the Class E Participant's Class E Interest in the Series, and (b) the Series Directors shall be entitled, in their sole discretion, to determine the manner in which to make a distribution in respect of the Class E Interest of a withdrawing Class E Participant. In the event of such an election to withdraw, any withdrawing Participant will receive such payments, if any, as are provided to be made in the event of a withdrawal under the Participant's Services Agreement. Upon the withdrawal of a Participant from a Series, the Series Director appointed by that Participant will be removed, and the number of Series Directors on the Series Board will be reduced by one.

7.2 Reduced Time Period for Subsequent Withdrawals. In the event of a resignation of a Participant of a Series pursuant to Section 7.1, any remaining Participant of the Series may also resign, within 30 days of the effective date of the initial resignation, subject to all terms and conditions of Section 7.1 with respect to a withdrawing Participant except for the required 60-day notice period set forth therein.

7.3 Defaulting Participants. A Defaulting Participant shall pay all costs and expenses incurred by a Series as a result of the relevant default, including attorneys' fees to enforce the relevant obligations, and shall be obligated to pay the Series interest in the amount of the lesser of (i) 1% per month and (ii) the greatest percentage interest allowed under law, with respect to any amount required to be funded that is not funded when required. If the Defaulting Participant does not remedy a default in the payment of a required contribution within 30 days after the receipt of notice of such default, the Defaulting Participant shall no longer have the right (if any) to vote on any matter with respect to the applicable Series or any other Series. If the Defaulting Participant does not remedy a default in the payment of a required contribution within 60 days after the receipt of notice of such default: (i) such Defaulting Participant shall be deemed to have withdrawn from each Series of the Company; and (ii) the Company may offset against any payment due to such Defaulting Participant under this Agreement, including without limitation payments due under Section 7.1, any amounts owing by that Defaulting Participant.

7.4 No Further Rights to Series Assets. Notwithstanding anything expressly or implicitly to the contrary provided under the Act, including specifically the provisions of Sections 18-604 thereof, any Participant that withdraws or is removed from any Series shall have

no right to demand or receive any Series Asset after the date of resignation or removal except as otherwise expressly provided herein or in a Services Agreement.

7.5 Withdrawal Constitutes Default. In the event that any Participant resigns or otherwise withdraws from the Company or any Series thereof in a manner other than in accordance with this Agreement such resignation or withdrawal shall, without any further action by the Company, any Series, or any remaining Participant, constitute a default by the resigning or withdrawing Participant under this Agreement, for which the Company and the other Participants shall have all of their rights and remedies, at law or in equity, under this Agreement or under applicable law, and the Participant will be deemed a Defaulting Participant and will be subject to Section 7.3.

## **ARTICLE 8**

### **MANAGEMENT**

#### 8.1 Directors.

8.1.1. Each Series will have a Series Board which shall meet periodically to provide strategic and operational guidance to the Series and to vote on matters affecting that Series. Each Series Board shall consist of Series Directors, one of whom shall be appointed by each of the Participants of that Series. Each Participant may appoint Alternates to act on its Series Director's behalf in the event of the absence or unavailability of the Series Director appointed by that Participant. The Participants will make appointments of Series Directors and Alternates under this Section 8.1.1 by written notice to the Company, with a copy for notice purposes to the other Series Directors of the Series, delivered in accordance with this Agreement to the address of each of the Participants of the Series. Upon the admission of a new Participant to a Series, the Series Board shall be increased in size by one, and the new Participant (i) shall appoint one Series Director to the Series Board at that time or any later time and (ii) may appoint one or more Alternates as provided in this Section 8.1.1. Each Series Director shall be entitled to one vote with respect to any matters considered by the Series Board.

8.1.2. Except as otherwise stated in this Agreement, the management of each Series and the Series business shall in every respect be the responsibility of each Series Board, which shall have all rights, powers and authorities permitted by the laws of the State of Delaware, and all decisions made for and on behalf of the Series by the Series Board in accordance with the terms of this Agreement shall be binding upon the Series. The Series Directors are the "Managers" (as such term is defined and applied under the Act) of the relevant Series. Each Series Director shall devote to the management of the business of each Series so much of such Series Director's time as such Series Director, in his or her reasonable discretion and subject to the terms of this Agreement, deems reasonably necessary to the efficient operation of the Series business. The Series Boards, in extension and not in limitation of the rights and powers given them by law or by the other provisions of this Agreement, shall, in their sole and absolute discretion, have the full and entire right, power and authority, in the management of each Series' business, to

do any and all acts and things necessary, proper, convenient or advisable to effectuate the purposes of the each Series.

8.1.3. Except as otherwise provided in this Agreement, in the event any management decisions are required to be made for the Company as a whole, and not with respect to any individual Series, the power and authority to make such decisions shall be vested exclusively in the Series A Board. The Participants may, upon the Super Majority Approval of the Series A Board, appoint Officers of the Company, with titles, power, authority, and duties as the Series A Board determine. Such Officers shall not be "Managers" of the Company for purposes of the Act.

8.1.4. A Series may only undertake the following acts with the Super Majority Approval of the Series:

8.1.4.1. Incurring Common Expenses in amounts exceeding \$25,000 which were not previously approved in the Budget for such Series for such calendar year;

8.1.4.2. Entering into any lease for office space for the Series;

8.1.4.3. Appointing Officers, agents, or representatives of the Series; and

8.1.4.4. Transferring, hypothecating, compromising, or releasing any claim of a Series for an amount up to \$100,000, except on payment in full.

8.1.5. A Series may only undertake the following acts with the Unanimous Approval of the Series:

8.1.5.1. Adopting and approving the Budget with respect to a Series;

8.1.5.2. Expansion of the business activities of a Series into business activities not previously approved by Unanimous Approval of the Series Board of the Series;

8.1.5.3. Incurring expenditures in excess of \$25,000 which are not Common Expenses;

8.1.5.4. Admitting new Participants to the Series;

8.1.5.5. Borrowing money in the name of the Series, except that the following non-exclusive list of items will not be considered to be borrowing money in the name of the Series: (i) owing money to the Participants of the Series in accordance with the terms of this Agreement; (ii) incurring trade payables in the ordinary course of business; (iii) indebtedness under performance bonds, bid bonds, appeal bonds, surety bonds, completion guarantees and letter of credit obligations in the ordinary course of business; (iv) obligations with respect to the

endorsement of checks and other negotiable instruments for deposit or collection; (v) indemnification obligations and other similar obligations of the Series in favor of Series Directors or Officers; and (vi) obligations associated with the issuance of credit cards or similar debt instruments with respect to which the Company or a Series may be liable to Series Directors, Officers of the Series or other agents of the Series;

8.1.5.6. Transferring, hypothecating, compromising, or settling any claim against a Series or any tax dispute;

8.1.5.7. Transferring, hypothecating, compromising, or releasing any claim of a Series exceeding \$100,000, except on payment in full;

8.1.5.8. Selling, transferring, leasing or hypothecating any Series Assets or entering into any contract for such purpose, other than any sale, lease or hypothecation of Series Assets to secure indebtedness incurred in the ordinary course of business;

8.1.5.9. Entering into or modifying any contract or agreement between that Series and a Participant or any affiliate of any Participant including any Services Agreement, but not including this Agreement;

8.1.5.10. Voluntarily taking any Bankruptcy or other insolvency action with respect to that Series;

8.1.5.11. Dissolving or terminating the existence of that Series;

8.1.5.12. Becoming a stockholder or otherwise acquiring an equity interest or similar interest in another Person, or forming a subsidiary or other affiliated entity;

8.1.5.13. Whether in one transaction or a series of transactions, winding up, liquidating or dissolving the affairs of a Series, entering into any transaction of merger or consolidation of the Series, engaging in any recapitalization of the Series, or engaging any sale or consummation of any disposition of substantially all of the Series Assets or equity interests of the Series; and

8.1.5.14. Knowingly suffering or causing anything to be done whereby Series Assets may be seized or attached or taken in execution, or their ownership or possession otherwise endangered.

## 8.2 Series Board Meetings.

8.2.1. Unless otherwise provided in this Agreement or by applicable law, any act of a majority of Series Directors who are present at any Series Board meeting at which there is a quorum shall be an act of the Series Board. Each Series Board shall hold its

first meeting as soon as possible after the date of establishment of the Series and will hold at least one meeting annually thereafter.

8.2.2. In addition to, and not in limitation of, the provisions of Section 8.1.2 hereof, any Series Director may call for a special meeting of the Series Board ("Special Meeting") by providing the other Series Directors written notice at least five (5) business days in advance of any such Special Meeting. Any such written notice of a Special Meeting shall state the purpose and location of such Special Meeting.

8.2.3. All meetings of a Series Board shall be held at the principal office of the Company or at such other place, either inside or outside of the United States, as shall be designated in the notice of such meeting.

8.2.4. At all Series Board meetings, the presence of two-thirds or more of the Series Directors, or their Alternates, will constitute a quorum for the transaction of business of the Series Board. If a quorum is not present at any Series Board meeting, the Series Directors present shall adjourn the Series Board meeting after setting a date and time for a new meeting. Series Directors that are not represented at a Series Board meeting shall receive notice of the updated meeting time and date.

8.2.5. Attendance at all Series Board meetings may be by telephone or other electronic devices allowing the remote party or parties to both hear and be heard, real time, by all Series Directors in attendance, whether physically or by such telephone or electronic device. Series Directors may be represented by their Alternates at any Series Board meeting.

8.2.6. At each annual meeting, the Series Board shall elect a chairman of that Series Board (the "Chairman"), whose term shall expire at the beginning of the next annual meeting. The Chairman shall arrange for recording of the minutes of each meeting.

8.2.7. Any action required or permitted to be taken at any Series Board meeting may be taken without a meeting if (i) a written consent to such action is signed by the number of Series Directors, or their Alternates, that would be required (under this Agreement or applicable law) to approve such action at a meeting at which all members of the Series Board were present and (ii) such written consent is filed with the minutes of its proceedings. Such written consent may be executed in one or more counterparts and shall become effective when the required number of counterparts have been signed by the number of Series Directors, or their Alternates, required by this Agreement or applicable law to be an act of the Series Directors. Each counterpart shall be fully effective as an original and all of them together shall constitute one and the same instrument. A facsimile copy of a counterpart signature page shall constitute an original. The Series Board promptly shall provide notice to any Series Directors that did not execute the written consent, including a copy of the written consent.

8.2.8. Any Series Director may resign at any time for any reason by giving written notice to the other Series Directors of the applicable Series.

8.2.9. Notwithstanding anything to the contrary contained in this Agreement or in the Act, a Series Director may be removed (with or without cause) by the Participant which appointed such Series Director, in such Participant's sole and absolute discretion, by giving written notice to the other Series Directors of the applicable Series.

8.2.10. In the event of the death, resignation, retirement or removal of a Series Director designated hereunder, the Participant that originally designated such withdrawing Series Director may designate and appoint at any time, a successor Series Director to serve on the applicable Series Board. However, until the Participant designates a successor Series Director, the Series Board shall consist of all remaining Series Directors.

8.2.11. A Series Board may establish such committees as it deems necessary for such Series. The Series Board shall select the members of each such committee and designate the chairman thereof. The Series Board shall have the power at any time to fill vacancies and to change the membership of or to discharge any such committee. No committee established by a Series Board shall have the authority to bind or otherwise act on behalf of the Series absent the prior express delegation of such authority conferred upon it by the Series Board. The chairman of any committee or a majority of its members may fix the time and place of its meetings, unless the Series Board shall otherwise provide.

### 8.3 Officers.

8.3.1. Each Series Board shall appoint a Chairman, and may appoint a president (the "President"), a secretary (the "Secretary"), a Treasurer (the "Treasurer"), and such other Officers as it shall deem necessary or appropriate. Officers may be Company Loaned Employees. Other than the Chairman, Officers shall hold office until death, resignation, retirement or removal. Any Officer may resign at any time and for any reason by giving written notice to the Series Board. The Series Board may remove any Officer, with or without cause, at any time. Each of these Officers shall report to and shall comply with the instructions of the applicable Series Board and each of the Officers' execution of documents and other actions taken on behalf of the Series, as an Officer and, if applicable, authorized agent of the Series, shall bind the Series when authorized by action of the Series Board pursuant to the provisions of this Article 8 (Management).

8.3.2. The President of a Series, if any, shall be the principal executive officer of the Series and shall in general supervise and control all of the business and affairs of the Series. The President, if any, shall administer the affairs of a Series under the general supervision of the applicable Series Board, in accordance with the policies, plans and programs approved by the Series Board. He may sign any deeds, mortgages, bonds, contracts, or other instruments which the Series Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Series Board or by this Agreement or by statute to some other Officer or agent of a Series; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Series Board from time to time. The President

shall specifically have the authority to utilize the services of a Company Loaned Employee in a Company or Series position if the position has been authorized by the Series Board.

8.3.3. The Treasurer or an assistant treasurer of a Series, if any: shall have or provide for the custody of funds or other property of the Series; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the Series; shall deposit all funds in its custody as Treasurer or assistant treasurer, as applicable, in such banks or other places of deposit as the Series Board may from time to time designate; shall, whenever so required by the Series Board, render an account showing all transactions as Treasurer or assistant treasurer, as applicable, and the financial condition of the Series; and, in general, shall discharge such other duties as may from time to time be assigned by the Series Board or the President. The Treasurer of a Series, if any, will be the Chief Financial Officer of the Series.

8.3.4. The Secretary or assistant secretary of a Series, if any: shall see that notices are given and records and reports property kept and filed by the Series as required by law; and, in general, shall perform all duties incident to the office of Secretary of the Series, and such other duties as may from time to time be assigned by the Series Board or the President of the Series.

## **ARTICLE 9**

### **LIMITATION OF LIABILITY; INDEMNIFICATION; INSURANCE**

#### **9.1 Waivers of Liability.**

9.1.1. The parties hereto recognize that the Company is organized for the purpose of acting for the benefit of the Participants in carrying out the activities described herein.

9.1.1.1. Accordingly, individual Participants shall have no liability to any other Participant, any Series, or to the Company, or to any other Person, for any action taken or omitted to be taken by such Participant, which arises out of this Agreement or the performance hereunder, except for (1) any indemnity obligation under Section 9.2 and (2) actions taken or omitted to be taken by such Participant that (a) are a material breach of this Agreement, including but not limited to failure of a Participant to make any payment required under this Agreement or any other written agreement between a Participant and another Participant, any Series, or the Company related to the subject matter of this Agreement, or (b) constitute fraud or willful misconduct of any Participant.

9.1.1.2. Further, neither the Company nor any Series shall have any liability to any Participant, or any Series, for any action taken or omitted to be taken by the Company or the Series pursuant to this Agreement, which arises out of this Agreement or the performance hereunder, except for actions taken or omitted to be taken by the Company or the Series that (a) are a material breach of

this Agreement or any other written agreement between a Participant and the Company or the Series related to the subject matter of this Agreement, or (b) constitute fraud or willful misconduct of the Company or the Series.

9.1.1.3. Finally, except as provided by the Act, the debts, obligations and liabilities of the Company, or any Series, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, or such Series, and no Participant or Covered Person shall be personally liable for any debt, obligation or liability of the Company or any Series to Third Parties solely by reason of being a Participant of the Company, or a Covered Person. The failure of the Company or any Series to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Act or this Agreement shall not be grounds for imposing liability on any Participant or any Covered Person for liabilities of the Company or any Series.

9.1.2. In no event, whether as a result of breach of contract, tort liability (regardless of the degree of fault or negligence and whether ordinary or gross, sole, joint or concurrent, or active or passive), strict liability or otherwise, shall a Participant, any Series, or the Company be liable to any other Participant, any Series, or to the Company for consequential, special, incidental, indirect or punitive damages of any nature whatsoever (including but not limited to: any and all claims, demands, liabilities, costs, expenses, damages and causes of action resulting from loss of use of facilities, plant shutdown costs, lost profits or revenue, cost of replacement power; processing and disposal of radioactive waste, decontamination, environmental damage; interest charges or cost of capital; regulatory fines or penalties; or claims of suppliers or customers) arising from or related to this Agreement or the performance hereunder; provided that the foregoing limitations will not apply to the extent that the Company, a Series, or a Participant has a duty to indemnify a Person hereunder for such damages claimed by Third Parties (not including the Company, a Series or a Participant or any Person entitled to indemnification hereunder).

9.1.3. No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Company, any Series, or to the Participants for any acts performed by such Covered Person within the scope of this Agreement; provided, however, that each Covered Person shall be liable for his or her respective actions and/or omissions to the extent the same result from the fraud or willful misconduct of such Covered Person. A Covered Person shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors retained by the Company, or any Series, and any act of or failure to act by such Covered Person in good faith reliance on such advice shall in no event subject the Covered Person to liability to the Company, any Series, or any Participant.

9.1.4. To the extent that, at law or in a equity, a Covered Person has duties (including fiduciary duties) to the Company, a Series, or any Participant, those duties are hereby eliminated to the fullest extent allowed under Delaware law and the Act, including §18-1101 of the Act. All liabilities for breach of contract and breach of duties (including

fiduciary duties) of a Covered Person to the Company, any Series, or any Participant are hereby eliminated to the fullest extent allowed under Delaware law and the Act, including §18-1101 of the Act. Notwithstanding the foregoing, nothing in this Section 9.1 will limit the liability of a Covered Person for the Covered Person's fraud or willful misconduct.

9.1.5. For the purposes of this Section 9.1, the term "Participant" shall also include parents, subsidiaries, affiliates and general partners of Participants as well as the directors, officers, employees, or agents thereof.

9.2 Indemnification of Non-Participating Participants. To the maximum extent permitted by law, any Non-Participating Participant that is not participating in a Series that gives rise to a claim, demand, liability cost (including but not limited to additional contributions to the Company, or any Series, that may be required as a result of such claim), expense, damage or cause of action, shall be indemnified, defended and held harmless by the Participants of that Series from and against any and all such claims, demands, liabilities, costs, expenses, damages and causes of action, including but not limited to breach of contract, tort liability (regardless of the degree of fault or negligence and whether ordinary or gross, sole, joint or concurrent, or active or passive), strict liability or otherwise, arising out of or incidental to such Series; provided, however, that the liability of each Participant of a Series hereunder shall be individual and not joint, and that each Participant of the Series shall be liable only for its pro rata share of any indemnification amount, in proportion to its participation in the Series or the transaction giving rise to the liability; provided, further, that the Non-Participating Participant will not be indemnified, defended or held harmless for any claims arising out of that Non-Participating Participant's fraud or willful misconduct.

9.3 Indemnification of Covered Persons.

9.3.1. Right to Indemnification. Subject to the limitations and conditions as provided in this Article 9 (Limitation of Liability; Indemnification; Insurance), each Covered Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action or other proceeding, whether civil, criminal, administrative, arbitative or investigative, or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding (hereafter a "Proceeding"), by reason of any actions or omissions or alleged acts or omissions of such Covered Person relating to the Company or the applicable Series, shall be indemnified by the Company or the applicable Series to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) (all collectively the "Indemnification Amounts") actually incurred by such Covered Person at the time any such Indemnification Amounts are incurred in connection with such Proceeding. Indemnification under this Article 9 (Limitation of Liability; Indemnification; Insurance) shall continue as to a Covered Person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. Without limiting the generality of the foregoing, it is expressly acknowledged that the indemnification provided in this

Article 9 (Limitation of Liability; Indemnification; Insurance) could involve indemnification for negligence or under theories of strict liability.

9.3.2. Limitation on Indemnification. Subject to applicable law, notwithstanding any language in this Article 9 (Limitation of Liability; Indemnification; Insurance) to the contrary, in no event shall any Person be entitled to indemnification pursuant to this Article 9 (Limitation of Liability; Indemnification; Insurance) if it is established or admitted either (a) in a final judgment of a court of competent jurisdiction or (b) by such Person in any affidavit, sworn statement, plea arrangement or other cooperation with any government or regulatory authority that the Person's acts or omissions that would otherwise be subject to indemnification under this Article 9 (Limitation of Liability; Indemnification; Insurance) constituted fraud or willful misconduct.

9.3.3. Appearance as a Witness. Notwithstanding any other provision of this Article 9 (Limitation of Liability; Indemnification; Insurance), the Company or the applicable Series may pay or reimburse expenses incurred by a Covered Person in connection with his or her appearance as a witness or other participation in a Proceeding at a time when he or she is not a named defendant or respondent in the proceeding.

9.3.4. Non-Exclusivity of Rights. The indemnification and advancement and payment of expenses provided by this Article 9 (Limitation of Liability; Indemnification; Insurance) shall not be deemed exclusive of any other rights to which a Covered Person indemnified pursuant to this Article 9 (Limitation of Liability; Indemnification; Insurance) may have or hereafter acquire under any law (common or statutory), provision of this Agreement, any agreement or otherwise.

9.3.5. Contract Rights. The rights granted pursuant to this Article 9 (Limitation of Liability; Indemnification; Insurance) shall be deemed to be contract rights, and no amendment, modification or repeal of this Article 9 (Limitation of Liability; Indemnification; Insurance) shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

9.3.6. Savings Clause. If this Article 9 (Limitation of Liability; Indemnification; Insurance) or any portion of this Agreement shall be invalidated on any ground by any court of competent jurisdiction, then the Company or the applicable Series shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this Article 9 (Limitation of Liability; Indemnification; Insurance) as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the fullest extent permitted by any applicable portion of this Article 9 (Limitation of Liability; Indemnification; Insurance) that shall not have been invalidated and to the fullest extent permitted by applicable law.

9.3.7. Consultation with Counsel. The right to indemnification conferred in this Article 9 (Limitation of Liability; Indemnification; Insurance) on any Covered Person shall include the right to consult with legal counsel, financial advisors and accountants

selected by such Covered Person, and any act or omission suffered or taken by such Covered Person on behalf of the Company or the applicable Series or in furtherance of the interests of the Company or the applicable Series in good faith in reliance upon and in accordance with the advice of such counsel, financial advisors or accountants will be full justification for any such act or omission, and each such Covered Person will be fully protected in so acting or omitting to act; provided that such counsel, financial advisors or accountants were selected with reasonable care.

9.3.8. Primary Indemnification. The Company and each Series acknowledges and agrees that the obligation of the Company or the applicable Series under this Agreement to indemnify or advance expenses to any Covered Person for the matters covered under this Agreement shall be the primary source of indemnification and advancement of such Covered Person in connection therewith and any other obligation to indemnify or advance expenses to such Covered Person shall be secondary to the Company's or the applicable Series' obligation, and shall be reduced by any amount that the Covered Person may collect as indemnification or advancement from the Company or the applicable Series.

9.4 Advancement of Expenses. The rights to indemnification conferred in this Article 9 (Limitation of Liability; Indemnification; Insurance) shall include the right to be paid or reimbursed by the Company or the applicable Series the reasonable expenses incurred by a Covered Person or a Participant of the type entitled to be indemnified above who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding, without any determination as to such Covered Person's or Participant's ultimate entitlement to indemnification under, upon receipt of a written affirmation by such Covered Person or Participant of such Covered Person's or Participant's good faith belief that such Covered Person or Participant has met the standard of conduct necessary for indemnification under applicable law and this Article 9 (Limitation of Liability; Indemnification; Insurance) and a written undertaking by or on behalf of such Covered Person or Participant to repay all amounts so advanced if it shall ultimately be determined that such Covered Person or Participant is not entitled to be indemnified by the Company or the applicable Series under this Article 9 (Limitation of Liability; Indemnification; Insurance) or if such indemnification is prohibited by applicable law.

9.5 Insurance. The Company or any Series shall purchase and maintain insurance, at its expense, on behalf of itself and any Covered Person, whether or not the Company or the Series would have the power to indemnify such Person against such liability, expense or loss under the provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance): (a) to indemnify the Company for any obligation which it incurs as a result of the indemnification of Series Directors, Officers of the Series, employees and agents under the provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance); and (b) to indemnify or insure Series Directors, Officers of the Series, employees and agents against liability in instances in which they may not otherwise be indemnified by the Company under the provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance). The amount and terms of any such insurance for any Series will be as determined by the applicable Series Board. Notwithstanding the foregoing, in the event that multiple Series obtain such insurance, the multiple Series shall obtain such insurance to the greatest extent practicable from a single provider and in a single policy with multiple endorsements, and the Series A Board shall

equitably allocate amounts payable by each Series with respect to such insurance based upon the relative fees for such insurance attributable to the activities of each Series. The Company or any Series may purchase and maintain insurance or another arrangement, at its expense, as determined by the Series A Board, on behalf of itself, or any manager, officer, employee or agent of the Company or the Series, or any Person who serves on behalf of the Company or the Series as a partner, manager, member, officer, director, employee or agent of any other entity against any liability, expense or loss, whether or not the Company or the Series would have the power to indemnify such Person against such liability, expense or loss under the provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance).

9.6 Enforceability. The parties hereto, having been advised by legal counsel, acknowledge and agree that they are sophisticated parties and that the provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance) represent bargained for allocations of risk, and that the economics, terms and conditions of this Agreement reflect such allocations.

9.7 Survival. The provisions of this Article 9 (Limitation of Liability; Indemnification; Insurance) shall survive the termination, cancellation, expiration or completion of performance of this Agreement.

## ARTICLE 10

### COMPANY LOANED EMPLOYEES; COMMON EXPENSES

#### 10.1 Company Loaned Employees.

10.1.1. Any Series may retain Company Loaned Employees, consultants, or a management company to provide services to the Series. Staffing for any Series shall be by either Company Loaned Employees or contracted staff. The applicable Series Board shall cause the Series to reimburse to the Lending Participant the salaries, employee benefits and applicable overhead costs of the Company Loaned Employees for services rendered to that Series pursuant to a Company Loaned Employee Agreement. To the extent practicable, the Company and the Participants should strive for an equal number of Company Loaned Employees provided by each Participant throughout the Company.

10.1.2. Notwithstanding any other provision of this Agreement, Company Loaned Employees shall be deemed to be employees or contractors only of the Lending Participant and not of the Company or any Series. All Company Loaned Employees shall be required to comply with the Company's or any Series' policies and procedures relating to employee conduct. Payments made by a Series with respect to Company Loaned Employees of that Series under a Company Loaned Employee Agreement will be Common Expenses.

#### 10.2 Common Expenses; Budget.

10.2.1. For each calendar year except for the calendar year that includes the Effective Date, on or before June 30 of that calendar year, the Chairman of each Series or the Chairman's designee shall present to the Series Board of that Series a proposed budget for the Common Expenses to be incurred during the following calendar year with

respect to that Series. Within 60 days after presentation of the proposed budget by the Chairman of the Series or the Chairman's designee, each Series Board shall adopt by Unanimous Approval of that Series Board the budget for Common Expenses to be incurred during the following calendar year with respect to that Series, which budget will include a margin for contingencies or unexpected Common Expenses as appropriate in the circumstances and as determined by the applicable Series Board (the "Budget" for that calendar year). If no annual Budget is approved, the Series shall operate in accordance with the last approved annual Budget until a new annual Budget is approved. Notwithstanding the foregoing, as of the Effective Date, the Participants have agreed on the Budget for the calendar year that includes the Effective Date, which will be the Budget for that calendar year for all purposes of this Agreement.

10.2.2. Common Expenses will be paid by the Participants in accordance with this Agreement and the Services Agreements between the Participants and the applicable Series.

## ARTICLE 11

### CONFIDENTIAL INFORMATION AND RECORDS

11.1 Definitions. For purposes of this Article 11 (Confidential Information and Records) the following terms are defined:

11.1.1. "Confidential Information" means all information in whatever form originated by or transmitted by the Disclosing Party, including, without limitation, documents, writings, designs, drawings, specifications and information incorporated in computer software or held in electronic storage media, which the Disclosing Party has marked as confidential or proprietary or which, based on the nature of the information provided, would reasonably be expected to be confidential or proprietary information of the Disclosing Party. "Confidential Information" does not include information:

(i) that at the time of disclosure is in the public domain, or after disclosure becomes, through no fault of the Receiving Party, part of the public domain as evidenced by generally available documents or publications; or

(ii) that is supplied to the Receiving Party by a Third Party as a matter of right and which is not subject to any restriction as to confidential treatment on the part of said Third Party; or

(iii) that was available to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Disclosing Party; or

(iv) that is independently developed by the Receiving Party or its affiliates; or

(v) that is explicitly declared as not being confidential by the Disclosing Party.

11.1.2. "Disclosing Party" means the Participant, the Company or any Series disclosing Confidential Information.

11.1.3. "Receiving Party" means the Participant, the Company or any Series in the position of receiving Confidential Information from another Participant, the Company or any Series.

11.2 Permitted Disclosures. During the course of performance of this Agreement, the Company, any Series, or a Participant (in such capacity, the "Disclosing Party") may disclose Confidential Information to the Company, any Series, or another Participant (each in such capacity the "Receiving Party").

11.3 Confidential Treatment. The Receiving Party will hold such Confidential Information in confidence and may not disclose said Confidential Information to any Person, other than the Company, any Series, or another Participant, or retained advisors pledged to confidentiality, including legal counsel, unless the Receiving Party enters into a signed confidentiality agreement with the Person agreeing to keep the Confidential Information confidential on substantially the same terms set forth herein.

11.4 Ownership of Confidential Information. All Confidential Information which is disclosed by the Disclosing Party or its affiliates to the Receiving Party under this Agreement shall be and remain property of the Disclosing Party and its affiliates. The Receiving Party agrees that, upon the request of the Disclosing Party, it will use its best efforts to return to the Disclosing Party or destroy all materials, including all copies thereof, constituting Confidential Information provided by the Disclosing Party hereunder.

11.5 Required Disclosures. In the event that a Receiving Party is requested or required (by oral questions, interrogatories, requests for information or subpoena of documents, civil, judicial or administrative investigative demand or similar process) to disclose any Disclosing Party's Confidential Information received pursuant to this Agreement, it is agreed that the Receiving Party shall provide the Disclosing Party with prompt notice of such request so that it may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, (i) the Receiving Party is nonetheless, in the opinion of its counsel, compelled or under reasonable threat of compulsion to disclose the Confidential Information, the Receiving Party may disclose such information to the extent that it is compelled to do so or (ii) the Receiving Party is required under the rules or regulations of the Securities and Exchange Commission or a recognized stock exchange on which any of the securities of the Receiving Party or any of its affiliates are listed, the Receiving Party may disclose such information to the extent required under such rules or regulations.

11.6 Access to Company Records. Subject to the provisions of this Article 11 (Confidential Information and Records), the Participants shall have access to and the right to copy all records relating to this Agreement, the Company or any Series ("Company Records") at all reasonable times and upon reasonable notice. In the event a request involves Confidential Information, such confidential Company Records shall only be disclosed after obtaining the Disclosing Party's written consent. Subject to the provisions of this Section 11.6, the Company

and any Series thereof shall allow full access to all such Company Records (including but not limited to its transactional and related records) if such request is made by any competent local, state or federal authority with jurisdiction over any Participant. For the purposes of this Section 11.6, documents and records provided by Participants to the Company or any Series for the purpose of contract administration are deemed not to be Company Records.

11.7 Part 810 Information. The Company, each Series and the Participants acknowledge that confidential, proprietary information and technical data regarding reactor operations and associated safety systems are "DOE-Controlled Nuclear Information" that is subject to the export control requirements of 10 CFR Part 810 (or any successor regulation or related statute thereto, "Part 810"), promulgated by the U.S. Department of Energy ("DOE"), concerning Assistance to Foreign Atomic Energy Activities. Any transfer of such information to any Persons that are not incorporated or organized in the United States, to Persons who are not citizens or lawful permanent residents of the United States or to recipients outside the United States ("Non-U.S. Persons") is within the scope of Part 810. The Company, each Series, and the Participants acknowledge that they cannot provide or give access to such DOE-Controlled Nuclear Information to Non-U.S. Persons, unless such transfer or access is pursuant to a specific or general authorization issued by DOE pursuant to Part 810. The Company, each Series, and each Participant shall each ensure its compliance with all applicable United States laws and regulations concerning export of DOE-Controlled Nuclear Information to Non-U.S. Persons. No exception to the obligations to keep information confidential under this Agreement, including without limitation the obligations under Section 11.2 or Section 11.5, applies to the requirements of this Section 11.7 with respect to DOE-Controlled Nuclear Information.

11.8 Company Records Policy. The Company shall develop a policy to manage records and documents in accordance with the provisions of this Article 11 (Confidential Information and Records).

## ARTICLE 12

### LEGAL TITLE TO SERIES ASSETS

12.1 Title to Series Assets. Legal title to the Series Assets (or any portion thereof) shall be taken and held in the manner which the Series Board determines to be in the best interests of the Series. Without limiting the foregoing grant of authority, the Series Board may take and hold title or arrange to have title taken and held in the name of any Participant or others, as trustee(s), nominee(s) or qualified intermediary(ies) for or on behalf of the Series.

12.2 Nature of Class E Participant's Interest. Each Class E Participant's Class E Interest shall be considered personal property and not a real property interest. Accordingly, no Participant shall have the right to request a partition (or similar division) of any Series Assets (or any portion thereof).

## ARTICLE 13

### BANK ACCOUNTS; ACCOUNTING AND RECORDS

13.1 Deposit of Funds. The funds of a Series shall be deposited in one (1) or more bank or investment accounts as shall be determined by, and in the sole and absolute discretion of, the applicable Series Board, which shall arrange for appropriate conduct of such account or accounts.

13.2 GAAP Accounting; Fiscal Year. In addition to the calculation of Series Capital Accounts, Series Profits and Series Losses, and the Book Value of Series Assets required for federal income tax purposes and as set forth in this Agreement, books and records of each Series shall also be kept, and the Series financial condition and the results of the Series operations shall also be recorded, in accordance with generally accepted accounting principles and the accounting methods elected to be followed by the Series Board. The books and records of a Series shall reflect all Series transactions and shall be appropriate and adequate for the Series' business.

13.3 Fiscal Year. The Fiscal Year of each Series for financial reporting and for federal income tax purposes shall be its required taxable year as determined pursuant to Section 706 of the Code (such period being referred to herein as the "Fiscal Year" of that Series).

13.4 Series Books and Records. With respect to each Series, and pursuant to and in fulfillment of the requirements of Section 18-215(b) of the Act, the Series Directors of the Series shall cause to be established and maintained for such Series the following records and accounts which, for each such Series, shall be kept separate and distinct from the records and accounts for each other Series:

13.4.1. financial records with respect to the assets, liabilities, receipts, expenses and activities of such Series prepared in accordance with generally accepted accounting principles; provided that, in preparing the financial records for all Series, no tax benefit and no tax receivable shall be recorded for any pre-tax net losses reflected in the financial records; and

13.4.2. all necessary tax records.

The form of the books and records referred to above shall be based on and derived from the books and records prepared by Series Directors with respect to the Series Assets.

13.5 Location of Books and Records. The Company shall keep at its principal office or at such other or additional offices (either within or without the State of Delaware) as the Series A Board shall deem advisable: (i) books and records setting forth a current list of the full name and last known address of each Participant; (ii) a copy of the Certificate and this Agreement, and all amendments thereto; (iii) copies of the federal, state and local income tax returns and personal property or intangible property tax returns of each Series, if any; (iv) copies of any financial statements of each Series, which reflect the Series' business and financial condition; and (v) any other information and records required by the Act.

13.6 Tax Elections; Transfers of Interest. The Series Directors of a Series may make all elections for Federal income tax purposes with respect to such Series; provided, however, that, in case of a transfer of all or part of the Class E Interest of a Class E Participant or the distribution to a Participant by the Company, the election pursuant to Code Sections 734, 743 and 754 to adjust the basis of the applicable Series Assets shall be timely made upon the request of a Participant.

13.7 Tax Matters Partner. The Series Board shall designate a "Tax Matters Partner" of the Company and each Series to serve as contemplated by Section 6231(a)(7) of the Code for federal income tax purposes and to perform such other duties as set forth herein with respect to such Series.

13.8 Information Provided to IRS. Pursuant to Section 6223(c)(3) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Company or a Series thereof, the Tax Matters Partner shall furnish the IRS with the name, address and profit interest of each of the Participants of that Series, provided that such information is provided to the Company or Series by the Participants.

13.9 Tax Matters Partner Discretion; Limitation of Liability.

13.9.1. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the Tax Matters Partner, but shall be taken in consultation with the applicable Series Board, except that the Super Majority Approval or Unanimous Approval of the Series Board will be required to the extent set forth in Section 8.1.4 or Section 8.1.5. The Tax Matters Partner may take an action requiring approval of the Series Board to the extent approved as required by this Agreement, by Super Majority Approval, Unanimous Approval, approval of the applicable Series Board, or otherwise.

13.9.2. The provisions relating to indemnification set forth in Article 9 (Limitation of Liability; Indemnification; Insurance) hereof shall be fully applicable to the Tax Matters Partner in his capacity as such.

13.10 Compensation; Costs and Expenses. The Tax Matters Partner shall receive no compensation for the services that it provides under this Agreement, except that, to the extent that the Tax Matters Partner utilizes the services of its internal tax personnel in performing its obligations under this Agreement, the Tax Matters Partner will be entitled to reasonable compensation from the applicable Series for performing such services as approved by the applicable Series Board, and compensation relating to such services will be deemed a Common Expense. All Third Party costs and expenses incurred by the Tax Matters Partner in performing his, her or its duties as such (including legal and accounting fees) shall be borne by the applicable Series as determined by the applicable Series Board. Nothing herein shall be construed to restrict the Company or any Series from engaging an accounting firm to assist the Tax Matters Partner in discharging the Tax Matters Partner's duties hereunder and being compensated for the applicable expenses.

13.11 Access to Records; Audits. Each Participant shall have complete and independent access and audit rights with respect to Company or Series records relating to such Participant and the Participant's auditor will have the right to reproduce any of such records. Series A shall arrange no less than every two (2) years for an independent financial audit of such Series that includes reviewing and testing the system of internal controls, including among other things those for allocation of expenses to Participants, compliance with the terms of this Agreement, written agreements between the Company, any Series, and/or any Participants, and compliance with Series policies and procedures as determined by the applicable Series Board. Each other Series will make such auditing arrangements as are determined by (i) the Series A Board upon authorization of the applicable Series, or (ii) in the absence of such a determination, by the applicable Series Board. The auditor selected for this purpose shall present its audit report, findings, and recommendations for improvement to the applicable Series Board. Each Participant of a Series shall have the right from time to time to audit the books and records pertaining to such Series to ensure compliance with this Agreement, including books and records pertaining to costs allocated to any of them. Any such audit shall be at the expense of the Participant initiating such audit, and each Participant of that Series and the relevant Series Directors shall reasonably cooperate with the Participant and its representatives in connection with any such audit.

## ARTICLE 14

### ASSIGNABILITY AND TRANSFERS OF INTERESTS

#### 14.1 Transfer of Interest.

14.1.1. Except as required under the Act, a Participant may not assign, transfer, convey, encumber, pledge or in any way alienate all or any part of such Participant's legal and/or beneficial right, title and interest in and to, (i) with respect to a Class E Participant, such Class E Participant's Class E Interest or its rights or obligations under its Services Agreement or this Agreement, or (ii) with respect to a Class NE Participant, its rights or obligations under its Services Agreement or this Agreement ("Transfer"), without the Unanimous Approval of the Series Board of the applicable Series, except as permitted by Section 14.1.2. No Participant may Transfer to a Person that is not also a Participant of Series A at the time of the Transfer. Any Transfer by a Class E Participant must include a Transfer of the Class E Participant's Class E Interest and an assignment of all of the Class E Participant's rights and obligations under both this Agreement and that Class E Participant's Services Agreement. Any Transfer by a Class NE Participant must also include an assignment of all of the Class NE Participant's rights and obligations under both this Agreement and that Class NE Participant's Services Agreement. Any alleged Transfer in violation of this Agreement will be null, void, and of no force or effect.

14.1.2. A Participant may take the following actions without the Unanimous Approval of the Series Board of the applicable Series:

14.1.2.1. a Participant may Transfer to an affiliate that is wholly-owned by the parent of the assigning Class E Participant;

14.1.2.2. a Class E Participant may grant a mortgage, pledge, lien or security interest on its Class E Interest or its rights under this Agreement or under its Services Agreement to creditors of the Class E Participant; provided that the rights of the lien holder if the lien holder becomes a Class E Participant will be no greater than those held by any other Class E Participant hereunder; and

14.1.2.3. a Participant may Transfer to an assignee of the Participant's entire business or in connection with a transfer of operating license of the nuclear power generation facility operated by that Participant; provided, however, that, without the Unanimous Approval of the Series Board of the applicable Series, no Transfer may be made to a Person that operates or has an affiliate that operates more than one nuclear generating facility (but a single, multi-unit nuclear generating facility will not be considered to be more than one nuclear generating facility for these purposes).

14.1.3. The rights of a Person receiving a Transfer as contemplated by this Section 14.1 will not vest until that Person executes and delivers to the applicable Series a Services Agreement and, if the Person was not a Participant prior to the Transfer, a Joinder and Ratification Agreement.

14.1.4. In connection with a Transfer permitted by this Section 14.1, if the Person Transferring or no longer holding the interest is a Class E Participant, and the Person to whom that Person desires to Transfer desires to become a Class NE Participant, then the Transfer may be effected as a withdrawal of the Transferring Class E Participant from the Company in accordance with Section 7.1 and a joinder of the proposed Transferee Class NE Participant in accordance with Section 6.1, except that such transactions will not require separate approval of any Series Board and the notice periods and periods for consummation of the transactions that would apply to a withdrawal will not be applicable, such that the transactions can be consummated contemporaneously.

14.2 Interests Not Registered. THE CLASS E INTERESTS AND MEMBERSHIP RIGHTS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH CLASS E INTERESTS AND MEMBERSHIP RIGHTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

14.3 No Right to Registration. The Participants shall not have the right to demand that the Company register any Class E Interest under the Securities Act of 1933.

14.4 Transfers Violating Securities Laws; Tax Termination. In addition to other restrictions found in this Agreement, and notwithstanding anything in Section 14.1 to the contrary, no Class E Participant shall transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Class E Interest: (i) without compliance with all federal and state securities laws; or (ii) without the consent of the applicable Series Directors if the Class E

Interest of a Series to be transferred, when added to the total of all other Class E Interests of that Series transferred in the preceding twelve (12) consecutive months prior thereto, would cause the tax termination of the Series under Code Section 708(b)(1)(B). Any transfer in violation of this Section 14.4 shall be null and void and the proposed transferee shall not become a Class E Participant in the Series for the purpose of this Agreement or the Act.

## ARTICLE 15

### DISSOLUTION AND TERMINATION OF A SERIES OR THE COMPANY

15.1 Dissolution. A Series shall be dissolved, the Series Assets shall be disposed of, and its affairs wound up, upon the earliest to occur of the following events (an "Event of Dissolution"):

15.1.1. the Unanimous Approval of the Series Board of the dissolution of the Series;

15.1.2. the entry of a decree or order of dissolution issued under Delaware law; or

15.1.3. the happening of any event which makes it unlawful for the Series to continue its business.

The Participants hereby expressly agree and acknowledge that the resignation, removal, Bankruptcy or dissolution of a Participant, or other event that terminates the continued membership of a Participant under the Act, shall not constitute an Event of Dissolution.

15.2 Termination of Series. The Series shall terminate when all the Series Assets have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid or illiquid assets of the Series, shall, unless otherwise required by the Act, be distributed as follows:

15.2.1. first, to the creditors of the Series for the payment or due provision for the liabilities of the Series (including loans, if any, to the Series from Participants); and

15.2.2. the balance to the Participants, with respect to the Class E Participants, in accordance with Section 16.1 and, with respect to Class NE Participants, as set forth under their Class NE Agreements.

15.3 Certificate of Cancellation. Following the distribution of the net proceeds under Section 15.2 hereof and the completion of winding up the affairs of all Series (and not any individual Series), the Series Board of the last existing Series is authorized and directed to have prepared and filed a certificate of cancellation of the Company with the Office of the Secretary of State of Delaware, in accordance with §18-203 of the Act, and take any and all other actions as may be necessary and/or appropriate under the Act to dissolve and terminate the Company.

**ARTICLE 16**  
**DISTRIBUTION RIGHTS**

16.1 Distributions. Subject to applicable law and any limitations contained elsewhere in this Agreement, the Series Directors may elect from time to time to distribute Distributable Cash with respect to a Series to the Class E Participants of that Series, which distributions shall be in the following order of priority:

(i) First, to the Class E Participants of the Series to the extent of, and in proportion to, their respective Unreturned Capital Contribution Balances associated with the Series, until each Class E Participant has recovered the Class E Participant's Unreturned Capital Contribution Balance associated with the Series;

(ii) Thereafter, to the Class E Participants of the Series in proportion to their respective Percentage Interests associated with the Series.

All such distributions shall be made only to the Persons who, according to the books and records of the Series, are the holders of record of the Class E Interests associated with the Series in respect of which such distributions are made on the actual date of distribution. Subject to Section 16.4, neither the Series nor any Series Director shall incur any liability for making distributions in accordance with this section. No distributions of Distributable Cash will be made unless the applicable Series has sufficient funds to satisfy all of its obligations as of the time of distribution under each of its Services Agreements.

16.2 Tax Distributions. Notwithstanding Section 16.1, and to the extent Distributable Cash with respect to a Series is available for distribution, the Series Directors shall cause a Series to distribute to each Class E Participant of that Series in cash, within thirty (30) days of the incurrence of any tax liability by each Class E Participant as a result of such Class E Participant's ownership of a Class E Interest in the applicable Series (to the extent not otherwise distributed pursuant to Section 16.1), an amount equal to the aggregate state and federal income tax liability such Class E Participant would have incurred as a result of such Class E Participant's ownership of the Class E Interest calculated (i) as if such Class E Participant's income were taxable at the maximum marginal income tax rates provided for with respect to taxable corporations under the federal, state and local income tax laws applicable to the Class E Participant in the Applicable Series with the highest such tax rate, as determined by the applicable Tax Matters Partner, (ii) as if allocations from the applicable Series pursuant to Section 17.5 hereunder were, for the applicable period, the sole source of income and loss for such Class E Participant, and (iii) by taking into account the carryover of items of loss, deduction and expense previously allocated by the Series to such Class E Participant (such distributions, "Tax Distributions"). Any Tax Distributions will be deemed to be an advance distribution of amounts otherwise distributable to the Class E Participants of the applicable Series pursuant to Section 16.1 and will reduce the amounts that would subsequently otherwise be distributable to such Class E Participants pursuant to Section 16.1.

16.3 No Right to Distribution in Kind. A Class E Participant, regardless of the nature of the Class E Participant's Capital Contribution to a Series, has no right to demand and receive any distribution from the Company or any Series in any form other than money. Except as provided in Article 15 (Dissolution and Termination of a Series or the Company), no Class E Participant may be compelled to accept from the Series a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Class E Participants and no Class E Participant may be compelled to accept a distribution of any asset in kind.

16.4 Restrictions on Distributions.

16.4.1. No distributions shall be made if, after giving effect to the distribution:

16.4.1.1. The Series would not be able to pay its debts as they become due in the usual course of business; or

16.4.1.2. The Series' total assets would be less than the sum of its total liabilities.

16.4.2. The Series Directors may base a determination that a distribution is prohibited on any of the following:

16.4.2.1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

16.4.2.2. Any other method that is reasonable in the circumstances.

16.4.3. The effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or the date payment is made if it occurs more than one hundred twenty (120) days of the date of authorization.

16.5 Return of Distributions. Class E Participants and who receive distributions made in violation of the Act or this Agreement shall return such distributions to the applicable Series. Except for those distributions made in violation of the Act or this Agreement, no Class E Participant shall be obligated to return any distribution to the Company or any Series or pay the amount of any distribution for the account of the Company or any Series or to any creditor of the Company. The amount of any distribution returned to the Company by a Class E Participant or paid by a Class E Participant for the account of the Company or to a creditor of the Company shall be added to the Series Capital Account from which it was subtracted when it was distributed to the Class E Participant.

## ARTICLE 17

### ALLOCATIONS, OTHER TAX MATTERS

17.1 Tax Treatment of each Series as a Separate Partnership. Notwithstanding the classification of the Company as a single legal entity under the Act, the undersigned parties hereto intend to treat each Series as a separate partnership in which only the Class E Participants

of that Series are partners for federal income tax and all other tax purposes consistent with principles set forth in Proposed Treasury Regulations Section 301.7701-1 and shall prepare all tax books, records, and filings consistent with such intent. Accordingly, all capital account, allocation, and other tax provisions set forth in this Agreement shall be interpreted and applied on a Series-by-Series basis to reflect the tax treatment of each Series as a separate partnership in which only the Class E Participants of that Series are partners.

## 17.2 Series Capital Accounts.

17.2.1. The Company shall establish and maintain a separate individual partner's equity account for each Class E Participant of each Series in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv) and this Section 17.2 (a "Series Capital Account" with respect to that Class E Participant and such Series).

17.2.2. Each Series Capital Account of a Class E Participant shall be maintained in accordance with the following principles:

17.2.2.1. To each Series Capital Account of a Class E Participant there shall be credited (A) the Book Value of any asset transferred to the Company as a Capital Contribution with respect to the applicable Class E Interest and Series, (B) the Class E Participant's distributive share of Series Profits and any items in the nature of income or gain which are specially allocated pursuant to this Agreement with respect to the applicable Class E Interest and Series, and (C) the amount of any Series liabilities assumed by such Class E Participant or which are secured by any Series Asset distributed to the Class E Participant with respect to with respect to the applicable Class E Interest and Series.

17.2.2.2. To each Series Capital Account of a Class E Participant there shall be debited (A) the amount of money and the Book Value of any Series Asset distributed to the Class E Participant pursuant to any provision of this Agreement with respect to the applicable Class E Interest and Series, (B) the Class E Participant's distributive share of Series Losses and any items in the nature of expenses or losses which are specially allocated pursuant to this Agreement with respect to the applicable Class E Interest and Series, and (C) the amount of any liabilities of such Participant assumed by the Company or which are secured by any asset contributed by such Class E Participant to the Company with respect to the applicable Class E Interest and Series.

17.2.3. If a Class E Participant transfers all or a part of the Class E Participant's Class E Interest in accordance with this Agreement, such Class E Participant's Series Capital Account attributable to such transferred Class E Interest or portion thereof shall carry over to the new owner of such Class E Interest pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(1).

17.2.4. The Series Capital Accounts of the Class E Participants of a Series shall be adjusted to reflect a revaluation of the applicable Series Assets made pursuant to the definition of Book Value; provided that any adjustments hereunder shall be made in

accordance with and to the extent provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and (g).

17.2.5. The foregoing provisions of this Section 17.2 and the other provisions of this Agreement relating to the maintenance of Series Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Tax Matters Partner of a Series shall determine that it is prudent to modify the manner in which Series Capital Accounts of that Series or any debits or credits thereto are computed in order to comply with such Treasury Regulations, the Tax Matters Partner may make such modifications without the consent of the Participants.

### 17.3 Allocations of Book Items.

17.3.1. After giving effect to the special allocations set forth in Section 17.3.2, Series Profits and Series Losses for each Fiscal Year (or shorter period if required by Section 706 of the Code, as applied by the applicable Series Directors pursuant to Section 17.4) attributable to the Company's ownership of the associated Series Assets shall be allocated to the Class E Participants of that Series in such a manner so that the Series Capital Account of each such Class E Participant equals (as of the end of such Fiscal Year or shorter period and to the fullest extent possible) the amount that would be distributed to such Class E Participant if all Series Assets of the applicable Series, including cash, were sold for cash equal to their respective Book Values, all liabilities allocable to such properties were then due and were satisfied according to their terms, all minimum gain chargebacks required by Section 17.3.2 of this Agreement were made, and all obligations of the Class E Participants of the applicable Series to contribute additional capital to the Company with respect to the applicable Series were satisfied and all remaining proceeds from such sale were distributed to the Class E Participants of that Series pursuant to the Section 16.1. Notwithstanding the foregoing, no Series Losses shall be allocated to a Class E Participant to the extent such an allocation would create or increase a deficit balance in that Class E Participant's applicable Series Capital Account (after crediting to such Series Capital Account any amounts which such Class E Participant is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5) and debiting to such Series Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6)).

17.3.2. The allocations set forth in Section 17.3.1 are intended to allocate Series Profits and Series Losses (and the items comprising Series Profits and Series Losses) to the Class E Participants in compliance with the requirements of Section 704(b) of the Code and the Regulations promulgated thereunder. If the Tax Matters Partner of the applicable Series reasonably determines that the allocation of Series Profits and Series Losses (or the items comprising Series Profits and Series Losses) for any period pursuant to the provisions of Section 17.3.1 do not satisfy Section 704(b) of the Code or the Regulations promulgated thereunder (including the minimum gain and partner minimum gain chargeback requirements of Section 1.704-2 of the Regulations and the qualified

income offset requirement of Section 1.704-1(b)(2)(ii)(d) of the Regulations), then notwithstanding anything to the contrary contained in this Agreement, items otherwise included in the computation of Series Profits and Series Losses shall be specially allocated in such manner as the Tax Matters Partner of that Series shall reasonably determine to be required by Section 704(b) of the Code and the Treasury Regulations promulgated thereunder; provided, however, that, if the Tax Matters Partner exercises its authority to make such allocations, then, notwithstanding the other provisions of this Section 17.3.2, but subject to Section 704(b) of the Code and the Treasury Regulations promulgated thereunder, the Tax Matters Partner shall reallocate other items of income, gain, deduction, loss, or other items otherwise included in the computation of Series Profits or Series Losses among the Class E Participants of the applicable Series so as to cause the Class E Participants' respective Series Capital Accounts to have balances (or as close thereto as possible) they would have if Series Profits and Series Losses and all other items of income, gain, deduction or loss were allocated without reference to the allocations permitted by this Section 17.3.2.

17.4 Allocations of Profits and Losses to New Participants. No new Participant shall be entitled to any retroactive allocation of any item of income, gain, loss, deduction or credit of the Company. For purposes of determining the Series Profits, Series Losses, or any other items allocable to any period and a Series, Series Profits, Series Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Series Directors of that Series using any permissible method under Code Section 706 and the Treasury Regulations thereunder (such as a closing of the books or a daily proration).

17.5 Allocations of Tax Items. For each Fiscal Year, items of taxable income, deduction, gain, loss or credit shall be allocated for income tax purposes among the Class E Participants in the same manner as their corresponding book items were allocated pursuant to Section 17.3 for such Fiscal Year, except as otherwise required by Section 704(c) of the Code and the regulations promulgated thereunder (which generally require that in the event that the Book Value of a Series Asset differs from its adjusted tax basis upon contribution or revaluation, that tax allocations of income, gain, loss and deduction relating thereto be shared among the Class E Participants of that Series in a manner that takes into account the variation between such book value and adjusted tax basis). Any elections or other decisions relating to Section 704(c) allocations shall be made by the Series Directors of the applicable Series.

17.6 Reporting Consistent With This Article. The Class E Participants are aware of the income tax consequences of the allocations made by this Article 17 (Allocations; Other Tax Matters) and hereby agree to be bound by the provisions of this Article 17 (Allocations; Other Tax Matters) in reporting their shares of Company income and loss for income tax purposes.

17.7 Determination of Fair Market Value. For all purposes of this Agreement, "Fair Market Value" shall mean the amount that an informed and willing purchaser under no compulsion to buy would pay to acquire the property of a Series, Class E Interest of the Series, or the Series itself (as the context requires) in an arm's length transaction in which an informed and willing seller under no compulsion to sell would accept for such property in an arm's length transaction and, except as otherwise provided herein, as determined by the applicable Series Board in their sole discretion (and with the aid of a formal Third Party valuation report when

deemed necessary or advisable by the applicable Series Board in their sole discretion in order to apply the terms of this Agreement or comply with applicable laws).

## ARTICLE 18

### MISCELLANEOUS PROVISIONS

18.1 Further Assurances. The Participants hereby agree to execute and deliver all documents, subject to the provisions of Section 18.3, provide all information and take or refrain from all such action as may be reasonably necessary or appropriate to achieve the purposes of this Agreement and the Certificate.

18.2 Corporate Opportunities.

18.2.1. Except as expressly provided in this Agreement, (i) Participants and their affiliates shall have no exclusive duty to act on behalf of the Company or a Series, (ii) each Participant and its affiliates may have other business interests and may engage in other activities in addition to those relating to the Company or a Series, (iii) nothing in this Agreement shall be deemed to restrict in any way the rights of any Participant or any of its affiliates from engaging in, possessing, expanding or divesting itself of, any interests in any other business activity whatsoever, and (iv) no Participant shall be liable to the Company, a Series or any other Participant for any such business or activity even if such business or activity competes directly or indirectly with the business of the Company or the Series. Neither the Company, a Series nor any Participant shall have any right, by virtue of this Agreement, to share or participate in any other investments or activities of the other Participants or any of their affiliates, and the formation of the Company or a Series shall be without prejudice to the Participants' or their affiliates' respective rights to maintain, expand, or diversify such other investments and activities and to receive and enjoy the compensation or revenue therefrom. No Participant or any of its affiliates shall incur any liability to the Company, a Series or any other Participant as a result of engaging in any other business or venture, except as otherwise expressly provided in this Agreement.

18.2.2. To the fullest extent permitted by Law (including Section 18-1101(c) of the Act), the doctrine of corporate opportunity or any other analogous doctrine shall not apply to the business of the Company or a Series, and except as expressly provided in this Agreement, no Participant (or affiliate of a Participant) shall have any obligation to refrain from, among other things, (i) engaging in the same or similar activities or lines of business as the Company or a Series or developing, acquiring, owning or operating any facilities or assets that compete, directly or indirectly, with those of the Company or a Series, (ii) doing business with a customer of or service provider to the Company or a Series, or (iii) developing a business relationship with anyone having a current or previous business relationship with the Company or a Series.

18.3 Notices. All notices, reports, records, or other communications which are required or permitted to be given to the Participants under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax or other electronic media, by

overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the address of each Participant as shown in Exhibit A, unless notice of a change of address is given to the Company pursuant to the provisions of this Article 18 (Miscellaneous Provisions). Any notice which is required to be given within a stated period of time shall be considered timely if delivered or postmarked before midnight of the last day of such period. Any notice made hereunder shall be deemed effective for all purposes and in all respects on the date of delivery, in the case of personal delivery or other electronic media, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail; provided however, a transmission per fax shall be sufficient and shall be deemed to be properly served when the fax is received if the signed original notice is received by the recipient, within seven (7) days thereafter.

18.4 Appointment of Agent for Participant. Each Participant hereby irrevocably makes, constitutes and appoints its appointed Series Director, or such other person designated in writing by the Participant, as such Participant's true and lawful attorney-in-fact and agent with full power and authority in such Participant's name, place and stead to make, execute, sign, acknowledge, deliver, file and record with respect to the Company or any Series the following:

18.4.1. all instruments and documents which a Series Board deems appropriate to qualify or to continue the Company as a limited liability company in each jurisdiction in which the Company conducts business;

18.4.2. all such other instruments, documents and certificates which may from time to time be required by the Company or a Series to (i) enter into and execute any lease, contract, agreement, deed, mortgage or other instrument or document required or otherwise appropriate to lease, sell, mortgage, license, convey or refinance the Series Assets (or any substantial portion thereof) or carry on any and all other activities related to the business of the Company or any Series, (ii) borrow money and execute promissory notes (including notes which confess judgment) and to secure the same by mortgage (which term "mortgage" is hereby defined for all purposes of this Agreement to include deeds of trust, financing statements, chattel mortgages, pledges, conditional sales contracts and similar security agreements) upon the Series Asset, (iii) renew or extend any and all such loans or notes, and (iv) convey the Series Assets in fee simple by deed, mortgage or otherwise;

18.4.3. all such other instruments, documents and certificates which may from time to time be required by the Company, any Series, its mortgage lenders, the IRS, the State of Delaware, the United States of America, or any political subdivision within which the Company or the Series conducts its business, to effectuate, implement, continue and defend the valid and continuing existence of the Company as a limited liability company and the Series as a series of the Company and to carry out the intention and purpose of this Agreement;

18.4.4. all amendments to this Agreement and any other documents, instruments and certificates which may be required to admit Participants;

18.4.5. all instruments which the Series Directors deem appropriate to reflect (i) any change or modification of the terms and conditions governing the relationship among the Participants, any Series, and the Company, or (ii) an amendment of this Agreement and/or the Certificate, made in accordance with the express terms hereof, including, without limitation, the approval and substitution of assignees or transferees as Participants; and

18.4.6. all conveyances and other instruments, certificates or documents which the Series Director deems appropriate to effect, evidence and/or reflect any sales or transfers by, or the dissolution, termination and/or liquidation of, the Company or any Series, including any sales or transfer by a Class E Participant of Class E Interests in the Company or any Series pursuant to this Agreement.

18.5 Governing Law. All matters arising under or relating to this Agreement and the rights of the parties hereunder will be governed by, interpreted and enforced in accordance with the laws of the State of Delaware, without regard to such jurisdiction's principles of conflicts of laws or choice of laws.

18.6 Successors and Assigns. This Agreement shall inure to the benefit of and bind the undersigned parties and their respective heirs, personal or legal representatives, successors and, subject to the provisions of Article 14 (Assignability and Transfers of Interests) hereof, assigns.

18.7 Dispute Resolution. In the event of a dispute arising out of or relating to this Agreement that is not resolved in the normal course of business, Participants agree to follow the following procedure:

18.7.1. The Participants shall attempt in good faith to resolve the dispute promptly by negotiations through the Series Board of the applicable Series. Any Participant(s) may give the other Participant(s) written notice of the existence of any such dispute. Within fifteen (15) days after delivery of the notice, the receiving Participant(s) shall submit to the other(s) a written response. The notice and the response shall include a statement of each Participant's position and a summary of arguments supporting that position. Within fifteen (15) days after delivery of the disputing receiving Participant's response, the relevant Series Directors shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Participant of the other will be honored.

18.7.2. If the dispute has not been resolved by the non-binding means as provided in Section 18.7.1 within sixty (60) days then the dispute shall be finally determined by arbitration under the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules are consistent with the provisions hereof, by a single arbitrator appointed in accordance with those rules. The site of any arbitration proceeding shall be in Phoenix, Arizona. In any arbitration, there shall be no discovery allowed (including the production of documents, interrogatories or any other means of discovery). Each Participant shall submit to the arbitrator and the other Participant(s) a written statement (up to a maximum of fifteen (15) pages including attachments) setting

forth such Participant's understanding of the dispute and its proposed resolution. There shall be no hearings or any other interactions with the arbitrator. With respect to each such dispute, the arbitrator shall select one of the proposals submitted by the parties in its entirety as his award. The arbitrator shall have no authority to reach any other decision. Judgment upon any arbitration award may be entered in any federal court having jurisdiction thereof in the State of Arizona. For this purpose the Participants hereby consent and irrevocably submit to the jurisdiction of any federal court sitting in the State of Arizona. The fees and other charges of the arbitrator shall be equally shared by the Participants.

18.8 Entire Agreement. This Agreement, together with its Exhibits, the Certificate and the Services Agreements, set forth all, and are intended by all Participants hereto to be an integration of all, of the promises, agreements, conditions, understandings, warranties and representations among all the Participants hereto with respect to the Company, each Series, the business of the Company and each Series and the Series Assets, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, except as set forth herein.

18.9 Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Participants, and their respective heirs, personal or legal representatives, successors and assigns, subject to the express provisions hereof relating to heirs, personal or legal representatives, successors and assigns, and no other Person will have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a Third Party beneficiary or otherwise. In furtherance of and not in limitation of the foregoing, the terms and provisions of this Agreement, including but not limited to the provisions of Article 6 (New Participants; Contributions) and the provisions of Article 9 (Limitation of Liability; Indemnification; Insurance), are not intended to be for the benefit of any creditor or other Person to whom or which any debts, liabilities or obligations are owed by (or who or which otherwise has a claim against) the parties, and no such creditor or other Person shall obtain any right of enforcement under the provisions of this Agreement against the Company, any Series, any Participant, any Series Director or any Officer.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon, but all of which together constitute but one and the same instrument. A facsimile copy of a counterpart signature page shall constitute an original for the purposes of this Agreement.

18.11 Agreement Not Signed by Initial Participant. In case one or more of the Participants listed in Exhibit A (as in effect on the date hereof) has not signed this Agreement, the rights and obligations under this Agreement of such Participant or Participants shall not vest in such Participant(s) until their execution of this Agreement. Until the date of such signing, the remaining Participants may conduct any and all activities under this Agreement, as if the Participants that have signed this Agreement were the only Participants listed in Exhibit A.

18.12 Sophistication; No Construction Against Drafter. The Participants, having been advised by legal counsel, acknowledge and agree that they are sophisticated parties in all matters relating to this agreement. For purposes of contract construction, or otherwise, this Agreement is

the product of negotiation and no Participant shall be deemed to be the drafter of this Agreement or any part thereof.

18.13 STARS Code of Conduct. The Company, each Series, and each Participant shall comply with the STARS Code of Conduct attached as Exhibit E.

18.14 Amendments; Waivers. No amendment of this Agreement will be effective unless it is in writing and signed by all Participants. No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the Person granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the undersigned parties have executed this Limited Liability Company Agreement as of the date written below.

**Union Electric Company, d/b/a  
Ameren Missouri**

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

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

Date: \_\_\_\_\_

**Luminant Generation Company LLC**

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

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

Date: \_\_\_\_\_

**Arizona Public Service Company**

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

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

Date: \_\_\_\_\_

**Pacific Gas and Electric Company**

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

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

Date: \_\_\_\_\_

**Southern California Edison Company**

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

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

Date: \_\_\_\_\_

**STP Nuclear Operating Company**

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

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

Date: \_\_\_\_\_

**Wolf Creek Nuclear Operating Corporation**

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

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

Date: \_\_\_\_\_

**Exhibit A**

**to Limited Liability Company Agreement of STARS Alliance LLC**

**List of Initial Participants**

<b>Name</b>	<b>Series</b>	<b>Class</b>
Union Electric Company d/b/a AmerenUE [Address]	Series A	Class E
Luminant Generation Company LLC [Address]	Series A	Class E
Arizona Public Service Company [Address]	Series A	Class E
Pacific Gas and Electric Company [Address]	Series A	Class E
Southern California Edison Company [Address]	Series A	Class E
STP Nuclear Operating Company [Address]	Series A	Class NE
Wolf Creek Nuclear Operating Corporation [Address]	Series A	Class NE

Revision Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Exhibit B**

**to Limited Liability Company Agreement of STARS Alliance LLC**

**Form of Class E Agreement**

**[Attached]**

**STARS ALLIANCE LLC SERVICES AGREEMENT**

**SERIES [A]<sup>1</sup> – CLASS E PARTICIPANT**

This agreement (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), and is between Series [A]<sup>2</sup> (the “Series”) of STARS Alliance LLC, a Delaware limited liability company (the “Company”), and [\_\_\_\_\_] <sup>3</sup>, a [\_\_\_\_\_] <sup>4</sup> (“Class E Participant”).

**RECITALS**

Class E Participant is or will become a member of the Series, which is a series of membership of the Company, and Class E Participant owns or will own a membership interest in the Series.

The limited liability company agreement of the Company (the “LLC Agreement”) provides that a series of the Company will enter into an agreement in the form of this Agreement with each Class E Participant of that series.

[In accordance with Section 6.1.2 of the LLC Agreement, the Series Directors of the Series have determined that Class E Participant will be required to pay a Participation Fee of [\_\_\_\_\_] <sup>5</sup> to the Series as a condition to joining the Series (the “Class E Fee”).] <sup>6</sup>

The Series may from time to time enter into agreements with vendors to the Participants of one or more Series of the Company (a “Vendor Agreement”) under which the vendor agrees to pay rebates to the Participants or directly to the Series.

The Series and Class E Participant desire to set forth their respective rights and obligations with respect to the matters described in this Agreement, subject to the terms and conditions of this Agreement.

**AGREEMENT**

The parties therefore agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement have the meanings given to those terms in the LLC Agreement.

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<sup>1</sup> Insert name of applicable Series.

<sup>2</sup> Insert name of applicable Series.

<sup>3</sup> Insert name of Class E Participant.

<sup>4</sup> Insert jurisdiction of formation of Class E Participant.

<sup>5</sup> Insert amount of Participation Fee.

<sup>6</sup> For new participants that are required to make payments of a Participation Fee in order to join a Series.

2. Amount of Services Fee. In exchange for services to be provided to Class E Participant, Class E Participant shall pay to the Series a services fee in an amount determined as follows (the “Services Fee”).

(a) The Services Fee will be an amount equal to (i) the Common Expenses of the Series for the applicable calendar year as set forth in the Budget for that calendar year, divided by (ii) the number of Participants of the Series as of the date of the determination. The amount of the Services Fee may be adjusted as provided in this Agreement.

(b) [Notwithstanding anything in Section 2(a) to the contrary, for the calendar year that includes the Effective Date, the Services Fee will be an amount equal to: (i) (a) the Common Expenses of the Series for that calendar year as set forth in the Budget for that calendar year, divided by (b) the number of Participants of the Series, including the Participant, as of the Effective Date; multiplied by (ii) (x) the number of days between the Effective Date and the end of the calendar year that includes the Effective Date divided by (y) (1) the total number of days in the calendar year that includes the Effective Date minus (2) if the Series was formed in the calendar year that includes the Effective Date, the number of days between the beginning of the calendar year and the date the Series was formed.]<sup>7</sup>

(c) The amount of the Services Fee for a calendar year may be adjusted at any time before the beginning of that calendar year to account for the following, to the extent occurring in accordance with the LLC Agreement before the beginning of that calendar year: (1) the joining of a new Participant of the Series; (2) the withdrawal of a Participant of the Series; or (3) the revision of the Budget of the Series for the subsequent calendar year.

3. Credits to Services Fee. The Services Fee may be reduced as follows:

(a) If a new Participant other than Class E Participant joins the Series, then the Services Fee paid by Class E Participant for the calendar year in which the new Participant joins the Series will be reduced by (i) the services fee payable by that new Participant under its services agreement with the Series in the calendar year in which the new Participant joins the Series, divided by (ii) the total number of Participants as of the date on which the new Participant joins the Series minus one.

(b) If any Participant of the Series except for Class E Participant pays a Participation Fee to the Series, then the Services Fee will be reduced by an amount equal to: (i) that Participation Fee; divided by (ii) the number of Participants of the Series at the time that Participation Fee becomes payable minus one.

(c) If, pursuant to a Vendor Agreement, a rebate based on the purchases made by Class E Participant is paid to the Series (due to the election of Class E Participant or

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<sup>7</sup> For new Participants of a Series only, and not for use where the Participants are joining a new Series.

otherwise), then the Services Fee paid by Class E Participant will be reduced by an amount equal to the applicable rebate. If the amount of the rebate is based on the aggregate purchases of all Participants of the Series, or of the Company, then the amount of the reduction of the Services Fee will be determined equitably by the Series Board of the Series. Nothing in this Section 3(c) prohibits Class E Participant from taking direct payment of the rebate, if permitted under the applicable Vendor Agreement, and paying the full amount of the Services Fee.

(d) If a Company Loaned Employee Agreement provides that payments made to Class E Participant will be made as a reduction of the Services Fee, or if pursuant to a Company Loaned Employee Agreement Class E Participant elects not to receive payment of amounts due under the Company Loaned Employee Agreement and instead to receive a reduction of the Services Fee, then the Services Fee paid by Class E Participant will be reduced by an amount equal to the amount of payment not received. Nothing in this Section 3(d) prohibits Class E Participant from taking direct payment of amounts due under the Company Loaned Employee Agreement as and to the extent provided under the Company Loaned Employee Agreement, and paying the full amount of the Services Fee.

4. Refunds of Services Fees.

(a) If, at the end of any calendar year, (i) the services fees collected by the Series from all Participants of the Series under Services Agreements exceed (ii) the aggregate Common Expenses incurred by the Series for the calendar year, Class E Participant immediately as of the end of that calendar year will become entitled to a refund from the Series in an amount equal to the excess of the amount described under subclause (i) over the amount described under subclause (ii). The refund will offset the Services Fee payable in the following calendar year.

(b) In the event of the termination of the Series under the LLC Agreement, the Series shall pay to Class E Participant a refund in an amount equal to (i) (a) the net proceeds from the disposition of Series Assets of the Series, as well as any other liquid or illiquid assets of the Series, minus (b) the amount due to the creditors of the Series for the payment or of due provision for the liabilities of the Series (including loans, if any, to the Series from Participants) except for liabilities due under this Agreement, divided by (ii) the number of Participants of the Series at the time of termination of the Series. The refund will be payable by the Company in cash or as otherwise determined by Unanimous Approval of the applicable Series Board concurrently with the termination of the Series and the wind-down of its affairs.

5. Invoicing and Payment of Services Fee. The Services Fee will be invoiced as follows:

(a) Except as provided below, promptly following the date that the Budget has been agreed (or is deemed to have been agreed in the absence of actual agreement of the Participants) for the following calendar year, the Series shall deliver an invoice to Class E

Participant setting forth (i) the Services Fee (as calculated at that time) for the following calendar year based on the Budget and (ii) the dates for payment of the Services Fee in that calendar year. Class E Participant acknowledges that all or any portion of the Services Fee may be payable at the beginning of the following calendar year, and that the dates for payment of the Services Fee in that calendar year will be as determined by the Series Board of the Series.

(b) For the calendar year that includes the Effective Date, the Series shall deliver the invoice on the Effective Date, and the invoice will be for the Services Fee payable in that calendar year and payable on the dates set forth therein.

(c) Class E Participant shall pay the Services Fee to the Series on the date or dates set forth in the applicable invoice.

6. Services Provided by the Series; Other Agreements. The Series shall provide such services to Participant as are determined by the Series Board of the Series. For the avoidance of doubt, the Company, or any series thereof, including the Series, may perform services for Class E Participant under one or more separate agreements between the Company or the applicable series and Class E Participant.

7. Participation Fees. Concurrently with the execution of this Agreement, Class E Participant shall pay the Class E Fee to the Series by wire transfer of immediately available funds.]<sup>8</sup>

8. Withdrawal.

(a) Class E Participant may elect to withdraw, or may be deemed to withdraw, from the Series as and to the extent provided in the LLC Agreement.

(b) If Class E Participant withdraws or is deemed to withdraw from the Series, notwithstanding any termination of this Agreement, Class E Participant will nevertheless be required to pay the Services Fee otherwise required to be paid in the calendar year of the withdrawal, which Services Fee may be reduced by the credits set forth in Section 3 or refunds set forth in Section 4 above.

(c) If Class E Participant withdraws or is deemed to withdraw from the Series, notwithstanding any termination of this Agreement, in the calendar year following the calendar year of withdrawal, the Series shall pay to Class E Participant in cash, within a reasonable period of time following receipt of such amounts by the Series, any amounts that would have been applied as a reduction to the Services Fee for such calendar year under Section 3(c), Section 3(d), or Section 4, as a full or partial refund of the Services Fee paid in the calendar year of withdrawal, except to the extent otherwise previously paid to Class E Participant.

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<sup>8</sup> For new Participants that are required to pay a Participation Fee to join a Series.

9. Termination of this Agreement. The term of this agreement commences on the Effective Date and terminates upon the earlier of (a) the effective date of Class E Participant's withdrawal from the Series, (b) the date of the termination of the Series and (c) the date that the Series and Class E Participant mutually agree to terminate this Agreement. The provisions of this Agreement that are intended to survive its termination will survive its termination.

10. Assignment and Transfer. Class E Participant may not assign, transfer, convey, encumber, pledge or in any way alienate all or any part of Class E Participant's legal and/or beneficial right, title and interest in or to its rights or obligations under this Agreement ("Transfer"), except as permitted under the LLC Agreement. Any alleged Transfer in violation of this Agreement will be null, void, and of no force or effect.

11. Incorporation by Reference of LLC Agreement Provisions. The following provisions of the LLC Agreement are hereby incorporated into this Agreement by reference, with such changes as are necessary to reflect that this Agreement is between Class E Participant and the Series, and not all parties to the LLC Agreement, and such other changes as are necessary for the appropriate application of those provisions to this Agreement: 9.1 (Waivers of Liability); 18.1 (Further Assurances); 18.5 (Governing Law); 18.6 (Successors and Assigns); 18.7 (Dispute Resolution); 18.8 (Entire Agreement); 18.9 (Third Party Beneficiaries); 18.10 (Counterparts); 18.12 (Sophistication; No Construction Against Drafter); and 18.14 (Amendments; Waivers).

12. Notices. All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax or other electronic media, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the addresses indicated on Exhibit A. Any notice which is required to be given within a stated period of time shall be considered timely if delivered or postmarked before midnight of the last day of such period. Any notice made hereunder shall be deemed effective for all purposes and in all respects on the date of delivery, in the case of personal delivery or other electronic media, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail; provided however, a transmission per fax shall be sufficient and shall be deemed to be properly served when the fax is received if the signed original notice is received by the recipient, within seven (7) days thereafter.

[The remainder of this page has been intentionally left blank.]

The parties are signing this Agreement on the dates indicated below to be effective as of the Effective Date.

**STARS ALLIANCE LLC, SERIES [A]<sup>9</sup>**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[ \_\_\_\_\_ ]<sup>10</sup>

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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<sup>9</sup> Insert name of applicable Series.

<sup>10</sup> Insert name of Class E Participant.

**EXHIBIT A**

**Notice Information**

**[To be provided for each Class E Participant.]**

**Exhibit C**

**to Limited Liability Company Agreement of STARS Alliance LLC**

**Form of Class NE Agreement**

**[Attached]**

**STARS ALLIANCE LLC SERVICES AGREEMENT**

**SERIES [A]<sup>1</sup> – CLASS NE PARTICIPANT**

This agreement (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), and is between Series [A]<sup>2</sup> (the “Series”) of STARS Alliance LLC, a Delaware limited liability company (the “Company”), and [\_\_\_\_\_] <sup>3</sup>, a [\_\_\_\_\_] <sup>4</sup> (“Class NE Participant”).

**RECITALS**

Class NE Participant is or will become a member of the Series, which is a series of membership of the Company, and Class NE Participant does not own a membership interest in the Series or the Company, as contemplated by Section 18-301(b) and Section 18-301(d) of the Delaware Limited Liability Company Act.

The limited liability company agreement of the Company (the “LLC Agreement”) provides that a series of the Company will enter into an agreement in the form of this Agreement with each Class NE Participant of that series.

[In accordance with Section 6.1.2 of the LLC Agreement, the Series Directors of the Series have determined that Class NE Participant will be required to pay a Participation Fee of [\_\_\_\_\_] <sup>5</sup> to the Series as a condition to joining the Series (the “Class NE Fee”).] <sup>6</sup>

The Series may from time to time enter into agreements with vendors to the Participants of one or more Series of the Company (a “Vendor Agreement”) under which the vendor agrees to pay rebates to the Participants or directly to the Series.

The Series and Class NE Participant desire to set forth their respective rights and obligations with respect to the matters described in this Agreement, subject to the terms and conditions of this Agreement.

**AGREEMENT**

The parties therefore agree as follows:

1. Definitions. Capitalized terms used but not defined in this Agreement have the meanings given to those terms in the LLC Agreement.

<sup>1</sup> Insert name of applicable Series.

<sup>2</sup> Insert name of applicable Series.

<sup>3</sup> Insert name of Class NE Participant.

<sup>4</sup> Insert jurisdiction of formation of Class NE Participant.

<sup>5</sup> Insert amount of Participation Fee.

<sup>6</sup> For new participants that are required to make payments of a Participation Fee in order to join a Series.

2. Amount of Services Fee. In exchange for services to be provided to Class NE Participant, Class NE Participant shall pay to the Series a services fee in an amount determined as follows (the “Services Fee”).

(a) The Services Fee will be an amount equal to (i) the Common Expenses of the Series for the applicable calendar year as set forth in the Budget for that calendar year, divided by (ii) the number of Participants of the Series as of the date of the determination. The amount of the Services Fee may be adjusted as provided in this Agreement.

(b) [Notwithstanding anything in Section 2(a) to the contrary, for the calendar year that includes the Effective Date, the Services Fee will be an amount equal to: (i) (a) the Common Expenses of the Series for that calendar year as set forth in the Budget for that calendar year, divided by (b) the number of Participants of the Series, including the Participant, as of the Effective Date; multiplied by (ii) (x) the number of days between the Effective Date and the end of the calendar year that includes the Effective Date divided by (y) (1) the total number of days in the calendar year that includes the Effective Date minus (2) if the Series was formed in the calendar year that includes the Effective Date, the number of days between the beginning of the calendar year and the date the Series was formed.]<sup>7</sup>

(c) The amount of the Services Fee for a calendar year may be adjusted at any time before the beginning of that calendar year to account for the following, to the extent occurring in accordance with the LLC Agreement before the beginning of that calendar year: (1) the joining of a new Participant of the Series; (2) the withdrawal of a Participant of the Series; or (3) the revision of the Budget of the Series for the subsequent calendar year.

3. Credits to Services Fee. The Services Fee may be reduced as follows:

(a) If a new Participant other than Class NE Participant joins the Series, then the Services Fee paid by Class NE Participant for the calendar year in which the new Participant joins the Series will be reduced by (i) the services fee payable by that new Participant under its services agreement with the Series in the calendar year in which the new Participant joins the Series, divided by (ii) the total number of Participants as of the date on which the new Participant joins the Series minus one.

(b) If any Participant of the Series except for Class NE Participant pays a Participation Fee to the Series, then the Services Fee will be reduced by an amount equal to: (i) that Participation Fee; divided by (ii) the number of Participants of the Series at the time that Participation Fee becomes payable minus one.

(c) If, pursuant to a Vendor Agreement, a rebate based on the purchases made by Class NE Participant is paid to the Series (due to the election of Class NE Participant or

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<sup>7</sup> For new Participants of a Series only, and not for use where the Participants are joining a new Series.

otherwise), then the Services Fee paid by Class NE Participant will be reduced by an amount equal to the applicable rebate. If the amount of the rebate is based on the aggregate purchases of all Participants of the Series, or of the Company, then the amount of the reduction of the Services Fee will be determined equitably by the Series Board of the Series. Nothing in this Section 3(c) prohibits Class NE Participant from taking direct payment of the rebate, if permitted under the applicable Vendor Agreement, and paying the full amount of the Services Fee.

(d) If a Company Loaned Employee Agreement provides that payments made to Class NE Participant will be made as a reduction of the Services Fee, or if pursuant to a Company Loaned Employee Agreement Class NE Participant elects not to receive payment of amounts due under the Company Loaned Employee Agreement and instead to receive a reduction of the Services Fee, then the Services Fee paid by Class NE Participant will be reduced by an amount equal to the amount of payment not received. Nothing in this Section 3(d) prohibits Class NE Participant from taking direct payment of amounts due under the Company Loaned Employee Agreement as and to the extent provided under the Company Loaned Employee Agreement, and paying the full amount of the Services Fee.

4. Refunds of Services Fees.

(a) If, at the end of any calendar year, (i) the services fees collected by the Series from all Participants of the Series under Services Agreements exceed (ii) the aggregate Common Expenses incurred by the Series for the calendar year, Class NE Participant immediately as of the end of that calendar year will become entitled to a refund from the Series in an amount equal to the excess of the amount described under subclause (i) over the amount described under subclause (ii). The refund will offset the Services Fee payable in the following calendar year.

(b) In the event of the termination of the Series under the LLC Agreement, the Series shall pay to Class NE Participant a refund in an amount equal to (i) (a) the net proceeds from the disposition of Series Assets of the Series, as well as any other liquid or illiquid assets of the Series, minus (b) the amount due to the creditors of the Series for the payment or of due provision for the liabilities of the Series (including loans, if any, to the Series from Participants) except for liabilities due under this Agreement, divided by (ii) the number of Participants of the Series at the time of termination of the Series. The refund will be payable by the Company in cash or as otherwise determined by Unanimous Approval of the applicable Series Board concurrently with the termination of the Series and the wind-down of its affairs.

5. Invoicing and Payment of Services Fee. The Services Fee will be invoiced as follows:

(a) Except as provided below, promptly following the date that the Budget has been agreed (or is deemed to have been agreed in the absence of actual agreement of the

Participants) for the following calendar year, the Series shall deliver an invoice to Class NE Participant setting forth (i) the Services Fee (as calculated at that time) for the following calendar year based on the Budget and (ii) the dates for payment of the Services Fee in that calendar year. Class NE Participant acknowledges that all or any portion of the Services Fee may be payable at the beginning of the following calendar year, and that the dates for payment of the Services Fee in that calendar year will be as determined by the Series Board of the Series.

(b) For the calendar year that includes the Effective Date, the Series shall deliver the invoice on the Effective Date, and the invoice will be for the Services Fee payable in that calendar year and payable on the dates set forth therein.

(c) Class NE Participant shall pay the Services Fee to the Series on the date or dates set forth in the applicable invoice.

6. Services Provided by the Series; Other Agreements. The Series shall provide such services to Participant as are determined by the Series Board of the Series. For the avoidance of doubt, the Company, or any series thereof, including the Series, may perform services for Class NE Participant under one or more separate agreements between the Company or the applicable series and Class NE Participant.

7. Participation Fees. Concurrently with the execution of this Agreement, Class NE Participant shall pay the Class NE Fee to the Series by wire transfer of immediately available funds.]<sup>8</sup>

8. Withdrawal.

(a) Class NE Participant may elect to withdraw, or may be deemed to withdraw, from the Series as and to the extent provided in the LLC Agreement.

(b) If Class NE Participant withdraws or is deemed to withdraw from the Series, notwithstanding any termination of this Agreement, Class NE Participant will nevertheless be required to pay the Services Fee otherwise required to be paid in the calendar year of the withdrawal, which Services Fee may be reduced by the credits set forth in Section 3 or refunds set forth in Section 4 above.

(c) If Class NE Participant withdraws or is deemed to withdraw from the Series, notwithstanding any termination of this Agreement, in the calendar year following the calendar year of withdrawal, the Series shall pay to Class NE Participant in cash, within a reasonable period of time following receipt of such amounts by the Series, any amounts that would have been applied as a reduction to the Services Fee for such calendar year under Section 3(c), Section 3(d), or Section 4, as a full or partial refund of the Services Fee paid in the

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<sup>8</sup> For new Participants that are required to pay a Participation Fee to join a Series.

calendar year of withdrawal, except to the extent otherwise previously paid to Class NE Participant.

9. Termination of this Agreement. The term of this agreement commences on the Effective Date and terminates upon the earlier of (a) the effective date of Class NE Participant's withdrawal from the Series, (b) the date of the termination of the Series and (c) the date that the Series and Class NE Participant mutually agree to terminate this Agreement. The provisions of this Agreement that are intended to survive its termination will survive its termination.

10. Assignment and Transfer. Class NE Participant may not assign, transfer, convey, encumber, pledge or in any way alienate all or any part of Class NE Participant's legal and/or beneficial right, title and interest in or to its rights or obligations under this Agreement ("Transfer"), except as permitted under the LLC Agreement. Any alleged Transfer in violation of this Agreement will be null, void, and of no force or effect.

11. Incorporation by Reference of LLC Agreement Provisions. The following provisions of the LLC Agreement are hereby incorporated into this Agreement by reference, with such changes as are necessary to reflect that this Agreement is between Class NE Participant and the Series, and not all parties to the LLC Agreement, and such other changes as are necessary for the appropriate application of those provisions to this Agreement: 9.1 (Waivers of Liability); 18.1 (Further Assurances); 18.5 (Governing Law); 18.6 (Successors and Assigns); 18.7 (Dispute Resolution); 18.8 (Entire Agreement); 18.9 (Third Party Beneficiaries); 18.10 (Counterparts); 18.12 (Sophistication; No Construction Against Drafter); and 18.14 (Amendments; Waivers).

12. Notices. All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax or other electronic media, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the addresses indicated on Exhibit A. Any notice which is required to be given within a stated period of time shall be considered timely if delivered or postmarked before midnight of the last day of such period. Any notice made hereunder shall be deemed effective for all purposes and in all respects on the date of delivery, in the case of personal delivery or other electronic media, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail; provided however, a transmission per fax shall be sufficient and shall be deemed to be properly served when the fax is received if the signed original notice is received by the recipient, within seven (7) days thereafter.

[The remainder of this page has been intentionally left blank.]

The parties are signing this Agreement on the dates indicated below to be effective as of the Effective Date.

**STARS ALLIANCE LLC, SERIES [A]<sup>9</sup>**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[ \_\_\_\_\_ ]<sup>10</sup>

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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<sup>9</sup> Insert name of applicable Series.

<sup>10</sup> Insert name of Class NE Participant.

**EXHIBIT A**

**Notice Information**

**[To be provided for each Class NE Participant.]**

**Exhibit D**

**to Limited Liability Company Agreement of STARS Alliance LLC**

**Form of Joinder and Ratification Agreement**

**JOINDER AND RATIFICATION AGREEMENT**

Reference is hereby made to the Limited Liability Company Agreement of STARS Alliance LLC, a Delaware limited liability company (the "Company"), dated as of [\_\_\_\_], 2012, as amended from time to time (the "LLC Agreement"), among the following current Participants of the Company: [\_\_\_\_]<sup>1</sup>. Pursuant to and in accordance with Section 6.1.4 or Section 14.1.3 of the LLC Agreement, the undersigned hereby acknowledges that it has received and reviewed a complete copy of the LLC Agreement and agrees that upon execution of this Joinder and Ratification Agreement, the undersigned will become a party to the LLC Agreement and will be fully bound by, and subject to, all of the covenants, terms and conditions of the LLC Agreement, and be admitted as a Class [\_\_\_\_]<sup>2</sup> Participant of Series [\_\_\_\_]<sup>3</sup>, for all purposes thereof, and entitled to all the rights and bound by all of the obligations incidental thereto.

Capitalized terms used herein without definition shall have the meanings ascribed thereto in the LLC Agreement.

The undersigned is signing this Joinder and Ratification Agreement on \_\_\_\_\_, 20\_\_.

[\_\_\_\_]<sup>4</sup>

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup> Insert names of current Participants.  
<sup>2</sup> Insert "E" or "NE", as applicable.  
<sup>3</sup> Insert name of the Series of which the Participant will be a member.  
<sup>4</sup> Insert name of new Participant.

## **Exhibit E**

### **to Limited Liability Company Agreement of STARS Alliance LLC**

#### **STARS Alliance Code of Conduct**

STARS Alliance LLC (STARS) and its Participants will comply with all laws applicable to their activities, including utility, nuclear, antitrust, trade regulation and environmental laws. To further this objective, STARS and its Participants establish this Code of Conduct:

1. Participants shall not exchange or discuss information concerning the prices that Participants charge customers for any service or product Participants provide customers, including the price charged for electrical power to any Participant's customers.
2. Participants shall not discuss or exchange information regarding their plans for future competitive activities, including plans for marketing electrical power and plans for expanding or altering the supply of power to their customers.
3. Joint purchasing activities involving joint procurements by the STARS Participants under the same terms from the same vendor are limited to 35% of the total sales of the product or service purchased in the relevant market. Based on the nature of the product or service, the relevant market will be national or global.
  - a. STARS will consult counsel prior to any joint purchasing activity that approaches 35% of the total sales of products or service purchased in the relevant market.
  - b. STARS joint purchasing and collaborative activity may be suspended in purchasing of a product or service that exceeds 35% of the total sales of the product or service. In such a case, STARS and Participants will not discuss or exchange information concerning the purchasing of the product or service.
4. The joint purchasing activities of the Participants through STARS are limited to those sponsored by STARS. Beyond activities formally sponsored by STARS, STARS will not serve as a forum for its Participants to discuss other joint purchasing activities, the prices prevailing in the industry, or other exchanges of information regarding price. Outside of joint purchasing activity conducted through the auspices of STARS, a Participant shall not discuss with another Participant the prices, which it would be willing to pay for goods or services.
5. Joint purchasing activities of STARS are entirely voluntary for its Participants. No Participant is obliged to make any purchase of a good or service through STARS. Each Participant at all times shall retain the right to deal with whomever it chooses, on whatever terms and conditions the Participant desires. Participants may be requested to commit to purchase voluntarily a minimum requirement so that a volume discount or other favorable terms can be negotiated; such requests may be rejected by the Participants. No Participant shall coerce or threaten another Participant to participate in a joint purchasing activity of STARS.

6. No Participant shall be required to purchase one product or service as the condition for purchasing or obtaining a second, distinct product or service.
7. Participant-specific competitive information shall be protected by STARS and will not be disseminated or exchanged with other Participants of STARS. STARS will undertake appropriate steps to ensure that competitive data are safeguarded, including where appropriate steps involving the use of independent third parties.
8. STARS shall not disparage the products or services of Participants or third parties.
9. STARS and its Participants will not discuss or otherwise exchange information intended to further an agreement to avoid doing business with any Participant, firm, or other third party. STARS and its Participants shall not discuss any refusal to do business with a particular firm.
10. STARS is not intended to function as a standard-setting organization for the nuclear power industry. Other than those common standards that may be required to further STARS' joint purchasing efforts or performance-improvement objectives, standard-setting activities of its Participants will be conducted outside the auspices of STARS by the Participants or STARS through other appropriate industry organizations, including the Nuclear Energy Institute and the Institute of Nuclear Power Operations.