

**LIMITED LIABILITY COMPANY
FORMATION QUESTIONNAIRE
STANLEY, ESREY & BUCKLEY, LLP**

The following is a list of certain general questions to consider when discussing the formation of a Limited Liability Company:

1. General

- Name of limited liability company (LLC)?
- State of organization?
- Address of LLC's principal office?
- Address and name of LLC's registered office and agent located in state of domicile?
- Business purpose of the LLC (can be general purpose clause)?
- Does the LLC need to be qualified to do business in any other states?
- Timing of organization (do filings need to be expedited)?

2. Members

- The names and addresses of the members of the LLC?
- Initial ownership percentages of each member?
- Initial capital contribution of each member (cash or other consideration)?
- Vote required for admission of additional members (unanimous, majority, etc.)?
- Who determines the initial capital contribution of new members?
- Vote required to require additional contributions by the members?
- Are members required to devote full time and effort to the LLC? If no, can they be involved with a competing business? Do the parties want a non-compete provision?
- Who will act as the tax matters member?
- Does the Company anticipate contracting with any of its owners or affiliates?

3. Management

- Who is the initial manager?
- Vote required to remove a manager (majority, 2/3, etc.)?
- Vote required to fill a manager vacancy (remaining managers, majority members, etc.)?
- Vote required to elect a new manager?
- Check the box to identify which of the following “major decisions” should require approval of a majority (or more 2/3, etc.) of the members (i.e., manager cannot act alone).
 - All of the below
 - Any merger or consolidation of the Company;
 - a material change in the nature of the Company’s business;
 - any requirement obligating Members to make additional Capital Contributions;
 - the dissolution or liquidation of the Company;
 - the creation by the Company of any debt or contract obligations that, taken with all other existing debts or contract obligations (other than anticipated obligations to pay for routine services and supplies), require the Company to pay more than \$_____ in any fiscal year;
 - the relocation of the Company's principal place of business, the opening of any new company office, the entrance into a new business by the Company, or the cessation of the Company’s business;
 - the compromise of any amount owed to the Company (including the writing off of any account receivable) of more than \$_____;
 - the increase, modification, consolidation, or extension any loan of more than \$_____, whether secured or unsecured, affecting the Company;
 - the confession of a judgment against the Company or submission of any claim of the Company to arbitration;
 - the distribution of any cash or property of the Company to any Member, other than as provided in this Agreement;
 - the assignment of the rights of the Company in any of its properties;
 - the assignment for the benefit of creditors or the filing a voluntary petition in bankruptcy or any petition seeking any reorganization, composition, liquidation, dissolution or similar relief under the present or future applicable federal or state laws relative to bankruptcy, insolvency or other relief for debtors (collectively, the “Bankruptcy Laws”), or the consent to or acquiesce in the entry of an order, judgment or decree approving a petition filed against the Company seeking any reorganization, composition, liquidation, dissolution or other relief under the Bankruptcy Laws, or seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of the Company or any of its property;
 - To sell or otherwise dispose of any of the assets of the Company; or
 - To enter into any contract or contractual arrangement with any Member or an affiliate of any Member.

4. Allocations and Distributions

- How will net profits and losses be allocated (in accordance with percentage interests, etc.)?
- How will distributions be made (in accordance with percentage interests, etc.)?
- Who determines when distributions are made (manager, members, etc.)?
- Will a distribution be made to pay taxes?
- Are there any preferred returns?
- Will allocations and distributions in connection with liquidation be the same as above?
 - Yes
 - No

5. Transfers

- Who determines if a transfer of membership interests can be made (manager, members, etc.)?
- Do you want a right of first refusal (i.e., member desiring to transfer interests must offer his interests to Company first and then other members before transferring them to a third party)?
- Upon the death of a member, do you want a mandatory buy-out of the member's interest or an optional purchase?
- Upon the disability of a member, do you want a mandatory buy-out of the member's interest or an optional purchase? Will payment be in the form of cash or cash and a promissory note?
- Who should determine the value of such interest to be purchased upon death, disability, or termination of services (manager, members, appraiser, formula, etc.)?
- Do you want a compulsory buy-sell offer (i.e., after a certain time, a member can offer to buy membership interests of other members, and the other members then can determine whether to sell at the same price and on the same terms as offered or to instead buy the interests at the same price and on the same terms as the offering member offered to buy their interests)?

6. Meetings

- What constitutes a quorum at a meeting (majority, 2/3, 70%)?
- Vote required for the act of members at a meeting?

- Who can call meetings (manager only, etc.)?

7. Dissolution

- Vote required to dissolve the LLC?
- Any other events that will cause a dissolution (specific date, happening, etc.)?

8. Miscellaneous

- Do you want a binding arbitration clause?
- Vote required to amend the Operating Agreement?
- Will there be confidential information about the business which needs to be protected?

9. Federal Employment Identification Number (EIN)

- Would you like SEB to obtain an EIN for the LLC?
- For a single member LLC, the default tax designation is a disregarded entity and for multi-member LLCs the default is a partnership. Do you elect the default designation? (i.e. disregarded entity or partnership)
- Principal business activity?
- Name and social security or EIN of principal member?
- Number of employees, if any?
- If there will be employees, what is the first date wages will be paid?

The preceding is only a general outline of key issues. Please feel free to contact me at the address below with additional questions or to proceed with the formation and organization.

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