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# Democratizing Entrepreneurship: Online Documents, Tools, and Startup Know-How

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# Democratizing Entrepreneurship: Online Documents, Tools, and Startup Know-How

*Jeff Thomas, Praveen Kosuri, and Bernice Grant*

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## I. Introduction

New ventures are inherently cash strapped. The entrepreneurs who start them are typically doers—problem-solvers who will find a way within given constraints. For most entrepreneurs, the legal formalities of a new venture are low priority at best and unnecessary bureaucracy at worst. No startup wants to expend scarce resources on what it perceives to be legal formality. Whether a venture is a limited liability company, C-corporation, or S-corporation, it will not exist if it has no product, sales, customers, or strategy to compete in the marketplace. This is a truth across all new ventures whether community-based, socially conscious, or high-tech and high growth. Online tools have recently emerged that address this issue by making it easier for entrepreneurs to comply with formalities. These tools also democratize access to legal documents and startup know-how for all types of entrepreneurs.

Leading venture capital (VC) law firms and startup accelerators are sharing their playbooks for forming and financing new ventures. Their websites provide free access<sup>1</sup> to battle-tested legal documents and wizards that even generate documents based on a company's particular facts and circumstances. Although these open source legal resources are made available by competing law firms, the materials are strikingly similar. This is because best practices have evolved in servicing the typical clients of these law firms: VC seeking companies. While only a small percentage of entrepreneurs are likely to raise VC, best practices built-in to these open source legal resources, and the reasons for using them, are far more universal. Leveraging this know-how could significantly impact a much broader range of entrepreneurs, including community-based businesses, worker cooperatives, social ventures, and even sole proprietors. Maybe most significantly, open source startup documents allow ventures outside major metropolitan areas newfound access to the same documents used in entrepreneurial epicenters such as Silicon Valley, New York, and Boston. Further, the open source movement is impacting organizations that assist all types of entrepreneurs. These organizations include law firms, legal clinics, small business development centers, accelerators, accounting and tax professionals, university entrepreneurship centers, and crowdfunding portals—all of which now have access to the same documents that were once exclusive to elite Silicon Valley law firms. The democratization of startup documents has the potential to transform entrepreneurial ecosystems and the global economy.

Parts II and III of this Article will recount the origins and evolution of open source legal documents for startup companies. Part IV will examine how the impact and utility of these documents extends far beyond the narrow slice of VC-backed businesses that were their initial intended audience. And finally, Part V describes how advisors and service providers

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1. Most of the open source legal resources referred to herein are free. We have also noted some that are low cost.

that are not themselves entrepreneurs or lawyers may leverage open source legal documents to better execute their own missions.

## II. Open Source Legal Resources: Lessons from Venture Capital Seeking Companies

Less than one percent of new businesses will likely raise venture capital.<sup>2</sup> However, there are at least four reasons why the entire spectrum of entrepreneurs, and the organizations supporting them, should examine open source legal resources aimed at VC seeking companies.<sup>3</sup> First, these resources bridge the gap between expensive legal services and customary non-lawyer, do-it-yourself options available to entrepreneurs by providing foundational documents that entrepreneurs and even attorneys can use to reduce startup costs.<sup>4</sup> If companies on the verge of raising millions of dollars are turning to open source legal resources to formalize their businesses and reduce costs, it is likely that entrepreneurs with fewer resources would benefit even more from the same offerings. Second, many of the open source legal resources address transactions commonly faced by all types of entrepreneurs, such as forming an entity,<sup>5</sup> cre-

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2. EWING MARION KAUFFMAN FOUNDATION, ENTREPRENEURSHIP POLICY DIGEST—HOW ENTREPRENEURS ACCESS CAPITAL AND GET FUNDED (June 2, 2015), <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/how-entrepreneurs-access-capital-and-get-funded> (stating that the “main sources of equity financing are angel investors and venture capitalists, which finance less than 3 percent and 1 percent of new firms, respectively”).

3. A summary of examples of such resources is included as Exhibit A to this Article. This summary was presented by the authors at the 2017 Transactional Clinical Conference. An electronic version of the summary is available at <https://teachvlgcom.files.wordpress.com/2017/05/revised-resources-1-pager2.pdf> (last visited June 29, 2017).

4. See, e.g., *Model Legal Documents*, NATIONAL VENTURE CAPITAL ASSOCIATION, <http://nvca.org/resources/model-legal-documents/> (last visited June 29, 2017) (“By providing an industry-embraced set of model documents that can be used as a starting point in venture capital financings, it is our hope that the time and cost of financings will be greatly reduced and that all principals will be freed from the time consuming process of reviewing hundreds of pages of unfamiliar documents and instead will be able to focus on the high level issues and trade-offs of the deal at hand.”); *About the Series Seed Documents*, SERIESSEED.COM, <http://www.seriesseed.com/posts/2010/02/about-the-series-seed-documents.html> (Feb. 24, 2010) (“The Series Seed Documents should reduce both the time and cost of a financing transaction. It should go without saying, but time and money are the two things most vital to a young company.”).

5. See, e.g., *Incorporation Package (Delaware)*, COOLEY LLP, <https://www.cooleygo.com/documents/incorporation-package/> (last visited June 29, 2017); *Startup Forms Library*, ORRICK, HERRINGTON & SUTCLIFFE LLP, <https://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms> (last visited June 29, 2017); *Founders Workbench*, GOODWIN PROCTER LLP, <http://www.foundersworkbench.com> (last visited June 29, 2017); *Startup Percolator*, PERKINS COIE LLP, <http://www.startuppercolator.com/>

ating governance structures, and raising startup capital.<sup>6</sup> Third, leading law firms are sharing their resources and thereby giving credibility to both specific open source legal resources and the overall movement. In fact, five of the United States' most active VC law firms in 2016 have put company formation documents online for anyone to use.<sup>7</sup> By way of further example, the nation's most active seed investors,<sup>8</sup> VC law firms,<sup>9</sup> and people affiliated with these parties<sup>10</sup> are sharing seed financing materials with the public. Seed financing is a fancy term for startup

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formation/ (last visited June 29, 2017); *WilmerHale LAUNCH, Document Generator*, WILMER CUTLER PICKERING HALE AND DORR LLP, <https://launch.wilmerhale.com/build/document-generator/> (last visited June 29, 2017).

6. See, e.g., *WSGR Term Sheet Generator (Convertible Notes)*, WILSON SONSINI GOODRICH & ROSATI, <https://www.wsgr.com/WSGR/Display.aspx?SectionName=practice/termsheet-convertible.htm> (last visited June 29, 2017); *Startup Documents, SAFE Financing Documents*, Y COMBINATOR (Feb. 2016), <https://www.ycombinator.com/documents/>; *500 Startups Announces 'KISS'*, 500 STARTUPS (July 3, 2014), <https://500.co/kiss/>; *Gust's Series Seed Documents*, GUST, <http://gust.com/series-seed/> (last visited June 29, 2017); *Series Seed Financing Documents*, SERIESSEED.COM, <http://www.seriesseed.com/posts/documents.html> (last visited June 29, 2017).

7. PitchBook 2016 Annual Global League Tables, PITCHBOOK DATA, INC. 29, <https://pitchbook.com/news/reports/2016-annual-global-league-tables> [hereinafter PITCHBOOK VC LAW FIRMS LIST] (last updated Feb. 14, 2017) (ranking these firms and others as their top 14 "most active in US" firms: Cooley LLP, Wilson Sonsini Goodrich & Rosati, Fenwick & West LLP, Orrick, Herrington & Sutcliffe LLP, Goodwin Procter LLP, Perkins Coie LLP, and Wilmer Cutler Pickering Hale and Dorr LLP).

8. PitchBook-National Venture Capital Association 4Q 2016 Venture Monitor, PITCHBOOK DATA, INC. 19 (Jan. 11, 2017), <https://pitchbook.com/news/reports/download/4q-2016-pitchbook-nvca-venture-monitor?key=zSirbDbTpz> (listing 500 Startups and Y Combinator as two of the top ten most active angel/seed investors in 2016).

9. See PITCHBOOK VC LAW FIRMS LIST, *supra* note 7.

10. See, e.g., SERIESSEED.COM (Feb. 24, 2010), <http://www.seriesseed.com/posts/> (presumably written by Ted Wang, Special Counsel at Fenwick & West LLP: "these are not Fenwick & West or my own form documents. Although I undertook the laboring oar (with the assistance of Khang Tran) and many of my colleagues at Fenwick & West have assisted me in the original drafts, these documents are intended to be an open source project and not particular to any lawyer or law firm. Similarly, this is not an Andreessen Horowitz undertaking. Although I am pleased to have the firm's support in launching this effort, the Series Seed Documents will require broad adoption in order to become an effective standard. The following investors have agreed to use the Series Seed Documents in certain of the [sic] their deals: Baseline, Charles River Ventures, SV Angel (Ron Conway), First Round Capital, Harrison Metal Capital, Mike Maples, Polaris Venture Partners, SoftTech VC and True Ventures.") (Fenwick & West LLP is also one of the firms listed in the PITCHBOOK VC LAW FIRMS LIST, *supra* note 7.).

capital, which every business needs.<sup>11</sup> In addition to being battle-tested, these open source legal documents have a better chance of being supported by others and even creating standards.<sup>12</sup> In fact, the similarities found when comparing these resources against each other suggest that standards and best practices have already emerged. This provides a fourth reason to consider these resources—many firms unable to raise venture capital are now able to take advantage of strategies that they previously did not have the ability to pursue. For example, the resources make it easier for these firms to grant employees equity that is subject to vesting<sup>13</sup> or to create two classes of stock.<sup>14</sup> Neither of these options is typically used in community-based businesses but could be if incorporated into standard formation documents that are used widely and available broadly. They may even influence how lower growth, less complex businesses incentivize employees and owners. These strategies were previously too complex and costly for most entrepreneurs to employ. However, the combination of open source legal documents and new tools and practices make it feasible for additional entrepreneurs to benefit from these strategies. The end result is that there is a leveling of the playing field for all entrepreneurial ventures, whether located in Silicon Valley, inner-city Chicago, or Clinton, Iowa.

### III. Evolution of Open Source Tools and Practices

Form banks have long existed in law firms across the country. Lawyers rarely create a document starting with a blank piece of paper, or these days a blank screen. Lawyers are more efficient when customizing a docu-

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11. While seed investors may include angel investors, or funds associated with accelerator programs, they may also include an entrepreneur's friends and family members.

12. See SERIESSEED.COM, *supra* note 10.

13. See, e.g., Portions of a Restricted Stock Purchase Agreement, generated by Cooley GO's Incorporation Package, attached as Appendix B to this Article.

14. It is well settled that companies seeking venture capital will leverage a structure that includes two classes of stock. One class, the less expensive common stock, is reserved for a company's founders and other employees. The other class, the more expensive convertible preferred stock, is issued to the venture capitalists. By holding convertible preferred stock, venture capitalists have rights and preferences generally not given to holders of common stock. In addition to providing investors with unique economic and control rights, issuing them convertible preferred stock may help to justify the lower fair market value for common stock and the associated minimal tax on employee incentive compensation. See, e.g., CONSTANCE E. BAGLEY & CRAIG E. DAUCHY, *THE ENTREPRENEUR'S GUIDE TO LAW AND STRATEGY* 95–97 (5th ed. 2017); Ronald J. Gilson & David M. Schizer, Understanding Venture Capital Structure: A Tax Explanation for Convertible Preferred Stock, 116 HARV. L. REV. 874, 879 (2003) (convertible preferred stock is “practically the exclusive means of external financing for U.S. venture capital-backed companies”); Michael A. Woronoff & Jonathan A. Rosen, Practitioner Note, *Effective vs. Nominal Valuations in Venture Capital Investing*, 2 N.Y.U. J.L. & Bus. 199, 206 (2005).

ment from an existing template than creating a new document from scratch every time. Clients benefit from this efficiency as well in the form of lower costs and quicker turnaround times. However, an unintended consequence to this practice is the notion that lawyers use the same form over and over again and just change the names. That notion has created the belief in many consumers that if they simply had the forms, they could change the names and do the work themselves. Some assert businesses like LegalZoom.com, Inc.<sup>15</sup> and Incorporate.com<sup>16</sup> have seized upon this belief by offering generic forms that consumers can fill in to complete before executing—no lawyer needed. The appeal is obvious—save money by not hiring a lawyer. The implication is that lawyers are not essential. The result, however, may be documents that do not comply with jurisdictional requirements or local laws, documents that do not address the factual reality of a particular business, and documents that were generated without any input from the consumer. Oftentimes, consumers that have utilized these types of self-help documents seek out legal counsel at some future point because they have discovered that their documents are a mess. Lawyers are often retained to clean up these messes.

Considering this context, the remainder of this Part III summarizes the evolution of tools and practices associated with open source legal resources. Resources aimed at VC seeking companies are used as examples; however, as discussed in Parts IV and V, many of these tools and practices can be utilized by the entire spectrum of entrepreneurs as well as the organizations that support them. We selected these as our examples for two reasons. First, there is a strong ecosystem for VC seeking companies and it has a solid history of providing open source legal resources.<sup>17</sup> Second, these examples highlight the fact that established, sophisticated international law firms utilize these tools and practices, making it difficult for anyone to argue that only unformed solo practitioners or small niche firms are engaging in these actions.

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15. LEGALZOOM.COM, INC., <https://www.legalzoom.com> (last visited June 29, 2017) (noting the LegalZoom.com, Inc. disclaimer reads, “Disclaimer: Communications between you and LegalZoom are protected by our Privacy Policy but not by the attorney-client privilege or as work product. LegalZoom provides access to independent attorneys and self-help services at your specific direction. We are not a law firm or a substitute for an attorney or law firm. We cannot provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies. Your access to the website is subject to our Terms of Use.”).

16. INCORPORATE.COM, <https://www.incorporate.com> (last visited June 29, 2017) (noting small print at the bottom of Incorporate.com’s website that “incorporate.com is a service company and does not offer legal or financial advice”).

17. See, e.g., John F. Coyle & Joseph M. Green, *Startup Lawyering 2.0*, 95 N.C. L. REV. 1403, 1412 (2017) (“In 2003, the National Venture Capital Association (‘NVCA’) published a set of ‘model’ documents for venture finance transactions.”).

### A. Shared Documents and Collections

After cleaning up enough messes caused by using the low-cost, non-lawyer forms, some lawyer presumably thought to post her own form documents that were at least vetted by her and other members of her firm and thus likely to be of higher quality than those documents that were then available in the marketplace. The lawyer-posted forms may have addressed company formation, business governance, or seed financing and were available on her law firm's website for visitors to access. These lawyer-posted forms were not advertised or marketed, but were available to enterprising entrepreneurs who may have been considering hiring that lawyer in the first place. The firm's intent was not for the entrepreneurs to use the forms themselves, but to see what well-crafted forms looked like in order to influence the entrepreneurs to call the lawyer to help draft and execute their own documents. Eventually, resources like Orrick's Startup Form Library emerged and went further by providing comprehensive sets of starting point documents that can be downloaded and completed by anyone with an Internet connection.<sup>18</sup> In addition to providing more documents, these collections create value by ensuring that various documents work well together. For example, if an entire set of incorporation documents is provided and maintained by one source, that set's organizational resolutions, bylaws, and restricted stock purchase agreements are more likely to accurately reference each other and to otherwise be internally consistent.<sup>19</sup>

### B. Wizards and Generators

Wizards and generators, such as Cooley GO's Incorporation Package, went beyond sharing collections of starting point documents.<sup>20</sup> When using wizards and generators, people enter specific data into simple online forms designed to solicit only the necessary information. An online program or "wizard" then "generates" (i.e., completes) the applicable documents by populating appropriate fields within each document with the user-provided data. The documents created by the wizards and generators are immediately made available online in a compressed (ZIP) folder that can easily be saved by the user. The wizards and generators add value by allowing users to focus on providing small amounts of data be-

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18. See ORRICK, HERRINGTON & SUTCLIFFE LLP, *supra* note 5.

19. Problems are more likely to arise if documents from multiple sources are used instead of documents from one set. For example, a right of first refusal may be found in bylaws prepared by one author but restricted stock purchase agreements drafted by another. If a company used each such document, and thus granted the same right using two different documents, issues would arise if the terms of the right of first refusal varied by document.

20. See COOLEY LLP, *supra* note 5.



fore addressing the much lengthier documentation.<sup>21</sup> As an example, it took the authors approximately ten minutes to enter data into the online forms associated with Cooley GO's Incorporation Package. Of course, Cooley GO's Incorporation Package is only one such generator. The authors reference it frequently throughout this Article to demonstrate various aspects of open source documents. However, resources provided by other law firms, including firms referenced in Appendix A, are also available. The wizard then took less than one additional minute to generate twenty-four entity formation-related documents. The Cooley GO offering (and others like it) is a substantial step forward to the consuming entrepreneur. If they were already inclined to form their company without formal legal assistance, the Cooley GO Incorporation Package saves the entrepreneur the time of figuring out what documents she needs. Further, the information that an entrepreneur must gather in advance of making any decisions is centralized and summarized in one location.

### *C. Incorporating Terms and Conditions by Reference*

Interestingly, some of the documents generated by wizards also shift lengthy legalese from an otherwise long agreement into a separate "terms and conditions" exhibit, which is attached to a much shorter agreement that incorporates the terms and conditions by reference. The result is a simple and short document that contains only the key business terms and signature blocks with the lengthier text (i.e., legalese) attached as an exhibit. Portions of a Restricted Stock Purchase Agreement, generated by Cooley GO's Incorporation Package, are included in Appendix B of this Article in order to provide an example of this approach. In this particular case, the terms and conditions approach turned a nine-page agreement into a one-page agreement with a signature page and a seven-page exhibit containing the terms and conditions.

### *D. Comprehensive Platforms*

Another development is the use of comprehensive platforms, such as those offered by Shoobx, Inc., eShares, Inc., and Gust.<sup>22</sup> These subscription-based platforms leverage technology to help companies with various legal and related needs, which may include forming entities, onboarding employees, granting equity, administering stock incentive plans, managing equity ownership, storing records and documents, performing bookkeeping and payroll functions, obtaining electronic signatures, obtaining board and stockholder approvals, communicating with counsel, raising capital, and conduct-

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21. While some appreciate this feature, others are concerned that value is actually lost (not gained) when it is easier for users of legal documents to more easily avoid reading the legal provisions.

22. See SHOOBX, INC., <https://www.shoobx.com> (last visited June 29, 2017); ESHARES, INC., <https://esharesinc.com> (last visited June 29, 2017); GUST, <https://gust.com> (last visited June 29, 2017).

ing due diligence.<sup>23</sup> While the pricing for these comprehensive platforms varies depending on a company's particular needs and size (e.g., number of employees, number of investors, and storage space needs), at least one of the platforms offers a free version to small companies.<sup>24</sup> Once again, top VC law firms are already using these resources,<sup>25</sup> but the potential benefits apply to a much broader spectrum of entrepreneurs.

Combining the terms and conditions approach with comprehensive platforms creates interesting possibilities. In such a world, managers of platforms, attorneys, and others could analyze which documents have a significant terms and conditions component. Those documents could then be broken up so that the terms and conditions could apply to an entire group using the platform. This group of users could range from people within a single company to all of the users of a platform.<sup>26</sup> Members of the group could use much shorter forms to capture user-specific information and incorporate the lengthier terms and conditions by reference. For example, the terms and conditions of a restricted stock purchase agreement could apply to founders and employees of a single company (or, if desired, all companies using a platform). Thus, when founders and other employees acquire their company's common stock, a simple form could capture specific information for each individual (e.g., the individual's name and address, purchase date, number of shares being acquired, purchase price, and vesting commencement date). The individual would also agree that the applicable terms and conditions apply.<sup>27</sup> Examples of other items with heavy terms and conditions components include stock option plans,

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23. *Id.*

24. See SHOOBX, INC., <https://www.shoobx.com/pricing/> (last visited June 29, 2017) (offering free service to small businesses with up to five workers, up to 10 stockholders, one class of common stock, and up to 100MB of storage space).

25. See, e.g., GOODWIN PROCTER LLP, *Shoobx, Goodwin Partner to Offer Enhanced Legal Technology Automation to Emerging Companies* (Dec. 7, 2016), [http://www.goodwinlaw.com/news/2016/12/12\\_07\\_16-shoobx-goodwin-partner-to-offer-enhanced](http://www.goodwinlaw.com/news/2016/12/12_07_16-shoobx-goodwin-partner-to-offer-enhanced); DLA PIPER, *DLA Piper to collaborate with Shoobx to boost startup clients' ability to form, fund and grow* (Dec. 7, 2016), <https://www.dlapiper.com/en/us/news/2016/12/dla-piper-to-collaborate-with-shoobx>; FENWICK & WEST, LLP, *Fenwick Helps Startup Companies Streamline Equity Management Processes Through eShares Partnership* (Apr. 28, 2017), <https://www.fenwick.com/media/pages/fenwick-helps-startup-companies-streamline-equity-management-processes-through-eshares-partnership.aspx>.

26. In the spirit of the open source movement, perhaps parties who do not even use a platform could incorporate the terms and conditions of various documents by reference if, for example, the terms and conditions were made available on an open website.

27. Ancillary documents would also be created. Platform users should still understand the consequences of using the resources. However, as more users adopt the same terms and conditions, offering reusable high-quality educational materials becomes more feasible. Furthermore, platforms and their users will need to con-

employment agreements and policies, and seed financing documents.<sup>28</sup> However, due to the complex nature of issuing equity, users should be advised to seek legal counsel to ensure compliance with securities, tax, and other laws. They may also desire to engage counsel and other professionals who are able to use the same platform. This results in simplification for entrepreneurs, more productive basic services, and tied-in professionals who are ready to get more involved when complexities arise.

#### E. Ethical and Professional Responsibility Issues

Open source legal resources, tools, and practices present at least six ethical and professional responsibility issues. First, are providers of wizards, generators, or platforms practicing law when they create legal documents for users who share specific facts and circumstances? Unfortunately, there is uncertainty as to what constitutes the practice of law.<sup>29</sup> Because of this uncertainty, some attorneys do not adopt tools and technologies that could provide underserved clients with more affordable solutions.<sup>30</sup> Other members of the legal profession use the tools and technologies but take additional precautions. With respect to wizards and generators, the attorney-providers' terms of use attempt to make clear that the providers are not practicing law, even though they are law firms (unlike LegalZoom.com, Inc. and Incorporate.com).<sup>31</sup> With respect to comprehensive platforms, some law

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sider that some aspects of such agreements, such as state securities laws and the requirement for spousal consents, tend to vary significantly by state law.

28. However, platforms and their users will need to consider that some documents, such as Confidential Information, Invention Assignment, and Non-Compete Agreements, tend to vary significantly by state law.

29. See, e.g., Jacqueline Nolan-Haley, *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem Solving Perspective*, 7 HARV. NEGOT. L. REV. 235, 262 (2002) ("Efforts to define the 'unauthorized practice of law,' or conversely the 'practice of law,' are characterized, at best, by longstanding ambiguity. The ethical rules governing lawyers' behavior do not define unauthorized practice and instead leave it to the states for individual determination. There is little uniformity in the definition of unauthorized practice or law practice. . . . Despite the uncertainties of what constitutes the practice of law, vagueness challenges to UPL statutes have been routinely rejected.").

30. See, e.g., Mary Juetten, *Part V: Examining LegalTech Adoption*, LAW TECH. TODAY (Jan. 19, 2016), <http://www.lawtechnologytoday.org/2016/01/part-5-mary-mary-juetten/> (quoting an attorney who worked at two law tech startups: "It's not necessarily the technology that lawyers have trouble with adopting; it's how and when they're permitted to deliver their services. So, for us, we see a major barrier being regulatory ambiguity. . . . As technology develops that can help provide more affordable and accessible support for families, we should see regulations get clarified and evolved so they don't do more harm than good.").

31. See, e.g., COOLEY LLP, *Cooley GO Docs Terms of Use*, accessed by clicking "Click here" at <https://www.cooleygo.com/documents/incorporation-package/> ("You acknowledge and agree that the making available of these documents (the "Cooley

firms have embedded the tool within their business models by having clients use the platforms as a part of their attorney-client relationship.<sup>32</sup>

Second, are the users of these resources protected by attorney-client privilege? The answer to this question should mirror the answer to the first question, i.e., if the attorney-client relationship exists, the attorney-client privilege applies. Once again, out of uncertainty or as a precaution, attorney-providers' terms of use attempt to make clear that neither an attorney-client nor other confidential relationship exists.<sup>33</sup>

Third, does providing these resources constitute attorney advertising? Here, the law firms providing the resources assume that their actions could amount to attorney advertising and simply make the required disclosure of such.<sup>34</sup>

Fourth, security issues should be considered, particularly with respect to the comprehensive platforms since confidential documents may be stored on servers for long periods of time and outsiders may be allowed access to certain items but not others. While uses of technology often involve security risks, that risk would presumably be managed by experts engaged by platform operators. Although this results in attorneys and law firms having less control, important security tasks would be taken care of by professionals with the proper expertise. However, several attorneys are still concerned about ethics-related issues, including the protection of confidential information and preservation of the attorney-client privilege.<sup>35</sup> Considering various ethics opinions that address cloud computing, issues to con-

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GO Docs") to you . . . shall not create any attorney-client or other confidential or special relationship between you and Cooley LLP and does not constitute the provision of legal advice or other professional advice. . . . You should seek advice from an attorney licensed in the relevant jurisdiction(s), as well as a tax professional, before relying on the Cooley GO Docs. The questionnaire and documents produced by Cooley GO Docs may be considered Attorney Advertising under the ethical rules of certain jurisdictions.") (last visited June 29, 2017).

32. See *supra* note 25.

33. It may also be possible that, even if the attorney-client relationship does not actually exist, a prospective client using the resources expects confidentiality and thus possibly makes the attorney-client privilege applicable.

34. See *supra* note 31.

35. See, e.g., Robert Ambrogi, *This Week In Legal Tech: Lawyers Still Fear The Cloud*, ABOVE THE LAW (Nov. 7, 2016), <http://abovethelaw.com/2016/11/this-week-in-legal-tech-lawyers-still-fear-the-cloud/?rf=1> (discussing concerns regarding attorneys' use of cloud computing: "[a]s for concerns about security and confidentiality, lawyers are right to worry about them. After all, lawyers are bound by rules of professional conduct to safeguard confidential client information and to protect client property, including client files, from loss. However, ethics panels in at least 20 states have considered lawyers' use of cloud computing and have been unanimous in ruling that lawyers may ethically use the cloud—provided they take reasonable steps to minimize risk to confidential information and client files.").

sider may include the reputation of the company providing the platform, whether attorneys can access data on the platform without restriction, whether attorneys can retrieve data from the platform after service is terminated, whether the platform uses advanced passwords and two-step verifications, the policies governing how the platform's employees and third-parties may access data, whether data is encrypted while in transit and when stored on the servers, data backup procedures, and security protections in place at data centers used by the platform.<sup>36</sup> While companies often share this information openly on their websites, attorneys should contact platform companies directly when they are unable to confirm this information.<sup>37</sup>

Fifth, many attorneys may resist using tools and practices that make it easier for clients (and even non-clients) to avoid dealing with complex legal issues when completing transactions (e.g., by moving legalese from documents to terms and conditions, which are then attached to the resulting—and much shorter—documents). The merit of this concern depends on several factors, including (1) whether users would be more likely to read and understand the legalese if it were included in the document itself, and (2) whether the terms and conditions are standards that users of documents will be aware of, even if they fail to read the legalese each time they engage in the applicable transaction. An example of the applicable risk comes from considering the bylaws that the Cooley GO Incorporation Package generates. The bylaws are the constitution of a corporation. They provide the rules by which the business will be governed. In a corporation, bylaws often articulate the rights of owners and, as a result, give rise to remedies if those rules are not followed. When the authors used the Cooley GO Incorporation Package, the generated bylaws were twenty-four pages long. They are comprehensive and thorough. If a startup's founders used Cooley GO to form their company and failed to read or understand the bylaws, the startup and its founders may be open to a stockholder lawsuit.

Finally, while ethical issues may challenge the use of these resources, it is also argued that both (1) the legal community has failed to satisfy its ethical obligation to ensure access to justice for the low and middle-income populations and (2) solutions like open source legal resources can improve that access.<sup>38</sup> Thus, ethical considerations cut both ways and could support the use of these resources since they make legal services more affordable and more available to a wider segment of the entrepreneurial population.

While many ethical and professional responsibility issues have been raised, it is worth remembering that examples provided in this Article involve several respected international law firms. Even if "everybody's

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36. *Id.*

37. *Id.*

38. Cody Blades, *Crying Over Spilt Milk: Why the Legal Community Is Ethically Obligated to Ensure LegalZoom's Survival in the Legal Services Marketplace*, 38 *HAMLIN L. REV.* 31, 52 (2015).

doing it” is not always a good defense, this Article presents evidence that a significant number of prominent members of the legal community are not only supporting open source legal resources—they are already providing them to the public on their websites.

#### IV. Impacting a Broader Spectrum of Entrepreneurs

Open source legal resources like the Cooley GO Incorporation Package and Orrick Startup Forms Library were designed for high growth emerging companies that have the potential to attract outside investor capital. For many law firms, startup formation work is unprofitable. A financing transaction, however, is more likely to generate significant fees. But very few startups will attract outside investment. Yet, some best practices contained in the tools and forms provided by open source legal resources apply to all entrepreneurs across the spectrum. First, these resources bridge the gap between expensive legal services and do-it-yourself options by providing foundational documents that entrepreneurs and attorneys can use to reduce transaction costs. Second, when entrepreneurs utilize comprehensive platforms, the quality of the legal and related services they receive may actually increase, even though transaction costs decrease. For example, by providing ways for entrepreneurs to manage and store information and more effectively communicate with others (e.g., legal counsel, other professionals, investors, co-managers, and employees), platforms encourage better transactions, compliance, and record keeping. Third, if the same quality documents are available online for all ventures, whether VC seeking or community-based, at least one structural impediment is removed. Entrepreneurs in different markets with different demographics, in theory, have the same legal construct and foundation from which to build their enterprises.

##### A. Additional High Growth Profit Driven Ventures

While VC-backed companies make up a small percentage of all entrepreneurial ventures, many *additional* high growth profit driven ventures should be able to take advantage of open source legal resources already available to VC seeking companies. This is because they share similar formation and financing goals. For example, many of these additional firms will also benefit from issuing equity to members of their teams and making that equity subject to vesting. In fact, since these additional firms are not raising VC, they should be even more dependent on using their equity to recruit, compensate, and retain talented employees. Moreover, although companies not seeking VC would appear to save money by forming entities in their home states (instead of Delaware, as many VC seeking companies do),<sup>39</sup> they may actually save money by forming their busi-

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39. Forming the entity in one’s home state (instead of forming it in Delaware and then qualifying to do business in the home state) will eliminate the require-

nesses as Delaware corporations. This is because the costs savings from using existing resources designed for Delaware corporations may outweigh the extra costs of having to qualify their Delaware entities in their home states and pay ongoing fees in both Delaware and their home states. For example, assume an entrepreneur can either pay a Chicago attorney: (1) \$2,000 to organize an Illinois corporation and provide the applicable startup documents or (2) \$500 to qualify a Delaware corporation, formed using an incorporation package, to transact business in Illinois. Assume further that the annual incremental cost of paying the Delaware franchise tax, annual report fee, and registered agent fee equals \$500.<sup>40</sup> The initial \$1,500 of savings appears to last only three years. However, additional resources designed for Delaware corporations, such as financing-related documents, may also reduce ongoing legal costs. Moreover, the business should consider reasons why VC seeking companies prefer Delaware, such as making it easier to raise funds from investors located in several states. These considerations apply to these additional high growth ventures as well. By way of further example, and because they will issue equity to their team members, these additional firms will benefit from leveraging and preserving two classes of stock. Granting equity to employees, making that equity subject to vesting and leveraging two classes of equity are strategies that are more commonly used by companies raising venture capital. However, the democratization of legal documents and online tools has created a new market of additional ventures that are now ready to tap this startup know-how. This new market is huge and its emergence should come as no surprise, since “if only the skilled and the rich have access to a product or service, then you can reasonably assume the existence of a market creating opportunity.”<sup>41</sup>

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ments to file annual reports with Delaware, pay Delaware franchise taxes each year, and maintain Delaware registered agent each year. This, of course, assumes that the home state is not Delaware.

40. Filing fees with the Illinois Secretary of State should be a “wash” since they must be paid in either scenario, i.e., these fees must be paid regardless of whether the company is formed as (1) an Illinois corporation or (2) a Delaware corporation that then qualifies to transact business in Illinois.

41. Clayton M. Christensen & Derek van Bever, *The Capitalist's Dilemma*, HARVARD BUS. REV. at 5 (June 2014), <https://hbr.org/2014/06/the-capitalists-dilemma> (“Market-creating innovations have two critical ingredients. One is an enabling technology that drives down costs as volume grows. The other is a new business model allowing the innovator to reach people who have not been customers (often because they couldn’t afford the original product). Think of it like this: An efficiency innovation pointed in the right direction—toward turning nonconsumption into consumption—becomes a market-creating innovation. Ford’s Model T, for example, brought automobile ownership within reach for most Americans because of both its simple design and the revolutionary assembly line that brought scale to the enterprise. In the same way, Texas Instruments and Hewlett-Packard used solid-

### B. Social Ventures

Social ventures are enterprises that champion people (often workers) and the environment as well as profit. They will also benefit from utilizing open source legal resources and the tools and practices discussed above. Like VC seeking companies, entrepreneurial social ventures commonly have formation and seed financing goals. However, the specific documents needed may differ significantly from the templates available for VC seeking companies. For example, social ventures are likely to consider additional entity types, such as not-for-profit corporations, L3Cs, benefit corporations, and worker cooperatives. Moreover, social ventures are likely to form entities in their home states (instead of Delaware, as many VC seeking companies prefer to do). Thus, social ventures require resources that support multiple entity types from numerous jurisdictions. While this diversity brings flexibility and other benefits, it makes it more difficult to develop standards and provide scalable open source materials. Further, financing materials used by VC seeking companies would be inappropriate for many social ventures, including those prohibited from issuing ownership interests that provide economic returns (e.g., if the social venture is a 501(c)(3)). Despite these challenges, social ventures still benefit from open source document collections, wizards and generators, and comprehensive platforms aimed at their unique needs. In fact, resources have been available to the public for several years via the IRS.gov website. These resources include information about tax-exempt organizations;<sup>42</sup> forms and instructions;<sup>43</sup> and an interactive wizard-like form that provides definitions, examples, explanations, links to resources, checklist items, and prerequisite questions for users.<sup>44</sup> Non-government organizations also provide resources aimed at social ventures.<sup>45</sup>

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state technology to bring low-cost calculators to millions of students and engineers worldwide.”).

42. See, e.g., DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, *Publication 557: Tax-Exempt Status for Your Organization* (Jan. 2017), <https://www.irs.gov/pub/irs-pdf/p557.pdf>.

43. See, e.g., DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, *Form 1023: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* (Oct. 2013), <https://www.irs.gov/pub/irs-pdf/f1023.pdf>; DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, *Instructions for Form 1023-EZ* (Jan. 2017), <https://www.irs.gov/pub/irs-pdf/i1023ez.pdf>.

44. See DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, *Interactive Form 1023*, <https://www.stayexempt.irs.gov/Starting-Out/interactive-form-1023-prerequisite-questions> (last visited June 29, 2017).

45. See, e.g., SLS Mills Legal Clinic, Stanford Univ., *Nonprofit Corporations: Forms and Sample Documents*, <https://nonprofitdocuments.law.stanford.edu> (last visited Sept. 1, 2017); B LAB, *How to Become a Benefit Corporation*, <http://benefitcorp.net/businesses/how-become-benefit-corporation> (last visited June 29, 2017); PUBLIC COUNSEL, *Publications (Community Development)*, [http://www.publiccounsel.org/publications#Community Development](http://www.publiccounsel.org/publications#Community%20Development) (last visited June 29,



### C. Community-Based Ventures and Small Businesses

Community-based ventures are those that typically do not employ a high growth strategy or attract professional investors. These are corner stores, restaurants, barber shops, beauty salons, dry cleaners, and daycare centers that populate the landscape of most communities in America. When starting a community-based venture, the legal needs are no less significant than those of a high growth, VC-backed business. There are formation issues, regulatory and licensing requirements, liability concerns, and governance needs. Because the capital behind these ventures is typically that of the entrepreneur and her friends and family, the stakes are arguably higher than for the VC-backed firm. If the business fails, the entrepreneur risks everything.

The same is true of the “small business.” Some argue that small business is not entrepreneurial in the same manner as the high growth VC seeking venture<sup>46</sup> and that communities serious about economic development should focus on supporting high growth ventures.<sup>47</sup> Listening to these positions, one might attempt to encourage small business owners to transform their companies into high growth ventures. That is, some small businesses may actually be quite scalable. For example, a current coffee shop might become the next Starbucks or an existing corner store might become the next Whole Foods Market. If such efforts worked, and applying the logic expressed in Part IV.A, the resources available for VC seeking companies would fit more entrepreneurs. However, even if such conversion efforts were desirable and wildly successful, small businesses would still continue to make up a significant part of the economy—and they would benefit from having access to more resources aimed at their particular needs. Like social ventures, these entrepreneurs need formation-related resources that support multiple entity types from numerous jurisdictions. They would also benefit from resources that could support employment and other contracting needs and platforms designed to help with bookkeeping, payroll, and other tax matters. There is an opportunity to offer more open source legal resources aimed at these entrepreneurs. Part V.B discusses some initiatives currently underway.

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2017); FLADVOCATE.ORG, *Community Economic Development, Transactional Legal Forms*, <https://www.fladvocate.org/ced/> (last visited June 29, 2017).

46. See, e.g., Rui Baptista & Ana Naia, *Entrepreneurs Education: A Selective Examination of the Literature*, 11:5 FOUNDATIONS AND TRENDS IN ENTREPRENEURSHIP 337, 342 (2015) (“while economists may regard all kinds of self-employment as entrepreneurship, organizational theorists are more likely to focus on the creation of growth-orientated ventures”).

47. See, e.g., Daniel J. Isenberg, *How to Start an Entrepreneurial Revolution*, HARVARD BUS. REV. at 6 (June 2010) (arguing that community development programs “should try to focus first on ambitious, growth-orientated entrepreneurs who address larger potential markets”).

## V. Impacting Organizations that Assist Entrepreneurs

Entrepreneurs are not the only population set that can benefit from open source legal resources. Law firms, law school clinics, small business development centers, business accelerators, accounting and tax advisors, university entrepreneurship centers, and crowdfunding portals can also gain from the development and proliferation of free online legal tools.

### A. Law Firms

Silicon Valley based law firms represent a tiny slice of legal service providers to entrepreneurs. Most entrepreneurs cannot afford the market rates of large law firms that must cover the high fixed cost of large overhead. If a startup is going to consult an attorney, it is more likely to be a small firm or solo practitioner.<sup>48</sup> Often firms of this size do not have the same quality of form banks or collections of standardized documents that larger firms do. The technology they employ is also typically less sophisticated than that of large firms. For these smaller firms and solo practitioners, having access to the form banks of larger firms that regularly do more sophisticated and higher volumes of work, levels the playing field a bit. The non-VC law firms can essentially offer the same product as the VC law firms by utilizing their online tools and resources. The non-VC lawyers can also modify the templates to fit the transactions of their clients.

Since there is a void in the current offerings of open source legal resources aimed at community-based ventures and mainstream small businesses, regional and other smaller firms might develop their own tools to service the entrepreneurs from their own communities. Perhaps local bar associations could play a role, much like the National Venture Capital Association did for VC-backed companies when it commissioned attorneys from several firms to develop and maintain its model legal documents.<sup>49</sup> These firms also have an opportunity to collaborate with legal clinics already taking steps to address this gap.

### B. Legal Clinics

For the VC law firms, business formation work is usually unprofitable yet necessary to get the client to the next stage. For lawyers representing community-based ventures and other small businesses, it is also difficult to bill clients for the time necessary to properly form a company. Often the work is done at a flat rate. Though entity choice and selection can be a complex issue for some ventures, it is pretty straightforward for most entrepreneurs. Open source documents provide lawyers, both VC law firms

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48. For example, online services such as UpCounsel provide entrepreneurs with attorneys (most of whom formerly practiced at large law firms) on demand for project-based services. See UPCOUNSEL, INC., <https://www.upcounsel.com/> (last visited June 29, 2017).

49. See NATIONAL VENTURE CAPITAL ASSOCIATION, *supra* note 4.

and others, with a tool that allows them to be more efficient and cost-effective for their startup clients. That allows the lawyers and clients the ability to spend more time on higher value-add services.

The same holds true for law school clinics. There are over 150 transactional clinics spread across America's 200 law schools.<sup>50</sup> Nearly all of them provide pro bono legal assistance to entrepreneurs and organizations. But because they are typically curricular offerings within law schools, they are limited in the number of clients they can service at any given time. Existing open source legal resources provide transactional clinics with the ability to service more clients with formation issues, much more efficiently.<sup>51</sup>

Many transactional clinics service community-based enterprises and other mainstream small businesses rather than high growth, VC seeking companies. Thus, the vast majority of businesses created in the United States resemble the types of businesses represented by transactional clinics. These businesses typically have fewer resources and less access to advisors than high growth ventures. Until very recently, there was almost a complete void in the open resource marketplace. Specifically, there was very little explanation or guidance for the material that was made publicly available for download. There were a lot of forms but little educational guidance. As such, an entrepreneur was on his own to figure out whether a document was relevant to him, how to manipulate it, and whether to execute it. Open source offerings began to alter that with the inclusion of tutorials, brief articles, and frequently asked questions; however, the educational content void is still large.

Some law school clinics have attempted to fill that void with offerings targeting community-based enterprises and small businesses. Two such initiatives are the University of Pennsylvania Law School's Entrepreneurship Legal Clinic's (ELC) StartUp Kit and the Legal Technology Laboratory's Startup Advisor Toolkit.<sup>52</sup>

With Penn ELC's StartUp Kit, the user is presented with numerous modules, each addressing common obstacles entrepreneurs face in getting their business off the ground. The modules include founder's agreements, entity choice, seed financing, financing generally, convertible notes, employment law, intellectual property, and independent contractors. Each

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50. See *Law School Entrepreneurship Clinics in the United States*, ESHIPLAW.ORG (May 18, 2017), <http://eshiplaw.org/entrepreneurship-clinics-map?showall=&limitstart> (listing 157 clinics that assist entrepreneurs and innovators); Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL'Y 85, 100 (2014).

51. That efficiency may come at the expense of pedagogy and learning, however. The balance between legal training of law students and client service is an important consideration for law school clinics but beyond the scope of this Article.

52. These initiatives were addressed at the Transactional Clinical Conference held at the University of Pennsylvania Law School on June 2, 2017.

module includes some combination of a primer on the topic, checklists to assist in self-navigation, and annotated sample documents. The StartUp Kit also contains interactive web tutorials to facilitate entrepreneurs' deeper understanding of these and related topics. In creating the StartUp Kit, the ELC recognized the reality that entrepreneurs are going to continue creating businesses on their own without consulting lawyers. However, in order to help them avoid common mistakes, the StartUp Kit offers user-friendly materials written specifically for non-lawyers and designed to educate as well as service entrepreneurs.<sup>53</sup>

Another online resource targeting mainstream small businesses is the Legal Technology Laboratory's Startup Advisor Toolkit, which will have two parts: (1) the Founders' Terms Sheet Generator Tool and (2) the LLC Formation suite of tools.<sup>54</sup> The Founders' Terms Sheet Generator Tool, which was designed for startups in their initial formation stage, addresses the rights and obligations between/among co-founders who are not seeking (and may never seek) VC or other professional investors.<sup>55</sup> The LLC Formation suite of tools will include checklists, templates, transmittal letters, and documents to complete the state-specific formation requirements of LLCs and it will initially be an online tool for law school entrepreneurship clinics serving a broad range of jurisdictions.<sup>56</sup> In contrast to Cooley GO's Incorporation Package, the LLC Formation suite of tools is being designed to help entrepreneurs create limited liability companies. The thought behind this is that most small businesses are better off as LLCs rather than corporations, especially if they do not seek to raise venture capital. LLCs are more flexible, less formal, and easier to administer in most circumstances. They still provide limited liability to owners while allowing flexible management structures.

Because both of these toolkits are aimed at community-based enterprises and are suitable for LLCs, they have the ability to bridge the gap between community-based enterprises and legal resources designed for VC seeking companies. In so doing, these toolkits help democratize access

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53. The Penn ELC StartUp Kit can be found at <https://www.law.upenn.edu/clinic/entrepreneurship/startupkit/> (last visited Sept. 9, 2017).

54. See *Portfolio: Automated Document Creation*, LEGAL TECHNOLOGY LABORATORY, <http://www.thelegaltechlab.com/portfolio/automated-document-creation/> (last visited June 29, 2017) (The Founders' Terms Sheet Generator Tool project is being led by Tony Luppino, the Rubey M. Hulen Professor of Law and Director of Entrepreneurship Programs at the University of Missouri-Kansas City; Jeff Ward, Associate Clinical Professor of Law and Director of the Start-Up Ventures Clinic at Duke University Law School; and Larry Farmer, Director of the MediaNotes Project and J. Reuben Clark Law School Faculty at Brigham Young University. The LLC Formation suite of tools is also being developed by Jeff Ward and Larry Farmer.).

55. *Id.*

56. *Id.*

to legal documents and startup know-how for these underserved entrepreneurs who form the backbone of small businesses across the country.

### *C. Small Business Development Centers and Accelerators*

Non-legal service providers, such as small business development centers and business accelerators, are also poised to benefit from open source legal resources. Small business development centers are a nationwide network of nonprofit organizations affiliated and supported by the Small Business Administration; they provide business consulting and business planning advice to entrepreneurs.<sup>57</sup> Business accelerators are mostly for profit ventures that provide education, mentorship, and sometimes financing to early stage ventures. Unlike SBDCs, which often offer à la carte services for all types of entrepreneurs to sample and participate in, accelerators are usually selective in the businesses they work with and often require participation in a fixed duration educational program followed by formal mentoring. Some take equity in the companies they assist as payment.<sup>58</sup> As organizations designed to help businesses create business plans and start their ventures, the desire to assist in creating the legal foundation for the entrepreneurs' businesses is natural. Before the development of open source legal resources, these organizations may have been practicing law without a license if they helped business founders create an entity or draft bylaws or draft a financing agreement. Now, because the documents are being provided online by law firms, business development centers and accelerators can point out the existence of these resources and perhaps assist businesses as they complete a wizard or document generator. In fact, some accelerators are even providing their own resources.<sup>59</sup>

### *D. Accounting and Tax Professionals*

In addition to legal aspects of entrepreneurship, open source materials are impacting accounting and tax aspects of entrepreneurship as well. Accounting and tax professionals, as well as entrepreneurs themselves, stand to benefit from these open source resources. Accounting and tax issues are critical to the success of startups. If startups do not track their expenses, monitor their burn rate, invoice and collect payments from customers, keep accurate books and records, comply with applicable employment and business tax laws, and properly process payroll, they will be unable to flourish, or perhaps even survive. Furthermore, many cash-strapped

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57. See Small Business Administration/Small Business Development Center for further information and reference to the vast network of SBDCs nationwide, <https://www.sba.gov/tools/local-assistance/sbdc>.

58. Y Combinator is a famous accelerator located in Silicon Valley. See also Ian Hathaway, *What Startup Accelerators Really Do*, HARVARD BUS. REV. (Mar. 1, 2016), <https://hbr.org/2016/03/what-startup-accelerators-really-do>.

59. See Y COMBINATOR, *supra* note 6.

startups choose to compensate their workforce with equity rather than cash, presenting a host of accounting and tax issues.

Accounting issues, just like legal issues, are often misunderstood and not prioritized by entrepreneurs, who are primarily focused on building their businesses.<sup>60</sup> Furthermore, certified public accountants often prefer to work with more established companies that can provide lucrative auditing, financial reporting, compliance, and tax work that many entrepreneurs may not need or be able to afford. As such, entrepreneurs face hurdles in the accounting realm that mirror those in the legal realm.

Fortunately, there are various accounting platforms for entrepreneurs, many of which are conveniently integrated into open source legal resources. These enable entrepreneurs, and the accountants who advise them, to properly handle accounting and tax needs with minimal time and effort. These resources can be particularly helpful for community-based entrepreneurs because they often cannot afford extensive help from accountants and other advisors. Rather than saving boxes of receipts and simply presenting them to an accountant once per year, entrepreneurs with limited financial resources and accounting know-how can now get real-time information about the financial operations of their business. This is critical information that can enable entrepreneurs to correct course if, for example, they discover they are running out of cash because an aged accounts receivable report alerts them to large outstanding invoices. Moreover, entrepreneurs can access accountants through these resources, either on demand or by providing their accountant with direct electronic access to the platform. Although these resources are quite user-friendly and have online tutorials, many small business owners find it helpful to grant an accountant access to their accounting platform so they can ensure that transactions are properly classified under Generally Accepted Accounting Principles and that any accounting errors are corrected.<sup>61</sup>

For many years, there have been online tools to help small businesses manage their bookkeeping and taxes. For example, many small businesses use QuickBooks<sup>62</sup> and TurboTax<sup>63</sup> for their bookkeeping and taxes, respectively. Accountants who represent small business clients are very familiar with these tools because they are widely used.<sup>64</sup> In recent years,

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60. STARTUP SAVANT, *Bookkeeping 101: Everything You Need to Know* (May 7, 2017), <https://startupsavant.com/understanding-bookkeeping/> (noting that “TD Bank surveyed over 500 small-biz owners to find out what they liked least about running their businesses, and bookkeeping won, hands-down”).

61. Telephone Interview with Khadhyja Taylor, CPA, Owner of KTD Accounting Advisory (June 22, 2017).

62. QUICKBOOKS, [https://quickbooks.intuit.com/?xid=seq\\_intuit\\_qb\\_click\\_hd](https://quickbooks.intuit.com/?xid=seq_intuit_qb_click_hd) (last visited June 29, 2017).

63. TURBOTAX, <https://turbotax.intuit.com/> (last visited June 29, 2017).

64. Taylor, *supra* note 61.

some of these tools have migrated from download-only programs to easily accessible cloud-based and app-based programs that are constantly updated. Although some accounting tools are subscription-based, many are available for free; this may be particularly helpful for community-based or low- to moderate-income entrepreneurs. For example, there are various free, open source accounting software programs, such as TurboCASH,<sup>65</sup> which is “known as the world’s leading open source accounting software for small businesses.”<sup>66</sup> Another very popular free accounting software is Wave,<sup>67</sup> which has been heavily featured in well-known publications and is designed for small businesses with nine employees or less.<sup>68</sup>

In addition, new platforms that integrate legal, accounting, and/or tax tools have arisen in recent years, including the comprehensive platforms referenced in Part III.D of this Article: Shoobx, eShares, and Gust Launch. For example, Gust Launch has several bookkeeping and accounting packages for entrepreneurs.<sup>69</sup>

Furthermore, many transactions that are facilitated by such comprehensive platforms have important accounting and tax implications for businesses and their employees. For example, the above-referenced platforms help companies issue equity to employees, which presents issues under several sections of the Internal Revenue Code, including Sections 409A (regarding deferred compensation), 83(b) (regarding the recognition of income), and 422 (regarding incentive stock options). Some of these provisions can result in substantial penalties—such as a 20% penalty in the case of Section 409A—if non-compliance occurs.<sup>70</sup>

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65. TURBOCASH, <http://turbocash.ning.com/> (last visited June 29, 2017).

66. INVESTORGUIDE, *Ten Best Free Business Accounting Software for Freelancers and Small Businesses*, <http://www.investorguide.com/article/14818/10-best-free-business-accounting-software-freelancers-small-businesses/> (last visited June 29, 2017).

67. WAVE ACCOUNTING INC., <https://www.waveapps.com/> (last visited June 29, 2017).

68. *Id.*

69. These include: (1) a pre-revenue package for \$99/month that provides basic bookkeeping for very early-stage companies, which includes monthly financial statements, bookkeeping by Simplexity and accounting software by Xero, as well as (2) a revenue and billing package for \$199/month, and (3) CFO services at customized prices. GUST, *Gust Launch FAQ: What Is Provided in Each Financials Package?* (June 1, 2017), <http://faqs.launch.gust.com/article/301-what-is-included-in-each-financials-package>.

70. Tahir J. Naim, *Section 409A Valuations and Stock Option Grants for Start-up Technology and Life Science Companies*, FENWICK & WEST LLP, [http://www.fenwick.com/FenwickDocuments/409\\_Valuations\\_Stock\\_Options.pdf](http://www.fenwick.com/FenwickDocuments/409_Valuations_Stock_Options.pdf) (last visited June 29, 2017) (“Employees, officers, directors and consultants who receive stock options with exercise prices that cannot be shown to be at or above the

The platforms referenced above have wizards that ask a series of questions to promote compliance with these sections of the Code. For example, companies issuing stock options need to ensure that the strike price is at least equal to fair market value on the grant date for compliance with Section 409A of the Code. The platforms provide 409A valuations to assist entrepreneurs with determining the fair market value of their company's equity.<sup>71</sup>

It is important to note that because these are complex sections of the Code, users are advised to consult with an accountant or tax lawyer for further guidance. However, having tools at their disposal can be very valuable for entrepreneurs—especially those with limited resources—as well as the accountants who advise them. Ultimately, these various accounting resources, just like the legal resources described in this Article, can help level the playing field between community-based entrepreneurs and VC-backed entrepreneurs.

#### *E. University Entrepreneurship Centers*

Open source materials are also impacting university entrepreneurship centers and their initiatives, including campus pitch competitions. For example, in addition to sharing educational resources about non-law topics, the University of Chicago's New Venture Challenge (NVC) provides a Simple Agreement for Future Equity (SAFE) and frequently asked questions about SAFEs on its resources webpage.<sup>72</sup> The NVC can also recruit judges, mentors, and advisors who support the use of these resources and are willing to use them to invest in NVC participants, which, in turn, become local businesses that create new products and services and generate employment opportunities. Thus, the NVC utilizes open source legal resources to both provide educational value (e.g., by demonstrating

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reasonably determined FMV on the date of grant face immediate tax on vesting at a combined federal and state tax rate as high as 85% or more.”).

71. *409A Valuations*, eSHARES, INC., <https://esharesinc.com/product/409a> (last visited June 29, 2017); *Out of the Bx, Your 409A Valuation*, SHOOBX, INC. (Jan. 30, 2017), <https://www.shoobx.com/409a-valuation/>; *Expert 409A Valuations*, GUST EQUITY MANAGEMENT, <https://equity.gust.com/409a> (last visited July 13, 2017). Although community-based entrepreneurs typically do not issue stock options because they are not applicable in LLCs, these types of entrepreneurs do provide other types of employee compensation for which Section 409A compliance is required. Lexis Practice Advisor Attorney Team, *Understanding Partnership and LLC Equity Compensation*, LEXIS NEXIS (Jan. 23, 2017).

72. *New Venture Challenge: Resources*, UNIV. OF CHICAGO BOOTH SCH. OF BUS., <https://research.chicagobooth.edu/nvc/traditional-nvc/resources> (last visited June 29, 2017).



how seed financings can be structured and documented) and further economic development (e.g., by empowering the NVC's network of professional volunteers to make seed investments with low transaction costs). In addition to giving practicality and prestige to its program,<sup>73</sup> the NVC's use of open source legal resources encourages additional positive spillover effects. For example, friends and family members of NVC participants can also use these resources to make seed investments. Moreover, people who become familiar with the resources may use them to make investments in other ventures (e.g., other local businesses not even participating in the NVC). Similar to how VC-law firms are likely to have high growth clients with access to more resources than many small businesses, the NVC is likely to have participants with high growth ambitions and access to more resources than students at typical universities. That said, universities everywhere have students with lofty dreams; the open source legal resources should be needed more (not less) by students with less resources, and the resources are equally accessible to such students.<sup>74</sup> Further, the NVC's use of open source legal resources signals to other programs that use of open source legal resources is an acceptable practice.

#### F. Crowdfunding Portals

The Jumpstart Our Business Startups (JOBS) Act<sup>75</sup> recently created a "crowdfunding exemption" that allows companies to raise up to \$1 million every twelve months<sup>76</sup> by selling stock (or other unregistered securities) to accredited or non-accredited investors as long as the sales are made through a registered intermediary (often an SEC registered funding portal).<sup>77</sup> Prior to the JOBS Act, it was more difficult for companies to raise much needed capital from non-accredited investors.<sup>78</sup> One SEC study estimated that, in 2013, 10.1% of the households in the United States were

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73. Yael Hochberg, Susan Cohen & Dan Fehder, *The Top 20 Start-Up Accelerators in the U.S.*, HARVARD BUS. REV. (Mar. 31, 2015), <https://hbr.org/2015/03/the-top-20-start-up-accelerators-in-the-u-s> (ranking the University of Chicago's NVC as the number 4 accelerator program in the United States).

74. However, as discussed above, resources could also be provided for additional types of entrepreneurs (e.g., social ventures and smaller community-based businesses).

75. Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified as amended in scattered sections of 15 U.S.C.) [hereinafter the JOBS Act].

76. After the passage of the JOBS Act, the SEC adjusted the \$1 million amount for inflation and increased the limit to \$1.07 million. See 80 Fed. Reg. 71,537 (Nov. 16, 2015), as amended at 82 Fed. Reg. 17,552 (Apr. 12, 2017).

77. See § 4(a)(6) of the Securities Act of 1933 (codified as amended at 15 U.S.C. § 77d(a)(6) (2012)); SEC Regulation Crowdfunding, 17 C.F.R. § 227 (2016); Jeff Thomas, *Making Equity Crowdfunding Work for the Unaccredited Crowd*, 4 HARV. BUS. L. REV. ONLINE 62 (2014), <http://www.hblr.org/?p=3773>.

78. See, e.g., Edan Burkett, *A Crowdfunding Exemption? Online Investment Crowdfunding and U.S. Securities Regulation*, 13 TRANSACTIONS: TENN. J. BUS. L. 63, 75 (2011)

accredited investor households.<sup>79</sup> While angel investors and VCs will usually be accredited, many entrepreneurs are unable to raise capital from them. Thus, the crowdfunding exemption is important because it creates a new source of capital (i.e., funds from non-accredited investors, which make up approximately 90% of the nation's households) for historically underrepresented entrepreneurs (i.e., entrepreneurs who are unlikely to raise money from angel investors or VCs or qualify for a bank loan).

While the JOBS Act was signed into law in 2012, the SEC's final crowdfunding rules did not permit the first equity crowdfunding transaction in the United States until May 16, 2016.<sup>80</sup> Even though equity crowdfunding is still in its infancy, the funding portals are already embracing open source legal resources. For example, funding portals are sharing resources that entrepreneurs can use to raise capital through their platforms.<sup>81</sup> As the founder of one SEC registered funding portal notes, these resources reduce costs for issuers raising money through their platforms and add value beyond the equity crowdfunding:

Issuers are using templated offering documents on many platforms . . . along with other tools to help them assess their valuation, complete all SEC filings, required background checks and all investor flows during the investment process. The issuer may incur modest third party expenses—like an accountant's independent review, but these tend to pale in comparison to the \$5-25k that a lawyer might charge just to create traditional offering documents. We discovered this point after being approached by a few accelerators that sought access to our platform solely for the legal offering documents for their current cohorts and alumni.<sup>82</sup>

Equity crowdfunding also illustrates a risk associated with open source legal resources: entrepreneurs and others may use documents that are inappropriate for their transaction. For example, arguments have been made that the SAFEs being shared by funding portals are, in fact, not suitable for

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("[S]ecurities laws . . . are a formidable barrier to investment crowdfunding in the United States.").

79. U.S. Securities and Exchange Commission, *Staff Report on the Review of the Definition of "Accredited Investor"* at 48 (Dec. 18, 2015), <https://www.sec.gov/corpfin/reportspublics/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf>.

80. See, e.g., Joseph M. Green & John F. Coyle, *Crowdfunding and the Not-so-Safe SAFE*, 102 VA. L. REV. ONLINE 168 (2016) ("On May 16, 2016, more than four years following the enactment of the Jumpstart Our Business Startups Act . . . the much-anticipated era of retail crowdfunding officially began in the United States.").

81. See, e.g., *Investment Contracts*, WEFUNDER INC., <https://wefunder.com/faq/legal-primer#securities> (last visited June 29, 2017); *The Crowd Safe*, REPUBLIC, <https://republic.co/crowdsafe> (last visited June 29, 2017).

82. Ken Staut, *Regulation Crowdfunding: What We See Day to Day*, CROWDFUNDING INSIDER (Apr. 27, 2017), <https://www.crowdfundinsider.com/2017/04/99381-regulation-crowdfunding-see-day-day/>.

equity crowdfunding.<sup>83</sup> Despite this risk, and given the small size of the investments in equity crowdfunding, open source legal resources are critical to reduce transaction costs to the point where the transactions are economically viable. Stated differently, even small transaction costs become economically prohibitive if the transactions themselves are quite small. Thus, open source legal resources must be leveraged to bring the transaction costs close to zero. Considering the above discussion, there may be opportunities to build entity formation resources and comprehensive platforms into funding portals. Imagine if all companies on a funding portal used essentially the same formation and financing documents, had the same stock option plan, and used the same bookkeeping and payroll tools.<sup>84</sup> These resources not only reduce transaction costs associated with companies raising funds directly from crowdfunding investors, they decrease other transaction costs (e.g., costs associated with forming entities, issuing equity to employees, and secondary trades of their securities) and possibly enhance the companies' operations (e.g., by improving compliance, record keeping, and communications).

## VI. Conclusion

The open source movement has begun. Legal documents, wizards, and other resources are already available online for a broad spectrum of entrepreneurs—including underserved entrepreneurs who may stand to benefit from them the most. While these resources raise ethical and professional responsibility issues, they cannot be easily dismissed as something that only involves attorneys practicing on the fringe. Highly respected international law firms are not only supporting the open source movement, they are leading the charge by providing and maintaining high quality resources on their websites. Perhaps these firms are promoting themselves; however, they understand the importance of entrepreneurship and they see an opportunity to contribute to the ecosystem. They have the opportunity to share battle-tested resources and to make legal services more affordable and accessible to entrepreneurs who have been historically underrepresented. They also have the opportunity to help create a new market—a market where the attorney-client relationship is redefined and best prac-

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83. See, e.g., Green & Coyle, *supra* note 80, at 170 (the SAFE “is not the right tool for channeling retail investment capital to crowdfunding companies”); *Investor Bulletin: Be Cautious of SAFEs in Crowdfunding*, U.S. SECURITIES AND EXCHANGE COMMISSION (May 9, 2017), [https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib\\_safes](https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_safes).

84. While this *appears* to reduce options for entrepreneurs, it may reduce costs to the point where entrepreneurs *actually* have access to things, such as sophisticated entity structures and seed capital, they previously did not. It is also reminiscent of Henry Ford’s attributed quote that customers, who previously could not afford cars, could get a Model T in “(a)ny color . . . so long as it is black.” Patrick Vlaskovits, *Henry Ford, Innovation, and That “Faster Horse” Quote*, HARVARD BUS. REV. (Aug. 29, 2011), <https://hbr.org/2011/08/henry-ford-never-said-the-fast>.

tices are themselves open sourced. While some entrepreneurs may attempt, or even need, to utilize these resources without seeking legal counsel, many will use the resources to build more productive attorney-client relationships. Other organizations that assist entrepreneurs are also shaping their business models to capture and share the value created by these resources. Legal clinics, small business development centers, accelerators, accounting and tax firms, university entrepreneurship centers, and crowdfunding portals are all taking part in the open source movement. In short, open source legal resources are disrupting many business models and astute entrepreneurs and organizations are already capitalizing on the value they add.

While this Article focused on the impact open source legal resources have on entrepreneurs and the organizations that support them, the open source movement will spark broader implications in the legal community. Other transactions could also benefit from a pool of high quality resources that are open to clients, attorneys and others. Whether entering into a lease, submitting a trademark or copyright application, creating a will, preparing a prenuptial agreement, or (if things do not work out) filing for a divorce, open source legal resources will make legal work more productive and thus more affordable and accessible. It is time to bridge the gap between traditional legal services that few can afford and customary do-it-yourself options. The open source movement is building that bridge.

# Examples of Existing Open Source Resources

FORMATIONS		LINKS
Delaware Corporation		
Incorporation Questionnaire	1, 2, 3	
Certificate of Incorporation	1, 2, 3, 4, 5, 6	
Bylaws	1, 2, 3, 4, 5, 6	
Action by Written Consent of Incorporator	1, 2, 3, 4, 5, 6	
Initial Organizational Board Resolutions	1, 2, 3, 4, 5, 6	
Founder Stock Purchase Agreement	1, 2, 3, 4, 5, 6	
Common Stock Certificate	1, 2, 3, 6	
Indemnification Agreement/Provisions	1, 2, 3, 4, 6	
Stock Plan	2, 6	
Board Approval of Stock Plan	2, 4, 6	
Stockholder Approval of Stock Plan	2, 4, 6	
Option Agreement (Grant)	2, 6	
Restricted Stock Purchase Agreement "RSP" (Grant)	2, 6	
Board Approval of Option/RSP Grant	2	
<b>Delaware LLC (Single &amp; Multiple Member)</b>		
Certificate of Formation	3	
LLC Agreement	3	
Subscription Letter	3	
Contribution & Assignment Agreement	3	
Founder's Restricted Unit Agreement	3	
<b>OTHER RESOURCES</b>		
Employee Offer Letter/Employment Agreement	1, 2, 5, 6	
Consulting Agreement	1, 2, 5, 6	
Advisor Agreement	1, 5	
Confidential Info & Invention Assignment Agreement	1, 2, 3, 4, 5, 6	
Non-Competition & Non-Solicitation Agreement	5	
Nondisclosure Agreement		
Website Terms & Conditions and Privacy Policy	1, 2, 5	
Equity Management Platform	1	
	15	

FINANCINGS		LINKS
Convertible Debt		
Term Sheet		1, 7
KISS: Debt Version		8
<b>Convertible (Non-Debt) Securities</b>		
SAFE: Primer		9
SAFE: Cap, no Discount		1, 9
SAFE: Discount, no Cap		1, 9
SAFE: Cap and Discount		1, 9
SAFE: MFN, no Cap, no Discount		1, 9
Convertible Security Financing Term Sheet		10
Convertible Security Purchase Agreement		10
Convertible Security		10
KISS: Equity Version		8
<b>Loans</b>		
Promissory Note		11
Revenue Loan Agreement		11
<b>Series Seed Convertible Preferred Stock</b>		
Term Sheet		12, 13
Restated Certificate of Incorporation		12, 13
Stock Investment/Purchase Agreement		12, 13
Investors' Rights Agreement		13
<b>Series A Convertible Preferred Stock</b>		
Term Sheet		14
Stock Purchase Agreement		14
Amended and Restated Certificate Of Incorporation		14
Investors' Rights Agreement		14
Voting Agreement		14
Right of First Refusal and Co-Sale Agreement		14
Management Rights Letter		14
Indemnification Agreement		14

	SOURCE	LINKS
1	Cooley LLP's Cooley GO*	<a href="https://www.cooleygo.com/documents/index-document-generators/">https://www.cooleygo.com/documents/index-document-generators/</a>
2	Orrick, Herrington & Sutcliffe LLP's Startup Forms Library	<a href="https://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms">https://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms</a>
3	Goodwin Procter LLP's Founders Workbench*	<a href="http://www.foundersworkbench.com">http://www.foundersworkbench.com</a>
4	Perkins Coie LLP's Startup Percolator*	<a href="http://www.startuppercolator.com/formation/">http://www.startuppercolator.com/formation/</a>
5	WilmerHale LAUNCH*	<a href="https://launch.wilmerhale.com/build/document-generator/">https://launch.wilmerhale.com/build/document-generator/</a>
6	Reed Smith LLP's RStart*	<a href="https://www.rstart.com/">https://www.rstart.com/</a>
7	Wilson Sonsini's Term Sheet Generator*	<a href="https://www.wsgr.com/WSGR/Display.aspx?SectionName=practice/termsheet-convertible.htm">https://www.wsgr.com/WSGR/Display.aspx?SectionName=practice/termsheet-convertible.htm</a>
8	500 Startups' KISS ("Keep It Simple Security")	<a href="http://500.co/kiss/">http://500.co/kiss/</a>
9	Y Combinator's Startup Documents	<a href="https://www.ycombinator.com/documents/">https://www.ycombinator.com/documents/</a>
10	TheFunded.com, Founder Institute and Wilson Sonsini Initiative Reported by TechCrunch	<a href="https://techcrunch.com/2012/08/31/the-funded-founder-institute-and-wilson-sonsini-debut-startup-friendly-seed-financing-vehicle-convertible-equity/">https://techcrunch.com/2012/08/31/the-funded-founder-institute-and-wilson-sonsini-debut-startup-friendly-seed-financing-vehicle-convertible-equity/</a>
11	Wefunder's Loan & Promissory Notes	<a href="https://wefunder.com/faq/securities#loan">https://wefunder.com/faq/securities#loan</a>
12	Ted Wang's Series Seed Financing Documents	<a href="http://www.seriesseed.com">http://www.seriesseed.com</a>
13	Gust's Series Seed Documents	<a href="http://gust.com/series-seed/">http://gust.com/series-seed/</a>
14	NVCA's Model Legal Documents	<a href="http://nvca.org/resources/model-legal-documents/">http://nvca.org/resources/model-legal-documents/</a>
15	Shoobx, Inc.	<a href="https://www.shoobx.com">https://www.shoobx.com</a>

\* Resources include a generator or wizard-like tool.

**DISCLAIMER.** This summary has been prepared for informational purposes only. We do not assume responsibility for the accuracy, adequacy or timeliness of any information contained in it (or found through it). The fact that we have provided links to organizations does not mean that we endorse them or have any relationship with them. This information should not be considered legal (or any other professional) advice. Do not rely on this information for any purpose without seeking advice from an attorney and other qualified professionals licensed in their jurisdiction.

**APPENDIX B**

**RESTRICTED STOCK PURCHASE AGREEMENT**

THIS RESTRICTED STOCK PURCHASE AGREEMENT (the “*Agreement*”) is made as of \_\_\_\_\_ by and between STARTUP INC., a Delaware corporation (the “*Company*”) and Ben Franklin (“*Purchaser*”). Certain capitalized terms used below are defined in the terms and conditions set forth in Exhibit A attached to this Agreement, which are incorporated by reference.

**Total shares of Stock purchased:** 4,000,000 shares of Common Stock (the “*Stock*”)  
**Purchase Price per share:** \$0.0001  
**Total Purchase Price:** \$400.00  
**Form of Payment:** Cash: \$400.00

**Vesting Schedule:**

4,000,000 shares of the Stock (the “*Restricted Stock*”) are subject to the Repurchase Option as of the date of this Agreement. On the date 12 months from \_\_\_\_\_, 20\_\_ (the “*Vesting Anniversary Date*”), 12/48th of the Restricted Stock shall vest and be released from the Repurchase Option; thereafter, 1/48th of the Restricted Stock shall vest and be released from the Repurchase Option on a monthly basis measured from the Vesting Anniversary Date, until all the Restricted Stock is released from the Repurchase Option (provided in each case that Purchaser remains a Service Provider as of the date of such release).

*[Remainder of page intentionally left blank]*

**Additional Terms/Acknowledgements:** The undersigned Purchaser acknowledges receipt of, and understands and agrees to, this Restricted Stock Purchase Agreement, including the terms and conditions set forth in **Exhibit A** attached to this Agreement, which are incorporated by reference.

**COMPANY:**

**STARTUP INC.**

By: \_\_\_\_\_

Name: Rocky Balboa  
Title: Chief Executive Officer

Address: 123 Main Street  
Suite 1302  
Philadelphia, Pennsylvania 94500

**PURCHASER:**

**BEN FRANKLIN**

\_\_\_\_\_  
(Signature)

Address: 789 Main Street  
Philadelphia, Pennsylvania 94500



EXHIBIT A

TERMS AND CONDITIONS INCORPORATED INTO  
RESTRICTED STOCK PURCHASE AGREEMENT

1. **PURCHASE AND SALE OF STOCK.** Purchaser agrees to purchase from the Company, and the Company agrees to sell to Purchaser, the number of shares of Stock for the consideration set forth in the cover page to this Agreement. The closing of the transactions contemplated by this Agreement, including payment for and delivery of the Stock, shall occur at the offices of the Company immediately following the execution of this Agreement, or at such other time and place as the parties may mutually agree.
2. **INVESTMENT REPRESENTATIONS.** In connection with the purchase of the Stock, Purchaser represents to the Company the following:
  - (a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Stock. Purchaser is purchasing the Stock for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "*Act*").
  - (b) Purchaser understands that the Stock has not been registered under the Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed in this Agreement.
  - (c) Purchaser further acknowledges and understands that the Stock must be held indefinitely unless the Stock is subsequently registered under the Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the Stock. Purchaser understands that the certificate evidencing the Stock will be imprinted with a legend that prohibits the transfer of the Stock unless the Stock is registered or such registration is not required in the opinion of counsel for the Company.
  - (d) Purchaser is familiar with the provisions of Rule 144 under the Act as in effect from time to time, that, in substance, permits limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of such securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions.