

Agenda  
**Board of Regents**  
**Emergency Meeting of the Full Board**  
Friday, July 27, 2012; 10:30 a.m. – 11:30 a.m.  
AUDIO CONFERENCE  
1-800-893-8850 / Pin 4054501

**I. Call to Order**

**II. Adoption of Agenda**

**MOTION**

**“The Board of Regents adopts the agenda as presented.**

- I. Call to Order**
- II. Adoption of Agenda**
- III. Resolution Authorizing Creation of Subsidiary Entities to Commercialize Research**
- IV. Adjourn**

**This motion is effective July 27, 2012.”**

**III. Resolution Authorizing Creation of Subsidiary Entities to Commercialize Research**

References 1 & 2

The President recommends that:

**MOTION**

**“The Board of Regents adopts the resolution authorizing creation of subsidiary entities to commercialize UA research as presented. This motion is effective July 27, 2012.”**

WHEREAS, the Board of Regents finds that it is in the interest of the public and the University of Alaska (the “University”) to commercialize intellectual property resulting from research conducted at and under the supervision of the University, and to do so through a variety of means, including without limitation, for-profit subsidiaries of the University.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to AS 14.40.458, the Board of Regents authorizes the president, and through the president, the chancellor and chancellor’s designees (the “Authorized Persons”), (i) to form on behalf of the University, a wholly-owned for-profit holding company (for ease of reference, hereafter “Hold Co”), for the purpose of holding and commercializing such intellectual property rights as they deem necessary and appropriate, and to manage Hold Co and delegate such authorities and duties as may be necessary and appropriate, subject to any approval rights over any matters that may be expressly reserved for the Board of Regents in Hold Co’s operating agreement, (ii) to cause Hold Co to enter into transactions and to form and manage subsidiaries and such other entities, and to cause such subsidiaries and other entities to enter into transactions as the Authorized Persons deem necessary and appropriate and consistent with the functions and purposes set forth in the

Agenda

**Emergency Meeting of the Full Board**

July 27, 2012

Audio conference

commercialization plan presented to the Board of Regents, (iii) to negotiate, execute and deliver, as appropriate, all documents related to such commercialization plan with such changes thereto as the Authorized Persons negotiating and executing the same shall approve in their sole discretion, subject to any approval rights over any matters that may be expressly reserved for the Board of Regents in any such documents, such execution and delivery thereof by the Authorized Persons to be conclusive evidence of such approval where Board of Regents approval is not so required, and (iv) to take such further action as they may deem necessary or appropriate in order to implement fully each and all of the foregoing actions. This resolution is effective July 27, 2012.”

**RATIONALE AND RECOMMENDATION**

As presented at the June 2012 Board of Regents' meeting, UAA is requesting board approval to commercialize UA research through formation of for-profit subsidiaries. These wholly-owned UA subsidiaries in turn will collaborate with private sector firms and startups to commercialize university intellectual property. The LLC structure described in Reference 1 has been developed in consultation with Patton-Boggs and UA General Counsel and is designed to safeguard the university's interests while remaining responsive to external investment opportunities.

UAA initially will operate the holding company as a member-managed LLC. Reference 2 is the initial operating agreement. UAA eventually will seek regent approval of a board of directors to operate the holding company. UAA will work with external counsel and UA General Counsel on an ongoing basis to develop the additional subsidiaries contemplated by the plan.

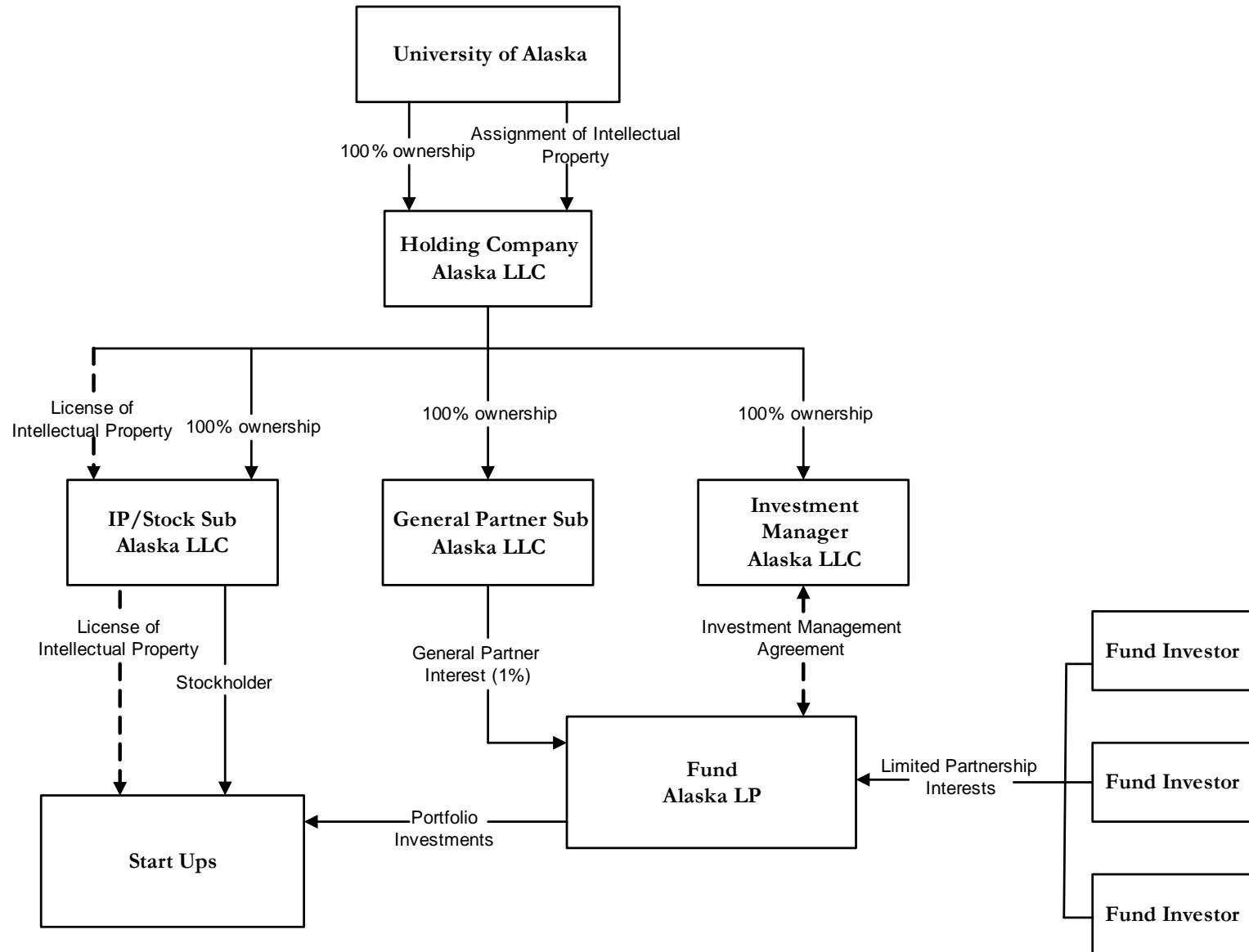
**IV. Adjourn**

# Proposed Structure of Technology Commercialization and Sponsorship of Private Investment Fund

University of Alaska  
Anchorage Project

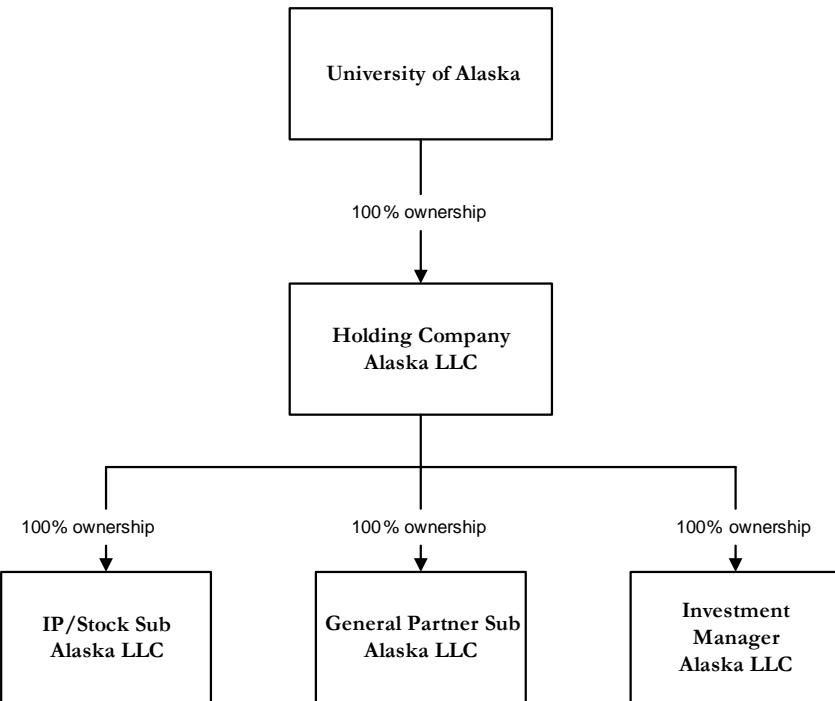
PATTON BOGGS LLP





# Holding Company and Subsidiaries—Corporate Separation

- Top-level holding company wholly-owned by UA
- Holding Company wholly-owns underlying subsidiaries
- Purposes:
  - The IP/Stock Subsidiary will hold the intellectual property rights pursuant to a license from Holding Company and any stock received from the start-up ventures
  - The intellectual property rights and the stock will be housed in the same entity and accordingly the assets would be available to satisfy any debts, liabilities, obligations, and risks associated with licensing the intellectual property and holding the stock
  - The contractual agreements will be drafted to minimize, to the extent possible, the exposure of the intellectual property assets to potential claims or losses
- Corporate separateness and formalities must be respected and practiced on a consistent and thorough basis to reduce or mitigate risk of a court looking through the structure and treating UA as the entity actually conducting the function, rather than a subsidiary or subsidiaries (also known as “piercing the corporate veil”).
- Each entity should:
  - have its own governing documents
  - take its own corporate actions
  - keep its own corporate books and records
  - operate within its own defined business areas
  - have at least some board members not in common with the other boards

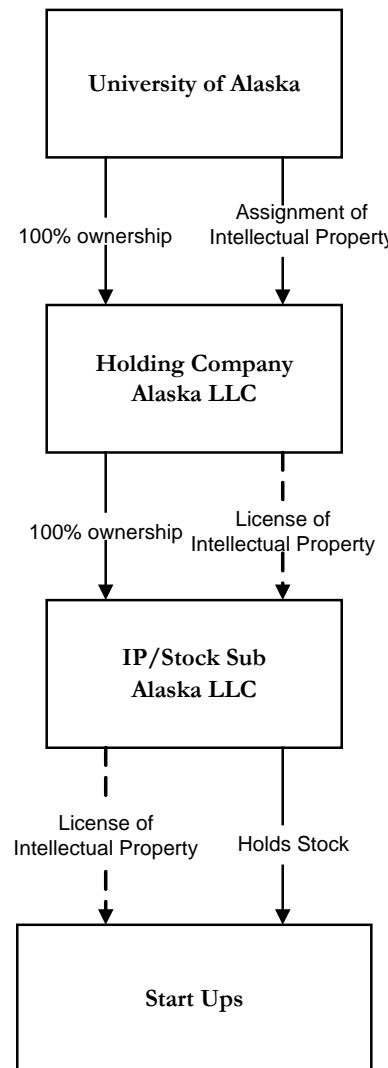


## Unrelated Business Taxable Income

- Income to the University of Alaska (“UA”) is not generally subject to federal income tax, except for income generated from unrelated trades or businesses, which is taxed at the highest corporate income tax rates
- Unrelated business income tax (“UBIT”) is imposed on gross income received by UA from an unrelated trade or business, less directly related expenses
- Income is taxable if
  - derived from a trade or business
  - the trade or business is regularly carried on
  - the regularly carried on trade or business is not related to UA’s charitable, educational, scientific, literary, etc. purposes
- Whether an activity is an unrelated trade or business is determined based on all the **facts and circumstances**

## Unrelated Business Taxable Income (cont.)

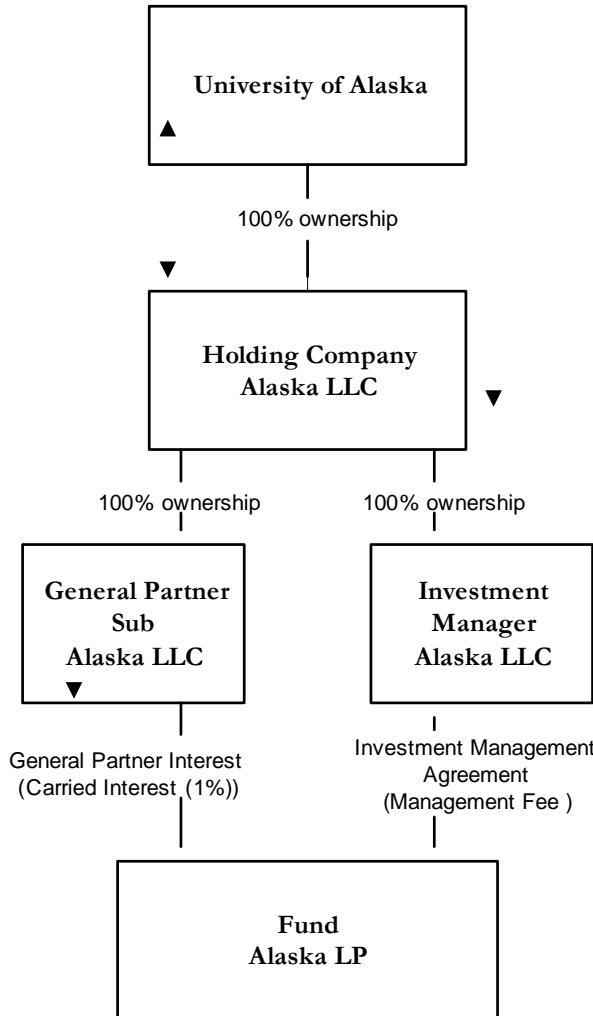
- Although exceptions may apply, certain types of income are not subject to UBIT, including
  - dividends
  - interest
  - royalties
  - rents
  - capital gains
  - income derived from research
- Income may be subject to UBIT even if it falls into one of the above categories in certain circumstances—for example:
  - In certain cases if the income is derived from debt-financed property
  - certain types of income from controlled subsidiaries if the subsidiary is able to deduct such amounts and thereby reduce its taxable income, or if the payment would allow the subsidiary to take a loss that may be used against income earned by it in subsequent years
- Income derived from research activities of a university is not generally subject to UBIT but to qualify, such research must be conducted by the university and may not be conducted through a separately incorporated entity
  - Research conducted by a single-member limited liability company that is treated as a disregarded entity and owned by a university will be treated as conducted by the university



## IP/Stock Subsidiary

- The IP/Stock Subsidiary holds the intellectual property rights (issued patents, trade secrets, and patent applications) pursuant to a license from Holding Company and licenses such property to the various start-up companies and also holds stock ownership interest of the start up-companies in exchange for the contribution of such licenses
- The intellectual property rights and the stock are being held in one corporation in order to ease the administrative costs and burdens
- The easing of the administrative costs and burdens will result in all of the corporation's assets being subject to any claims or losses
- To the extent possible, the contractual agreements for the intellectual property will try to reduce and minimize such risks

# General Partner and Investment Manager Subsidiaries



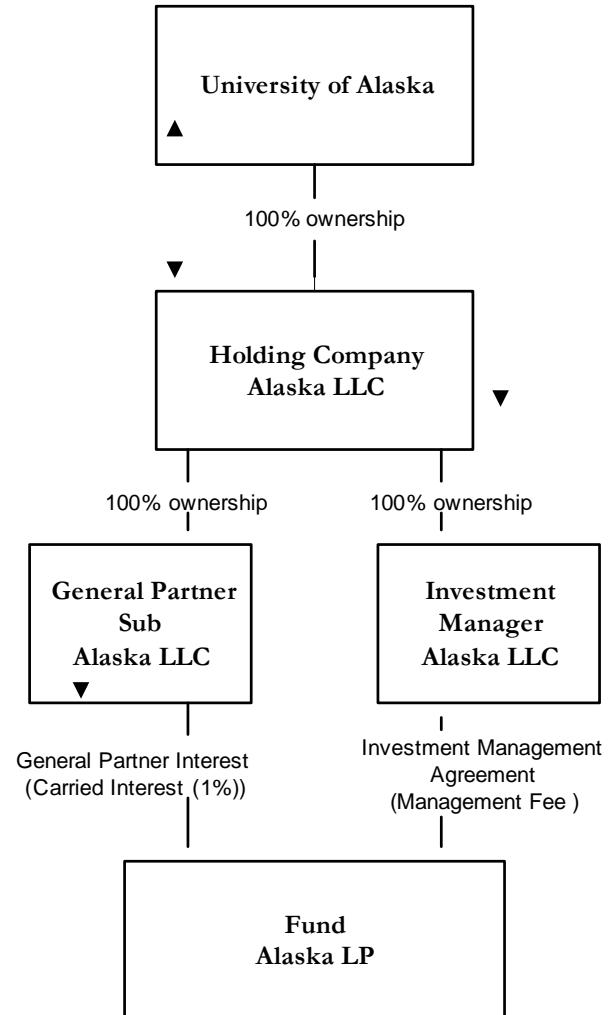
- The General Partner Subsidiary will serve as the general partner of the Private Investment Fund (“Fund”) and receive a share of the profit from investments (“carried interest”)
- The Investment Manager Subsidiary will serve as the investment manager of the Fund and receive a management fee
- Purposes for forming separate entities to serve as general partner and investment manager of the Fund:
  - taxation
    - carried interest currently categorized as capital gains (although there are efforts in Congress to have carried interest treated as ordinary income)
    - management fees categorized as ordinary income
    - having different revenue streams flow to separate entities reduces risk that both revenue streams will be treated as ordinary business income, which would create a larger tax burden
  - protection from Fund-related liabilities
    - the general partner has general liability for the debts and obligations of a limited partnership

## **General Partner Subsidiary—Purpose and Existence**

- The General Partner Subsidiary should be a single purpose vehicle dedicated solely to the Fund that would:
  - wind down its affairs following liquidation and wind down of the Fund (a new General Partner Subsidiary should be established if a successor investment fund is established)
  - limit the scope of any incentive compensation schemes that may be established for UAA personnel with respect to carried interest generated by the Fund or the sharing of carried interest with third parties (to ensure that any incentive compensation or other carried interest participants that may be terminated would not have a role with and receive similar incentive compensation in respect of the successor fund)

## Investment Manager Subsidiary—Purpose and Existence

- The Investment Manager Subsidiary serves as investment manager of the Fund
  - has no ownership interest whatsoever in the Fund
  - enters into an investment management agreement with the Fund under which it will provide investment management and advisory services to the Fund
  - receives management fees from the Fund
- does not have general liability for the debts and obligations of the Fund since there is no ownership interest in the Fund (unlike the General Partner Subsidiary)
- does not need to wind down when the Fund and the General Partner Subsidiary are wound down, so long as other business opportunities exist for continued operation
- may, if successful, serve as an operating business and exist beyond the life of the Fund to sponsor, raise and manage successor funds and engage in other similar business activities
- as day-to-day manager of the Fund's operations, employs/pays the investment professionals and provides the overhead necessary to run the operations.



**FORM OF  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
\_\_\_\_\_ LLC**

This Limited Liability Company Agreement (this “Agreement”) of \_\_\_\_\_ LLC is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by the University of Alaska (the “Member”) pursuant to and in accordance with the Alaska Revised Limited Liability Company Act (AS 10.50), as amended from time to time (the “Act”).

**1. Name.** The name of the limited liability company governed hereby is \_\_\_\_\_ LLC (the “Company”).

**2. Certificates.** \_\_\_\_\_, as an authorized person within the meaning of the Act, has executed, delivered and filed the Articles of Organization of the Company with the Department of Commerce, Community, and Economic Development of the State of Alaska. Upon the execution of this Agreement, [his]/[her] powers as an authorized person shall cease and the Member shall thereafter be designated as an authorized person within the meaning of the Act. The Member shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

**3. Purpose.** The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in all lawful activities for which limited liability companies may be formed under the Act. Without limiting the foregoing in this Section 3, the primary purpose of the Company is to commercialize intellectual property resulting from research conducted at and under the supervision of the Member, and to do so through a variety of means, including without limitation, the establishment of one or more direct and indirect subsidiaries of the Company to engage in commercial transactions and the assignment and/or licensing of certain intellectual property assigned and/or licensed to the Company by the Member.

**4. Powers.** The Company shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purpose and business described herein and for the protection and benefit of the Company, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Company by the Member pursuant to this Agreement, including Section 15.

**5. Principal Business Office.** The principal place of business and office of the Company shall be located at, and the Company’s business shall be conducted from, such place or places as may hereafter be determined by the Member.

**6. Registered Office.** The address of the registered office of the Company in the State of Alaska is c/o Corporation Service Company, 9360 Glacier Highway, Suite 202, Juneau, Alaska 99801.

**7. Registered Agent.** The name and address of the registered agent of the Company for service of process on the Company in the State of Alaska are Corporation Service Company, 9360 Glacier Highway, Suite 202, Juneau, Alaska 99801.

**8. Name and Mailing Address of the Member.** The name and the mailing address of the Member are as follows:

<u>Name</u>	<u>Address</u>
University of Alaska	3211 Providence Drive Anchorage, Alaska 99508

**9. Term.** The term of the Company commenced on the date of filing of the Articles of Organization of the Company in accordance with the Act and shall continue until dissolution of the Company in accordance with Section 23 of this Agreement.

**10. Limited Liability.** Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and none of the Member, any Officer (as hereinafter defined), employee or agent of the Company (including a person having more than one such capacity) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of acting in such capacity.

**11. Capital Contributions.** The Member is deemed admitted as a Member of the Company upon its execution and delivery of this Agreement. The initial contribution of the Member consists of the assets set forth on Schedule A attached hereto. The total capital of the Member in the Company from time to time shall be referred to as the Member's "Capital."

**12. Additional Contributions.** The Member is not required to make additional capital contributions to the Company.

**13. Distributions.** Distributions shall be made to the Member at such times and in such amounts as may be determined in the sole discretion of the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Member on account of its interest in the Company if such distribution would violate Section 10.50.305 of the Act or other applicable law.

**14. Officers.** The Member may, from time to time as it deems advisable, appoint officers of the Company (the "Officers") and assign in writing titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Alaska Corporation Code, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 16 may be revoked at any time by the Member.

**15. Management.**

a. The business and affairs of the Company shall be managed by the Member. Subject to the express limitations contained in any provision of this Agreement, the Member shall have complete and absolute control of the affairs and business of the Company,

and shall possess all powers necessary, convenient or appropriate to carrying out the purposes and business of the Company, including, without limitation, doing all things and taking all actions necessary to carrying out the terms and provisions of this Agreement.

b. Subject to the rights and powers of the Member and the limitations thereon contained herein, the Member may delegate to any person, any or all of its powers, rights and obligations under this Agreement and may appoint, contract or otherwise deal with any person to perform any acts or services for the Company as the Member may reasonably determine.

c. The Member shall have the powers set forth above until the earliest to occur of its dissolution, termination, winding-up, bankruptcy, or other inability to act in such capacity, at which time the legal representative of the Member shall appoint a successor to the interest of the Member for the purpose of settling the estate or administering the property of the Member.

d. The Member may be compensated for its services to the Company, as determined in its sole discretion.

**16. Other Business.** The Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

**17. [Exculpation and Indemnification.]** None of the Member, any of its employees, agents, officers, directors, Board of Regents (the “Board of Regents”) and members thereof, members of its advisory bodies and councils, any of their respective affiliates, consultants, employees or agents or any Officer (each an “Indemnified Party”) shall be liable to the Company or any other person or entity who has an interest in the Company for any loss, damage or claim (including reasonable legal fees and costs) incurred by reason of any act or omission performed or omitted by such Indemnified Party in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Party by this Agreement, except that an Indemnified Party shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Party’s gross negligence or willful misconduct. To the full extent permitted by applicable law, an Indemnified Party shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Indemnified Party by reason of any act or omission performed or omitted by such Indemnified Party in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Party by this Agreement, except that no Indemnified Party shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Party by reason of gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 19 shall be provided out of and to the extent of Company assets only, and the Member shall have no personal liability on account thereof.] [TBD]

**18. Admission of Additional Members.** No additional members of the Company may be admitted to the Company without the approval of the Board of Regents. Upon admission of an additional member, this Agreement shall be amended to reflect the status of the Company as a

partnership for federal income tax purposes, including without limitation, for the provision of capital accounts, the allocation of profits and losses, and distributions (whether interim or upon dissolution).

**19. Assignments.** The Member, with the approval of the Board of Regents, may transfer, assign, pledge or hypothecate, in whole or in part, its limited liability company interest, as determined in its sole discretion.

**20. Termination of Membership.** The rights of the Member to share in the Profits and Losses of the Company, to receive distributions and to assign its interest in the Company pursuant to Section 21 shall, on its dissolution, termination, winding-up, bankruptcy, or other inability to act in such capacity, devolve on its legal representative for the purpose of settling its estate or administering its property.

**21. Dissolution.**

a. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following:

- (i) the written consent of the Member;
- (ii) the dissolution, termination, winding-up, bankruptcy, or other inability to act in such capacity, of the Member; and
- (iii) the entry of a decree of judicial dissolution under Section 10.50.405 of the Act.

b. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs.

c. Upon the winding up of the Company, the assets of the Company shall be distributed in the following manner and order of priority:

- (i) payment, or adequate provision for payment, to creditors in satisfaction of the liabilities of the Company; and
- (ii) to the Member.

**22. Elections.** The Member shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction and credit of the Company or any other method or procedure related to the preparation of such tax returns. The Member may cause the Company to make or refrain from making any and all elections permitted by such tax laws, and the Member shall not be liable for any consequences to any previously admitted or subsequently admitted Members resulting from their making or failing to make any such elections.

**23. Separability of Provisions.** Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity,

unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

**24. Entire Agreement.** This Agreement constitutes the entire agreement of the Member with respect to the subject matter hereof.

**25. Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Alaska (without regard to conflict of laws principles thereof), and all rights and remedies shall be governed by such laws.

**26. Amendments.** This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Member. At least 30 calendar days in advance of any such modification, alteration, supplement or amendment, the Company shall provide written notice thereof and a brief explanation of same to the Board of Regents.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first written above.

UNIVERSITY OF ALASKA

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Name:

Title:

**Schedule A**

Name

Capital Contribution