



TOP 10 **LEGAL** DOCUMENTS FOR ANY TECHNOLOGY VENTURE

When launching a startup involving any technology, (e.g., a software development operation or a social media venture), there are key documents that are necessary to make sure that the essentials are protected and the parties have the right sense of duties and incentives. Doing that will put the venture on the best path to maximizing its value. As part of that process, your startup will ensure the following: (a) the intellectual property is properly owned by the operation, (b) the co-founders are contractually bound to defined frameworks to handle disputes and misunderstandings; and (c) the proper business entity is selected for future financing goals. And now the top ten legal documents:

BUSINESS ENTITY FORMATION DOCUMENTS

Any venture that is serious about what it has to offer the world will set up an entity to give it the best foundation possible. An entity is one of the classic alphabet soup of possibilities (S-Corps, C-Corps, LLC's and so on). Without an entity it will be next to impossible to raise capital, structure employee incentive plans, and properly house your intellectual property.

1. ARTICLES OF ORGANIZATION (LLC's Only)

To setup the LLC, you will file, with the New York Department of State, Articles of Organization. A rather "plain Jane" document, it usually begins at a mere 2 pages setting out the name of the LLC, its county, etc. (This process is extremely similar across states including Delaware, which has a similarly styled Certificate of Formation for LLC's).

2. CERTIFICATE OF INCORPORATION (Corporations Only)

To setup the corporation, you will file a Certificate of Incorporation with the New York Department of State. A rather "plain Jane" document, it usually begins at a mere 2 pages setting out the number of shares and the par value, if any. ([This process is extremely similar across states including Delaware](#)).

BUSINESS ENTITY STRUCTURE AGREEMENTS

3. OPERATING AGREEMENT (LLC's Only)

If the venture goes the route of an LLC, then it will need an operating agreement ([important tip: any venture that is venture capital driven, should be setup as a C corporation](#)). An operating agreement sets the metes and bounds of the relationship between the founders. It discusses equity stakes, voting, managerial rights, and other key issues that any partner/founder would want to know about his or her rights relative to the other partner/founders. [A detailed breakdown of the operating agreement for the New York Venture and Everyone Else can be found here.](#)

4. BYLAWS (Corporations Only)

Bylaws speak to some of the major corporate basic questions, such as voting, timing of votes, notice requirements, composition of the board, etc. The bylaws essentially set out the basic rules of governance

(i.e., internal administration and management.) Startups should not overlook adopting bylaws, simply because bylaws aren't submitted to the secretary of state.

5. SHAREHOLDERS AGREEMENT (Corporations Only)

If the venture goes the route of a corporation, then it will need a shareholders agreement ([important tip: any venture that is venture capital driven, should generally be setup as a C corporation](#)). A shareholders agreement sets the metes and bounds of the relationship between the shareholders. It discusses critical events with regard to how the shares are held, bought, and sold, such as a shareholder's right to transfer the shares, "rights of first refusal," and redemptions upon death, disability, etc. This startup document is too often overlooked and can prevent a great deal of confusion and trauma in the event a co-founder leaves the startup.

When launching a startup involving any technology, (e.g., a software development operation or a social media venture), there are key documents that are necessary to making sure that the essentials are protected and the parties have the right sense of duties and incentives. Doing that will put the venture on the best path to maximizing its value. As part of that process, your startup will ensure the following: (a) the intellectual property is properly owned by the operation, (b) the co-founders are contractually bound certain frameworks to handle disputes and misunderstandings; and (c) the proper business entity is selected for future financing goals. And now the top ten legal documents:

BUSINESS ENTITY FORMATION DOCUMENTS (CONTINUED)

Any venture that is serious about what it has to offer the world will set up an entity to give it the best foundation possible. An entity is one of the classic alphabet soup of possibilities (S-Corps, C-Corps, LLC's and so on). Without an entity it will be next to impossible to raise capital, structure employee incentive plans, and properly house your intellectual property.

6. STOCK PURCHASE AGREEMENT (Corporations Only)

A Stock Purchase Agreement is the agreement between each shareholder and the corporation that effects transfer of title and sale of the corporation's stock to the shareholder. That agreement sets forth the critical details of the transaction, such as number of shares purchased, the price per share and total consideration paid, and how the method of payment (cash, services, property (intellectual and/or tangible), etc.) The agreement will often impose other restrictions and warranties that will control how the shareholder gets to hold and enjoy the purchased stock, such as the shareholder acquiring the stock for holding/investment purposes only and not for resale.

7. MEMBERSHIP INTEREST ASSIGNMENT AND TRANSFER AGREEMENT (LLC's Only)

A Membership Interest Assignment and Transfer Agreement is the agreement between each member and the LLC that effects transfer of title and sale of the LLC's Membership interests to the member. That agreement sets forth the critical details of the transaction, such as the amount of membership interest purchased, the price and total consideration paid, and how the method of payment (cash, services, property (intellectual and/or tangible), etc.) The agreement will often impose other restrictions and

warranties that will control how the member gets to hold and enjoy the purchased membership interest, such as the member acquiring the membership interest for holding/investment purposes only and not for resale. One thing to note is that often this agreement is dispensed with in favor of an Operating Agreement setting forth the founding members' initial contributions and membership interests (latter members will still need the Membership Interest Assignment and Transfer Agreement.)

INTELLECTUAL PROPERTY AGREEMENTS

8. Technology Assignment Agreement (Corporations and LLC's)

On occasion, there may be technology and know how that resides in the hands of one of the founders **before** the founder becomes a shareholder/member of the business entity. In order for the business entity to properly lay claim to it (for valuation, operational, branding, fundraising, and other purposes), it needs to be sold and transferred ("assigned") to the business entity. The technology assignment agreement between the shareholder/member and the corporation/LLC, assigns that intellectual property to the business entity. The assignment agreement will specify the IP to be assigned to the business entity, with warranties of sole ownership and unencumbered chain of title to the IP.

In addition, the transferor will often agree to execute ancillary agreements that support the assignment, such as a separate copyright assignment agreement or a recordation of such assignment for the US Patent and Trademark Office and/or or the US Copyright Office. In some cases, the transfer of such intellectual property can be the consideration for the purchase of a membership interest or shares in the business entity. Hence, the technology assignment agreement is often referred to in the Stock Purchase/Membership Interest agreement.

9. Intellectual Property and Invention Assignment Agreement (Corporations and LLC's)

The key asset in all technology driven businesses is the intellectual property. Although the Operating Agreement and/or the Shareholders' Agreement may call for IP ownership by the business entity, the most secure way to assure the business entity owns the IP is for all founders/employees to enter into a separate IP and Invention Assignment Agreement (sometimes as an addendum, attachment, or rider to their employment agreement). What this effectively does is assure that technology and know how, developed after the inception of the business entity, will be transferred to the business entity. Occasionally, these agreements provide a "carve out" which excludes certain prior inventions that are listed on an attached schedule from being assigned to the business entity (hence the inventor retains right over such inventions).

EMPLOYMENT AGREEMENTS

10. Employment Agreement (Corporations and LLC's)

Do not assume that handshakes and a shared sense of adventure will insulate the company from misunderstandings with the stakeholders/founders. In addition, the Operating Agreement or Shareholders' Agreement cannot capture the specific details of an individual's unique relationship with the business. Hence, often a separate employment agreement on top of the operating agreement (LLC) or



shareholders agreement (Corporation), is necessary to set out specifics about the founder/employee's relationship to the business entity (e.g., at-will employment, duties, obligations, confidentiality, termination, equity incentive and other forms of compensation, etc.)

THE BIG PICTURE

These 10 legal documents are not an automatic gateway to success, as that is driven by a dynamic team and its ability to execute. However, these 10 legal documents are key execution points, forming the foundation for your startup business for the short and long term.

ATTORNEY ADVERTISING. Results depend on a number of factors unique to each matter. Prior results do not guarantee a similar outcome.