

Founders' Agreement Overview

It is important for a company's founders to have an agreement among themselves even before creating an entity. Founders' agreements are the product of conversations that should take place among a company's founders at the early stages of formation rather than later in the life of a company.

The goal of these conversations is to have an open and honest discussion about the attitudes, fears, and aspirations of individuals involved with the startup, so as to minimize the likelihood of debilitating surprises as the company continues to evolve.

This module includes two documents:

- 1 A Conversation Guide.** Answering these hard questions now will help you and your co-founders avoid personal conflicts in the future.
- 2 A Model Founders' Agreement.** A Founders' Agreement is a contract that a company's founders enter into that governs their business relationships. The Agreement lays out the rights, responsibilities, liabilities, and obligations of each founder. Generally speaking, it regulates matters that may not be covered by the company's operating agreement. Ultimately, Founders' Agreements are designed to protect each founder's interests and memorialize that all founders are in agreement about the venture's basic structure and how the founders will work together to move their business forward. Forging an agreement between all founders helps mitigate the risk of a lawsuit over who owns the business.

There is a wide range of provisions that could be addressed in a Founders' Agreement. The template below includes provisions about:

- transfer of ownership;
- ownership structure;
- confidentiality;
- decision-making and dispute resolution;
- representations and warranties; and
- choice of law.

These are essential provisions that are commonly seen in Founders' Agreements. Annotations explaining all of the provisions in the document are at the end of the agreement. The first four pages of the document are the template agreement. The rest of the pages contain helpful explanatory annotations which refer to provisions within the document itself.

Disclaimer

These documents were created and vetted by students and supervising attorneys at the University of Pennsylvania Law School's Entrepreneurship Legal Clinic applying Pennsylvania law. They are intended to educate and inform the early stage start-up. As such, they are designed to be simple and accessible and may omit terms or language relevant to your specific circumstances. Please carefully read through the documents and any instructions and annotations included therein.

You acknowledge that your use of these documents does not create an attorney-client relationship between you and the Clinic or you and the individual members of the Clinic and does not constitute the provision of legal advice or other professional advice. You should seek advice from a licensed attorney before using or relying on these documents. Additionally, none of the documents created constitute tax advice. By using and relying on these documents, you assume all risk and liability that may result.

Questions to Aid a Conversation among Co-Founders

Strategy

- What goals does each of us have for the start-up? What goals do we have for ourselves?
- What are our respective timelines for these goals?

Ownership Structure

- Who gets what percentage of the company?
- What will we each contribute to the company? (e.g., duties, job descriptions, hour commitments, roles, and responsibilities).
- How much capital are we each contributing and for what?
- Is the percentage of ownership shares subject to vesting based on continued participation in the business?

Management

- How are key decisions and day-to-day decisions of the business to be made? (e.g., by majority vote, unanimous vote, or certain decisions solely in the hands of the CEO?).
- What salaries (if any) are the founders entitled to? How can that be modified?
- What happens if one of us wants to leave?
- If one founder leaves, does the company or the other founder have the right to buy back that founder's shares? At what price?
- What happens if one of us wants to sell the company, raise money, or kill the company?
- What happens if one of us becomes disabled or dies?
- What happens if it takes us longer than we expected to get our product up and running?
- Can we each launch other startups while working on this project?
- Under what circumstances can a founder be removed as an employee of the business?
- What happens if one founder is not living up to expectations under the Founders' Agreement? How would this situation be resolved?
- If it turns out the business is not taking off and we decide to end our venture, can one of us take the idea and try it again?
- If we need to raise start-up capital, where will it come from and how much of the company are we willing to give in exchange for that start-up capital?

Founders' Collaboration Agreement¹

The undersigned (each a "Founder" and together the "Founders") are collaborating with the purpose of developing together a Business Concept.

A Business Concept is an idea for a business that includes the service, product, or invention, the target demographic, and a unique selling proposition that gives a company an advantage over competitors. The Business Concept also includes the related technology and intellectual property that is used to create, implement, develop, or perfect the idea. A Business Concept may involve a new product or service or different approach to marketing or delivering an existing product or service.

The following Business Concept is the subject of this agreement:

[Project Name] is a [Project Description].

In connection with creating the Business Concept, and in consideration for a mutually agreeable framework which will serve as the foundation for the Founders to successfully develop the Business Concept, the undersigned hereby agree as follows:

1 Transfer of Ownership to Company Upon Formation

- 1.1 Ownership.** The Founders² own the Business Concept pursuant to this Founders' Collaboration Agreement. Founders will transfer³ the Business Concept to a [limited liability company] ("Company")⁴ that will be formed by the Founders upon the earliest of the following circumstances: [when the project will become a company].
- 1.2 Transfer.** Each Founder will grant and assign to the Company immediately upon its formation all of his or her right, title, and interest in and to the Business Concept, including all ideas (however formed or unformed) and labor and work product that results from any task or work performed by the Founder that relates to the Business Concept for the full term of such rights.⁵ Each Founder will also perform any and all acts and execute all documents and instruments as may be required by the Company at its sole discretion to perfect title in the Business Concept.
- 1.3 Consent to Future Transfers.** Any future agreement that requires an ownership interest in the Business Concept to be transferred to a third party before the formation of the Company must be agreed upon by each Founder.⁶ In the event of such an agreement, the

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obligations of this Founders' Collaboration Agreement must be disclosed to that third party.

2 Business Structure And Ownership⁷

2.1 Ownership Structure. Upon formation of the Company, the ownership interests in the Company will reflect the following:⁸

<u>Person</u>	<u>Percentage Interest</u>
[Founder 1 Name]	[Founder 1 Percentage Interest]
[Founder 2 Name]	[Founder 2 Percentage Interest]

2.2 Future Employee Interest. Should the Founders wish to reserve any Percentage Interest for future employees, any such Percentage Interest reserved will dilute all Founders equally.⁹

<u>Percentage Interest Reserved For Future Employees</u>
[Future Employee Percentage Interest]

***Note:** Setting aside a Percentage Interest for future employees may have tax consequences. Consult a lawyer before saving a Percentage Interest for future employees. (Delete this note before executing this agreement).

2.3 Founders as Managers. Upon formation of the Company, each Founder will be appointed to serve as a [Manager]¹⁰ of the Company.

2.4 Vesting. The Percentage Interest issued to each Founder will vest¹¹ accordingly:

(A) [Founder 1 Name] Percentage Interest in the Company will vest pursuant to a four (4) year vesting schedule beginning [Founder 1 vesting starting date], which will vest 1/48th per month in exchange for continuous and consecutive service to the Business Concept.

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(B) Additionally, [Founder 1 Name] vesting schedule will be subject to a one (1) year cliff.¹²

(C) If a Founder who is subject to a vesting schedule departs the Company prior to full vesting of his or her Percentage Interest, the remaining portion of any unvested Percentage Interest will be returned to the Company in accordance with that vesting schedule.

***Note:** More examples of vesting provisions are listed in endnote 12. (Delete this note before executing this agreement).

2.5 Founders' Rights.¹³ Each Founder will have the same rights (including but not limited to voting and distribution rights) accorded to the Percentage Interest issued to each Founder.

2.6 Sale of the Company.¹⁴ Sale of the Company to an interested third party will take place if the sale is authorized by the [Managers]¹⁵ and otherwise conforms to all applicable state and federal laws.

3 Confidentiality¹⁶

The Founders will keep the Business Concept confidential; Founders may disclose the Business Concept only on an as-needed basis and only upon agreement of all Founders. Upon the formation of the Company, the Founders may further detail and define any additional confidentiality obligations.

4 Contractual Communication and Dispute Resolution¹⁷

4.1 Schedule. If the Founders have not yet formed a Company within twelve (12) months of executing this Agreement, the Founders will have 30 additional days to take substantial steps toward forming the Company. If the Company has still not been formed after 30 days, the Founders will execute a separation agreement which divides rights to the Business Concept and any other assets accumulated by the Founders in pursuit of developing the Business Concept.¹⁸ The Founders will further define any and all confidentiality obligations related to the Business Concept within the separation agreement.

4.2 Mediation. In the event that the Founders are not able to agree on a separation agreement, the Founders will submit to a binding confidential mediation to be held in _____ and conducted by a mutually agreed to mediator. All provisions of this Agreement, including confidentiality provisions, will be binding up through the

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end of this mediation process. Costs of the mediation will be borne equally by all Founders.¹⁹

4.3 *Note: It is recommended that the Founders insert a deadlock provision under newly created Section 4.3 that defines how the Company will proceed in the event of a major disagreement between the Founders (other than not forming the Company). This agreement does not contain this type of deadlock provision (a provision that prescribes how the Founders will proceed if there is a disagreement about a major decision). However, different deadlock provisions are detailed in endnote 19. Delete this note and consult a lawyer before executing this agreement.

5 Representations and Warranties²⁰

Each Founder represents and warrants that he or she is not a party to any other agreement that would restrict such Founder's ability to perform its obligations as set forth in this Founders' Collaboration Agreement. Each Founder represents and warrants that no third party can claim any rights to any intellectual property or other proprietary right possessed by that Founder as it relates to the Business Concept.

6 Choice of Law²¹

This Agreement will be governed by and construed in all respects in accordance with [State and Country].

By signing below, the Founders submit that they agree to all of the above terms and conditions.

[Founder 1 Name]

Date

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[Founder 2 Name]

Date

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¹ The following provisions are sometimes included in Founders' Agreements, but are not included here for the sake of simplicity: compensation provision and non-compete provision.

Also, this agreement does not contain a deadlock provision (a provision that prescribes how the Founders will proceed if there is a tie about how to resolve a major decision). However, different deadlock provisions are detailed in endnote 19.

² All Founders of this Business Concept should be party to this agreement, which lays out, among other things, the rules over who owns the Business Concept. Persons who contributed significantly to the Business Concept, but are not part of this agreement, may attempt to assert a legal claim of ownership over the Business Concept and the resulting business. A lawsuit will cause headaches for the Founders and potentially lead to money being spent to resolve the dispute, especially if the Business Concept is very successful. For example, the Winklevoss brothers sued Facebook Founder Mark Zuckerberg for using their idea to start Facebook. Zuckerberg settled the lawsuit for over \$200 million in Facebook stock. Zuckerberg could have given the Winklevoss's less money or a small stake in the company, had they negotiated their differences at Facebook's inception.

Consult a lawyer if you are unsure if a person should be considered a Founder. A lawyer can advise you on what course of action to take (like negotiating a separate agreement) regarding persons who contributed significantly to your Business Concept but are not a party to this agreement.

³ The Founders agree to transfer their rights to the Business Concept to the Company in order to avoid disputes about ownership of the Business Concept. This Company will be created and owned by the Founders. This transfer prevents one of the Founders from stealing the Business Concept created by the Founders and forming an independent business. Furthermore, future investors will invest only in companies that clearly own their Business Concept. In the event litigation arises, this provision makes it clear that the Business Concept is owned by the Company.

⁴ This fill in the blank refers to the type of entity that will hold the rights to the Business Concept. Refer to our [Entity Choice Primer](#) for advice about selecting the appropriate entity to own your Business Concept and consult a lawyer for more assistance. Then, if the entity is a Limited Liability Company ("LLC"), no change is necessary to this provision. If the entity is not an LLC, then you should consult a lawyer before using this agreement as it is structured.

⁵ This provision ensures that the Founders' Business Concept is protected. Both the Company's Founders and its future investors have a stake in ensuring that the Company protects its intellectual property (part of the Business Concept) and avoids infringing the intellectual property rights of third parties. Intellectual property (IP) is often the most valuable asset for many start-ups. A problem arises, however, if one of the Founders leaves prior to entity creation and takes his rights to certain IP along with her. Another problem often arises with respect to IP created pre-entity creation by outside developers or consultants (i.e., non-Founders), particularly if the developers or consultants are located outside of the United States. The IP created often never gets assigned to the company at all, either because there was no written agreement or because the company was not a party to the agreement (because it did not exist at the time). Founders should consult an attorney to determine the best method to protect a start-up's IP. You may also want to review our [Intellectual Property Kit](#).

⁶ This clause applies before the formation of the Company. It prevents anyone with an

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ownership interest in the Business Concept from transferring that interest to another party. This type of ownership transfer can occur only if it is approved by the other Founders. It is not necessary for this provision to apply after the formation of the Company because section 1.1 states that the Founders agree to transfer ownership of the intellectual property to the Company once it is formed.

This type of ownership transfer provision protects all of the Founders against another Founder transferring their ownership interest to someone with adverse interests to the rest of the Founders. Furthermore, by agreeing to this provision, all of the Founders demonstrate to each other that they are committed to developing the Business Concept.

This agreement does not contain any restrictions on the transfer of ownership interests once the Company is formed. Some agreements contain restrictions on the transfer of ownership interests, but outside investors often frown upon these restrictions. If the Founders collectively wish to add further ownership restrictions to this agreement, they should seek legal counsel. Below, find a non-exhaustive list of a few other ownership transfer restrictions:

- **Permitted Transfers.** Permitted transfers restrict transfers after the Company is formed, but permit certain transfers to closely related people, such as immediate family members, affiliates, and controlled entities (such as family trusts). In addition, owners are often allowed to transfer their ownership stake to other interest holders, free of restrictions.
- **Right of First Offer.** The right of first offer requires the owner of a percentage interest to offer the interest to the other interest holders before offering to sell to third parties. If the interest holders do not buy the percentage interest, the owner usually has a limited period of time to sell to a third party, but that sale must be on terms no more favorable than those offered to the other interest holders.
- **Right of First Refusal.** The right of first refusal is similar to the right of first offer, except that the selling owner offers to sell the percentage interest to the other interest holders after receiving a bona fide third party offer. The offer to the interest holders must typically be made on substantially the same terms offered by the third party. The selling owner describes the terms of the third party offer to the other interest holders. This is a big difference from the right of first offer because the interest holders do not know the identity of the third party purchaser when deciding whether or not to buy the offered percentage interest.

⁷ This section mainly discusses the ownership structure of the Company. In other words, what percentage of the Company does each Founder own? Should a percentage interest in the Company be left un-owned for future employees? How long does it take for Founders to actually own their percentage interest?

⁸ This chart shows the percentage interest each Founder has in the Company. It is important to note that Founders must provide consideration to the company in return for receiving a percentage interest. States have different laws regarding adequate consideration for receiving a percentage interest in an LLC. Pennsylvania generally will not inquire into whether services rendered (a common form of consideration) are adequate consideration as long as the managers of an LLC approve the percentage interest. Here are some factors to consider when deciding how to split the percentage interests in a company:

- Consider whether equity should be split equally among Founders, but:
 - Do not automatically assume that an equal split is the best option.

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- If the Founders settle on an even split, memorialize a decision-making deadlock provision that will clearly state who gets to make a decision when there is a disagreement; otherwise, the company could easily grind to a halt during a disagreement (such provisions are detailed in endnote 19).
- Consider alternatives such as unequal distributions based on each Founder's contributions to the business.
- Factors that may be considered in an unequal distribution of equity include:
 - who came up with the idea that is the key to the Business Concept;
 - who has the greatest stake in the IP in the Business Concept;
 - who developed the technology necessary to run the Business Concept;
 - who owns the patents on which the Business Concept or its products will be based;
 - whether any Founder brings existing copyrights or trademarks into the Company;
 - which Founders are providing the start-up capital for the Business Concept and in what percentage contribution;
 - how much time has each Founder invested in the development of the Business Concept;
 - whether all Founders are full-time contributors to the development of the Business Concept;
 - what was the opportunity cost for each Founder to help create the Business Concept? Those who sacrificed more lucrative, high-power positions at established businesses are often compensated more for their risk than those who were not actively employed when the venture began; and
 - who has the industry expertise necessary to get the Business Concept going.

⁹ Setting aside a 10–20% percentage interest for future employees may be prudent. Future investors will expect the company to set aside a percentage interest because equity compensation is a commonly accepted way to motivate high-level employees to put in long hours at start-ups. Of course, the company can distribute 100% of the percentage interest in the Company to Founders, but it will likely have to issue percentage interests later to employees. Founders may be unwilling to issue a percentage interest in the future for fear of diluting their interest (decreasing their ownership percentage by increasing the overall number of percentage interests that are issued). But, this will likely happen if the company receives money from investors and wants to retain top talent. Setting aside a percentage interest at the beginning for future employees will help the Company avoid potential headaches when the start-up is in full swing. Setting aside a percentage interest in an LLC leads to complex tax consequences. Consult a lawyer before setting aside a percentage interest for future employees.

¹⁰ The inclusion of “Mangers” here is proper only if the entity is in fact a manager-managed LLC. If the entity is not a manager-managed LLC, then “Managers” should be replaced with the respective entity’s appropriate governing authority.

¹¹ Vesting provisions govern how long it takes for Founders or others to take ownership over their stake in the Company. For example, if a company does not have vesting, the Founder immediately owns their full stake in the company. But, if a company has a standard four-year vesting term with a one-year cliff (as does the agreement here), the Founder does not actually possess its ownership stake until certain time periods have elapsed. The Founder accrues 1/48th of their ownership interest every month, but does not actually receive their accrued ownership stake until the end of year one of continuous and consecutive employment at the company. Not actually owning the first year’s worth of accrued

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ownership until after a year of working for the company is called a cliff. Vesting with a cliff encourages commitment for at least the first year. After that first year, if the Founder leaves the company, they can walk away with the amount of interest that they actually own. In our four-year vesting example, that would be 25% (12/48 months) and a Founder could walk away from the company with only that 25% share of their ownership stake. The remaining 75% share would be returned to the company. Vesting is essential because it ensures that Founders and even top employees are committed to the venture. Furthermore, investors will not invest in a company that does not have vesting provisions.

Other common vesting provisions include vesting with a cliff, but instead of starting at 0%, the Founder starts at some percentage of their share greater than zero in order to recognize the Founder's contribution of cash, time, or ideas to the venture. Under this arrangement, the Founder immediately owns the initial percentage interest, but does not actually own any more of her accrued ownership stake until after one year of consecutive and continuous service to the company.

Additionally, accelerator provisions speed up the pace of vesting. A common accelerator provision is triggered if the company changes ownership. This exists in fairness to Founders and employees who commit to the company and might not have wanted the ownership change.

Consult a lawyer to learn about the tax implications of vesting and which vesting scheme makes sense for your business. Visit the following web page for more information about vesting: <http://www.investopedia.com/terms/v/vesting.asp>

¹² These are sample vesting clauses that correspond to the vesting option described in the previous endnote.

- Vesting without a cliff:
 - [Founder 2 Name] Percentage Interest in the Company will vest pursuant to a four (4) year vesting schedule beginning [Founder 2 vesting starting date], which will vest 1/48th per month in exchange for continuous and consecutive service to the Business Concept.
- Vesting with a cliff but with credit in recognition of contributions to the Business Concept:
 - [Founder 2 Name] Percentage Interest in the Company will vest pursuant to a four (4) year vesting schedule beginning [Founder 2 vesting starting date], which will vest 1/48th per month in exchange for continuous and consecutive service to the Business Concept. Upon the execution of this agreement, [Founder 2 Name] will receive 12/48th of her Percentage Interest in recognition of her contributions to the Business Concept. The remainder of [Founder 2 Name] vesting schedule will be subject to a one (1) year cliff.
- Vesting with a cliff and a change of ownership accelerator clause:
 - [Founder 1 Name] Percentage Interest in the Company will vest pursuant to a four (4) year vesting schedule beginning [Founder 1 vesting starting date], which will vest 1/48th per month in exchange for continuous and consecutive service to the Business Concept. Additionally, [Founder 1 Name] vesting schedule will be subject to a one (1) year cliff. If a Percentage Interest in the company is owned by non-Founders during the vesting schedule, [Founder 1 Name] will immediately receive 12/48ths of her percentage interest.

¹³ This section states that the percentage interests received by the Founders under this

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agreement have the same type of rights, including the same voting rights.

¹⁴ This section states that a sale of the company will occur if the Managers authorize it. This does not foreclose a sale according to methods outlined in the operating agreement of the LLC. However, as mentioned previously, the company can explore other restrictions on ownership transfers.

¹⁵ The inclusion of Managers here is proper only if the entity is in fact a manager-managed LLC. If the entity is not a manager-managed LLC, then Managers should be replaced with the respective entity's appropriate governing authority.

¹⁶ This provision ensures that the Business Concept remains confidential during the formation process to guard against theft by third parties. Common exceptions to confidentiality obligations include: information that the recipient can demonstrate that they had prior to receipt of information from the discloser, information that becomes known to the public through no fault of the recipient, information that becomes known to the recipient from a third party that has a lawful right to disclose the information, information that was public knowledge before the disclosure of the information to the recipient, and information independently created by the recipient.

¹⁷ This provision is important because it covers the method through which both simple and substantial decisions should be made. It might include information such as: which sorts of decisions can be made by a single individual and which sorts of decisions should be voted on by the group of Founders; If a vote occurs, does everyone have an equal vote (regardless of their proportion of equity) or will voting procedures align with the distribution of percentage interests; In the case of a split vote (50% on one side of the decision, 50% on the other) will anyone have the deciding vote, and if so, how is that person determined and how will that decision be made?

¹⁸ This provision ensures that the parties remain committed to completing the entity's formation within a reasonable timeframe. The template suggests a timeframe of one year with an additional 30 days to work toward formation before a separation agreement should be put in place, but this can be increased or decreased based on the Founders' wishes.

¹⁹ In the event of a deadlock among the Founders, it is helpful to have a clear mechanism in the agreement for resolving the conflict as that will avoid confusion and uncertainty and save time and money. A deadlock provision aims to create a mechanism that will treat the Founders fairly while allowing the business to continue to operate. Without a deadlock provision, dissolution of the enterprise is often the only choice. The Agreement template suggests a binding confidential mediation as the deadlock mechanism. There are many different forms of mediation, ranging from a more formal arbitration, in which the mediator make her own binding decision, to "baseball mediation," where each side writes down its final position and the mediator picks one side or the other (this should lead to the Founders presenting their most reasonable position in order to be picked), to "golf mediation," where the mediator writes down the most equitable solution and whichever Founder presents a solution closest to the mediator's wins. Mediation works well for factual matters but it does not always work so well for solving multi-faceted business issues, such as determining the best capital-raising terms or deciding whether to admit a new strategic member. Founders have several other options for resolving deadlocks, however. Other common provisions include:

- **Escalation.** In the event of a deadlock, the Founders' Agreement can provide that the issue is escalated to certain key executives on behalf of each member (if put in

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place) in an attempt to solve the problem; unfortunately, this often results in the same deadlock.

- **Manager Tie-Breaking Vote.** The Founders' Agreement can provide that the Manager (if put in place) has the right to cast a tie-breaking vote in the event a members vote results in a tie (which was not resolved after escalation). The problem with this approach, however, is that this does not work in every deadlock scenario (e.g., when a member defaults on its capital contributions). Also, this gives one party control, which is contrary to the joint venture's 50/50 purpose in the first place.
- **Independent Tie-Breaking Vote.** To eliminate the problem of one party having too much control, rather than providing the Manager with the tie-breaking vote, the Founders' Agreement can provide that an independent member has the right to cast the tiebreaking vote. However, finding an independent member that the other members agree on may prove difficult for various reasons (and no person may be willing to take on this burden). Also, as with the Manager tie-breaker vote, this does not work in every scenario.
- **Buy-Sell.** When the parties do not want to let a third party settle the deadlock, one solution is the buy-sell provision pursuant to which one of the Founders buys the other Founder out. This can be handled in many different ways, but the following are commonly seen favorites:
 - **"Russian Roulette."** One member serves notice to the other member stating the notifying member's perceived value of the joint venture. The member receiving the notice must then either sell her percentage interest to the other member at that price or purchase all of the other member's percentage interest at that price.
 - **"Texas Shoot-Out."** Each member submits a sealed bid containing her perceived value per percentage interest in the joint venture. The member with the higher bid buys the other member out.
 - **Dutch Auction.** Each member submits a sealed bid containing the lowest price at which she would sell her percentage interest. The member with the higher price buys the other member's percentage interest at the lower price submitted.
 - **Adjusted Fair Market Value.** An expert or auditor determines the "fair market value" of the percentage interest. Once determined, the member triggering the buy-sell provision will either buy the other member's percentage interest at a set premium (e.g., 20%) or sell her percentage interest to the other member at an equivalent discount.

Buy-sell provisions are the last resort because once implemented, the joint venture arrangement terminates and one member acquires 100% of the joint venture vehicle.

²⁰ A representation is a statement that something is true at the time of the statement. A warranty is a binding promise to pay another party if they suffer losses resulting from the falsehood of another party's representation. For example, if A represents and warrants to B that the sky is green, A would owe B damages to cover B's losses that are suffered as a result of the sky being blue.

²¹ A Choice of Law provision is a provision in which the parties can designate the jurisdiction whose law will govern any disputes that may arise between the parties about the agreement. In other words, the parties specify or stipulate that any dispute or lawsuit that arises out of the contract between them will be determined according to the law of a particular jurisdiction. The choice usually becomes binding when the dispute is adjudicated.