

Operating Agreement

of

[LLC NAME]

a **Manager-Managed Limited Liability Company**

A. Preliminary Provisions

1. *Effective Date*

This Operating Agreement of [LLC NAME], effective [DATE], is adopted by the Members whose signatures appear at the end of this agreement.

2. *Formation*

This limited liability company (LLC) was formed by filing Articles of Organization with the [STATE] Secretary of State on [DATE]. A copy of the Articles of Organization has been placed in the LLC's records book.

3. *Name*

The formal name of this LLC is as stated above. However, this LLC may do business under a different name by complying with the state's fictitious or assumed business name statutes and procedures.

4. *Registered Office and Registered Agent*

The registered Agent and Agent's office address of this LLC is:

[NAME AND ADDRESS OF REGISTERED AGENT]

The registered agent and/or office of this LLC may be changed from time to time as the Member may see fit, by filing a change of registered agent or office statement with the [STATE] Secretary of State. It will not be necessary to amend this provision of the Operating Agreement if and when such changes are made.

5. *Business Purpose*

The specific business purposes and activities contemplated by the founders of this LLC at the time of initial signing of this agreement include any legal business.

Comment [MSOffice1]: This form is form is for a multi-member, co-manager LLC. COMPLETE ALL BRACKETED TERMS AND REMOVE BRACKETS. Comments explain the reasoning and function of the provisions. This Operating Agreement contains terms enforceable in all states that follow the Uniform LLC Act.

Comment [MSOffice2]: Any Member may be the Manager or the Members, together, may appoint a Manager who does not have an ownership interest. This form is written assuming that 2 members will share the management duties as co-members, as that is the most common configuration that my clients choose.

Comment [MSOffice3]: A LLC may file for a trade name so they don't have to use the LLC designation or to create a new brand for one of the LLC's projects. In other words, it can d/b/a another name.

Comment [MSOffice4]: The registered agent receives the subpoena if the LLC is sued. The Member, the Manager or another individual may be named. If you have a lawyer, typically the law firm is named.

Comment [MSOffice5]: This is intentionally broad so that the agreement doesn't have to be amended if the LLC enters new markets or products.

It is understood that the foregoing statement of powers shall not serve as a limitation on the powers or abilities of this LLC, which shall be permitted to engage in any and all lawful business activities. If this LLC intends to engage in business activities outside the state of its formation that require the qualification of the LLC in other states, it shall obtain such qualification before engaging in such out-of-state activities.

Comment [MSOffice6]: The LLC is a state company. If you do business in another state, the LLC may have to register as a "foreign" entity in that state.

6. Duration of LLC

The duration of this LLC shall be Perpetual. This LLC shall terminate when a proposal to dissolve the LLC is adopted by the membership of this LLC or when this LLC is otherwise terminated in accordance with law.

Comment [MSOffice7]: Perpetual existence means that the company will continue if the founding members leave or pass away.

B. Management Provisions

Comment [RMP8]: The Manager takes care of the day-to-day business of the LLC.

1. Management by Co-Managers

This LLC will be managed by the Manager listed below.

Name of Manager: [NAME]
[TITLE]
[ADDRESS]
[ADDRESS]
Name of Manager: [NAME]
[TITLE]
[ADDRESS]
[ADDRESS]

Comment [MSOffice9]: Here you can create offices like, President, CEO, etc. You can designate any Member, as the Manager & give each Member an office. Co-Managers is the default on this form. You may, however, choose 1 Manager for the LLC.

2. Nonliability of Managers

No manager of this LLC shall be personally liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it.

Comment [RMP10]: Remember that the LLC insulates your personal assets from business liabilities. This provision states that explicitly.

3. Authority and Votes of Managers

Except as otherwise set forth in this agreement, the Articles of Organization, or under the laws of this state, all management decisions relating to this LLC's business shall be made by its managers.

Comment [MSOffice11]: Managers can make all management decision without formality or the need of a written resolution. Conduct business as usual.

4. Term of Managers

Each Manager shall serve until the earlier of the following events:

a. the Manager becomes disabled, dies, retires or otherwise withdraws from management;

b. the Manager's term expires, if a term has been designated in other provisions of this agreement.

Upon the happening of any of these events, a new manager may be appointed to replace the departing manager by vote of the Members.

Comment [MSOffice12]: The Member/Manger may resign his management position. If so, the Members shall appoint a new manager by vote. You can choose to require this vote to be unanimous or majority by adding your preference before the word "vote."

5. *Managers' Commitment to LLC*

The Managers shall devote sufficient efforts and energy to achieving the objectives and financial goals of this LLC. Neither of the Managers of this LLC will be involved as an investor or manager of a competing business.

6. *Manager Compensation*

The Managers of this LLC may be reimbursed actual expenses advanced by them to attend to management business for the LLC, and may be compensated in other ways for performing managerial duties. The Managers may work in other capacities for this LLC and may be compensated separately for performing these additional services, whether as an officer, staff, consultant, independent contractor or in other capacities.

Comment [RMP13]: You can be compensated by the LLC for being the Manager and for any other role that you play or services you provide.

6. *Managers' Death or Incapacity*

If [Managing Member's Name] dies or is unable to act, the LLC will be managed by [Replacement Managing Member's Name] unless the Managing Member designated someone else in writing to manage the LLC. That person will have full authority to manage the LLC until the Member can do so.

If [Managing Member's Name] dies or is unable to act, the LLC will be managed by [Replacement Managing Member's Name] unless the Managing Member designated someone else in writing to manage the LLC. That person will have full authority to manage the LLC until the Member can do so.

Comment [RMP14]: Each Managing Member must designate someone to act on his/her behalf as Managing Member in the event of his or her death or incapacity. This is so that the LLC can continue to conduct business without interruption. NOTHING IN THIS PROVISION PASSES OWNERSHIP OF THE LLC; ONLY YOUR ESTATEN PLAN DOES THAT.

C. Membership Provisions

1. *Nonliability of Members*

No Member of this LLC shall be personally liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it.

Comment [MSOffice15]: This is the LL (liability limitation) of the LLC. This is NOT A SUPERPOWER. A court may "pierce" the limited liability shield offered by the LLC. Among the top reasons courts will pierce the LLC and get into the Member's personal pockets is for 1) comingling personal and business funds, 2) Treating the business as an extension of your personal business rather than as its own legal entity. The courts will pierce if you attempt to abuse the LLC form and engage in fraud or other bad acts.

2. Reimbursement for Organizational Costs

The Members shall be reimbursed by the LLC for organizational expenses paid by the Members. The LLC shall be authorized to elect to deduct organizational expenses and start-up expenditures ratably over a period of time as permitted by the Internal Revenue Code and as may be advised by the LLC's tax advisor.

Comment [RMP16]: Talk to your tax advisor about this.

3. Membership Voting and Member Action Recordation Requirement

Except as otherwise may be required by the Articles of Organization, other provisions of this Operating Agreement, or under the laws of this state, each member shall vote on any matter submitted to the membership for approval by the managers of this LLC in proportion to the member's capital interest in this LLC. Further, unless otherwise stated in another provision of this Operating Agreement, the phrase "majority of members" means a majority of members whose combined capital interests in this LLC represent more than 50% of the capital interests of all members in this LLC, and a majority of members, so defined, may approve any item of business brought before the membership for a vote.

Comment [RMP17]: The number of votes each Member has is equivalent to his/her share of ownership of the LLC.

4. Compensation

The Members may be paid in their capacity as a member of the LLC for performing any duties associated with such membership. The Members may also be paid, however, for any services rendered in any other capacity for the LLC, whether as officer, employee, independent contractor or otherwise.

Comment [RMP18]: Same thing as C.6., except that this is for you as a Member. In other words, you can get a salary as a Manager and get a Member distribution of profits.

5. Members' Meetings

The LLC shall not provide for regular members' meetings. However, any member may call a meeting by communicating his or her wish to schedule a meeting to all other members. Such notification may be in person or in writing, or by telephone, facsimile machine, or other form of electronic communications reasonably expected to be received by a member, and the other members shall then agree, either personally, in writing, or by telephone, facsimile machine, registered email, or other form of electronics communication to the member calling the meeting, to meet at a mutually acceptable time and place. Notice of the business to be transacted at the meeting need not be given to members by the member calling the meeting, and any business may be discussed and conducted at the meeting.

Written minutes of the discussions and proposals presented at a members' meeting, and the votes taken and matters approved at such meeting, shall be taken by one of the members or a person designated at the meeting. A copy of the minutes of the meeting shall be placed in the LLC's records book after the meeting.

6. Admission of New Members

Except as otherwise provided in this agreement, a person or entity shall be admitted into membership in this LLC by the Members' vote and written consent. The admission of new members into this LLC who have been transferred, or wish to be transferred, a membership interest in this LLC by the existing member of this LLC is covered by separate provisions in this Operating Agreement.

Comment [RMP19]: Again, you can make this "majority" or "unanimous."

7. Member's Death or Incapacity

If any Member dies or is unable to act, the LLC will be managed by the person whom that Member last designates in writing to act on the Member's behalf within the LLC. That person will have full authority to exercise the Member's rights within the LLC until the Member can do so.

Comment [MSOffice20]: You can name an individual here or keep a note in the record books.

8. Intellectual Property of the Member and Company

The LLC recognizes that the Members own good and valuable copyrights, trademarks, and other intellectual property. For the duration of this agreement, the Members grant to the LLC the right and permission to use some these copyrighted materials. This grant shall expire upon termination of this Agreement or the dissolution of the LLC. At no time shall ownership of any of the copyrighted materials, trademarks, or other intellectual property created by any Member prior to or outside the business of the LLC be transferred to the LLC, but always, during the existence of this Agreement and afterwards, shall the ownership of previously created intellectual property remain solely to those Members respectively. Intellectual Property developed specifically for the LLC, whether created by the Members or directed to be created by the Members, shall belong to the LLC as work-for-hire.

Comment [RMP21]: Your intellectual property remains yours personally, according to this provision. To transfer it to the LLC, you would have to ASSIGN it in a written agreement.

Comment [MSOffice22]: Intellectual property created for the LLC, will belong to the LLC, not the members. Still, be sure that your LLC has a work for hire agreement in place with any service providers or independent contractors that it hires to create intellectual property.

D. Tax and Financial Provisions

1. Tax Classification of LLC

The Members of this LLC intends that this LLC be initially classified as a disregarded entity for federal and, if applicable, state income tax purposes. It is understood that the Member may agree to change the tax treatment of this LLC by signing, or authorizing the signature of, IRS Form 8832, Entity Classification Election, and filing it with the IRS and, if applicable, the state tax department within the prescribed time limits.

Comment [RMP23]: The default tax status of the LLC in this agreement and with the IRS is to tax all Members as an individuals. You can change this and file to be taxed as an S-Corp by filing IRS Form 8832. If you decide to do that initially, you would change this statement to say so.

2. Tax Year and Accounting Method

The tax year of this LLC shall end on the last day of the month of December.

The LLC shall use the cash method of accounting. Both the tax year and the accounting period of the LLC may be changed with the consent of all members or all managers if the LLC qualifies for such change, and may be effected by the filing of appropriate forms with the IRS and state tax offices.

3. *Tax Matters Partner*

If required under Internal Revenue Code provisions or regulations, this LLC shall designate its member as a “tax matters partner” in accordance with Internal Revenue Code Section 6231(a)(7) and corresponding regulations, who will fulfill this role by being the spokesperson for the LLC in dealings with the IRS as required under the Internal Revenue Code and Regulations, and who will report to the Members on the progress and outcome of these dealings. This role shall be fulfilled by [MEMBER NAME].

Comment [MSOffice24]: This is the LLC’s liaison with the IRS. This is an Accountant-worthy discussion.

4. *Annual Income Tax Returns and Reports*

Within 90 days after the end of each tax year of the LLC, a copy of the LLC’s state and federal income tax returns for the preceding tax year shall be mailed or otherwise provided to the Member of the LLC, together with any additional information and forms necessary for the Member to complete his or her individual state and federal income tax returns. This additional information shall include a federal (and, if applicable, state) Form K-1 (Form 1065—Partner’s Share of Income, Credits, Deductions) or equivalent income tax reporting form, as well as a financial report, which shall include a balance sheet and profit and loss statement for the prior tax year of the LLC.

5. *Bank Accounts*

The LLC shall designate one or more banks or other institutions for the deposit of the funds of the LLC, and shall establish savings, checking, investment and other such accounts as are reasonable and necessary for its business and investments. One or more employees of the LLC shall be designated with the consent of the Manager to deposit and withdraw funds of the LLC, and to direct the investment of funds from, into and among such accounts. The funds of the LLC, however and wherever deposited or invested, shall not be commingled with the personal funds of the Members or manager of the LLC.

Comment [MSOffice25]: Bank account in the LLC’s name.

6. *Title to Assets*

All personal and real property of this LLC shall be held in the name of the LLC, not in the names of individual member or manager.

Comment [RMP26]: If you want to use your own property for the LLC but continue to own it individually, you can do that, but you have to put an agreement in place between you and the LLC saying so.

E. *Capital Provisions*

1. Capital Contributions by Member

The Member shall make the following contributions of cash, property or services to the LLC, on or by specified dates, as shown next to the Member’s name below. The fair market values of items of property or services as agreed between the LLC and the contributing member are also shown below.

Name of Member: [NAME]
Value of Capital Payment: Intellectual Property & Consulting Services
-OR -
Intellectual Property, Consulting Services, and a Capital Contribution of \$[CASH]
Date of Payment: DATE
Units Issued: [UNIT AMOUNT] Units

2. Additional Contributions and Loans by Member

The Member may make additional capital contributions. All contributions shall be memorialized in writing and incorporated into the records book.

The Member may, at anytime, make or cause a loan to be made to the Company in any amount and on reasonable and competitive terms.

3. No Interest on Capital Contributions

No interest shall be paid on funds or property contributed as capital to this LLC, or on funds reflected in the capital accounts of the Member.

5. Allocation and Distribution of Cash to Members

The Members, by vote, will determine when and how cash from a sale or other disposition of LLC capital assets, may be allocated and distributed.

7. Allocation of Noncash Distributions

If proceeds consist of property other than cash, the Member is authorized to determine the value of such property as well as how and when the property is to be allocated. If such noncash proceeds are later reduced to cash, the Member will determine how and when the cash will be allocated.

8. Allocation and Distribution of Liquidation Proceeds

Regardless of any other provision in this agreement, if there is a distribution in liquidation of this LLC, or when the Members’ interest is liquidated, all items of income and loss shall be allocated to the Members’ capital accounts, and all

Comment [RMP27]: Repeat this format for each and every Member of the LLC. Each Member must make a contribution in exchange for an ownership interest. That contribution can be cash or services. Designate which here.

Comment [MSOffice28]: The total units (Membership shares) are 100k units. Issue the Member s a total of 60k. The 40k units remaining unissued are for future partners, investors, etc. The 40k may never be used. Because ownership is determine by a fraction, the unused 40k units have no effect on ownership %. 60k units issued divided by 60k units outstanding = 100% ownership.

This allows you the flexibility to grow by adding more Members down the line.

Comment [RMP29]: The Members determine when the LLC pays out to You if it sells assets. This provision is about the sale of assets NOT the distribution of profits from the sale of the services or products the LLC sells. You can create another provision if you’d like to designate when, after the LLC makes a profit on sales, it makes a distribution to its Members.

Comment [RMP30]: Again, determine whether “majority” or “unanimous.”

appropriate credits and deductions shall then be made to these capital accounts before any final distribution is made. A final distribution shall be made to the Members only to the extent of, and in proportion to, any positive balance in the Members' capital account.

F. Membership Transfer Provisions

1. *Restrictions on the Transfer of Membership*

Notwithstanding any other provision of this agreement, transfers of the Members' membership in the LLC must be memorialized in writing. Further, the Members may not encumber a part or all of his or her memberships in the LLC by mortgage, pledge, granting of a security interest, lien or otherwise, unless the encumbrance has first been memorialized in writing and incorporated into the records book.

Comment [RMP31]: You must put a transfer of your Membership interest in the LLC in writing. Likewise, you must put any mortgages or liens in writing.

The Members may assign an economic interest in his or her membership to another person. Such an assignment shall not include a transfer of the Members' voting or management rights in this LLC, and the assignee shall not become a member of the LLC.

Comment [RMP32]: You can give someone your economic interest, i.e., the money you earn from Member distributions. You CANNOT give someone your voting rights or management authority.

G. Dissolution Provisions

1. *Events That Trigger Dissolution of the LLC*

The following events shall trigger a dissolution of the LLC:

a. Expiration of LLC Term. The expiration of the term of existence of the LLC if such term is specified in the Articles of Organization, Certificate of Formation or a similar organizational document, or this Operating Agreement, shall cause the dissolution of this LLC.

b. Written Agreement to Dissolve. The Members' written, unanimous intent to immediately dissolve the LLC shall cause a dissolution of this LLC.

c. Entry of Decree. The entry of a decree of dissolution of the LLC under state law shall cause a dissolution of this LLC.

If the LLC is to dissolve according to any of the above provisions, the Members and, if applicable, managers, shall wind up the affairs of the LLC, and take other actions appropriate to complete a dissolution of the LLC in accordance with applicable provisions of state law.

Comment [MSOffice33]: This is not a cut and run process. You should see an attorney if you're going to dissolve the LLC.

Comment [RMP34]: You can create offices and designate officers. They don't have to be you and they don't have to have be a Member. This is another way that Management can be different than ownership if you want in the future.

H. General Provisions

1. *Officers*

The Co-Managers of this LLC may designate one or more officers, such as a President, Vice President, Secretary and Treasurer. Persons who fill these positions need not be the members or manager of the LLC. Such positions may be compensated or non-compensated according to the nature and extent of the services rendered for the LLC as a part of the duties of each office. Ministerial services only as a part of any officer position will normally not be compensated, such as the performance of officer duties specified in this agreement, but any officer may be reimbursed by the LLC for out-of-pocket expenses paid by the officer in carrying out the duties of his or her office.

2. *Records*

The LLC shall keep at its principal business address a copy documents or member actions as required by this agreement as well as books of account of the LLC's financial transactions. A list of the name and addresses of the current member and manager of the LLC also shall be maintained at this address, with notations on any transfers of the member's interests to nonmembers or persons being admitted into membership in the LLC.

Copies of the LLC's Articles of Organization a signed copy of this Operating Agreement, and the LLC's tax returns for the preceding three tax years shall be kept at the principal business address of the LLC. A statement also shall be kept at this address containing any of the following information that is applicable to this LLC:

- a. the amount of cash or a description and value of property contributed or agreed to be contributed as capital to the LLC by the Member;
- b. a schedule showing when any additional capital contributions are to be made by the Member to this LLC;
- c. a statement or schedule, if appropriate, showing the rights of the Member to receive distributions representing a return of part or all of member's capital contributions; and
- d. a description of events, or the date, when the legal existence of the LLC will terminate under provisions in the LLC's Articles of Organization, Certificate of Formation or a similar organizational document, or this Operating Agreement.

If one or more of the above items is included or listed in this Operating Agreement, it will be sufficient to keep a copy of this agreement at the principal business address of the LLC without having to prepare and keep a separate record of such item or items at this address.

Comment [RMP35]: If you have a plan to contribute more capital to the LLC, keep record.

Comment [RMP36]: Under what conditions can you get all or part of your investment in the LLC back? Define those and keep a written record.

Comment [RMP37]: This is taken care of by G.1. above.

3. **All Necessary Acts**

The Members, managers and officers of this LLC are authorized to perform all acts necessary to perfect the organization of this LLC and to carry out its business operations expeditiously and efficiently. The Secretary of the LLC, or other officers, or the Managers or the Members of the LLC, may certify to other businesses, financial institutions and individuals as to the authority of one or more members, managers or officers of this LLC to transact specific items of business on behalf of the LLC.

Comment [MSOffice38]: This is a very broad delegation of authority so that this agreement does not have to be amended with unanticipated LLC requirements.

4. **Entire Agreement**

This Operating Agreement represents the Members' entire agreement. This agreement shall not be amended, modified or replaced except by a written instrument executed by all the Members of the LLC. This agreement replaces and supersedes all prior written and oral agreements regarding the structure, ownership, and formalities of this LLC.

Comment [MSOffice39]: Everything about how the LLC is going to operate is contained in this Agreement and ONLY this Agreement.

Comment [MSOffice40]: This agreement can be amended by the Member in writing.

6. **Choice of Law and Venue**

This agreement shall be interpreted under the laws of the State of [STATE]. Any dispute regarding this agreement shall be resolved in the proper venue in the State of [STATE].

7. **Severability**

If any provision of this agreement is determined by a court or arbitrator to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this agreement, and the remaining provisions shall remain in effect and enforceable.

Comment [MSOffice41]: This means that if part of this agreement is found to violate a law or is otherwise prohibited, then the agreement will still be ok minus the offending provision. Without this clause the entire agreement may not be enforceable.

I. Signatures of Member and Manager

1. Execution of Agreement

In witness whereof, the Members of this LLC, and the Managers on the date of execution of this agreement, sign and adopt this agreement as the Operating Agreement of this LLC and agree to abide by its terms. A person who is both member and manager of this LLC shall sign twice: once in the capacity as member of this LLC and once in the capacity of manager of this LLC.

MANAGER

Date: [DATE]

Signature: _____
[NAME]
Manager and [TITLE]

MANAGER

Date: [DATE]

Signature: _____
[NAME]
Manager and [TITLE]

MEMBER

Date: [DATE]

Signature: _____
[NAME]
Member

MEMBER

Date: [DATE]

Signature: _____
[NAME]
Member