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Founders Agreement Checklist

A well-drafted cofounder agreement is essential for protecting your business and relationships. Use this checklist as a guide, but tailor it to your specific situation and jurisdiction. Open, honest discussion among cofounders is the best way to avoid future conflict and set your venture up for success.

If you need attorney review, you can connect with an experienced attorney through TalkingTree.app via our [Find Counsel](#) platform. If you need a pre-drafted template, please visit TalkingTree.app via and select Founders Collaboration Agreement through our [Contracts](#) platform.

1. Equity Ownership and Vesting

1. Initial Equity Split: Specify each cofounder's percentage ownership.
2. Vesting Schedule: Define how and when equity vests (e.g., 4-year vesting with a 1-year cliff).
3. Acceleration Triggers: Address what happens to vesting upon events like acquisition or termination.
4. Founder Buyback Rights: Company's right to repurchase unvested shares if a founder leaves.

2. Roles and Responsibilities

1. Titles and Positions: Assign roles (e.g., CEO, CTO, COO).
2. Duties and Expectations: Outline each cofounder's responsibilities.
3. Time Commitment: Minimum hours or full-time/part-time status.
4. Performance Metrics: Any KPIs or milestones expected.

3. Decision-Making Processes

1. Voting Rights: How votes are allocated (by share ownership or otherwise).
2. Board Structure: Who sits on the board and how are decisions made.
3. Deadlock Resolution: Mechanism for resolving disagreements (e.g., mediation, third-party tie-breaker).

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4. Major Decisions: List of actions requiring unanimous or supermajority approval (e.g., fundraising, sale of company, hiring/firing executives).

4. Intellectual Property (IP) Ownership

1. IP Assignment: All founders assign IP created for the business to the company.
2. Prior IP: Disclosure and treatment of any pre-existing IP.
3. Ongoing IP Development: Clarify ownership of future inventions and works.

5. Confidentiality and Non-Compete

1. Confidentiality Obligations: Non-disclosure of company secrets.
2. Non-Compete/Non-Solicit: Restrictions on competing with the company or soliciting employees/customers (note: enforceability varies by jurisdiction).

6. Compensation and Benefits

1. Salary: Initial and future compensation, if any.
2. Expense Reimbursement: Policy for business expenses.
3. Bonuses/Profit Sharing: Any additional compensation structures.

7. Dispute Resolution

1. Internal Resolution: Steps for resolving disputes internally.
2. Mediation/Arbitration: Requirement to mediate or arbitrate before litigation.
3. Jurisdiction and Governing Law: Which state/country's laws apply.

8. Exit and Removal of Cofounders

1. Voluntary Departure: What happens if a founder leaves voluntarily.
2. Involuntary Removal: Grounds and process for removing a founder.
3. Buyout Terms: How departing founder's equity is valued and purchased.
4. Death/Disability: Procedures if a founder dies or becomes incapacitated.

9. Fundraising and Bringing in New Partners

1. Pre-Emptive Rights: Existing founders' rights to participate in new funding rounds.
2. Equity Dilution: How new equity grants affect existing ownership.

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3. Admission of New Cofounders: Process and approval required.

10. Changes in Business Direction

1. Pivot/Change Approval: Who must approve major changes in business model or direction.
2. Amendment Process: How the agreement can be changed.

11. Other Key Provisions

1. Assignment: Whether founders can transfer their rights/interests.
2. Dissolution: Process for winding down the company.
3. Miscellaneous: Notices, counterparts, entire agreement, severability, etc.

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Questions and Considerations for Cofounders

- What are our long-term goals (exit, IPO, lifestyle business)?
- How will we handle disagreements about company direction?
- What happens if one of us wants to leave or reduce commitment?
- How will we handle future fundraising and dilution?
- Are we comfortable with the vesting schedule and buyback terms?
- How do we want to handle bringing in new cofounders or key employees?
- What are our expectations for transparency and communication?
- Are there any personal circumstances (immigration, outside obligations) that could affect commitment?
- Do we need to address remote work, location, or travel requirements?
- Are there any regulatory or licensing requirements for our business?

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Jurisdictional Variations and Best Practices

Contracting:

- Non-Compete Clauses: Some states (e.g., California) do not enforce non-compete agreements except in limited circumstances.
- IP Assignment: Ensure compliance with local laws regarding assignment of inventions (e.g., California Labor Code Section 2870).
- Vesting and Buyback: Securities laws may affect how equity is issued and repurchased.
- Dispute Resolution: Arbitration clauses may be subject to specific requirements in some jurisdictions.
- Employment Law: If founders are also employees, local employment laws may apply.

Best Practice: Always have your agreement reviewed by someone familiar with startup law in your jurisdiction. Collaborate and work through each section together, ensuring all cofounders understand and agree to the terms. Use a template as a starting point, but customize for your needs.

Common Risks/Traps:

- Failing to address vesting or buyback can lead to major disputes if a founder leaves early.
- Not assigning IP to the company can jeopardize future investment or acquisition.
- Unclear decision-making or deadlock provisions can paralyze the company.
- Ignoring jurisdictional issues can render parts of the agreement unenforceable.