

FOUNDERS' AGREEMENT TEMPLATE - WITH VESTING

The Company

This agreement governs the partnership between the Founders, doing business as _____ (the “**Company**”). The Company will continue perpetually, unless dissolved in accordance with this agreement. The Founders will cause the Company to register its fictitious name in the jurisdiction where it conducts its business, as soon as reasonably practicable after the date hereof. The Company’s principal office address will be set by a majority of Founders, and initially is: _____.

The Founders

The following individuals are hereby admitted as partners in the Company (“**Founders**”)

The Project

The Founders have created the Company for the sole purpose of _____ (the “**Project**”).

Initial Capital

Each Founder hereby commits to contribute up to \$_____ toward Company expenses when called by the Company, as non-refundable capital contributions. The Company must make capital calls of Founders on a *pro rata* basis, according to their proportional ownership of the company.

Additional Capital Contributions

The Founders may make additional capital contributions in the form of cash and prepaid expenses from time to time to fund the Company’s ongoing capital and operating needs. The written consent of all Founders is required for any Founder to make a capital contribution. No Founder may be required to make a capital contribution except pursuant to such mutual written consent.

Expenses and Budgeting

The Founders will budget for Company expenses on a rolling basis. All budgets must be approved by all Founders in writing. Any Founder may pay budgeted expenses on the Company's behalf, and the Company will reimburse each Founder for properly budgeted expenses paid on the Company's behalf, within a reasonable time period after the paying Founder submits an expense report supported by receipts.

Ownership of the Company

Ownership of the Company will initially be reflected in shares, and the Company will initially have _____ total shares. These shares are solely for the purpose of recording the proportional ownership of the Founders of the Company, are not transferrable in any fashion, and do not constitute securities of any kind. The Founders hereby agree to divide ownership of the Company as follows:

- _____ : _____ shares @ \$ _____
- _____ : _____ shares @ \$ _____
- _____ : _____ shares @ \$ _____

Vesting

Vesting will occur based on the following schedule:

- Until and through _____, neither Founder's shares will vest
- On and not before _____ – _____ of each Founder's shares will vest
- On and not before the 1st of every month thereafter, _____ of the remaining _____ will vest
- Thus, on _____ (the "**Full Vesting Date**"), each Founder will be 100% vested.

If either Founder ceases to provide services to the Company, resigns from the Company, or is terminated from service with the Company by a majority vote of the Founders according to their respective ownership interests, with or without cause or good reason, (the "**Terminated Founder**") at any time prior to the Full Vesting Date (the "**Termination Date**"), none of the Terminated Founder's additional shares shall vest. The Terminated Founder's shares remaining unvested as of the Termination Date shall be cancelled or returned to the Company, and the Founder's ownership interest shall be reduced by the amount of unvested shares so cancelled or returned.

If all Founders are still fully involved with the business and a liquidity event (i.e. sale to a third party, an initial public offering, or other liquidity event) occurs, 100% vesting will occur immediately.

Tax Matters

The Company will elect to be taxed as a partnership, and will maintain separate capital accounts for

each Founder in accordance with applicable US Treasury Regulations. If the Company earns more than *de minimis* revenues it will retain an accountant or tax advisor to keep its books and prepare all tax returns and filings on its behalf.

The Company will allocate items of income and losses as if the Company were liquidated, its assets sold at their fair market value, and the resulting proceeds (net of liabilities) distributed to the Founders in accordance with this agreement.

The Company will specially allocate income and losses in accordance with applicable US partnership income tax safe harbor provisions to avoid, to the extent permissible, any Founder having a capital account deficit at the end of any tax year.

The Company will allocate any item of nonrecourse deduction to the Founders equally; provided, that any Founder's partner nonrecourse deductions for any fiscal year or other period will be specially allocated to the Founder who bears the economic risk of loss with respect to the nonrecourse debt to which such partner nonrecourse deductions are attributable. It is intended that the Company be treated as a pass-through entity for tax purposes. Subject to applicable law, the Company will allocate income, gain, loss, deductions, and credits in the same manner as described above and, solely for tax purposes, any items related to contributed property will be allocated taking into account any difference between the Company's adjusted basis in such property and the property's fair market value upon contribution. Any elections or decisions relating to such allocations must be made in a manner that reasonably reflects the intent of this agreement.

_____ will act as the Company's tax matters partner, and will act as the primary point of contact with any taxing authorities and other third parties with regard to the Company's financial and tax matters. The tax matters partner may make any tax election with respect to the Company, provided he obtains the prior written consent of a majority of Founders.

Capital Accounts; Distributions

Each Founder shall have a capital account, which shall reflect such Founder's initial capital contribution, shall be credited with such Founder's additional capital contributions (if any) and such Founder's share of the profits of the Company (if any) based on such Founder's respective ownership interest in the Company, and shall be debited with distributions to such Founder (if any) and such Founder's share of the losses of the Company based on such Founder's respective ownership interest in the Company.

The Company may (but is not required to) make ordinary distributions to the Founders out of cash received by the Company (excluding new capital contributions or loans), less all accounts payable and reserves against anticipated expenses from time to time as determined by a majority of Founders. All distributions must be made in the following order:

- First, in equal proportion to all Founders who have contributed cash that has not been repaid, until each Founder has been paid out to the extent of such contributions in full;

- Second, to all Founders in accordance with each Founder's positive capital account balance; and
- Third, to all Founders in proportion to their respective ownership interests.

Management and Approval Rights

The Company will be managed by the Founders, and a majority of Founders may take any action on behalf of the Company except where explicitly stated otherwise in this agreement. The unanimous written approval of all Founders is required to:

- incur any debt on the Company's behalf or employ its credit, other than receivables to trade creditors in the ordinary course of business not to exceed \$250 individually and \$500 in aggregate;
- initiate any voluntary bankruptcy proceeding;
- liquidate or dissolve the Company, or distribute substantially all of its assets and business;
- enter into any inbound or outbound license, transfer, or other assignment of protectable intellectual property used in the Project, including any patentable inventions, copyrights, trade secrets, or trademark rights (except for inbound end user licenses for software applications in the ordinary course of business);
- approve any contract with a Founder, or an immediate family member or domestic partner of a Founder, or an affiliate of any of the foregoing persons;
- raise any equity capital in any amount from any person;
- admit any partner to the Company; and
- amend this agreement.

Duties to the Company

The Founders must refer to the Company, in writing, all opportunities to participate in a business or activity that is directly competitive with the Project within _____, whether as an employee, consultant, officer, director, advisor, investor, or partner. The Company will have 15 days to decide whether to pursue any referred opportunity, and to notify the referring Founder of its decision in writing. If the Company elects not to pursue the opportunity, or if it does not notify the referring Founder of its intent in writing within the 15 day period, then the referring Founder will be free to pursue the opportunity independently. If the Company elects to pursue the opportunity, but later abandons it, then the referring Founder will be free to pursue the opportunity independently at such time.

Other than pursuant to the preceding paragraph, to protect the Company's legitimate business interests, no Founder may participate in any business or activity that is directly competitive with the Project within [geographic region], whether as an employee, consultant, officer, director, advisor, owner, sole proprietor, investor, or partner. The ownership of 1% or less of the securities of any publicly-traded company will not be considered participation in a competitive business or activity. The Founders' obligations contained in this section (Duties to the Company) will continue with respect to each Founder until the later of the date that is 3 months after (i) he ceases to be a partner

of the Company, and (ii) he ceases to provide any services to the Company, whether as a partner, employee, officer, director, or otherwise.

Other than as explicitly provided herein, no Founder will have any duty to the other Founders or to the Company, including any fiduciary duty, and including any duty to refer business opportunities to the Company, or to refrain from engaging in activity that is competitive with that conducted or planned by the Company.

Project-Related Intellectual Property

“Project IP” means:

(a) contributions and inventions, discoveries, creations, developments, improvements, works of authorship and ideas (whether or not protectable under patent, copyright, or other legal theory) of any kind that are conceived, created, developed or reduced to practice by any Founder, alone or with others, while such Founder is a member of, or provides services to, the Company, regardless of whether they are conceived or made during regular working hours or at the Company’s place of work, that are directly or indirectly related to the Project, result from tasks assigned to a Founder by the Company, or are conceived or made with the use of the Company’s resources, facilities or materials; and (b) any and all patents, patent applications, copyrights, trade secrets, trademarks (whether or not registered), domain names and other intellectual property rights, worldwide, with respect to any of the foregoing.

The term “Project IP” does not include any inventions developed by a Founder entirely on such Founder’s own time, without using any Company equipment, supplies, facilities or trade secret information, unless the invention related to the Project at the time of the invention’s conception or reduction to practice.

Each Founder hereby irrevocably assigns to the Company all right, title, and interest in and to all Project IP owned by such Founder. Each Founder agrees (i) to assist the Company from time to time with signing and filing any written documents of assignment that are necessary or expedient to evidence such Founder’s irrevocable assignment of Project IP to the Company; and (ii) to assist the Company in applying for, maintaining, and filing any renewals with respect to Project IP anywhere in the world, in each case at the Company’s expense.

Confidentiality

The Founders agree to keep all non-public information with respect to Project IP confidential and not to disclose it to any other party, except (i) to attorneys and advisors who need to know in connection with performing their duties, (ii) to potential business development partners and/or investors approved by the Company in writing, and who are bound by a confidentiality agreement in writing, and (iii) in response to an inquiry from a legal or regulatory authority.

Third-Party Offer to Invest

The written consent of all Founders is required to approve any additional investment in the Company from any party, including a Founder, and to issue any equity securities or rights convertible into the Company's equity to any party.

Any Founder who receives an offer from any party to invest in the Company will notify the other Founders of the same, and provide each Founder an opportunity to participate meaningfully in the negotiations surrounding the potential investment in the Company. The Founders will use their best efforts to obtain terms that are no less favorable to any Founder than those outlined in the term sheet attached as Exhibit A hereto. The Founders understand that they would likely be required to submit their equity interests in the Company to vesting and other restrictions in such event, to assign all Project IP to the Company, and to submit to other employment-related covenants.

The Founders anticipate that any transaction resulting from such an offer would require that the Company convert to a business entity that provides limited liability to its members, or else to contribute the Company's assets and liabilities to a newly-formed business entity with limited liability.

Resignation and Removal of Founders

Any Founder may resign from partnership in the Company for any reason or no reason at all by giving written notice to the other Founders. A majority of Founders may remove a Founder from the partnership at any time, for any reason or no reason at all, by giving written notice to such Founder. Upon a Founder's resignation or removal, the Company will continue and will not dissolve, so long as at least one Founder remains as a member of the Company. The Company will pay out to the resigning or removed Founder his positive capital account balance (if any) within 180 days of resignation, either in cash or with an unsecured note payable within 2 years and bearing interest at 8% per year.

If only one Founder remains a partner of the Company at any time, then the Company shall continue as a sole proprietorship of the remaining Founder until he resigns, without affecting any rights due to any Founder or former Founder under this agreement.

If no Founder remains as a partner of the Company at any point in time, then the Company will dissolve, and this agreement will terminate immediately upon completion of the winding up of the Company and distribution of its assets and liabilities in accordance with this agreement.

Dissolution

If the Founders determine by unanimous consent to dissolve the Company and wind up its affairs, or if the Company dissolves because no Founders remain as partners, then any persons who were Founders immediately prior to the dissolution event will cause the Company to sell all its property (including Project IP) for cash only, and to liquidate in an orderly fashion. All Founders must be

afforded a full opportunity to bid on any Project IP in connection with such liquidation process. The Company will distribute any property that remains after paying for the expenses of dissolving and winding up, and repaying all indebtedness owed by the Company, as follows:

- First, in equal proportion to all Founders who have contributed cash that has not been repaid, until each Founder has been paid out to the extent of such contributions in full;
- Second, to all Founders in accordance with each Founder's positive capital account balance; and
- Third, to all Founders in equal proportion.

Title to any Project IP that is not sold in connection with dissolution and liquidation of the Company must, however, be distributed to all Founders as owners in common.

Dispute Resolution

All disputes arising from or related to this agreement must be submitted for binding arbitration before a single arbitrator under the rules of the American Arbitration Association as in effect at such time. The location for such arbitration will be _____, _____.

The Founders agree that either party may, within 7 days after the filing of a Demand for Arbitration, demand that the parties' dispute first be submitted to a neutral evaluator pursuant to the American Arbitration Association's Early Neutral Evaluation Procedures prior to proceeding with arbitration.

Any resulting arbitration award may be enforced in any court having valid jurisdiction, wherever located. In addition, the Founders hereby irrevocably submit to the jurisdiction of the state and federal courts located in _____ for the enforcement of any such arbitration award.

Miscellaneous Provisions

Assignment. This agreement may not be assigned by any party hereto without the written consent of all Founders.

Successors / Assigns. This agreement shall be binding upon and inure to the benefit of the Founders, the Company, their successors, and their permitted assigns.

Notices. Any notice or other communication required or permitted under this agreement may be addressed to the recipient at its address given above, or such other address as that party may provide from time to time, and shall be deemed duly given (A) when delivered, if by hand delivery; and (B) if otherwise delivered, when written confirmation of receipt thereof is obtained (i) from the recipient; or (ii) from a nationally recognized mail carrier.

No Third-Party Beneficiaries. Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto, except as explicitly provided otherwise herein.

Amendment / Waiver. This agreement may only be amended with the written consent of all

Founders, and none of its provisions may be waived except with the written consent of the party waiving compliance.

Governing Law. This agreement shall be governed by and construed in accordance with the laws of the state of _____, without regard to the principles of conflicts of laws.

Severability. If any provision in this agreement is held to be invalid or unenforceable in any jurisdiction, the validity and enforceability of all remaining provisions contained herein shall not in any way be affected or impaired thereby, and the invalid or unenforceable provisions shall be interpreted and applied so as to produce as near as may be the economic result intended by the parties hereto.

Entire Agreement. This agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior arrangements or understandings (whether written or oral) with respect thereto.

Signature

By signing below, each Founder indicates acceptance of the terms of this agreement in their entirety as of the date first written above, and represents and warrants to the Company and each other Founder that he has fully read and understood this agreement, and that to each Founder's knowledge, no law or third-party obligation would prevent each such Founder from entering into and performing this agreement in full. For the convenience of the parties, this agreement may be executed electronically and in counterparts. Each counterpart shall be binding, and all of them shall constitute one and the same instrument.

