

_____, LLC

LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement, dated as of _____, is by and among the persons listed on Schedule A hereto (each being individually referred to as a “Member” and collectively as the “Members”) and _____ (the “Manager”).

WHEREAS, _____ (the “LLC”) has been formed pursuant to the Delaware Limited Liability Company Act (the “Act”) by the filing on _____ of a Certificate of Formation in the office of the Secretary of State of the state of Delaware; and

WHEREAS, the Members have each signed Subscription Agreements dated as of _____ with the LLC (the “Subscription Agreements”).

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereto agree as follows:

1. Name and Purposes.

(a) The name of the LLC is _____.

(b) The purposes for which the LLC is organized are to research and identify promising businesses to acquire, to acquire such business (an “Acquisition”) and to carry on any lawful business, trade or activity permitted by the Act.

2. Management by Manager; Member Approval Rights.

(a) The LLC shall be managed by the Manager. Subject to Section 2(f) below, the Manager shall have the authority to (i) exercise all the powers and privileges granted by the Act or any other law or this Agreement, together with any powers incidental thereto, so far as such powers are necessary or convenient to the conduct, promotion or attainment of the business, trade, purposes or activities of the LLC and (ii) to take any other action not prohibited under the Act or other applicable law. Except as otherwise expressly set forth herein, the Members, as such, shall have no authority to act for the LLC or to exercise any of the powers granted by the Act.

(b) Except as otherwise expressly set forth herein, no Member who is not a Manager shall take any part in the control of the business of the LLC, or transact any business for the LLC.

(c) Except as otherwise expressly set forth herein, the Members shall not be entitled to vote on any matter. On those matters in respect of which Members have the right to vote, each Member shall have one vote for each Share (as defined below) held by such Member.



(d) The action of the Manager may be conclusively relied upon by any and all third parties as a duly authorized action of the LLC. Subject to Section 2(f) below, the Manager shall have the power on behalf and in the name of the LLC to:

- (i) open, maintain and close bank accounts, and draw checks or other orders for the payment of money;
- (ii) open, maintain and close accounts with brokers and give instructions or directions in connection therewith;
- (iii) receive, receipt for and otherwise dispose of and deal in all securities, and distribute to the Members all checks, money and other assets or liabilities of the LLC;
- (iv) hire employees, investment bankers, consultants, custodians, contractors, attorneys, accountants, nominees and other agents, and establish and pay them compensation;
- (v) make credit card charges;
- (vi) issue purchase orders;
- (vii) execute contracts and agreements, including equipment leases;
- (viii) enter into arrangements relating to the acquisition and disposition of tangible personal property;
- (ix) do any and all acts required of the LLC with respect to its interest in any corporation, partnership, limited partnership or other business;
- (x) maintain one or more offices within or without the State of Delaware and in connection therewith rent or acquire office space and do such other acts as may be advisable in connection with the maintenance of such offices; and
- (xi) admit additional Members on or prior to _____, without the consent of any other Members; provided, that, the total number of Shares sold to the Members does not exceed _____, and the price per Share is not less than \$1.00.

(e) The Manager shall be fully protected and justified with respect to any action or omission taken or suffered by him in good faith in reliance upon and in accordance with the opinion or advice as to matters of law of legal counsel, or as to the matters of accounting of accountants, selected by him with reasonable care.

(f) Notwithstanding anything to the contrary contained in this Agreement, the written consent or vote of holders of at least a majority of the outstanding Shares shall be required for:

(i) any amendment of the Certificate of Formation of the LLC or this Agreement which:

(x) creates any class or series of Shares having rights senior to or on a par with the rights of the Shares, or

(y) otherwise adversely affects the rights of the holders of the Shares;

(ii) appointing or removing the Manager;

(iii) entering into, amending, otherwise modifying (including waiving any rights or obligations), or terminating any contract, agreement, arrangement, or transaction with any Member or Manager or any affiliate of a Member or Manager;

(iv) making a distribution (other than any distribution made pursuant to the second sentence of Section 5(a) or any distribution made upon dissolution of the LLC in accordance with this Agreement) on any Shares or redeeming, purchasing or otherwise acquiring (or paying into or setting aside for a sinking fund for such purpose) any Shares;

(v) except as provided in Section 2(d)(xi), admitting additional Members; or

(vi) the continuation of the LLC pursuant to Section 9(b) of this Agreement.

3. Capital Contributions; Capital Accounts; and Liability of Members.

(a) Each Member has contributed in cash to the capital of the LLC the amount set forth opposite such Member's name on Schedule A under the heading "Initial Contribution". Additional capital contributions may be made by any Member if agreed to by the Manager and the holders of a majority of the outstanding Shares or if permitted by Section 2(d)(xi), and shall be reflected on Schedule A hereto. The Manager shall have the right to amend Schedule A to reflect the admission of additional Members in accordance with this Agreement. The Manager shall furnish promptly to each of the Members any revisions to Schedule A that may be effected.

(b) Except as otherwise provided in this Section 3, no Member shall be obligated or permitted to contribute any additional capital to the LLC. No interest shall accrue on any contributions to the capital of the LLC, and no Member shall have the right

to withdraw or to be repaid any capital contributed by it or to receive any other payment in respect of its interest in the LLC, including without limitation as a result of the withdrawal or resignation of such Member from the LLC, except as specifically provided in this Agreement.

(c) A separate capital account shall be established for each Member, and shall be maintained in accordance with applicable regulations under the Internal Revenue Code of 1986, as amended (the “Code”). To the extent consistent with such regulations, there shall be credited to each Member’s capital account the amount of any contribution of capital made by such Member to the LLC, and such Member’s share of the net profits of the LLC, and there shall be charged against each Member’s capital account the amount of all distributions to such Member, and such Member’s share of the net losses of the LLC.

(d) The liability of the Members for the losses, debts and obligations of the LLC shall be limited to their capital contributions; provided, however, that under applicable law, the Members may under certain circumstances be liable to the LLC to the extent of previous distributions made to them in the event that the LLC does not have sufficient assets to discharge its liabilities. No Member shall have any liability to restore any negative balance in such Member’s capital account. In no event shall any Member be personally liable for any liabilities or obligations of the LLC.

4. Shares of LLC Interest.

(a) The interests of the Members shall be divided into shares (the “Shares”). The Shares initially held by the Members shall be as set forth on Schedule A under the heading “Initial Shares”. The number of Shares initially authorized for issuance by the LLC shall be _____. If additional Shares are to be issued, the number of Shares to be issued and the purchase price thereof shall be determined by the Manager with the consent of holders of a majority of the outstanding Shares.

(b) The Shares may, at the option of the Manager, be represented by certificates of limited liability company interest, but need not be so represented.

5. Share of Profits and Other Items.

(a) The net profits and losses of the LLC shall be allocated among the Members pro rata according to the Shares held by each Member. To the extent that funds are available, the Manager shall distribute to the Members in each year, an amount intended to cover the potential federal, state and local tax obligations of the Members on account of their share of the LLC’s taxable income, at an assumed combined rate equal to 40%. Subject to the foregoing, distributions to the Members shall be made at such times and in such amounts as the Manager shall determine.

(b) Net profits and net losses shall, for both accounting and tax purposes, be net profits and net losses as determined for reporting on the LLC’s federal income tax return. For tax purposes, all items of depreciation, gain, loss, deduction or credit shall be determined in accordance with the Code and, except

to the extent otherwise required by the Code, allocated to and among the Members in the same percentages in which the Members share in net profits and net losses.

6. Priority. No Member to whom Shares shall have been awarded shall have any rights or priority over any other Members to whom Shares shall have been awarded as to contributions or as to distributions or compensation by way of income.

7. Substitution and Assignment of a Member's Interest. No Member may sell, assign, give, pledge, hypothecate, encumber or otherwise transfer, including, without limitation, any assignment or transfer by operation of law or by order of court, such Member's interest in the LLC or any part thereof, or in all or any part of the assets of the LLC, without the express written consent of the Manager, which consent may be given or refused in the sole discretion of the Manager, and any purported assignment without such consent shall be null and void and of no effect whatsoever. Notwithstanding the foregoing, a Member may, without the consent of the Manager, transfer his or her Shares to members of the Member's immediate family or trusts or family partnerships primarily for their benefit or to persons for whom Member is an investment advisor or, if a Member is an entity, to any entity which, directly or indirectly, controls, is controlled by or is under common control with such Member, if in each case prior to any such transfer the transferee shall first agree in writing delivered to the LLC, and in form satisfactory to the LLC and its counsel, to become a party to this Agreement and to be subject to all of the obligations and entitled to all of the benefits of this Agreement.

8. Admission of Additional Members. Additional Members may be admitted to the LLC if agreed to by the Manager and by holders of a majority of the outstanding Shares; provided, however, that the Manager may admit additional Members on or prior to _____ without the consent of any other Members provided that the total number of shares sold to Members does not exceed _____ and the price per Share is at least \$1.00.

9. Term.

(a) Except as provided otherwise in Section 9(b), the LLC shall continue in existence until dissolved by the Manager.

(b) The LLC shall be dissolved in the event that the Manager ceases to be a manager of the LLC for any reason or no reason, unless Members holding a majority of the Shares elect to continue the business of the LLC and appoint, effective as of the event giving rise to such election, one or more Managers within 90 days after such event. If such Members elect to continue the LLC business, they shall file any necessary amendment to the LLC's Certificate of Formation within 30 days after such election is made. The LLC shall not be dissolved in the event of the death or withdrawal of any Member.

(c) Upon the dissolution of the LLC, the Manager shall wind up its affairs, discharge or provide for its liabilities and make distributions to the Members as provided in the Act.

10. Termination of Membership; Return of Capital. No Member may terminate such Member's membership in the LLC or have any right to distributions respecting such Member's membership interest (upon withdrawal or resignation from the LLC or otherwise) except as expressly set forth herein. No Member shall have the right to demand or receive property other than cash in return for such Member's contribution.

11. Books and Records; Bank Accounts.

(a) The Manager shall cause the LLC to keep just and true books of account with respect to the operations of the LLC. Such books shall be maintained at the principal place of business of the LLC, or at such other place as the Manager shall determine, and all Members, and their duly authorized representatives, shall at all reasonable times have access to such books.

(b) Such books shall be closed and balanced as of December 31 in each year. The same method of accounting shall be used for both LLC accounting and tax purposes. The fiscal year of the LLC shall be the calendar year.

12. Indemnity; Other Business.

(a) The Manager and each Member shall be entitled to indemnity from the LLC for any liability incurred and/or for any act performed by such Manager or Member on behalf of the LLC, and/or for any act omitted to be performed on behalf of the LLC, except for such Manager's or such Member's gross negligence or willful misconduct, which indemnification shall include all reasonable expenses incurred, including reasonable legal and other professional fees and expenses.

(b) Except as limited by law or by the provisions of this Agreement, reasonable expenses incurred by a Manager or a Member under Section 12(a) may be paid by the LLC to such Manager or Member in advance of the final disposition of the proceeding giving rise to such reasonable expenses. The LLC may require that such Manager or Member execute a written undertaking to repay the amount of any advance if such Manager or Member is subsequently determined to be ineligible for indemnification under Section 12(a). No advance payment of expenses shall be made if it is determined on the basis of facts known at the time (without further investigation) that such Manager or Member is ineligible for indemnification.

(c) Except to the extent limited by any agreement between a Member and the LLC and subject to the last sentence of this clause (c), the Members and any affiliates of any of them may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others, including serving as managers and general partners of other limited liability companies and partnerships with purposes similar to those of the LLC. Neither the LLC nor any other Member or Manager shall have any rights in or to such ventures or opportunities or the income or profits therefrom. For the 24-month period commencing with _____, the Manager shall devote substantially all of his business time and efforts to the LLC, unless it is sooner terminated or dissolved.

13. Valuation of Assets; Name and Goodwill.

(a) Whenever valuation of the LLC or of Shares is required by this Agreement, the Manager shall determine the fair market value thereof in good faith using reasonable market and economic analysis.

(b) The LLC's name and goodwill shall, as among the Members, be deemed to have no value and shall belong to the LLC, and no Member shall have any right or claim individually to the use thereof.

14. Exoneration. The Manager shall not be liable to the LLC or the Members for monetary damages for breach of fiduciary duty as a Manager, and no Member of the LLC shall be liable to the LLC or the Members, except for liability (i) for any breach of such Manager's or Member's duty of loyalty to the LLC or the Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction in which such Manager or Member derived an improper personal benefit. No amendment to or repeal of any provision of this Section, directly or by adoption of an inconsistent provision of this Agreement, shall apply to or have any effect on any liability or alleged liability of any Manager or Member of the LLC for or with respect to any acts or omissions of such Manager or Member occurring prior to such amendment or repeal.

15. Power of Attorney.

(a) Each Member hereby constitutes and appoints the Manager as his or her attorney, to make, execute, sign, acknowledge and file (i) a Certificate of Formation under the Act or any other jurisdiction, any amendment to any such Certificate of Formation or any other instrument, certificate or document required from time to time to reflect any action of the Manager or Members provided for in this Agreement; and (ii) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the United States, any state or any governmental entity in any jurisdiction in which the LLC is doing or intends to do business, provided all such instruments, certificates and other documents referred to in clauses (i) and (ii) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents shall be sent to all Members upon written request of such Members.

(b) Each of the Members is aware that the terms of this Agreement permit amendments to the Certificate of Formation to be effected and certain other actions to be taken by or with respect to the LLC by the Manager without the approval of the Members. If, as and when an amendment of the Certificate of Formation is proposed or an action is proposed to be taken by or with respect to the LLC which does not require, under the terms of this Agreement, the approval of the Members, each Member agrees that the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such Member, and in his or her name, place and stead, any and all instruments and documents which may be necessary or

appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Member is fully aware that he or she and each other Member will rely on the effectiveness of such powers with a view to the orderly administration of the LLC's affairs.

(c) The foregoing grant of authority (i) is a special power of attorney coupled with an interest in favor of the Manager and as such shall be irrevocable and shall survive the death or insanity (or, in the case of a Member that is a corporation, association, partnership or trust, shall survive the merger, dissolution or other termination of the existence) of the Member and (ii) shall survive the assignment by the Member of the whole or any portion of his or her interest, except that where the assignee of the whole thereof is to become a substituted Member and has furnished a power of attorney, this power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument necessary to effect such substitution and shall thereafter terminate.

16. Conversion to Corporation.

(a) The Members acknowledge and agree that there may be circumstances, including but not limited to a public offering of equity interests in the business being conducted by the LLC (a "Public Offering"), that would cause it to be in the best interests of all of the Members that such business be conducted in corporate form. Accordingly the Manager, acting without the approval or consent of the Members is authorized, upon a determination that the conduct of the business in corporate form would be in the best interests of the Members under the circumstances then prevailing, to take such action as he shall determine to be necessary or desirable to convert (the "Conversion") the LLC to a corporation (the "Corporation"), organized under the laws of such jurisdiction as he shall determine and the charter and by-laws of which to contain such terms as he determines to be appropriate, subject, however, to the requirements of subsection (b) immediately below with respect to the resulting share ownership interests of the Members in the Corporation. The Manager shall effect the Conversion in such manner as he shall in his reasonable discretion determine to fairly represent the relative economic and other rights of the Members as members of the Company at the time and as shall minimize taxes and costs to be incurred by the LLC, the Members or the Corporation. The Conversion may take the form of, without limitation, a conversion of the LLC into corporate form, a merger of the LLC into the Corporation, a contribution of all of the Shares of the Members in the LLC to the Corporation and the distribution of the Corporation's shares to the Members, a transfer of the assets, subject to the liabilities, of the LLC to the Corporation and the distribution of the Corporation's shares to the Members or such other form as the Manager shall reasonably determine.

(b) The shares of the capital stock of the Corporation shall be divided into classes and series and shall be allocated to and among the Members in such manner as shall result in the Members having the same relative rights with respect to the assets, profits and losses of the LLC immediately prior to the Conversion. Notwithstanding the foregoing, if the event triggering a Conversion is a Public Offering, the shares of the capital stock of the Corporation may consist of a single class, allocated to and among the

Members as if the LLC had been liquidated, its liabilities had been satisfied in full and its remaining assets converted into cash and distributed to the Members, and such cash paid by the Members to the Corporation in exchange for such shares.

17. Miscellaneous.

(a) Subject to the restrictions on transfers set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the Members, the Manager and their respective successors, successors-in-title, heirs and assigns, and each and every successor-in-interest to any Member, which such successor acquires such interest by way of gift, purchase, foreclosure or any other method, shall hold such interest subject to all of the terms and provisions of this Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of any Member, or any creditor of the LLC other than a Member who is such a creditor of the LLC.

(b) This Agreement may be changed, modified or amended only by a writing signed by the Manager and the holders of a majority of the outstanding Shares.

(c) This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Delaware.

(d) This Agreement may be executed in a number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on all the Members notwithstanding that all Members have not signed the same counterpart.

(e) This Agreement, together with the Subscription Agreements, embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

IN WITNESS WHEREOF, the Manager and Members have signed this Agreement as of the date first above written.

MANAGER:

MEMBERS:

By: _____
Name:
Title (if any):

