

# LLCs

(Drafted for a Board-Managed Limited Liability Company  
with additional comments applicable to  
Member-Managed and Manager-Managed LLCs)

*with eFormbook*

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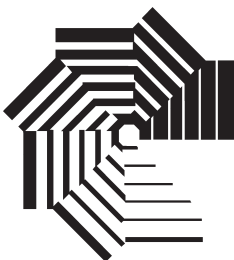
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**FORM NOTES**

A limited liability company (LLC) is formed when the articles of organization have been filed with the Minnesota Secretary of State. MINN. STAT. § 322C.0201, SUBD. 4(a). Article I through Article IV are mandatory and must be contained in the articles of organization.

One or more persons may act as the organizer of the company. MINN. STAT. § 322C.0201, SUBD. 1.

MINN. STAT. § 322C.0201, SUBD. 2(1). The name of the company must: (1) be in English; (2) contain the words “limited liability company” or the abbreviation “LLC;” (3) cannot contain the words “corporation,” “incorporated,” or abbreviations thereof; (4) cannot contain words or phrases that indicate or imply the company is organized for a purpose other than a permitted purpose; and (5) be distinguishable with the Minnesota Secretary of State. MINN. STAT. § 322C.0108. A limited liability company name may be reserved by filing an application with the Minnesota Secretary of State, stating the name and address of the applicant and the name proposed to be reserved. If the name applied for is available, it must be reserved for the applicant’s exclusive use for a one-year period.

**ARTICLES OF ORGANIZATION  
OF  
AMP, LLC**

The undersigned organizer, being a natural person of full age, in order to form a limited liability company under the provisions of Minnesota Statutes chapter 322C, hereby adopts the following Articles of Organization:

**ARTICLE I: NAME**

The name of the limited liability company shall be AMP, LLC (the “Company”).

**FORM NOTES**

MINN. STAT. § 322C.0201, SUBD. 2(2). The company must have a registered office. MINN. STAT. § 322C.0113.

The company is not required to designate an agent for service of process. MINN. STAT. § 322C.0113. However, if the company designates an agent, the name of the agent must be in the articles of organization. MINN. STAT. § 322C.0201, SUBD. 2(2). Pursuant to Minnesota Statutes section 5.35, subdivision 2, the registered agent may be a natural person residing in this state, a domestic corporation or LLC, or a foreign corporation or foreign LLC authorized to transact business in Minnesota. The registered agent must maintain a business office that is identical with the registered office.

MINN. STAT. § 322C.0113, SUBD. 2(3).

Minnesota Statutes section 322C.0201, subdivision 3 allows the articles to contain optional provisions. Statements that, if contained in the operating agreement, are ineffective under Minnesota Statutes section 322C.0112, subdivision 3 are also ineffective if contained in the articles. However, a statement in the articles is not effective as a statement of authority.

**ARTICLE II: REGISTERED OFFICE**

The registered office of the Company shall be [company’s address].

**ARTICLE III: REGISTERED AGENT**

The Company’s agent for service of process shall be [Member’s name].

**ARTICLE IV: ORGANIZER**

The name and address of the sole organizer of the Company is as follows:

[Attorney’s name]  
[Attorney’s address]

**ARTICLE V: MANAGEMENT**

The Company shall be “Board Managed” as that term is defined in Minnesota Statutes section 322C.0102, subdivision 4.

IN WITNESS WHEREOF, the sole organizer has executed these Articles of Organization this \_\_\_\_ day of \_\_\_\_\_, 2016.

[Name of Organizer]

\_\_\_\_\_  
Sole Organizer

**FORM NOTES**

The operating agree- →  
 ment governs: (1) the relations  
 among the members as members  
 and between the members and  
 the LLC; (2) the rights and duties  
 of a manager or governor; (3) the  
 activities and conduct of the LLC;  
 and (4) the method and conditions  
 for amending the operating agree-  
 ment. MINN. STAT. § 322C.0110. To  
 the extent the operating agreement  
 does not otherwise provide for a  
 matter described above, Minnesota  
 Statutes chapter 322C governs the  
 matter. MINN. STAT. § 322C.0110,  
 SUBD. 2. An operating agreement  
 need not be in writing, but may be  
 oral, in a record, implied, or any  
 combination thereof. MINN. STAT.  
 § 322C.0102, SUBD. 16. An oper-  
 ating agreement is subject to the  
 restrictions of Minnesota Statutes  
 section 322C.0110, subdivision 3.

The name of the LLC →  
 must be in the English language  
 or expressed in English letters and  
 must contain the words “limited  
 liability company” or contain the  
 abbreviation “LLC.” MINN. STAT.  
 § 322C.0108.

An LLC may be member →  
 managed, board managed, or man-  
 ager managed. An LLC is deemed  
 to be member managed, unless  
 the operating agreement expressly  
 provides that the LLC is board  
 managed or manager managed,  
 or words of similar import. MINN.  
 STAT. § 322C.0407, SUBD. 1. This  
 operating agreement is written for  
 a board-managed LLC with anno-  
 tations for modifications needed  
 for member-managed LLCs and  
 manager-managed LLCs.

**OPERATING AGREEMENT  
 OF**

**AMP, LLC**

**A Board-Managed Limited Liability Company**

**FORM NOTES**

The operating agreement may provide that the affirmative approval of less than all of the members is required to amend the operating agreement. See *infra* paragraph 3.8.

The definition of “Authenticated Electronic Communication” is taken from Minnesota Statutes chapter 322B.

The Act uses the term “governors” rather than “directors,” which is a corporate term. However, most people in business are confused by the term “governor.” Therefore, the terms “director” and “board of directors” are used in this operating agreement.

This Operating Agreement is executed by the Organizer of AMP, LLC, a Minnesota limited liability company (the “Company”) as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, to provide for the governance and management of the Company, including the relations among the Members of the Company and between the Members and the Company. This Agreement may not be amended without the unanimous consent of the Members.

**ARTICLE I  
DEFINITIONS**

1.1 Act. “Act” means the Minnesota Revised Uniform Limited Liability Act which is codified as Minnesota Statutes chapter 322C, including any amendments thereof from time to time.

1.2 Agreed Value. “Agreed Value” has the meaning set forth in paragraph 4.8.1.

1.3 Articles of Organization. “Articles of Organization” means the Articles of Organization which were filed with the Minnesota Secretary of State to form the Company under the Act, including any subsequent amendment or restatement of such articles.

1.4 Authenticated Electronic Communication. “Authenticated Electronic Communication” means any form of communication, not directly involving the physical transmission of paper, that: (i) creates a Record that may be retained, retrieved and reviewed by the recipient of the communication; (ii) may be directly reproduced in paper form by the recipient through an automated process; and (iii) sets forth information from which the recipient can reasonably conclude that the communication was sent by the purported sender.

1.5 Available Cash. “Available Cash” means all net revenues from the Company’s operations, including net proceeds from all sales, refinancing, and other dispositions of Company assets, in excess of the amount reasonably necessary for the operating needs of the Company, including capital improvements, debt reduction, and operating reserves.

1.6 Board. “Board” means the Board of Directors.

1.7 Code. “Code” means the Internal Revenue Code of 1986, including any amendments thereof from time to time.

1.8 Contact Information. “Contact Information” means the name, mailing address, email address, and telephone number of a Person.

## FORM NOTES

MINN. STAT. § 322C.0102, SUBD. 5. →

1.9 Contribution. “Contribution” means any tangible or intangible property or other benefit, including money, services performed, a contract to perform services, or promissory notes provided by a Person to the Company in order to become a Member of the Company, or by a Member of the Company in accordance with this Agreement (or other agreement between the Member and the Company).

1.10 Director. “Director” means a Natural Person who is serving on the Board.

1.11 Dissociated Member. “Dissociated Member” means a Member who has withdrawn as a Member, been expelled as a Member, or otherwise become dissociated from the Company as provided in Article V hereof.

1.12 Dissociation. “Dissociation” means a withdrawal by a Member, an expulsion of a Member, or other event causing a Person to become a Dissociated Member as provided in Article V hereof.

MINN. STAT. § 322C.0102, SUBD. 7. →

1.13 Distribution. “Distribution” means a transfer of money or other property from the Company to a Person on account of a Transferable Interest.

1.14 Encumber. “Encumber” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.15 Encumbrance. “Encumbrance” means, with respect to any Transferable Interest, or any part thereof, a mortgage, pledge, security interest, lien, or proxy coupled with an interest, option, or preferential right to purchase.

1.16 Involuntary Transfer. “Involuntary Transfer” means any Transfer or Encumbrance of a Transferable Interest, or any part thereof, by operation of law, court order, dissolution of a marriage, assignment for the benefit of creditors, foreclosure of a mortgage or security interest, execution of a judgment or other legal process, including a purported Transfer to or from a trustee in bankruptcy or receiver.

1.17 Member. “Member” means a Person that has become a Member of the Company as provided in paragraph 2.2 hereof, and has not become a Dissociated Member.

1.18 Natural Person. “Natural Person” means a Person who is an individual.

1.19 Notice. “Notice” may be given to a Person, by manual delivery, by United States mail, or by Authenticated Electronic Communication directed to the Person’s Contact Information. Notice given by manual delivery or by Authenticated Electronic Communication shall be effective immediately.

**FORM NOTES**

A board-managed LLC is not required to have officers. →

Notice given by United States mail shall be effective when the same is properly addressed to the intended recipient and deposited in a United States mailbox with postage prepaid.

1.20 Officer. “Officer” means a Natural Person who has been appointed as Chair, Chief Executive Officer, or Chief Financial Officer of the Company as provided in Article VIII hereof.

1.21 Official Capacity. “Official Capacity” means (i) serving as a Director or as an Officer of this Company or (ii) serving at the request of the Company as a director, officer, partner, trustee, governor, manager, employee, or agent of another organization or employee benefit plan.

MINN. STAT. § 322C.0102, SUBD. 10. →

1.22 Organizer. “Organizer” means the Natural Person who signed and filed with the Minnesota Secretary of State the Articles of Organization to form this Company.

1.23 Person. “Person” includes an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public benefit corporation, governmental unit or agency, or other legal entity.

1.24 Personal Representative. “Personal Representative” means the Person duly serving as the personal representative or executor of the estate of a deceased Member.

MINN. STAT. § 322C.0102, SUBD. 22. →

1.25 Record. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

The definition of “Remote Communication” is taken from Minnesota Statutes chapter 322B. →

1.26 Remote Communication. “Remote Communication” means electronic communication, conference telephone, video conference, the Internet, or such other means by which Members not physically present in the same location may communicate with each other on a substantially simultaneous basis.

1.27 Taxable Income. “Taxable Income” shall be determined in accordance with Section 703 of the Code.

1.28 Tax Matters Partner. “Tax Matters Partner” shall have the meaning set forth in Section 6231(a)(7) of the Code.

1.29 Transfer. “Transfer” means any sale, gift, or other disposition of a Transferable Interest, or any part thereof, including an Encumbrance, an Involuntary Transfer, or a Voluntary Transfer.

**FORM NOTES**

MINN. STAT. § 322C.0102, SUBD. 28. Minnesota Statutes section 322C.0502, subdivision 4, which allows certificates to be issued evidencing a transferable interest, is a carry-over from the “corporate” model found in Minnesota Statutes chapter 322B.

MINN. STAT. § 322C.0102, SUBD. 5.

Unless the operating agreement provides otherwise, each member possesses voting power in proportion to the member’s interest in the then-current profits of the LLC. MINN. STAT. § 322C.0407, SUBD.17. A 2015 amendment to Minnesota Statutes chapter 322C provides that in the

1.30 Transferable Interest. “Transferable Interest” means the right, as originally associated with a Person’s capacity as a Member, to receive Distributions from the Company in accordance with this Agreement, whether or not the Person remains a Member or continues to own any part of such right. A Transferable Interest may be evidenced by a certificate issued by the Company in a Record, and subject to the limitations set forth in Article IV hereof, may be transferred.

1.31 Transferee. “Transferee” means a Person to which a Transferable Interest has been transferred. A Transferee shall not be deemed to be a Member unless such Transferee becomes a Member pursuant to paragraph 2.2 hereof.

1.32 Transferring Member. “Transferring Member” means a Member that proposes to Encumber or Transfer a Transferable Interest pursuant to a Voluntary Transfer, whose employment is terminated, or whose Transferable Interest has been Encumbered or Transferred pursuant to an Involuntary Transfer.

1.33 Triggering Event. “Triggering Event” means: (i) the effective date of a Dissociation as provided in Article V hereof; (ii) the date that a Member who is a Natural Person and who is employed by the Company terminates his or her employment with the Company, whether voluntarily or involuntarily; (iii) the date that a Transferring Member gives Notice of a Voluntary Transfer as provided in paragraph 4.5 hereof; or (iv) the date that a Transferee gives Notice of an Involuntary Transfer as provided in paragraph 4.6 hereof.

1.34 Valuation Agreement. “Valuation Agreement” means an agreement signed by a majority of the Directors in the form attached hereto with respect to the value of a Transferable Interest.

1.35 Voluntary Transfer. “Voluntary Transfer” means any Encumbrance or Transfer of a Transferable Interest, or any part thereof, excluding: (i) any Transfer by reason of the death of a Member who is a natural Person; (ii) any Involuntary Transfer; and (iii) any Dissociation.

1.36 Voting Power of the Members. “Voting Power of the Members” is allocated among the Members in proportion to the value of each Member’s Contributions.

**FORM NOTES CONTINUED...**

**FORM NOTES**

case of an LLC formed prior to August 1, 2015, unless the operating agreement provides otherwise, the voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records of the LLC.

The default rule is that an LLC is member managed unless the operating agreement expressly specifies that the LLC is board managed or is manager managed. MINN. STAT. § 322C.0407, SUBD. 1.

This provision creates a “shelf LLC” under Minnesota Statutes section 322C.0401, subdivision 2, yet allows either the organizer (pre-LLC formation) or the board (post-LLC formation) to admit members. Section 322C.0401, subdivision 2 allows members of a multi-member LLC to “become members as agreed by the persons before the formation of the LLC” without any affirmative act of the organizer admitting the members.

A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution. MINN. STAT. § 322C.0401, SUBD. 5. The operating agreement should specify whether a person must make a contribution in order to be a member. This provision authorizes the board to require a member to make additional contributions in order to remain a member.

**ARTICLE II  
MEMBERS**

2.1 Management of the Company. Except as otherwise provided in this Agreement, or in the Act, Members shall not participate in the management of the Company.

2.2 Becoming a Member. A Person shall not become a Member of the Company, or acquire a Transferable Interest, unless and until the Person has been accepted as a Member by the Board (or by the Organizer if the Board has not been established).

2.3 Required Contributions. Each Member shall make an initial Contribution and additional Contributions as determined by the Board (or by the Organizer if the Board has not been established). If a Member fails to make a required Contribution, the unpaid amount of the required Contribution shall be deemed to be a debt of the Member which the Company may collect through legal action.

**FORM NOTES CONTINUED...**

FORM NOTES

A member’s obligation to make a contribution is not excused by death, disability, or other inability to personally perform. MINN. STAT. § 322C.0403, SUBD. 1.

MINN. STAT. § 322C.0111, SUBD. 2. →

MINN. STAT. § 322C.0304, SUBD. 2. →

MINN. STAT. § 322C.0301, SUBD. 2. →

The operating agreement may not unreasonably restrict a member’s or dissociated member’s rights to access information as set forth in this paragraph. MINN. STAT. § 322C.0110, SUBD. 3(6). →

MINN. STAT. § 322C.0410, SUBD. 2(2), (3). →

MINN. STAT. § 322C.0410, SUBD. 2(4). When the LLC is board managed, the Act provides that member consent is required for the following transactions: (1) sale, lease, exchange, or otherwise dis-

2.4 Assent to Operating Agreement. A Person who becomes a Member of the Company is deemed to have assented to this Agreement.

2.5 Liability of Members. The debts, obligations, or other liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, or other liabilities of the Company, and do not become the debts, obligations, or other liabilities of a Member solely by reason of the Member acting as or being a Member.

2.6 No Automatic Agency. A Member is not an agent of the Company solely by reason of being a Member.

2.7 Right to Information. A Member shall have the right to information concerning the activities of the Company as follows:

2.7.1 During regular business hours and at a reasonable location specified by the Company, a Member may obtain from the Company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the Company as is just and reasonable if: (i) the Member seeks the information for a purpose material to the Member’s interest as a Member; (ii) the Member makes a demand in a Record received by the Company, describing with reasonable particularity the information sought and the purpose for seeking the information; and (iii) the information sought is directly connected to the Member’s purpose. Within ten (10) days after receiving a demand from a Member, the Company shall notify the Member of when and where the Company will provide the information, and if the Company declines to provide the demanded information, the reasons for declining to provide the information.

2.7.2 Whenever this Agreement or the Act provides for a Member to give or withhold consent to a matter, before the consent is given or withheld, the Company shall, without demand, provide the Member with all information that is known to the Company and is material to the Member’s decision.

FORM NOTES

pose of all, or substantially all of the LLC’s property, with or without the good will, outside the ordinary course of the LLC’s activities; (2) approve a merger, conversion, or domestication; and (3) amend the operating agreement. MINN. STAT. § 322C.0407, SUBD. 4(16). Minnesota Statutes section 322C.0407, subdivision 5 provides any member may demand a meeting of the members to take action requiring consent of the members under the Act.

The dissociated member must demonstrate the requirements of paragraph 2.7.1(i)–(iii) in order to obtain the information. MINN. STAT. § 322C.0410, SUBD. 3.

MINN. STAT. § 322C.0410, SUBD. 4.

MINN. STAT. § 322C.0410, SUBD. 7.

MINN. STAT. § 322C.0410, SUBD. 5.

Minnesota Statutes section 322C.0404, subdivision 1 provides the default rule that any pre-dissolution or winding up distribu-

2.7.3 On ten (10) days’ demand to the Company made in a Record, a Dissociated Member may have access to information to which the Person was entitled while a Member if the information pertains to the period during which the Person was a Member and the Person seeks the information in good faith. Within ten (10) days after receiving the demand, the Company shall in a Record inform the Dissociated Member: (i) of the information that the Company will provide in response to the demand; (ii) when and where the Company will provide the information; and (iii) if the Company declines to provide any demanded information, the Company’s reasons for declining.

2.7.4 The Company may charge reasonable costs of labor and material in copying the information demanded by a Member or Dissociated Member.

2.7.5 The Company may adopt reasonable restrictions and conditions on access to and use of information to be furnished to Members and Dissociated Members, including designating information as confidential and imposing nondisclosure and safeguarding obligations on the recipient.

2.7.6 A Member or Dissociated Member may exercise the rights provided in this paragraph through an agent or, in the case of a Natural Person under legal disability, a legal representative. Any restriction or condition imposed by this Agreement or by the Company apply both to the agent or legal representative and the Member or Dissociated Member.

2.8 Distributions. Distributions shall be allocated among Members and Dissociated Members in proportion to the value of the Contributions made by each Member and Dissociated Member. To the extent permitted under the Act, the Company shall make Distributions as follows:

FORM NOTES CONTINUED...

FORM NOTES

tions are distributed to the members and dissociated members in "equal shares." Most LLCs which are taxed as partnerships will allocate profits and losses among members as provided in section 704 of the Internal Revenue Code.

In a board-managed LLC, the board (not the members) decides the amount of the LLC's income to be distributed. The provision in this paragraph is a mechanism to protect members' right to receive distributions in an amount sufficient to cover their tax liabilities. Instead, the operating agreement may provide that distributions be equal to the highest tax bracket of the members to allow for more cash-flow in the operations.

MINN. STAT. § 322C.0405, SUBD. 1. An LLC may not make a distribution if, upon distribution, the LLC would not be able to pay its debts in the ordinary course of business or the LLC's liabilities exceed its assets.

A member only has a right under the Act to receive a distribution prior to dissolution or winding up of the LLC if the LLC decides to make an interim distribution. MINN. STAT. § 322C.0404, SUBD. 2. The distribution requirement set forth in this paragraph is intended to ensure that members receive distributions at least 15 days before the date that quarterly estimated tax payments are due.

2.8.1 Each calendar year the Company shall make Distributions in an amount equal to fifty percent (50%) of the Taxable Income of the Company for such year.

2.8.2 The Board may declare additional Distributions in an amount that does not exceed the Company's Available Cash.

2.8.3 Distributions shall be made in quarterly installments on or prior to April 1, June 1, September 1, and December 1 of each year.

2.9 Compensation. Members may be compensated for their services performed for or on behalf of the Company to the extent determined by a majority of the Members.

**FORM NOTES**

The duty of good faith and fair dealing is set forth in Minnesota Statutes section 322C.0409, subdivision 4. Minnesota Statutes section 322C.0110, subdivision 3(5) prohibits the operating agreement from eliminating the contractual obligation of good faith and fair dealing. However, section 322C.0110, subdivision 4(5) allows the operating agreement to proscribe the standards against which to measure the contractual obligation of good faith and fair dealing, provided the standard is not manifestly unreasonable and does not limit other terms in the operating agreement.

MINN. STAT. § 322C.0407, SUBD. 5. See *supra* paragraph 2.7.2 and accompanying explanatory text for transactions in which the Act requires member consent.

Paragraph 3.3 adopts the remote communication rule of Minnesota Statutes section 322C.0407, which is applicable to board members, and makes it also applicable to members.

MINN. STAT. § 322C.0407, SUBD. 5. Member consent by authenticated electronic communication is by virtue of the operating agreement and not explicitly provided in the Act. Minnesota Statutes section 322C.0117, subdivisions 2(1) and 3 provide a record may not be denied legal effect because it is in electronic form. This language is adopted from Minnesota Statutes section 322B.35.

2.10 Duty of Good Faith and Fair Dealing. A Member shall discharge the Member’s duties and exercise the Member’s rights under this Agreement and the Act in a manner which is consistent with the contractual obligation of good faith and fair dealing, including acting in a manner that is honest, fair, and reasonable.

**ARTICLE III  
MEETINGS OF MEMBERS**

3.1 Regular Meetings of Members. The Company shall hold regular meetings of Members at such times and at such locations as may be determined by the Members.

3.2 Special Meetings of Members. A Member may demand a special meeting of the Members to take action requiring consent of Members under this Agreement or the Act upon not less than twenty (20) days’ Notice to all Members in a Record setting forth the date and time of the meeting. Any meeting held upon demand of a Member shall be held at the Company’s principal place of business or by Remote Communication.

3.3 Meetings By Remote Communication. Meetings of Members may be conducted solely by one or more means of Remote Communication if the same Notice is given of the meeting as would be required by this Agreement for a meeting, and if the number of Members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation in a meeting by Remote Communications shall constitute presence at the meeting.

3.4 Written Action. Any action required or permitted to be taken at a meeting of the Members may be taken by written action signed, or consented to by Authenticated Electronic Communication, by the Voting Power of the Members required to take the same action at a meeting of the Members at which all Members were present. The written action is effective when signed, or consented to by Authenticated Electronic Communication, by the required Voting Power of the Members, unless a different effective date is provided in the written action. When written action is taken by less than all of the Members, all Members shall be notified immediately of its text and effective date, except that failure to provide such Notice does not invalidate the written action.

FORM NOTES

Minnesota Statutes section 322C.0407, subdivision 17 provides that in a board-managed LLC, the majority of the voting powers of the members present at a meeting of the members is a quorum.

This language is adopted from the meetings of the board of a board-managed LLC of Minnesota Statutes section 322C.0407, subdivision 4(10) and applies it to the members of a board-managed LLC.

MINN. STAT. § 322C, SUBD. 4(4).

MINN. STAT. § 322C.0407, SUBD. 5. The requirement to file the proxy with the LLC in writing or by authenticated electronic communication is created by the operating agreement and not the Act.

MINN. STAT. § 322C.0407, SUBD. 4(16). The members may want to provide in the operating agreement that the listed actions require the consent of a supermajority of the members and not unanimous approval.

3.5 Quorum. A majority of the Voting Power of the Members present at a duly called meeting is a quorum for the transaction of business. If a quorum is present when a duly held meeting is convened, the Members who are in attendance at such meeting may continue to transact business until adjournment, even though the withdrawal of one or more Members originally present leaves less than the proportion or number otherwise required for a quorum.

3.6 Waiver of Notice of Meeting. A Member may orally, or in writing, waive Notice of a meeting of the Members before, at or after such meeting. Attendance by a Member at a meeting of the Members is also a waiver of Notice of such meeting, except where the Member objects at the beginning of the meeting to the transaction of business because the meeting allegedly is not lawfully called or convened and does not participate thereafter in the meeting.

3.7 Proxies. A Member may vote by proxy by filing an appointment of proxy with the Company at or before the meeting at which the appointment is to be effective. Proxies may be filed in writing or by Authenticated Electronic Communication.

3.8 Acts of the Members. The Members shall take action by a majority of the Voting Power of the Members, except that the consent of all Members is required to:

3.8.1 Amend this Agreement;

3.8.2 Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the Company’s property, with or without the good will, outside the ordinary course of the Company’s activities; or

3.8.3 Approve a merger, conversion, or domestication of the Company.

**FORM NOTES**

The default rule is that a transferable interest can be transferred at any time, in whole or in part, without the approval of the members or the board. *See* MINN. STAT. § 322C.0501. In order to modify this default rule, the operating agreement must restrict or limit the transfer of transferable interests. *See* MINN. STAT. § 322C.0110, SUBD. 2. The Act does not specify permissible transfers. Therefore, it is important to create mechanisms that will allow or restrict transfers in certain circumstances. Article IV contains the terms and conditions that would accompany a buy-sell agreement. Paragraph 4.1 provides the general rule that a member may not transfer his or her transferable interest. The remainder of Article IV provides examples of permissible exceptions in which a member may transfer his or her transferable interest. It is important to note that a member does not automatically become a dissociated member under Article V by virtue of the transfer of a transferable interest under Article IV. *See* MINN. STAT. § 322C.0501, SUBD. 1(2).

**ARTICLE IV  
TRANSFERABLE INTERESTS**

4.1 Prohibition. A Member may not Encumber or Transfer a Transferable Interest, or any part thereof, except pursuant to this Agreement, or with the approval of the Board.

**FORM NOTES**

Paragraph 4.2 places some limitations on the default rule of Minnesota Statutes section 322C.0501. The proposed transfer of the transferable interest, in form and in substance, allows the member-settlor to retain control over the revocable trust and is the only income and principal beneficiary. Thus, the member-settlor transfers the transferable interest to himself or herself, but in a different form. A member may effectuate such transfer for estate planning purposes.

A transferable interest is personal property. *See* MINN. STAT. § 322C.0501. Upon the death of a member who is a natural person, the member becomes a dissociated member under Minnesota Statutes section 322C.0602(6)(i) and as reflected in paragraph 5.4.1 of the operating agreement. Paragraph 4.3 governs the right to receive a distribution (i.e., the transferable interest) that becomes part of the deceased member’s estate by operation of law (i.e., involuntary transfer).

Paragraph 4.3.2 allows the LLC to redeem the member’s transferable interest at the time of the triggering event. This provision may be drafted to allow the remaining members to purchase the transferable interest, rather than the LLC. While the proceeds of the redemption will ultimately reach the members, there are different tax consequences under the code for sale or redemption of the member’s transferable interest.

4.2 Transfers to Trusts. A Member who is a natural Person shall be allowed to Transfer the Member’s Transferable Interest to a revocable trust without the consent of the Company provided: (i) the Member is the settlor and sole trustee of such Trust; and (ii) such Interest remains subject to all the terms of this Agreement.

4.3 Death of a Member Who is a Natural Person. In the event of the death of a Member who is a Natural Person, the Personal Representative of the deceased Member’s Estate shall give Notice to the Company.

4.3.1 The Notice shall identify: (i) the name and date of death of the deceased Member; and (ii) the Contact Information for the Personal Representative.

4.3.2 Upon receiving such Notice, the Company shall have the option, exercisable within thirty (30) days following receipt of such Notice, to purchase the Transferable Interest of the deceased Member, for the price and upon other terms hereinafter provided.

FORM NOTES

If the LLC does not exercise the option of paragraph 4.3.2, then the personal representative may transfer the transferable interest under applicable law, generally the probate code. The deceased member’s estate is a member until the transferable interest is fully distributed, at which time the estate becomes a dissociated member pursuant to Minnesota Statutes section 322C.0602(9).

In a closely-held business, owner-employees have a reasonable expectation of continuing employment by the company. *Pedro v. Pedro*, 489 N.W.2d 798 (Minn. Ct. App. 1992); *Gunderson v. Alliance of Computer Prof’ls*, 628 N.W.2d 173 (Minn. Ct. App. 2001). A member employee becomes a transferring member under paragraph 1.32 upon the occurrence of a triggering event under paragraph 1.33, including voluntary or involuntary termination of employment from the LLC.

However, the transferring member becomes a dissociated member under paragraph 5.2.2.

The LLC need not give effect to the transferee’s rights under Minnesota Statutes section 322C.0502, including the right to distributions, until the LLC receives notice of the transfer. MINN. STAT. § 322C.0502, SUBD. 5.

4.3.3 If the Company does not exercise its option to purchase the Transferable Interests of the deceased Member, then the Personal Representative shall be entitled to Transfer the Transferable Interest of the deceased Member as provided by law.

4.4 Termination of Employment of a Member Who is a Natural Person. If a Member’s employment by the Company is voluntarily or involuntarily terminated for any reason, other than death, the Company shall have the option, exercisable within thirty (30) days following such termination of employment, to purchase the Transferable Interest of the Member for the price and upon other terms hereinafter provided. If the Company does not exercise its option to purchase the Transferable Interests of the Transferring Member, then the Transferring Member shall be entitled to retain ownership of the Transferable Interest, and the Member’s Transferable Interest shall remain subject to this Agreement.

4.5 Voluntary Transfers. A Transferring Member shall give Notice to the Company of a proposed Voluntary Transfer by such Member.

4.5.1 The Notice shall identify: (i) the Contact Information of the proposed Transferee; (ii) the amount of the consideration to be paid by the Transferee, if any; and (iii) the other terms of the Transfer.

**FORM NOTES**

As in paragraph 4.3.2, paragraph 4.5.2 may be modified to provide that the LLC has the obligation, rather than the option, to purchase the transferable interest. The provision may also be modified to have the option made available to the remaining members (via a cross-purchase arrangement) rather than, or in addition to, a redemption by the LLC.

The LLC need not give effect to the transferee’s rights under Minnesota Statutes section 322C.0502, including the right to distributions, until the LLC receives notice of the transfer. Minnesota Statutes section 322C.0502, SUBD. 5.

Paragraphs 4.6.1 and 4.6.2 may be modified to allow for a cascading redemption and purchase options with the LLC and remaining members retrospectively. For example, the LLC and the remaining members may purchase less than all of the transferable interest.

The transferee is not entitled to participate in the management or conduct of the LLC and does not have the right to access records or other information concerning the LLC’s activities pre-dissolution. MINN. STAT.

4.5.2 The Company shall have the option, exercisable within thirty (30) days following receipt of such Notice, to purchase the Transferable Interest of the Member, for the price and upon other terms hereinafter provided.

4.5.3 If the Company does not exercise its option to purchase the Transferable Interests of the Transferring Member, then the Transferring Member shall be entitled to Transfer the Transferable Interest to the proposed Transferee pursuant to the precise terms, and under the precise conditions set forth in the Notice to the Board. Such sale shall be completed within sixty (60) days after the expiration of the period for the Company to elect to purchase the Transferable Interest of the Transferring Member, or the Transferring Member’s right to sell such Transferable Interest shall lapse and the Transferable Interest shall remain subject to this Agreement.

4.6 Involuntary Transfers. In the event a Transferee acquires the Transferable Interest of a Member pursuant to an Involuntary Transfer, the Transferee shall immediately give Notice to the Company.

4.6.1 The Notice shall include: (i) Contact Information of the Transferee; (ii) the name of the Transferring Member; and (iii) a description of the transaction by which the Transferee acquired the Transferable Interest.

4.6.2 The Company shall have the option, exercisable within thirty (30) days following receipt of such Notice, to purchase the Transferable Interest acquired by the Transferee for the price and upon the other terms hereinafter provided.

4.6.3 If the Company does not exercise its option to purchase the Transferable Interest acquired by the Transferee, then the Transferee may retain the Transferable Interest.

**FORM NOTES CONTINUED...**

**FORM NOTES**

§ 322C.0502, SUBDS. 1(2), 1(3) & 3. The transferee continues to have the right to distribution that the transferring member had prior to the involuntary transfer. MINN. STAT. § 322C.0502, SUBD. 2.

Article V, *infra*, specifies the events causing dissociation. →

4.7 Dissociations. In the event a Transferee acquires the Transferable Interest of a Member pursuant to a Dissociation, the Transferee shall immediately give Notice to the Company.

4.7.1 The Notice shall include: (i) Contact Information of the Transferee; (ii) the name of the Dissociated Member; and (iii) a description of the transaction by which the Transferee acquired the Transferable Interest.

4.7.2 The Company shall have the option, exercisable within thirty (30) days following receipt of such Notice, to purchase the Transferable Interest acquired by the Transferee for the price and upon the other terms hereinafter provided.

4.7.3 If the Company does not exercise its option to purchase the Transferable Interest acquired by the Transferee, then the Transferee may retain the Transferable Interest.

4.8 Purchase Price of Transferable Interests. The purchase price for a Transferable Interest shall be the Agreed Value as set forth in a Valuation Agreement.

4.8.1 If the date of the most recent Valuation Agreement is less than two (2) months and more than eighteen (18) months before the Triggering Event, then the purchase price for a Transferable Interest shall be determined by the agreement of the Company, the Personal Representative (in the case of a deceased Member), the Transferring Member (in the case of a Voluntary Transfer), and the Transferee (in the case of an Involuntary Transfer or Dissociation), as the case may be.

The valuation process may be negotiated. For example, the parties may also select their own appraiser and if the two appraised values are within \$XX.xx dollars, the higher appraised value will be deemed the value of the transferable interest. →

4.8.2 If the parties are unable to reach unanimous agreement as to the purchase price for a Transferable Interest within thirty (30) days following a Triggering Event, the value of the Transferable Interest shall be determined by appraisal. Within forty-five (45) days following a Triggering Event, the Company and the Personal Representative, the Transferring Member, or the Transferee, as the case may be, shall each select one appraiser and the two appraisers so selected shall agree upon a third appraiser. The appraisers shall be instructed not to give any consideration to the fact that the Transferable Interest being valued may be more or less than a majority of the outstanding Transferable Interests

**FORM NOTES**

This provision relates to minority and lack of marketability discounts. Minority members prefer that appraisers not take into account these discounts, resulting in a higher value for the transferable interest. In *Advanced Communication Design, Inc. v. Follett*, 615 N.W.2d 285 (Minn. 2000), the Minnesota Supreme Court held that “fair value” for purposes of a court-ordered buy-out under Minnesota Statutes section 302A.751 (and presumably also under Minnesota Statutes chapter 322C) should equal the shareholder’s proportionate interest in the corporation without a discount for lack of marketability, except in extraordinary circumstances.

Paragraph 4.9.1 may be drafted so the LLC pays a percentage at closing (e.g., 20 percent) and pays the remaining amounts by a term promissory note.

Minnesota Statutes section 322C.0601, subdivision 1 allows a person to dissociate at any time, rightfully or wrongfully, by expressly withdrawing as a member. Minnesota Statutes section 322C.0602(1) specifies the notice provisions to dissociate.

MINN. STAT. § 322C.0602(4). The operating agreement can provide for expulsion by the board or by less than unanimous act of the members.

or that the Transferable Interest being valued is not readily transferable. The decision of a majority of the three (3) appraisers as to the value of the Transferable Interest shall be binding upon the parties.

4.9 Closing and Payment of the Purchase Price. The closing shall take place at a time and place to be determined by the Company; provided, however, that such closing must take place within one-hundred twenty (120) days following the Triggering Event, or within thirty (30) days following the determination of the value of the Transferable Interest under paragraph 4.8, whichever is later.

4.9.1 The Company shall pay the purchase price for the Transferable Interest in cash at the closing.

4.9.2 At the closing, the Personal Representative, the Transferring Member, or the Transferee, whichever is applicable, shall deliver to the Company such instruments as are necessary and proper to terminate the Transferable Interest being sold.

**ARTICLE V  
DISSOCIATION OF A MEMBER**

5.1 Power to Voluntarily Withdraw. A Person has the power to dissociate and withdraw as a Member at any time by giving Notice to the Company. The withdrawal shall be effective as of the date the Company receives Notice of the withdrawal unless a later date is specified in the Notice.

5.2 Expulsion by the Members. A Person may be expelled as a Member by the unanimous consent of the other Members if:

5.2.1 It is unlawful to carry on the Company’s activities with the Person as a Member;

FORM NOTES

MINN. STAT. § 322C.0602(5).

Additionally, when the LLC is member managed, Minnesota Statutes section 322C.0602(5)(ii) allows a person to be expelled as a member by judicial order because the person willfully or persistently breached the person’s duties or obligations under Minnesota Statutes section 322C.0409 (standard of conduct). In a board-managed LLC, the duties or obligations under Minnesota Statutes section 322C.0409 apply to the board, not the members (see paragraphs 6.12–6.14, *infra*).

MINN. STAT. § 322C.0602(6)(i).

5.2.2 There has been a Transfer of the Person’s Transferable Interest in the Company, other than a Transfer for security purposes or a charging order which has not been foreclosed;

5.2.3 The Person is a corporation and, within ninety (90) days after the Company notifies the Person that it will be expelled as a Member because the Person has filed a certificate of dissolution or the equivalent, the Person’s charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or the Person’s charter or right to conduct business has not been reinstated; or

5.2.4 The Person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

5.3 Expulsion By Court Order. On application by the Company, a Person may be expelled as a Member by judicial order because the Person:

5.3.1 Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the Company’s activities;

5.3.2 Has willfully or persistently committed, or is willfully and persistently committing, a material breach of this Agreement; or

5.3.3 Has engaged, or is engaging, in conduct relating to the Company’s activities which makes it not reasonably practicable to carry on the activities with the Person as a Member.

5.4 Dissociation of a Member who is a Natural Person. A Natural Person becomes a Dissociated Member if:

5.4.1 The Person dies;

**FORM NOTES**

By default, a person in a member-managed LLC automatically becomes a dissociated member when the events of paragraphs 5.4.2 and 5.4.3 occur. MINN. STAT. § 322C.0602(6)(ii). In a board-managed LLC, the person does not automatically become a dissociated member when the events listed in paragraphs 5.4.2 and 5.4.3 occur, unless the operating agreement provides otherwise.

The events causing dissociation in paragraph 5.5 automatically apply to a member-managed LLC. In the context of a board-managed LLC, the events of paragraph 5.5 causing dissociation must be explicitly provided in the operating agreement.

5.4.2 A guardian or general conservator for the Person is appointed; or

5.4.3 There is a judicial order finding that the Person has otherwise become incapable of performing the Person’s duties under this Agreement or the Act.

5.5 Other Events Causing Dissociation. A Person becomes a Dissociated Member:

5.5.1 If the Person becomes a debtor in bankruptcy;

5.5.2 If the Person executes an assignment for the benefit of creditors;

5.5.3 If the Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the Person’s property;

5.5.4 In the case of a Person that is a trust or is acting as a Member by virtue of being a trustee of a trust, the trust’s entire transferable interest in the Company is distributed;

5.5.5 In the case of a Person that is an estate or is acting as a Member by virtue of being a Personal Representative, the estate’s entire Transferable Interest in the Company is distributed;

5.5.6 The Company participates in a merger in compliance with the requirements of the Act, and: (i) the Company is not the surviving entity; or (ii) as a result of the merger, the Person ceases to be a Member;

5.5.7 The Company participates in a conversion in compliance with the requirements of the Act;

5.5.8 The Company participates in a domestication in compliance with the requirements of the Act, and as a result of the domestication, the Person ceases to be a Member; or

5.5.9 The Company terminates its existence.

**FORM NOTES**

MINN. STAT. § 322C.0601. →

5.6 Wrongful Dissociation. A Person’s dissociation is wrongful only if the dissociation is in breach of an express provision of this Agreement, or occurs before the termination of the Company, and:

5.6.1 The Person withdraws as a Member by express will;

5.6.2 The Person is expelled as a Member by judicial order under paragraph 5.3;

5.6.3 The Person is dissociated under paragraph 5.5.1 by becoming a debtor in bankruptcy; or

5.6.4 In the case of a Person that is not a trust other than a business trust, an estate, or a Natural Person, the Person is expelled or otherwise dissociated as a Member because it willfully dissolved or terminated.

MINN. STAT. § 322C.0601, SUBD. 3. →

A Person that wrongfully dissociates as a Member is liable to the Company and the other Members for damages caused by the dissociation to the extent provided in the Act. The liability is in addition to any other debt, obligation, or other liability of the Member to the Company or the other Members.

5.7 Effect of Person’s Dissociation as a Member. When a Person becomes a Dissociated Member:

5.7.1 The Person’s right to participate as a Member in the management and conduct of the Company’s activities terminates;

**[Optional For Member-Managed LLCs**

**5.7.2 The Person’s fiduciary duties as a Member end with regard to matters arising and events occurring after the Person’s Dissociation;]**

5.7.3 Except as otherwise provided in this Agreement or in the Act, any Transferable Interest owned by the Person immediately before Dissociation in the Person’s capacity as a Member, is owned by the Person following such Dissociation solely as a Transferee;

5.7.4 The Company shall have the option to purchase the Transferable Interest of the Dissociated Member from the Transferee as provided in paragraph 4.7 hereof; and

5.7.5 The Person’s Dissociation does not of itself discharge the Person from any debt, obligation, or other liability to the Company or the other Members that the Person incurred while a Member.

MINN. STAT. § 322C.0603, SUBD. 1(1). →

Minnesota Statutes section 322C.0603, subdivision 1(2) applies when the LLC is member managed.

MINN. STAT. § 322C.0603, SUBD. 1(3). →

MINN. STAT. § 322C.0603, SUBD. 2. →

**FORM NOTES**

If the LLC is to be board managed, the operating agreement must specifically provide as such. MINN. STAT. § 322C.0407, SUBD. 1.

Minnesota Statutes section 322C.0407, subdivision 4(3) provides that directors are to be elected by a plurality of the voting power present at a duly called meeting at which a quorum is present.

MINN. STAT. § 322C.0407, SUBD. 4(2).

A majority of the voting power of the members determine the number, method of election, and qualifications of the directors. MINN. STAT. § 322C.0407, SUBD. 4(1), (3).

Minnesota Statutes section 322C.0407, subdivision 4(5) does not provide the length of a director's term.

Minnesota Statutes section 322C.0407, subdivision 4(5) allows a director to resign at any time, but does not contain notice provisions.

MINN. STAT. § 322C.0407, SUBD. 4(5).

MINN. STAT. § 322C.0407, SUBD. 4(6).

**ARTICLE VI  
BOARD OF DIRECTORS**

6.1 Management. The activities and affairs of the Company are to be managed by or under the direction of a Board of Directors elected by the affirmative vote of a majority of the Members.

6.2 Qualifications of Directors. Directors must be Natural Persons. Directors need not be Members, except that the Dissociation of a Member who is also a Director disqualifies the Person from serving as a Director.

6.3 Number of Directors. The Board shall consist of at least one (1) Director, with the actual number of Directors to be decided from time to time by the Members.

6.4 Terms. A Director shall serve for a term of three (3) years and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the Director.

6.5 Resignation. A Director may resign at any time by mailing or delivering written notice to the Company at its registered office. The resignation is effective without acceptance when the notice is given to the Company, unless a later effective time is specified in the notice.

6.6 Removal. A Director may be removed at any time, with or without cause, by the affirmative vote of a majority of the Members.

6.7 Vacancies. When a vacancy on the Board occurs, the Company shall provide all Members Notice of the vacancy and the cause of the vacancy. Within thirty (30) days of the date of the Notice, the Members may fill the vacancy by the affirmative vote of a majority of the Members. If the vacancy is not filled by the Members, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, even though less than a quorum.

**FORM NOTES**

MINN. STAT. § 322C.0304, SUBD. 1. Paragraph 6.8 applies to the members in a member-managed LLC and the managers in a manager-managed LLC.

MINN. STAT. § 322C.0304, SUBD. 1. Paragraph 6.9 reflects the rule that individual directors do not have the authority to act for the LLC unless authorized to do so by the members or by the board.

Minnesota Statutes section 322C.0410, subdivision 2(1) applies the right to information contained in Minnesota Statutes section 322C.0410, subdivision 1 to the directors.

MINN. STAT. § 322C.0410, SUBD. 4.

MINN. STAT. § 322C.0410, SUBD. 7. The LLC has the burden of proving reasonableness if a dispute arises.

**[Optional For Member-Managed LLCs and Manager-Managed LLCs**

**6.8 Liability of Directors. The debts, obligations, or other liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, or other liabilities of the Company, and do not become the debts, obligations, or other liabilities of a Director solely by reason of the Director serving on the Board.]**

6.9 No Automatic Agency. A Director is not an agent of the Company solely by reason of serving on the Board.

6.10 Right to Information. A Director shall have the right to information concerning the activities of the Company as follows:

6.10.1 On reasonable Notice, a Director may inspect and copy during regular business hours, at a reasonable location specified by the Company, any Record maintained by the Company regarding the Company’s activities, financial condition, and other circumstances, to the extent the information is material to the Director’s rights and duties under this Agreement or the Act.

6.10.2 The Company shall furnish to each Director, without demand, any information concerning the Company’s activities, financial condition, and other circumstances which the Company knows and is material to the proper exercise of the Director’s rights and duties under this Agreement or the Act, except to the extent the Company can establish that it reasonably believes the Director already knows the information. The duty imposed by this subparagraph applies to each Director to the extent the Director knows any of such information.

6.10.3 The Company shall furnish to each Director, on demand, any other information concerning the Company’s activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances. The duty imposed by this subparagraph applies to each Director to the extent the Director knows any of such information.

6.10.4 The Company may charge reasonable costs of labor and material in copying the information demanded by a Director.

6.10.5 The Members or the Board may adopt reasonable restrictions and conditions on access to and use of information to be furnished to Directors, including designating information as confidential

FORM NOTES

The Act does not address director compensation.

Minnesota Statutes section 322C.0409, subdivision 8 applies the duty of loyalty provisions of subdivision 2 to the directors. Minnesota Statutes section 322C.0110, subdivisions 3 and 4 allow the duty of loyalty to be restricted, but not eliminated, if not manifestly unreasonable.

Minnesota Statutes section 322C.0409, subdivision 8 applies the member authorization and ratification provisions contained in section 322C.0409, subdivision 6 (member-managed LLC) to the members in a board-managed LLC.

Minnesota Statutes section 322C.0409, subdivision 8 applies the duty of loyalty provisions of section 322C.0409, subdivision 2 to the directors.

and imposing nondisclosure and safeguarding obligations on the recipient.

6.11 Compensation. Directors may be compensated for their services performed for or on behalf of the Company to the extent determined by the Members.

6.12 Duty of Loyalty. A Director owes to the Company and the Members the duty:

6.12.1 To account to the Company and to hold as trustee for it any property, profit, or benefit derived by the Director: (i) in the conduct or winding up of the Company's activities; (ii) from a use by the Director of the Company's property; or (iii) from the appropriation of a Company opportunity;

6.12.2 To refrain from dealing with the Company in the conduct or winding up of the Company's activities as or on behalf of a Person having an interest adverse to the Company; and

6.12.3 To refrain from competing with the Company in the conduct of the Company's activities before the dissolution of the Company.

The Members may, by unanimous action, authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate this paragraph.

6.13 Duty of Care. A Director is to act in the conduct and winding up of the Company's activities with the care that a Person in a like position would reasonably exercise under similar circumstances, and in a manner the Director reasonably believes to be in the best interests of the Company. In discharging this duty, a Director may rely in good faith on opinions, reports, statements, or other information provided by another Person that the Director reasonably believes is a competent and reliable source for the information.

**FORM NOTES**

Minnesota Statutes sections 322C.0409, subdivision 4 and 322C.0110, subdivision 3(5) prohibit the operating agreement from eliminating the contractual obligation of good faith and fair dealing; however, section 322C.0110, subdivision 4(5) allows the operating agreement to proscribe the standards against which to measure the contractual obligation of good faith and fair dealing so long as the standard is not manifestly unreasonable and does not limit other terms in the operating agreement. In a board-managed LLC, the duty of good faith and fair dealing applies to both the members and the directors. See MINN. STAT. § 322C.0409, SUBD. 8(3).

Minnesota Statutes section 322C.0408 references “committees” of the board, but the Act does not specify their formation. Paragraph 6.15 is taken from the Minnesota Business Corporation Act, MINN. STAT. § 302A.241.

Minnesota Statutes section 322C.0407, subdivision 4(7) provides the majority of the voting power of the members determine when the board shall meet.

MINN. STAT. § 322C.0407, SUBD. 4(8).

The default under Minnesota Statutes section 322C.0407, subdivision 4(7) is that the director calling the meeting must provide the place of the meeting in the notice.

6.14 Duty of Good Faith and Fair Dealing. A Director shall discharge the Director’s duties and exercise the Member’s rights under this Agreement and the Act in a manner which is consistent with the contractual obligation of good faith and fair dealing, including acting in a manner that is honest, fair, and reasonable.

6.15 Committees. The Board may establish one or more committees having the authority of the Board in the management of the business and affairs of the Company. A committee may consist of one or more Natural Persons, who need not be Directors. A majority of the members of a committee is a quorum for the transaction of business. Minutes, if any, of committee meetings shall be made available upon request to other members of the committee and to any Director.

**ARTICLE VII  
MEETINGS OF THE BOARD**

7.1 Regular Meetings of the Board. The Board shall hold regular meetings at such times and at such locations as may be determined by the Board.

7.2 Special Meetings of Board. A Director may demand a special meeting of the Board upon not less than ten (10) days’ Notice to all Directors in a Record setting forth the date and time of the meeting. Any meeting held upon demand of a Director shall be held at the Company’s principal place of business or by Remote Communication.

FORM NOTES

The board may determine the place of the board meetings. MINN. STAT. § 322C.0407, SUBD. 4(7).

MINN. STAT. § 322C.0407, SUBD. 4(12).

MINN. STAT. § 322C.0407, SUBD. 4(13).

MINN. STAT. § 322C.0407, SUBD. 4(9).

MINN. STAT. § 322C.0407, SUBD. 4(10).

7.3 Location of Meetings. Meetings of the Board may be held from time to time at any place within or without the State of Minnesota that the Board may select. If the Board fails to select a place for a meeting, the meeting shall be held at the Company’s principal place of business.

7.4 Meetings By Remote Communication. Meetings of the Board may be conducted solely by one or more means of Remote Communication if the same Notice is given of the meeting as would be required by this Agreement for a meeting, and if the number of Directors participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation in a meeting by Remote Communications shall constitute presence at the meeting.

7.5 Written Action. Any action required or permitted to be taken at a meeting of the Board may be taken by written action signed, or consented to by Authenticated Electronic Communication, by the number of Directors required to take the same action at a meeting of the Board at which all Directors were present. The written action is effective when signed, or consented to by Authenticated Electronic Communication, by the required number of Directors, unless a different effective date is provided in the written action. When written action is taken by less than all of the Members, all Members shall be notified immediately of its text and effective date, except that failure to provide such Notice does not invalidate the written action.

7.6 Notice of Meetings. A Director may call a meeting of the Board of Directors by giving ten (10) days’ Notice to all Directors of the date, time, and place of the meeting. If the date, time, and place of a meeting of the Board have been announced at a previous meeting of the Board of Directors, no additional notice of such meeting is required. Notice of a meeting of the Board of Directors need not state the purposes of the meeting.

7.7 Waiver of Notice of Meeting. A Director may orally or in writing waive notice of a meeting of the Board of Directors before, at or after such meeting. Attendance by a Director at a meeting of the Board of Directors is also a waiver of notice of such meeting, except where the Director objects at the beginning of the meeting to the transaction of business because the meeting allegedly is not lawfully called or convened and does not participate thereafter in the meeting.

7.8 Quorum. A majority of the Directors present at a duly called meeting is a quorum for the transaction of business. If a quorum is present when a duly called or held meeting is convened, the Directors who are in attendance at such meeting may continue to transact business until adjournment, even though the withdrawal of a number of Directors originally present leaves less than the proportion or number otherwise required for a quorum.

**FORM NOTES**

Minnesota Statutes section 322C.0407, subdivision 4(10) provides when a quorum is present at a duly called meeting of the board, a majority of the board present constitutes an act of the board.

MINN. STAT. § 322C.0407, SUBD. 4(14).

MINN. STAT. § 322C.0407, SUBD. 4(15).

7.9 Number of Directors Required to Take Action. Except where a larger proportion or number is required by this Agreement or the Act, the Board may take action by the affirmative vote of a majority of the Directors present at a duly held meeting.

**ARTICLE VIII  
OFFICERS**

8.1 Chair. The Board may elect one of the Directors to be “Chair,” who shall preside at all meetings of the Board of Directors and at all meetings of the Members.

8.2 Chief Executive Officer. The Board may designate a Natural Person as “President,” “Chief Executive Officer,” “CEO,” or another title of similar import, who shall:

8.2.1 Serve as an agent of the Company at the will of the Board, without prejudice to any rights the Person may have under a contract with the Company;

8.2.2 Have general active management of the business of the Company, subject to the supervision and control of the Board;

8.2.3 See that all orders and resolutions of the Board are carried into effect;

8.2.4 Sign and deliver in the name of the Company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the Company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Board to some other Person;

8.2.5 Maintain records of and, whenever necessary, certify all proceedings of the Board and the Members; and

8.2.6 Perform other duties prescribed by the Board.

8.3 Chief Financial Officer. The Board may designate a Natural Person as “Treasurer,” “Chief Financial Officer,” “CFO,” or another title of similar import, who shall:

8.3.1 Serve as an agent of the Company at the will of the Board, without prejudice to any rights the Person may have under a contract with the Company;

8.3.2 Keep accurate financial records for the Company;

**FORM NOTES**

8.3.3 Deposit all money, drafts, and checks in the name of and to the credit of the Company in the banks and depositories designated by the Board;

8.3.4 Endorse for deposit all notes, checks, and drafts received by the Company as ordered by the Board, making proper vouchers for them;

8.3.5 Disburse Company funds and issue checks and drafts in the name of the Company, as directed by the Board;

8.3.6 Give to the Chief Executive Officer and the Board, whenever requested, an account of all transactions by the Chief Financial Officer and of the financial condition of the Company; and

8.3.7 Perform other duties prescribed by the Board or by the Chief Executive Officer.

**ARTICLE IX  
FINANCIAL AND TAX MATTERS**

9.1 Books and Records. The Company’s books and records will be kept in accordance with generally accepted accounting principles, consistently applied, and will reflect all Company transactions and be appropriate and adequate for all Company business. The Company books will be kept on a fiscal year ending December 31st. The Company’s records will be maintained at a place agreed to by the Members.

9.2 Single Member. If at any time the Company has only one Member, the Company shall be deemed to be a “disregarded entity” under Treasury Regulation § 301.7701-2(c)(2).

9.3 Accounting as a Partnership. If at any time the Company has two (2) or more Members, the Company will be treated as a “partnership” for federal and state tax purposes in accordance with Treasury Regulation § 301.7701-3(f)(2).

Under section 7701 of the Internal Revenue Code, an unincorporated business entity with two or more owners is deemed to be a “partnership” for tax purposes, unless the business entity elects to be taxed as a “corporation.” A single-owner unincorporated business entity is disregarded for tax purposes unless the business entity elects to be taxed as a “corporation.”

**FORM NOTES**

9.3.1 Within ninety (90) days after the end of each Fiscal Year, the Company will cause to be delivered to each Person who was a Member at any time during such Fiscal Year, a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member’s federal and state income tax (or information) returns, including a statement showing such Member’s share of income, gain or loss, and credits for the Fiscal Year.

9.3.2 The Company will establish and maintain a capital account for each Member as required by Treasury Regulation § 1.704-1(b)(2)(iv).

9.3.3 The Board shall designate a Director to serve as the Tax Matters Partner.

**ARTICLE X  
DISSOLUTION AND WINDING UP**

10.1 Causes for Dissolution. The Company will be dissolved upon the affirmative vote of a majority of the Transferable Interests of the Company. The death, disability, or bankruptcy of a Member shall not cause the dissolution of the Company.

10.2 Winding-Up. Upon its dissolution, the Company will terminate and the Board will immediately commence to wind up its affairs.

10.3 Profits and Losses. The Members will continue to share in profits and losses during liquidation in the same manner and proportions as they did before dissolution.

10.4 Sale of Assets. The Company’s assets may be sold, if a price deemed reasonable by the Members may be obtained. The proceeds from liquidation of the Company’s assets will be applied as follows:

10.4.1 First, all of the Company’s debts and liabilities to Persons other than Members will be paid and discharged in the order of priority as provided by law;

Minnesota Statutes section 322C.0701, subdivision 1 provides the LLC is dissolved when: (1) the operating agreement provides; (2) all of the members consent; (3) failure to admit members within 90 days of the LLC’s formation; (4) by court order; or (5) by action by the attorney general.

MINN. STAT. § 322C.0702, SUBD. 1. The board’s fiduciary duty of loyalty continues in the winding up of the LLC’s activities. MINN. STAT. § 322C.0409, SUBD. 2 (unless otherwise limited by the operating agreement pursuant to Minnesota Statutes section 322C.0110, subdivisions 3 and 4).

Minnesota Statutes section 322C.0702, subdivision 2(2)(iv) allows the LLC to transfer the LLC’s property when winding up the LLC’s affairs.

MINN. STAT. § 322C.0707, SUBD. 1.

**FORM NOTES**

Minnesota Statutes section 322C.0707, subdivision 1 provides that the LLC must first satisfy creditors' claims, including member-creditors' claims; however, the Act does not specify that third-party creditors' claims take priority over member-creditors' claims. Paragraph 10.4.1 provides for the claims of third-party creditors to take priority over the claims of member-creditors.

MINN. STAT. § 322C.0707, SUBD. 3.

10.4.2 Second, all of the Company's debts and liabilities to Members will be paid and discharged in the order of priority as provided by law; and

10.4.3 Third, all remaining assets will be distributed proportionately among the Members in proportion to their Transferable Interests.

10.5 Gain or Loss. Any gain or loss on the disposition of any assets of the Company in the process of liquidation will be credited or charged to the Members in proportion to their Transferable Interests; provided, however, that gain or loss with respect to property contributed to the Company by a Member will be shared among the Members so as to take into account any variation between the basis of the property so contributed and its fair market value at the time of Contribution, in accordance with any applicable Treasury regulations. Any property distributed in kind in the liquidation will be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value will be treated as a gain or loss on the sale of property, and will be credited or charged to the Members accordingly.

10.6 Members' Rights to Payments. The Members will look solely to the Company's assets for the payment of any debts or liabilities owed by the Company to the Members and for the return of their capital contributions and liquidation amounts. If the Company property remaining after the payment or discharge of all of its debts and liabilities to Persons other than Members is insufficient to return the Members' capital contributions, the Members will have no recourse therefor against the Company or any other Members, except to the extent that such other Members may have outstanding debts or obligations owing to the Company.

**ARTICLE XI  
INDEMNIFICATION**

MINN. STAT. § 322C.0408, SUBD. 2(a).

Minnesota Statutes section 322C.0408, subdivision 3 allows

To the extent permitted by law, any Natural Person who was or is a party or is threatened to be made a party to any proceeding, wherever and by whomever brought, by reason of his or her former or present Official Capacity, shall be indemnified by this Company against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually

**FORM NOTES CONTINUED...**

**FORM NOTES**

the LLC to advance reasonable expenses, including attorneys’ fees, and requires the requestor to provide certain information such as a good-faith belief that the requirements for indemnification are met.

Minnesota Statutes section 322C.0408, subdivision 4 allows the LLC to place limitations or prohibitions of indemnification advances.

The Act does not address whether or not an LLC may have a seal. Minnesota Statutes sections 322B.20, subdivision 15 and 322B.21 allowed but did not require an LLC to have a seal.

The Act defines “operating agreement” to include “oral” and “implied” agreements. MINN. STAT. § 322C.0102, SUBD. 17. Paragraph 12.2 is important to foreclose any oral or implied agreements outside the scope of the written operating agreement. However, a court interpreting the Act’s definition of “operating agreement” may allow subsequent oral amendments to the operating agreement, which could subsequently vary the terms and obligations set forth in the written operating agreement.

and reasonably incurred by him or her in connection with such proceeding, except where the Natural Person in his Official Capacity brings an action against the Company or its Members. Such reimbursement shall be made in advance of the final disposition of the proceeding to the extent provided by law. A Person shall not have a right to indemnification or indemnification advances by the Company with respect to any threatened, pending or civil, administrative, arbitration, investigative, or other proceeding brought by or in the right of the Company against such Person. Except as expressly provided herein, no other Person shall be indemnified by the Company for expenses incurred in connection with a proceeding to which such Person was or is a party or is threatened to be made a party by reason of the former or present Official Capacity of such Person.

**ARTICLE XII  
MISCELLANEOUS**

12.1 Company Seal. The Company shall have not have a seal.

12.2 Entire Agreement. This Agreement is the entire agreement among the Members or between the Members and the Company with respect to the governance and management of the Company and the relations among the Members, the duties and rights of the Board and Directors, and supersedes any arrangement, understanding, or previous agreement of whatsoever nature, whether oral or in a Record, entered into by the Members with respect to such matters.

12.3 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity will not affect the validity of the remainder of this Agreement.

[Signature page follows]

**FORM NOTES**

The LLC is bound by and may enforce the operating agreement, whether or not the LLC has itself signed or assented to the operating agreement. MINN. STAT. § 322C.0111, SUBD. 1.

A person who becomes a member of the LLC is deemed to assent to the operating agreement and need not sign it. MINN. STAT. § 322C.0111, SUBD. 2. However, it is recommended that each member sign the operating agreement to help reduce a claim by a member that he or she had reasonable expectations that were not covered by the agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date written above.

AMP, LLC

By: \_\_\_\_\_  
Its: Organizer

THE UNDERSIGNED MEMBERS OF AMP, LLC, DO HEREBY CONSENT TO THE ABOVE OPERATING AND AGREE TO BE BOUND THEREBY.

\_\_\_\_\_  
Member A

\_\_\_\_\_  
Member B

FORM NOTES

EXHIBIT A		
<u>Member</u>	<u>Voting Power</u>	<u>Transferrable Interest</u>
Member A		
Member B		

**FORM NOTES**

**VALUATION AGREEMENT**

DATE: \_\_\_\_\_

For the purposes of paragraph 4.8 of the Operating Agreement of AMP, LLC dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the value of each Transferable Interest of AMP, LLC as of the date hereof shall be \$\_\_\_\_\_.

\_\_\_\_\_  
Director A

\_\_\_\_\_  
Director B



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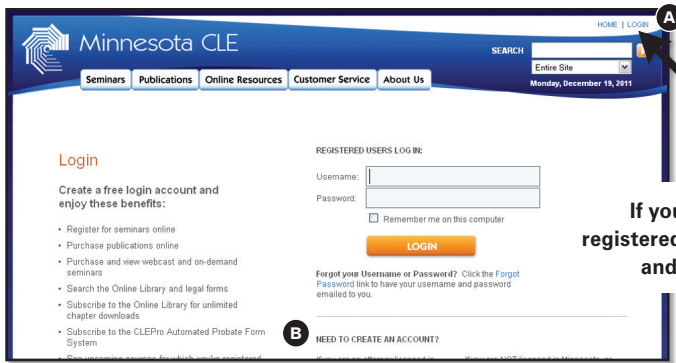
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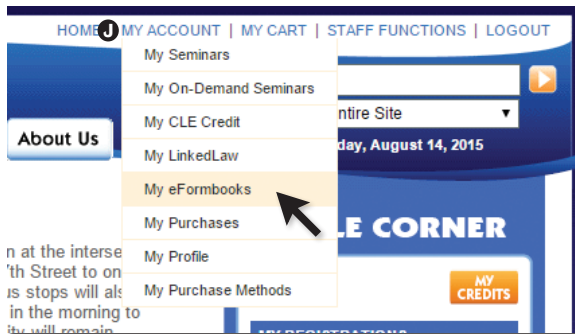
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