

# **NORTH DAKOTA LIMITED LIABILITY COMPANY MANAGER-MANAGED OPERATING AGREEMENT**

*Governed by the North Dakota Uniform Limited Liability Company Act, N.D.C.C. ch. 10-32.1*

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## **ARTICLE I ORGANIZATION**

### **1.01 Formation and Governing Law.**

This Limited Liability Company (the “Company”) is organized under the North Dakota Uniform Limited Liability Company Act, N.D.C.C. ch. 10-32.1 (the “Act”). The rights and obligations of the Members and the governance of the Company are subject to the Act except as expressly modified by this Operating Agreement.

### **1.02 Company Name.**

The legal name of the Company is:

### **1.03 Articles of Organization.**

The Company was formed by filing Articles of Organization with the North Dakota Secretary of State through the FirstStop Portal. Filing fee: \$135 (N.D.C.C. § 10-32.1-92). After proper filing and fee payment, the North Dakota Secretary of State issues a certificate of organization. This Operating Agreement is an internal document and is NOT filed with the North Dakota Secretary of State. IMPORTANT: Do not call the formation document a 'Certificate of Formation'; North Dakota uses 'Articles of Organization.'

### **1.04 Operating Agreement — Oral, Written, Implied, or Combined.**

Under N.D.C.C. § 10-32.1-02(36), a North Dakota operating agreement is defined as an agreement that may be ORAL, IN A RECORD, IMPLIED, OR ANY COMBINATION, among ALL MEMBERS, including a sole member. North Dakota is unusual in expressly recognizing non-written operating agreements. The Members have nevertheless elected to execute this WRITTEN Agreement because oral and implied agreements are difficult to prove in court and do not satisfy bank, investor, or lender requirements. Under N.D.C.C. § 10-32.1-13, this Agreement governs: (a) relations among Members and the Company; (b) rights and duties of managers and governors; (c) Company activities and affairs; and (d) means for amending this Agreement.

### **1.05 Formation Does NOT Automatically Create Membership.**

CRITICAL NORTH DAKOTA TRAP: Under N.D.C.C. § 10-32.1-20, formation of the LLC does NOT by itself cause any person to become a member. An organizer who files the Articles without separately documenting initial membership may create an LLC with no members, triggering the 90-day no-member dissolution clock under N.D.C.C. § 10-32.1-50. This Agreement documents initial membership. The initial Member(s) are listed in Exhibit 1.

**1.06 Nonwaivable Provisions.**

Under N.D.C.C. § 10-32.1-13(3), this Agreement may NOT: (a) eliminate the duty of loyalty, duty of care, or another fiduciary duty beyond statutory limits; (b) eliminate the contractual obligation of good faith and fair dealing (standards may be prescribed if not manifestly unreasonable); (c) unreasonably restrict information rights under § 10-32.1-42; (d) vary court dissolution powers under § 10-32.1-50 in specified circumstances; (e) vary the winding-up requirement under § 10-32.1-51; or (f) restrict rights of persons other than members, managers, or governors.

**1.07 Registered Agent and Registered Office.**

Under N.D.C.C. § 10-32.1-16, every North Dakota LLC must maintain a registered office and registered agent. The Articles must name either a commercial registered agent or a noncommercial registered agent with a North Dakota address. Agent/office change fee: \$10.

**Registered Agent Name:**

**Registered Office Address:**

**1.08 Principal Executive Office.**

The principal executive office of the Company is:

**Principal Executive Office:**

**1.09 Purpose.**

The Company is organized to engage in:

and any lawful activity permitted under the Act.

**1.10 Annual Report.**

Annual report requirements by LLC type (N.D.C.C. § 10-32.1-89):

- (a) Standard Business LLC and PLLC: due November 15 (before November 16). Fee: \$50. First report due in the calendar year following the calendar year of the effective formation date.
- (b) Farming or Ranching LLC: due April 15. Fee: \$50.

- (c) Authorized Livestock Farm LLC (ALF LLC): due April 15. Fee: \$50. **IMPORTANT:** the ALF LLC annual report form is NOT available in the FirstStop Portal; contact the North Dakota Secretary of State office directly to request the form.
- (d) PLLC: a copy of the filed annual report must also be provided to the North Dakota licensing board that licenses the members providing the professional service.

Failure to file: the LLC is placed in Not Good Standing status and is typically involuntarily terminated if the past-due annual report is not filed within 6 to 12 months (N.D.C.C. § 10-32.1-90). Reinstatement is available within one year after involuntary termination (N.D.C.C. § 10-32.1-91).

### **1.11 No Publication Requirement.**

No publication requirement for standard North Dakota LLC formation was found in N.D.C.C. ch. 10-32.1 or the North Dakota Secretary of State's LLC formation materials.

## **ARTICLE II DEFINITIONS**

As used in this Agreement, the following terms have the meanings set forth below:

- (a) "Act" means the North Dakota Uniform Limited Liability Company Act, N.D.C.C. ch. 10-32.1, as amended.
- (b) "Agreement" means this written Operating Agreement, as amended.
- (c) "Articles" means the Company's Articles of Organization filed with the North Dakota Secretary of State, as amended.
- (d) "Capital Account" means the account maintained for each Member reflecting contributions, allocated profits/losses, and distributions.
- (e) "Capital Contribution" means any cash, property, services, or written promise to contribute, documented in Exhibit 1 (N.D.C.C. § 10-32.1-29).
- (f) "Ownership Interest" means a Member's percentage interest in the Company as set forth in Exhibit 1.
- (g) "Transferable Interest" means the right under N.D.C.C. § 10-32.1-43 to receive distributions from the Company. Transfer does NOT confer management rights, information access, or membership status.
- (h) "Post-2017 Default" means the contribution-value and distribution-interest based defaults that apply to LLCs created after July 31, 2017 under N.D.C.C. §§ 10-32.1-30, 10-32.1-30.1, and 10-32.1-39.

- (i) “Governor” means a natural person serving on the board of a board-managed LLC under N.D.C.C. § 10-32.1-39. A governor need not be a member.
- (j) “Dissociation” means an event under N.D.C.C. § 10-32.1-48 causing a person to cease being a Member.
- (k) “SOS” means the North Dakota Secretary of State.

## **ARTICLE III CAPITAL CONTRIBUTIONS AND ACCOUNTS**

### **III.01 Initial Capital Contributions.**

Each Member’s initial Capital Contribution and Ownership Interest are set forth in Exhibit 1. CRITICAL POST-JULY 31, 2017 DEFAULT: Under N.D.C.C. §§ 10-32.1-30 and 10-32.1-30.1, for LLCs created after July 31, 2017, distributions before dissolution and profit/loss allocations default to proportions based on the VALUE OF EACH MEMBER’S CONTRIBUTIONS — not equal shares. Voting power also defaults to each member’s DISTRIBUTION INTEREST (§ 10-32.1-39). This Agreement expressly overrides these defaults by establishing the Ownership Interest percentages in Exhibit 1.

### **III.02 Post-2017 Default Override.**

The Members override the contribution-value and distribution-interest defaults of N.D.C.C. §§ 10-32.1-30, 10-32.1-30.1, and 10-32.1-39: all voting, profit/loss allocations, and distributions shall follow the Ownership Interest percentages in Exhibit 1.

### **III.03 Capital Accounts.**

The Company shall maintain a separate Capital Account for each Member. Capital Accounts shall be credited with contributions and allocated profits, and debited with distributions and allocated losses, consistent with Treasury Regulation § 1.704-1(b)(2)(iv).

### **III.04 Contribution Obligations.**

Under N.D.C.C. § 10-32.1-29, an obligation to make a contribution is enforceable; failure to make a required contribution may create a monetary obligation equal to the value of the unmade contribution. No Member shall be required to make any additional Capital Contribution without the written consent of all Members.

### **III.05 No Interest on Contributions.**

No Member is entitled to receive interest on any Capital Contribution unless separately agreed in writing.

**ARTICLE IV  
ALLOCATIONS AND DISTRIBUTIONS**

**IV.01 Profit and Loss Allocation.**

Profits and losses shall be allocated among the Members in proportion to their Ownership Interest percentages in Exhibit 1, overriding the contribution-value default of N.D.C.C. § 10-32.1-30.1 (post-July 31, 2017 LLCs).

**IV.02 Distributions.**

Distributions shall be authorized by the Authorized Persons and allocated in proportion to each Member's Ownership Interest in Exhibit 1, overriding the contribution-value default of § 10-32.1-30. Authorized by:

**Authorized by:**

**IV.03 Limitation on Distributions.**

Under N.D.C.C. § 10-32.1-31, the Company may not make a distribution if immediately after the distribution the Company would not be able to pay its debts as they become due in the ordinary course. Members who vote for or receive improper distributions are liable under § 10-32.1-32.

**IV.04 Tax Distributions.**

To the extent funds are available, the Company shall make annual tax distributions estimated to cover each Member's income tax liability attributable to Company income, before any discretionary distributions.

**IV.05 North Dakota Tax Compliance.**

Federal tax classification follows IRS check-the-box rules: single-member LLCs are disregarded entities; multi-member LLCs are partnerships by default; corporate treatment: Form 8832 (C corp) or Form 2553 (S corp). North Dakota individual income tax rates range from 0% to 2.50% for the 2025 tax year. North Dakota corporate income tax rates range from 1.41% to 4.31%. Nonresident member passthrough withholding is 2.50% under N.D.C.C. § 57-38-31.1 (threshold: \$1,000 in distributive share). Register on ND TAP. File Form 58 (partnership), Form 60 (S corp), or Form 40 (corporation) as applicable. North Dakota sales tax rate is 5% for most retail sales; remote-seller threshold is \$100,000 in taxable sales into North Dakota per calendar year.

**ARTICLE V  
MANAGEMENT — MANAGER-MANAGED**

**V.01 Manager-Managed Structure.**

The Company is manager-managed. Under N.D.C.C. § 10-32.1-39, management authority is vested exclusively in the Manager(s). In a manager-managed LLC, Members are NOT fiduciaries solely by being Members; fiduciary duties of loyalty and care apply to Managers, not Members.

**V.02 Three-Structure Note — North Dakota Unique.**

NOTE: North Dakota uniquely recognizes THREE management structures: member-managed, manager-managed, and BOARD-MANAGED (governed by a board of governors). This Agreement uses manager-managed. For a board-managed LLC with governors, custom language citing N.D.C.C. § 10-32.1-39 is required.

**V.03 Initial Manager(s).**

The initial Manager(s) of the Company are:

**Manager 1 Name:**

**Manager 1 Address:**

**Manager 2 Name (if any):**

**Manager 2 Address:**

**V.04 Manager Selection and Removal.**

Under N.D.C.C. § 10-32.1-39, a Manager may be chosen by consent of a majority of members and may be REMOVED BY CONSENT OF A MAJORITY OF MEMBERS at any time, without notice or cause. A Manager need not be a Member.

**Manager selection/removal threshold:**

**V.05 Manager Authority — Ordinary Course.**

Each Manager may bind the Company in the ordinary course, including:

- (a) Executing contracts and instruments on behalf of the Company.
- (b) Opening and managing bank accounts and credit facilities.
- (c) Hiring, supervising, and terminating employees and contractors.
- (d) Acquiring, encumbering, and disposing of Company assets in the ordinary course.
- (e) Filing the annual report with the North Dakota Secretary of State (November 15 deadline for standard LLC; \$50 fee).

**V.06 Manager Voting — Majority Among Managers.**

Under N.D.C.C. § 10-32.1-39, ordinary-course manager disputes are decided by a MAJORITY OF MANAGERS. Each manager has equal management rights by default.

**Manager voting threshold:**

**V.07 Actions Requiring Member Consent.**

Under N.D.C.C. § 10-32.1-39, the following require CONSENT OF ALL MEMBERS by default even in a manager-managed LLC:

- (a) Disposing of all or substantially all Company property outside the ordinary course.
- (b) Approving a merger, conversion, or domestication.
- (c) Acts outside the ordinary course of Company activities.
- (d) Amending this Operating Agreement.

Elected member threshold for extraordinary actions:

**Member extraordinary threshold:**

**V.08 Manager Fiduciary Duties.**

Managers owe fiduciary duties of loyalty and care consistent with the business judgment rule, and the contractual obligation of good faith and fair dealing (N.D.C.C. § 10-32.1-41). These duties cannot be eliminated by this Agreement (N.D.C.C. § 10-32.1-13(3)).

**V.09 Charging Order.**

Under N.D.C.C. § 10-32.1-45, the charging order is the EXCLUSIVE REMEDY against a Member's Transferable Interest for both single-member and multi-member LLCs.

**ARTICLE VI  
TRANSFER OF MEMBERSHIP INTERESTS**

**VI.01 Transferable Interest — Economic Rights Only.**

Under N.D.C.C. § 10-32.1-43, a Transferable Interest is personal property and constitutes only the right to receive distributions. Under N.D.C.C. § 10-32.1-44, transfer of a Transferable Interest does NOT: cause dissociation, dissolve the LLC, give the transferee management rights, or give the transferee access to LLC records. The transferee does NOT become a Member.

**VI.02 Charging Order — Exclusive Creditor Remedy.**

Under N.D.C.C. § 10-32.1-45, the charging order constitutes a lien on the judgment debtor's Transferable Interest and directs distributions. It is the EXCLUSIVE REMEDY to satisfy a judgment from a Member's Transferable Interest, applicable to BOTH single-member and multi-member LLCs.

**VI.03 Transfer Restrictions.**

The Members impose the following restrictions on transfers:

**Transfer restrictions:**

**VI.04 Right of First Refusal.**

Before transferring any Transferable Interest to a third party, the transferring Member shall first offer it pro-rata to remaining Members. Remaining Members have:

**Days to exercise ROFR:**

**VI.05 Wrongful Dissociation.**

Under N.D.C.C. § 10-32.1-47, dissociation is wrongful if it breaches an express provision of this Agreement or occurs before termination in specified statutory circumstances. A wrongfully dissociating Member is liable for damages.

**VI.06 Dissociation Events.**

Under N.D.C.C. § 10-32.1-48, dissociation events include: express will to withdraw, events in this Agreement, expulsion, bankruptcy, death, incapacity, or other events specified in the statute.

**ARTICLE VII  
MEMBER RIGHTS AND OBLIGATIONS**

**7.01 Limitation on Member Authority.**

In a manager-managed LLC, Members are NOT agents of the Company solely by virtue of membership (N.D.C.C. § 10-32.1-23). Management authority is vested exclusively in the Manager(s) per Article V.

**7.02 Fiduciary Duties — Members vs. Managers.**

In a manager-managed LLC, fiduciary duties of loyalty and care apply to Managers, NOT to Members solely by reason of being Members (N.D.C.C. § 10-32.1-41). This makes manager-managed structures appropriate for passive investors.

**7.03 Board-Managed Alternative.**

North Dakota uniquely recognizes a BOARD-MANAGED LLC structure with governors under N.D.C.C. § 10-32.1-39. If a board-managed structure is desired, custom language is required. A governor must be a natural person but need not be a member.

**ARTICLE VIII  
ADMISSION OF NEW MEMBERS**

**8.01 Admission Requirements.**

Under N.D.C.C. § 10-32.1-27, a person becomes a Member as provided in this Agreement or with consent of all Members. Elected threshold:

**Admission threshold:**

## **ARTICLE IX LIABILITY SHIELD AND INDEMNIFICATION**

### **IX.01 Liability Shield.**

Under N.D.C.C. § 10-32.1-26, a debt, obligation, or other liability of the LLC is SOLELY the Company's liability and does not become the personal liability of a Member, Manager, or Governor solely because of that role.

### **IX.02 Failure to Observe Formalities.**

Consistent with the North Dakota LLC statute, failure to observe internal formalities is NOT by itself sufficient to impose personal liability on Members, Managers, or Governors. Per West Dakota Oil, Inc. v. Kathrein Trucking, LLC (2022 ND 111), North Dakota courts analyze veil-piercing on fact-specific grounds including undercapitalization, commingled funds, and whether the LLC is a sham — not merely on whether formalities were missed. A signed written OA and good records matter alongside real bookkeeping.

### **IX.03 Indemnification ({NDCC} § 10-32.1-40).**

The operating agreement may alter or eliminate indemnification and may limit or eliminate monetary liability of a Member, Manager, or Governor, but NOT for: breach of the duty of loyalty, improper financial benefit, improper distributions, intentional harm, or intentional violation of criminal law. The Company shall indemnify:

**Indemnification scope:**

Exclusions: no indemnification for the prohibited categories above.

### **IX.04 Insurance.**

The Company may purchase and maintain liability insurance on behalf of any Member, Manager, Governor, officer, or agent.

## **ARTICLE X DISSOLUTION AND WINDING UP**

### **X.01 Dissolution Events.**

The Company dissolves upon (N.D.C.C. § 10-32.1-50):

- (a) An event or circumstance stated in this Operating Agreement.

- (b) Consent of all Members.
- (c) 90 consecutive days without Members after initial admission of Members.
- (d) Court-ordered dissolution (unlawful activity, impracticability, illegal or fraudulent acts by those in control, or oppressive conduct directly harmful to the applicant).

Members elect the following dissolution threshold:

**Dissolution threshold:**

**X.02 90-Day No-Member Dissolution Clock.**

IMPORTANT: Under N.D.C.C. § 10-32.1-50, if 90 consecutive days pass without any Members, the LLC may dissolve. This is the same trap as the organizer-not-member issue in Section 1.05. Initial membership must be documented in Exhibit 1.

**X.03 Winding Up.**

Upon dissolution (N.D.C.C. § 10-32.1-51): (a) collect and liquidate assets; (b) pay creditors; (c) distribute remaining assets to Members in proportion to their Ownership Interest percentages. File Notice of Dissolution and Articles of Dissolution and Termination with the North Dakota Secretary of State (dissolution fee \$20).

**X.04 Dispute Resolution and Deadlock.**

To resolve disputes or deadlock before judicial dissolution:

**Dispute method:**

Per Kramlich v. Hale (2017 ND 203), arbitration clauses are enforced for claims arising out of or relating to THIS specific LLC’s operating agreement. Scope the clause precisely to avoid ambiguity.

**ARTICLE XI  
AMENDMENTS**

**XI.01 All-Member Consent Default.**

Under N.D.C.C. § 10-32.1-39, amending this Operating Agreement requires CONSENT OF ALL MEMBERS by default. A single holdout can block changes indefinitely unless this Agreement sets a lower threshold. The Members elect:

**Amendment threshold:**

**XI.02 Written Amendments.**

Although N.D.C.C. § 10-32.1-02(36) allows oral and implied operating-agreement terms, all amendments to this written Agreement must be in writing and signed by the applicable approval threshold of Members.

**XI.03 Records.**

All amendments shall be maintained at the Company’s principal executive office.

**ARTICLE XII  
GENERAL PROVISIONS**

**XII.01 Entire Agreement.**

This Agreement and the Articles of Organization constitute the entire agreement among the Members with respect to the subject matter hereof and supersede all prior oral, written, and implied arrangements.

**XII.02 Severability.**

If any provision is found invalid or unenforceable, the remaining provisions continue in full force.

**XII.03 Governing Law.**

This Agreement shall be governed by the laws of the State of North Dakota, specifically the North Dakota Uniform Limited Liability Company Act, N.D.C.C. ch. 10-32.1.

**XII.04 Dispute Resolution.**

Disputes arising out of or relating to THIS Operating Agreement shall be resolved by binding arbitration with North Dakota venue, consistent with *Kramlich v. Hale* (2017 ND 203). The scope of arbitration is limited to claims relating to this specific LLC and this Agreement.

**Venue:**

**XII.05 Notices.**

All notices shall be in writing and delivered by personal delivery, certified U.S. mail, or e-mail with confirmation.

**XII.06 Counterparts and Signatures.**

This Agreement may be executed in counterparts, including electronically. North Dakota does not require notarization of an LLC operating agreement. This Agreement is NOT filed with the North Dakota Secretary of State. All Members should sign; banks and counterparties rely on this Agreement to verify authority under § 10-32.1-23.

**XII.07 No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the Members and the Company, except as provided in § 10-32.1-13(3).

**XII.08 Further Assurances.**

Each Member shall execute additional documents and take actions reasonably necessary to carry out the purposes of this Agreement.

**SIGNATURE PAGE — MANAGERS**

IN WITNESS WHEREOF, the Manager(s) have executed this Operating Agreement. North Dakota does not require notarization. This Agreement is NOT filed with the North Dakota Secretary of State. Annual report: November 15 deadline, \$50 fee.

**Company Name:**

**Effective Date:**

**Manager 1 Signature:** \_\_\_\_\_

**Printed Name:**

**Date:**

**Address:**

**Manager 2 (if any) Signature:** \_\_\_\_\_

**Printed Name:**

**Date:**

**Address:**

**SIGNATURE PAGE — MEMBERS**

The Members hereby adopt this Operating Agreement and confirm initial membership under N.D.C.C. § 10-32.1-20 (formation alone does NOT create membership).

**Member 1 Signature:** \_\_\_\_\_

**Printed Name:**

**Date:**

**Address:**

**Member 2 Signature:** \_\_\_\_\_

**Printed Name:**

**Date:**

**Address:**

**Member 3 Signature:** \_\_\_\_\_

**Printed Name:**

**Date:**

**Address:**

*(Attach additional signature pages for additional Members.)*

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**EXHIBIT 1**  
**CAPITAL CONTRIBUTIONS AND OWNERSHIP INTERESTS**

Company Name:

Member / Manager / Governor	Address	Role	Contribution (\$)	Ownership (%)
<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 130px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 130px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 130px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 180px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 130px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>

**Total Ownership:**  %

Manager need not be a member (N.D.C.C. § 10-32.1-39). This Exhibit documents initial membership and overrides the post-July 31, 2017 contribution-value and distribution-interest defaults of N.D.C.C. §§ 10-32.1-30, 10-32.1-30.1, and 10-32.1-39.

## LEGAL DISCLAIMER

This Manager-Managed Operating Agreement template for a North Dakota limited liability company is provided by Boost Suite for informational and educational purposes only. It does not constitute legal advice and does not create an attorney-client relationship. Boost Suite is not a law firm. This template is based on the North Dakota Uniform Limited Liability Company Act, N.D.C.C. ch. 10-32.1, including N.D.C.C. §§ 10-32.1-02(36), 10-32.1-13, 10-32.1-14, 10-32.1-15, 10-32.1-16, 10-32.1-20, 10-32.1-23, 10-32.1-26, 10-32.1-27, 10-32.1-29, 10-32.1-30, 10-32.1-30.1, 10-32.1-31, 10-32.1-32, 10-32.1-39, 10-32.1-40, 10-32.1-41, 10-32.1-42, 10-32.1-43, 10-32.1-44, 10-32.1-45, 10-32.1-47, 10-32.1-48, 10-32.1-49, 10-32.1-50, 10-32.1-51, 10-32.1-89, 10-32.1-90, 10-32.1-91, and 10-32.1-92. Laws change; Boost Suite does not guarantee that this template reflects the most current version of North Dakota law. LLCs with complex structures should have this Agreement reviewed by a licensed North Dakota attorney before execution.

### **Your North Dakota LLC Resources:**

- <https://boostsuite.com/llc-operating-agreement/north-dakota/>
- <https://boostsuite.com/how-to-start-an-llc/north-dakota/>
- <https://boostsuite.com/how-to-start-an-llc/cost/north-dakota/>

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