

# FOUNDERS AGREEMENT

**Company:** [COMPANY NAME] **Governing State:** [STATE] **Effective Date:**

This Founders Agreement (this "Agreement") is entered into and made effective as of (the "Effective Date") by and among the individuals listed in Section 2 below (each a "Founder" and collectively the "Founders") and [COMPANY NAME] (the "Company"), a Delaware corporation with its principal place of business at [PRINCIPAL PLACE OF BUSINESS].

## Recitals

**WHEREAS**, the Founders have formed, or will cause to be formed, the Company to engage in the following business (the "Business"): [BRIEF DESCRIPTION OF THE BUSINESS];

**WHEREAS**, the Founders desire to set forth their respective rights, obligations, equity holdings, vesting, intellectual-property assignments, and governance arrangements with respect to the Company; and

**WHEREAS**, this Agreement is intended to supplement, and not to replace, the Company's Certificate of Incorporation, Bylaws, and any shareholder or stock-purchase agreements.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

## 1. The Company; Definitions

**1.1 The Company.** The Company is a Delaware C-corporation formed to operate the Business. This Agreement is governed by the laws of the State of [STATE].

### 1.2 Definitions.

- "**Change of Control**" means (a) any merger, consolidation, or reorganization in which the Company's stockholders immediately before the transaction hold less than 50% of the voting power of the surviving entity; (b) a sale of all or substantially all of the Company's assets; or (c) a sale of a majority of the Company's outstanding voting stock to a single person or group in a single transaction or series of related transactions.
- "**Cause**" means, with respect to any Founder's service to the Company: (i) conviction of, or plea of no contest to, a felony or any crime involving moral turpitude; (ii) commission of an act of fraud, embezzlement, or material dishonesty with respect to the Company; (iii) material and uncured breach of this Agreement, any employment or consulting agreement with the Company, or the Company's written policies; (iv) gross negligence or willful misconduct in the performance of duties; or (v) breach of fiduciary duty.

- **"Good Reason"** means, with respect to any Founder: (i) a material diminution of title, authority, duties, or responsibilities; (ii) a material reduction in base compensation (other than an across-the-board reduction applicable to all senior executives); or (iii) a relocation of the Founder's principal workplace by more than fifty (50) miles, in each case without the Founder's written consent, and in each case with notice and an opportunity to cure.

## 2. Founders, Roles, and Equity

The Founders, their roles, equity percentages, and initial contributions are:

Founder	Title	Equity %	Shares	Cash Contribution
[FOUNDER 1 FULL LEGAL NAME]	[FOUNDER 1 TITLE ROLE]	50%	TBD	\$0.00
[FOUNDER 2 FULL LEGAL NAME]	[FOUNDER 2 TITLE ROLE]	50%	TBD	\$0.00

### 2.1 Descriptions of non-cash contributions.

- [FOUNDER 1 FULL LEGAL NAME]: Cash contribution and services only.
- [FOUNDER 2 FULL LEGAL NAME]: Cash contribution and services only.

**2.2 Chief Executive Officer.** [INITIAL CEO FOUNDER NAME] shall serve as the initial Chief Executive Officer of the Company and shall report to the Board of Directors.

**2.3 Compensation.** Founders shall serve without cash compensation until the Company either (a) closes a financing round of at least \$500,000 or (b) generates sufficient revenue to support reasonable market-rate salaries, as determined by the Board.

**2.4 Full-Time Commitment.** Each Founder shall devote substantially all of their business time and effort to the Company, unless the Board unanimously consents otherwise in writing. Outside activities (including board service, advisory roles, and passive investments) that do not compete with the Business and that do not materially interfere with the Founder's duties are permitted and shall be disclosed to the Board.

## 3. Board of Directors

**3.1 Initial Board.** The initial Board of Directors of the Company shall consist of 3 director(s), who shall be the following individuals: [FOUNDER 1 FULL LEGAL NAME], [FOUNDER 2 FULL LEGAL NAME].

**3.2 Voting agreement.** Each Founder agrees to vote all shares owned or controlled by the Founder to elect, and to cause to remain elected, the directors designated above, until (a) the closing of the Company's next equity financing led by an institutional investor, or (b) the written consent of the Founders under the major-decisions vote standard set forth in Section 4, whichever occurs first. Upon

such financing, the Founders will cooperate in good faith to reconstitute the Board to reflect the investor's board designation rights and customary startup board composition.

#### 4. Decision-Making

**4.1 Day-to-day.** The CEO shall make ordinary-course operational decisions after reasonable consultation with the other Founders.

**4.2 Major decisions — Unanimous approval required.** Notwithstanding Section 4.1, the following actions require the approval of Founders meeting the Unanimous threshold (and, where required by law, Board and stockholder approval):

1. Amending this Agreement, the Certificate of Incorporation, or the Bylaws;
2. Issuing or authorizing the issuance of any equity, convertible security, option, warrant, or security of any kind;
3. Admitting, removing, or materially changing the role or compensation of any Founder;
4. Incurring any indebtedness, guaranty, lease, or contractual obligation in excess of **\$25,000.00** (individually or in the aggregate over any 12-month period);
5. Acquiring, disposing of, or licensing any material assets or intellectual property of the Company;
6. Approving any Change of Control of the Company;
7. Dissolving, liquidating, or winding up the Company, or filing a bankruptcy petition;
8. Commencing or settling material litigation;
9. Changing the Company's federal tax classification, accounting methods, or fiscal year; and
10. Hiring or terminating any executive officer.

**4.3 Deadlock.** If the Founders are deadlocked on any matter requiring the major-decisions vote for more than thirty (30) days, the matter shall be referred to the dispute-resolution process in Section 13.

#### 5. Vesting; Reverse Vesting of Founder Equity

**5.1 Reverse vesting.** Notwithstanding that each Founder's equity is issued and outstanding as of the Effective Date, each Founder's shares (the "Restricted Shares") are subject to a right of repurchase by the Company at the Repurchase Price (defined below) upon the Founder's departure from service to the Company, which right lapses over time as the Restricted Shares vest in accordance with this Section 5.

**5.2 Vesting schedule.** The Restricted Shares shall vest over a period of **4 year(s)** from each Founder's Vesting Commencement Date (as defined in Section 5.3), with a one-time cliff of **12 months** during which no shares vest. Upon completion of the cliff, 25% of the Restricted Shares shall vest, and the remaining Restricted Shares shall vest in equal monthly installments over the remainder of the vesting period until all Restricted Shares are fully vested.

**5.3 Vesting Commencement Date.** The "Vesting Commencement Date" for each Founder shall be the Effective Date of this Agreement.

**5.5 Repurchase right.** If a Founder ceases to be a service provider to the Company for any reason (whether by resignation, removal, death, disability, or otherwise), the Company shall have the right (but not the obligation) to repurchase from the Founder (or the Founder's estate) all of the Founder's unvested Restricted Shares at a price equal to the lesser of (a) the original issue price paid by the Founder for such shares and (b) the then-current fair market value (the "Repurchase Price for Unvested Shares"), exercisable for 180 days following the cessation of service.

**5.6 Repurchase of vested shares.** Upon a Founder's departure, the Company shall have the option to repurchase the Founder's vested Restricted Shares at their fair market value as most recently determined by the Board pursuant to a §409A-compliant valuation.

**5.7 Stock power; escrow.** Each Founder shall, concurrently with execution of this Agreement, deliver to the Company an executed blank stock power (or equivalent assignment instrument) to facilitate any repurchase by the Company. The Restricted Shares may, at the Company's option, be held in escrow until fully vested.

**5.8 Legend.** Each stock certificate or book-entry notation representing Restricted Shares shall bear a legend substantially in the form: "THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO A REPURCHASE OPTION AND VESTING SCHEDULE SET FORTH IN A FOUNDERS AGREEMENT, A COPY OF WHICH IS ON FILE WITH THE COMPANY."

## **6. Acceleration on Change of Control (Double Trigger)**

Notwithstanding Section 5, if within twelve (12) months after the closing of a Change of Control a Founder's service with the Company or its successor is terminated (a) by the Company or successor without Cause or (b) by the Founder for Good Reason, then 100% of the Founder's then-unvested Restricted Shares shall immediately vest in full as of the date of such termination. This "double-trigger" formulation is the market standard in venture-backed companies.

## **8. Section 83(b) Election — CRITICAL TAX NOTICE**

**8.1 Election required.** Each Founder whose Restricted Shares are subject to a substantial risk of forfeiture (i.e., the Company's repurchase right under Section 5) is STRONGLY ENCOURAGED to file a timely election under Section 83(b) of the Internal Revenue Code ("83(b) Election") with the Internal Revenue Service within **THIRTY (30) DAYS** after the date of issuance of the Restricted Shares. Failure to file within this 30-day window cannot be cured and may result in the Founder recognizing ordinary income (rather than capital gain) as the Restricted Shares vest, measured by the fair market value of the shares at each vesting date — a potentially catastrophic tax outcome for any Founder whose company appreciates in value.

**8.2 Covenant.** Each Founder covenants to (a) promptly file an 83(b) Election with the IRS within thirty (30) days of the issuance of the Founder's Restricted Shares; (b) deliver a copy of the filed election to the Company; and (c) retain proof of mailing (certified mail, return receipt requested, is strongly recommended). A form of 83(b) Election is attached as **Exhibit C**.

**8.3 Tax advice.** The Company is not providing tax advice. Each Founder should consult independent tax counsel before making the 83(b) Election.

## **9. Intellectual Property Assignment**

**9.1 Present assignment.** Each Founder hereby irrevocably assigns, transfers, and conveys to the Company, and shall cause to be assigned to the Company, all of the Founder's right, title, and interest, throughout the world and in perpetuity, in and to any and all inventions, discoveries, developments, improvements, designs, algorithms, software (including source code and object code), works of authorship, trade secrets, know-how, trademarks, trade dress, domain names, databases, mask works, data, processes, formulae, compositions of matter, business plans, customer lists, and any other intellectual property, whether or not patentable, copyrightable, or otherwise protectable (collectively, "Company IP"), that the Founder, alone or with others, has conceived, created, reduced to practice, authored, developed, or acquired (a) prior to the Effective Date in connection with, or for the benefit of, the Business; (b) during the term of the Founder's service to the Company; or (c) using any Company resources, facilities, trade secrets, or Confidential Information.

**9.2 Work for hire.** To the greatest extent permitted by law, all copyrightable Company IP authored by any Founder in connection with the Business constitutes a "work made for hire" within the meaning of the U.S. Copyright Act (17 U.S.C. §101). To the extent any such work is not a "work made for hire," the Founder irrevocably assigns all rights therein to the Company.

**9.3 Further assurances.** Each Founder shall promptly disclose all Company IP to the Company in writing and shall execute, at the Company's request and expense, any and all documents reasonably necessary to perfect, evidence, or enforce the Company's rights in Company IP, including patent assignments, copyright assignments, and powers of attorney. The Founder appoints the Company as the Founder's attorney-in-fact (coupled with an interest) to execute such instruments if the Founder fails or refuses to do so.

**9.4 State-required carve-outs.** The assignment in Section 9.1 does not extend to any invention that the Founder can prove qualifies under the applicable invention-assignment statute of the state where the Founder resides or works, including Cal. Lab. Code §2870, Del. Code tit. 19 §805, 765 ILCS 1060/2, Kan. Stat. §44-130, Minn. Stat. §181.78, N.C. Gen. Stat. §66-57.1, N.J. Stat. §34:1B-265, Wash. Rev. Code §49.44.140, or Utah Code §34-39-3 — namely, an invention developed entirely on the Founder's own time, without using the Company's equipment, supplies, facilities, or trade-secret information, that (a) does not relate at the time of conception or reduction to practice to the Company's business or to actual

or demonstrably-anticipated research or development, and (b) does not result from any work performed by the Founder for the Company. By signing this Agreement, each Founder acknowledges receipt of written notice of the applicable state's carve-out.

**9.5 Prior inventions — Exhibit B.** Each Founder has listed on Exhibit B all inventions, works of authorship, and other intellectual property that the Founder (a) developed prior to the Effective Date, (b) claims as the Founder's own, and (c) is excluding from the assignment in Section 9.1 (collectively, "Prior Inventions"):

- **[FOUNDER 1 FULL LEGAL NAME]:** None.
- **[FOUNDER 2 FULL LEGAL NAME]:** None.

**License-back of Prior Inventions.** If a Founder incorporates any Prior Invention into any Company product, service, or Company IP, the Founder hereby grants the Company a perpetual, irrevocable, worldwide, royalty-free, fully-paid, non-exclusive, sublicensable license to make, use, modify, distribute, sell, and otherwise exploit such Prior Invention.

**9.6 Waiver of moral rights.** To the fullest extent permitted by law, each Founder irrevocably waives and agrees never to assert any "moral rights" or analogous rights of attribution and integrity in any Company IP, including rights under 17 U.S.C. §106A and analogous laws of any jurisdiction.

## 10. Confidentiality

Each Founder acknowledges that during the term of service, the Founder will have access to confidential and proprietary information of the Company ("Confidential Information"), including business plans, customer lists, source code, financial information, trade secrets, and Company IP. Each Founder shall (a) hold Confidential Information in strict confidence, (b) use Confidential Information only for the benefit of the Company, (c) not disclose Confidential Information to any third party without prior written consent, and (d) upon termination of service, return or destroy all tangible and electronic copies. These obligations survive termination of service indefinitely with respect to trade secrets and for five (5) years with respect to other Confidential Information. Nothing herein prohibits disclosures protected under the federal Defend Trade Secrets Act (18 U.S.C. §1833(b)) or analogous whistleblower protections.

## 12. Non-Solicitation of Employees and Contractors

During each Founder's service and for **18** months after cessation, the Founder shall not, directly or indirectly, solicit, induce, recruit, or attempt to induce any employee or independent contractor of the Company to terminate their service with the Company; provided that general advertising not specifically targeted at Company personnel does not violate this covenant.

**Non-solicitation of customers.** During each Founder's service and for **18** months after cessation, the Founder shall not, directly or indirectly, solicit or divert the business of any customer, prospective

customer, or material business relationship with whom the Founder had material contact during the twelve (12) months preceding cessation.

### **13. Transfer Restrictions and Buy-Sell**

**13.1 Restrictions.** Except as expressly permitted by this Agreement, no Founder may sell, assign, pledge, gift, or otherwise transfer any of the Founder's equity in the Company (or any interest therein) without the prior written consent of the Founders holding the major-decisions vote. Any purported transfer in violation of this Section is void.

**13.2 Permitted transfers.** Notwithstanding Section 13.1, a Founder may transfer equity to (a) a trust for the benefit of the Founder's spouse, children, or other immediate family, provided the Founder retains exclusive voting control and the trust executes a joinder to this Agreement; or (b) with respect to estate-planning transfers approved in advance by the Board.

**13.3 Right of First Refusal.** If a Founder receives a bona fide third-party offer to purchase any of the Founder's equity, the Founder shall deliver written notice to the Company specifying the proposed transferee, price, and terms. The Company shall have thirty (30) days to elect to purchase the offered equity on the same terms; if the Company declines (in whole or part), the other Founders shall have an additional thirty (30) days to purchase pro rata on the same terms. Any portion not so purchased may be sold to the named transferee on the stated terms for ninety (90) days, subject to the transferee's execution of a joinder to this Agreement.

**13.4 Drag-Along.** If Founders holding the major-decisions vote (the "Dragging Founders") approve a Change of Control of the Company to a third party acting at arm's length, each other Founder shall, upon written notice from the Dragging Founders, (a) vote all of the Founder's equity in favor of the transaction; (b) sell the Founder's equity on the same per-share terms as the Dragging Founders; (c) execute customary transaction documents containing representations, warranties, and indemnities on a several (not joint) basis and capped at the Founder's net proceeds; and (d) take all other actions reasonably necessary to effect the transaction.

### **14. Dispute Resolution**

**Mediation, then arbitration.** Before commencing any arbitration or litigation, the Founders shall first attempt to resolve any dispute through non-binding mediation in [VENUE CITY], [STATE], for at least thirty (30) days. If mediation fails, the dispute shall be resolved by binding AAA arbitration seated in [VENUE CITY], [STATE]. Preliminary injunctive relief may be sought in court.

### **15. General Provisions**

**15.1 Governing Law.** This Agreement is governed by the laws of the State of [STATE], without regard to its conflict-of-laws principles.

**15.2 Entire Agreement.** This Agreement, together with the Company's Certificate of Incorporation, Bylaws, any stock purchase agreement, and any employment or consulting agreements between the Company and any Founder, constitutes the entire agreement of the parties concerning the subject matter and supersedes all prior or contemporaneous agreements, whether oral or written.

**15.3 Amendment.** This Agreement may be amended only by a written instrument signed by the Founders holding the Unanimous threshold, and, where required, by the Company.

**15.4 Severability.** If any provision is held invalid or unenforceable, the remainder shall continue in full force, and the invalid provision shall be modified to the minimum extent necessary to be enforceable while preserving the parties' original intent.

**15.5 Assignment.** No Founder may assign this Agreement without the written consent of the other Founders. This Agreement binds and inures to the benefit of the parties' permitted successors and assigns.

**15.6 Notices.** All notices shall be in writing and delivered in person, by courier, by certified mail (return receipt requested), or by email to the addresses listed in Section 2, and shall be effective upon receipt.

**15.7 Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Electronic signatures (including DocuSign, Adobe Sign, and scanned PDFs) are valid and binding under the federal ESIGN Act (15 U.S.C. §7001 *et seq.*).

**15.8 Specific performance.** The Founders agree that breach of the IP-assignment, confidentiality, non-compete, non-solicit, or transfer-restriction provisions would cause irreparable harm for which money damages would be inadequate, and that specific performance and injunctive relief are appropriate remedies in addition to damages.

**15.9 Survival.** Sections 9 (IP Assignment), 10 (Confidentiality), 11 (Non-Compete), 12 (Non-Solicit), 13 (Transfer Restrictions), 14 (Dispute Resolution), and 15 (General Provisions) survive termination of any Founder's service and, to the extent applicable, termination of this Agreement.

**15.10 No tax or legal advice.** The Company has not provided tax or legal advice to any Founder in connection with this Agreement. Each Founder has had the opportunity to consult independent counsel.

## Signatures

IN WITNESS WHEREOF, the parties have executed this Founders Agreement as of the Effective Date.

### THE COMPANY

#### Company

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**THE FOUNDERS**

**Founder 1**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Founder 2**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Exhibit A — Founder Vesting Schedule**

Founder	Vesting Commencement Date	Total Restricted Shares	Vesting Period	Cliff	--- --- --- --- ---
[FOUNDER 1 FULL LEGAL NAME]		[to be determined]	4 years	12 months	[FOUNDER 2 FULL LEGAL NAME]
[FOUNDER 2 FULL LEGAL NAME]		[to be determined]	4 years	12 months	

**Exhibit B — Prior Inventions Schedule**

See Section 9.5 above.

**Exhibit C — Form of Section 83(b) Election**

[Standard IRS Section 83(b) election form to be attached. The Founder shall file the completed form with the IRS Service Center where the Founder files the Founder's tax return, by certified mail (return receipt requested), within 30 days of the transfer of the Restricted Shares. A copy shall be delivered to the Company.]

**Exhibit D — Spousal Consent (Community-Property States)**

The undersigned is the spouse of the Founder named below. The undersigned hereby acknowledges and consents to the terms of the foregoing Founders Agreement, including all transfer restrictions, vesting,

repurchase rights, and buy-sell provisions. The undersigned agrees that the Founder's equity in [COMPANY NAME] shall be governed by the Agreement, and the undersigned shall not, during the marriage or upon dissolution, claim, transfer, or encumber the equity except in accordance with the Agreement. The undersigned has had the opportunity to consult independent counsel.

Founder: \_\_\_\_\_ Spouse Signature: \_\_\_\_\_ Date:  
\_\_\_\_\_ Spouse Printed Name: \_\_\_\_\_