

START-UP PACK

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FOREWORD

DLA Piper is one of the leading global business law firms. We have been established in Silicon Valley for more than 30 years and have a significant presence in the United Kingdom, including in Tech City. We are among the world's largest and most geographically diverse legal practices with clients ranging from start-ups to AIM and FTSE 100 listed companies. Most importantly, we recognise the benefits of working with companies across the corporate life cycle.

We have lawyers with specialist knowledge of companies across six continents, meaning we can serve clients wherever in the world they do business – quickly, efficiently and with genuine knowledge of both local and international considerations.

We have extensive experience of advising start-ups, utilising our global network of business relationships with venture and strategic investors, entrepreneurs and corporates to help them get organised and funded.

WELCOME TO THE DLA PIPER START-UP PACK

This Start-Up Pack has been designed and prepared by DLA Piper's Technology Sector initiative, which includes lawyers with expertise in intellectual property, corporate, employment and tax matters.

The purpose of this Start-Up Pack is to provide assistance and support to early stage start-ups who are looking to establish their business on a more formal basis. Creating the right legal framework and ensuring that the business is protected at the outset is vital for a start-up to achieve its full potential.

We have drawn from our significant experience in advising companies at all stages in the corporate life cycle to assist start-up companies with understanding some of the key legal issues that are likely to be relevant to them at this stage of their development.

DLA Piper have also been actively involved in and devoted significant resources to the vibrant start-up scene. We have a presence in London's thriving Tech City and by attending and hosting numerous start-up and venture capitalist events we have been able to tailor this Start-Up Pack to the needs of the start-up community.

This Start-Up Pack contains the key legal documents that an early stage start-up will need and includes:

- a step by step guide to setting up a company in the UK;
- a subscription and shareholders' agreement;
- an intellectual property assignment agreement;
- a non-disclosure agreement;
- a standard employment contract;
- an intellectual property checklist;
- a tax checklist; and
- a checklist of regulatory restrictions.

The information contained in this Start-up Pack is offered open source and is freely available. It is intended to be shared amongst the start-up community to educate and provide assistance to start-ups to reach their full potential.

A few words of warning... We very much hope users of this Start-up Pack enjoy the benefits of the information enclosed and gain a greater understanding of some of the key legal issues that they are likely to face and how to tackle such issues with greater knowledge and awareness.

The documents in this Start-up Pack are intended as a general overview of some of the key legal issues that are likely to be relevant to start-ups. It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this start-up pack, we recommend that you seek legal advice before taking any further action.

This Start-up Pack is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted, however, the law may have changed since this date. The information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

This Start-up Pack is subject to the terms and conditions of use stated on the **final page**.

DLA PIPER UK LLP

For more information, to send feedback, or for receiving legal updates regarding start-ups please send an email to startup@dlapiper.com

AN INTRODUCTION TO KEY LEGAL DOCUMENTS FOR START-UPS

This Start-Up Pack includes not only legal documentation that a startup may wish to adopt to formalise their business, but also useful guides and checklists. They have been prepared by lawyers with experience in corporate, intellectual property, employment and tax matters and are aimed at early stage start-ups (who are considering setting up a company or those who have very recently incorporated).

Incorporating a Company

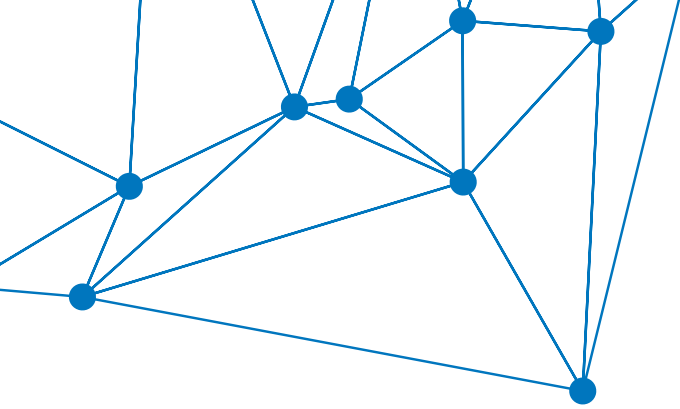
One of the first legal steps that any entrepreneur should consider is the incorporation of a private limited company. A private limited company is the most common vehicle for start-ups in the UK. As an overview, the benefits of forming a private limited company include the following:

- A private limited company has a distinct legal personality separate from its owners. It can enter into contracts with third parties, hire employees and is also likely to be required for the purposes of financing (whether it be by crowd funding, equity investment or bank debt).
- It enables founders to control their exposure to financial risk. Whilst a founder's investment in the start-up may be lost, in the absence of misfeasance, a founder's home and other assets will be protected.
- A company can serve as a vehicle for intellectual property to be pooled and protected. If intellectual property has been developed with a group of colleagues, a company enables the founders to allocate a share in the ownership of the company and avoid disputes.

Any choice of business structure should be considered from a tax perspective. If you are in any doubt as to whether a company is the best structure for you, please consult a tax advisor for more detailed advice.



A step-by-step guide to setting up a company in the UK is provided in this guide.



Key Legal Documents

The articles of association and the subscription and shareholders' agreement

With respect to the governance of a company, the two most important documents are the articles of association ("**Articles**") and the subscription and shareholders' agreement ("**SSHA**").

The Articles are a contract between the shareholders of a company which must be filed at Companies House. The purpose of the Articles is to regulate the internal management of the company and how power and control is shared between the shareholders of the company and its directors. The Articles address not only the day to day practicalities of running the company, but also other important information regarding the make-up and ownership of the company. The most common form of Articles for newly formed companies are the Model Articles.

➡ **The Model Articles are available from Companies House here.**

The SSHA is a private and confidential document that records the commercial terms of the arrangement between the parties and will include specific details of any relevant proposed subscription for shares and any other key terms of the investment.

The SSHA in the Start-up Pack is subject to the terms and conditions of use stated on the final page has been prepared on the basis of start-ups receiving seed financing from friends and family and/or other private investors. The SSHA has two main purposes: a) to provide the legal mechanism for an investor to subscribe for shares in the company (typically including details on price, conditions and number of shares); and b) to define the rights and obligations of the shareholders and to govern their relationship between one another and the company.

The SSHA will need to reflect the commercial agreement between the founders and/or any investors and it is important for the correct balance to be achieved. Founders should give detailed consideration to how much equity to make available to investors as this may have a significant impact at the time further investment is sought. For obvious reasons, founders are likely to want to retain as much equity in the company as possible.

➡ **A precedent SSHA has been provided in this Start-up Pack.**

The intellectual property and assignment agreement

Intellectual Property ("**IP**") is one of the most important parts of any business, particularly for a technology company, where it can be vital. If IP is or may be key to your business, you should take care when entering into any agreement that involves sharing or using IP, whether yours or a third party's.

An assignment of IP, transfers the ownership and rights of the IP specified in the assignment from one person to another.

The IP assignment agreement ("**IP Assignment Agreement**") provided is a simple assignment for transferring ownership of relevant IP rights of an individual (e.g. the IP rights created by that individual in connection with the business prior to becoming an employee, director or shareholder or a consultant) to the company. Under the IP Assignment Agreement the individual no longer has any rights in or to the IP assigned.

The IP Assignment Agreement should only be used for straightforward circumstances to transfer existing IP, where the IP is easy to identify and define. IP must be described in sufficient detail to clearly identify what is assigned. If IP is not correctly described, the assignment may not be effective and may not transfer the IP that you want it to transfer. It is important to make sure that the assignment is consistent with the terms of any other agreement that you have with the particular individual.

If you are in any doubt or if the IP concerned is particularly important, valuable, difficult to define or if there is any additional complexity, we recommend that you seek legal advice to ensure it is properly transferred and all issues are covered.

➡ **A precedent IP Assignment Agreement has been provided in this Start-up Pack.**

The non-disclosure agreement

At the outset, a valuable tool for protecting a business is to maintain confidentiality of company information and IP. However, the need to maintain confidentiality must be balanced with the need to elicit further investment and/or collaboration with third parties. In order to do so, certain confidential information may be required to be shared with such third parties.

Before sharing sensitive or confidential information it is ideal to have a non-disclosure agreement ("**NDA**") in place, wherever possible. Where it is not possible to put an NDA in place, a company could seek to protect company information and IP by making it clear in writing that any information provided is confidential and should not be disclosed to any other person and by limiting the disclosure of such information to a need to know basis. Please be aware that venture capitalists and angel investors often refuse to sign NDAs on the basis that, amongst other things, to do so may restrict their ability to seek out and evaluate other potential investments. This NDA is not intended to be used for potential investors. For an example of such an NDA, the **BVCA** has produced a draft outline that investors are likely to be familiar with.

The content of an NDA depends on the nature of the information being disclosed, the relationship between the parties and the purpose of sharing the information. On that basis, an NDA cannot really be "general" or "standard form" as it should meet the needs and requirements of the specific circumstances.

The precedent NDA provided in this Start-up Pack is intended for use at the early stages of a start-up business to be used when deciding whether to collaborate with another start-up entity. This NDA is not intended to cover collaboration going forward and if the relationship does develop you should obtain advice on the form of collaboration arrangements to manage the relationship and confidentiality going forward.

The NDA includes mutual promises to keep information confidential and provides obligations of confidence for both parties covering information disclosed by you and your "Representatives" and also provides the requirements for the end of the relationship including the return and destruction of confidential information.

It is important that an NDA is suitable for the specific circumstances and you should seek legal advice if you are unsure whether this particular NDA is applicable or if you have any queries on specific provisions.

Where confidential information is particularly valuable it is advisable to make it clear that it is covered by an NDA. For evidential purposes you may wish to state that any information provided is being provided subject to any NDA that has been signed (in addition to marking it confidential). Alternatively, you could list any key confidential documents in the NDA itself (e.g. as a new sub-paragraph (f) in the definition of "Confidential Information").

Where information has been provided prior to signing an NDA, you may wish to send a follow up email to the other party identifying the confidential information provided and confirm that it is covered by any NDA that has been signed.



A precedent NDA has been provided in this Start-up Pack.

The Employment Contract

All start-ups will, during the course of their corporate life-cycle, have employees.

As they look to expand they may need to employ personnel providing technical, marketing and/or operational expertise. It is important that the rights of both the company and its employee(s) are properly addressed and an employment contract should be entered into between the parties in order to best protect the company.



A precedent employment contract has been provided in this Start-up Pack.

The essential terms of the Employment Contract include role, the date when the employment began and the nature of its term, salary and other benefits, standard hours of work and job location.

For technology start-ups in particular, it will also be vital that the Employment Contract includes provisions covering confidentiality and ownership of intellectual property. It is customary that all intellectual property created by any employee during his or her employment must remain the sole property of the company. Post-termination restrictive covenants should also be included in order to best protect the company's interest, staff and client base.

Legal Checklists

We have prepared three legal checklists designed to cover some of the key intellectual property, tax and regulatory issues that are likely to be relevant to a start-up business at this stage of their development.



Further information on the legal checklists can be found here.

GLOSSARY OF USEFUL VENTURE CAPITAL AND COMPANY TERMS

Angel Groups – Organisations, funds and networks made up of high net-worth individuals formed for the specific purpose of facilitating angel investments in start-up companies.

Anti-dilution Provisions – Mechanisms by which certain shareholders' economic ownership in the company may be protected from being diluted (upon the issuance of additional shares) without the shareholders' having to make a material new investment.

Articles of Association – The main constitutional document of every company which governs the company's internal matters. See page 3 for more information.

Brokers – Individuals or firms retained by early-stage companies to raise funds for a finder's fee.

Business Day – commonly refers to any day (other than a Saturday, Sunday or public holiday) on which banks are open for normal banking business.

Call – A type of option (but not an obligation) for a purchaser to acquire a specified number of shares from a seller at a specified price and exercisable during a specified period, or upon the occurrence of specified events.

Cap Table – A table describing the capitalisation of a company including the names and number of shares owned by each principal/founder and investors and any other obligations to issues shares, such as convertible debt, warrants or employee options. This table is often segmented to describe each of several funding rounds in the company and clearly differentiates between holders of different classes of shares.

Change of Control – This typically means (i) an acquisition of a company by means of a merger, consolidation, share exchange or other transaction or series of related transactions resulting in a change in ownership of the issued shares of the company's share capital such that the shareholders of the company prior to such a transaction do not own, directly or indirectly, at least 50% of the voting power of the surviving entity in the same proportions, relative to other shareholders, as they did prior to such transaction; or (ii) the disposition by sale, license or otherwise of all or substantially all of the assets of the company.

Confidential Information – The definition varies from one agreement to another (see how this is defined in the

Non-Disclosure Agreement) but will commonly include all information that is only known to a certain group of individuals or a company and is not known to the public. Information could include details on transactions, customers, employees and other sensitive matters.

Conversion Rights – Rights by which preference shares "convert" into ordinary shares at a pre-agreed conversion ratio (e.g. one preference share converts into one ordinary share). Usually a holder of preference shares has this right at any time after acquiring such shares. The company may want rights to force a conversion upon an IPO, upon the hitting of certain sales or earnings' targets, or upon a majority of supermajority vote of the preference shareholders.

Convertible Loan Note – An instrument by which investors provide loans to companies which provide the option upon certain agreed terms or events to 'convert' the outstanding loan into shares in the company.

Co-Sale Provisions or Tag Rights – Gives investors the right to sell their shares in the same proportions and for the same terms as the founders, managers, or other investors, should any of those parties receive an offer for some or all of their shares which they wish to accept. Most often sought by investors who will hold a relatively small portion of a company compared to such founders, managers or other investors.

Deed of Adherence – A document which a new shareholder will typically be required to enter into if there is an existing shareholders' agreement in order to assume the same rights and responsibilities of the other shareholders in the company.

Dilution – The reduction in percentage ownership of the company that shareholders suffer due to the issuance of additional shares, e.g. by subsequent funding rounds.

Director – means any of the directors serving on the board of directors of the company.

Dividends – Profits available for distribution and paid by the company to its shareholders as a return on an original investment. Generally, they are paid at the election of the company (and subject to any legal restrictions on doing so). Dividends are not often paid until much later in the business life cycle as start-ups are very rarely lawfully able to pay them.

Due Diligence – Process of validating a potential investment. Usually involves the study of six areas of a company's business: market structure, competition and strategy; technology assessment; management team; operating plan; financial review; and legal review.

Equity – Ownership interest in a company, usually in the form of shares or share options.

Event of Default – A specific event, such as failure to pay an amount due under a loan, which will give a party (usually lenders) specific rights, such as the ability to demand full payment of outstanding debts or the ability to enforce any security the lender may have.

Exit Strategy – An agreed strategy for shareholders to see a return on the shares they have purchased. This will normally take the form of a floatation or a sale of the company. Likely to be at a developed stage of the business life cycle.

First Refusal Rights – A negotiated obligation of the company or existing investors to offer shares to the company or other existing investors at fair market value or a previously negotiated price, prior to selling shares to new investors.

FMV (fair market value) – An acceptable selling price to an independent third party. What a willing buyer would pay a willing seller on a transaction negotiated at arm's length.

Founder – A person who founded a company and was an initial subscriber for shares in the company.

Incorporation – The act of registering a company (see the guide to incorporation on page 9 of this Start-up Pack).

Information Rights – Rights granting access to the company's information, i.e., inspecting the company books and receiving financial statements, budgets and executive summaries.

Intellectual Property – Right or non-physical resource that is presumed to represent an advantage to the firm's position in the marketplace, including patents, trademarks, trade secrets, copyrights and licenses.

Intermediary (Financial Intermediary) – an individual or institution which typically assists persons or entities in making investment decisions.

IPO (initial public offering) – the regulated process by which a private company registers its shares for trading in public markets ("going public").

Investment Bankers – Representatives of financial institutions engaged in the issue of new securities, including management and underwriting of issues as well as securities trading and distribution.

Investor – The common term for a person or company other than a Founder or Employee that purchases shares in a company.

Issued Share Capital – The amount of shares of a company that have been issued and are held by shareholders.

Key Men – The term given to specific employees within a company whose value has been identified as being material to the company. Key Men are often the subject of specific company insurance policies and more sophisticated service contract terms.

Leverage Buyout – Acquisition of a company, using a mixture of borrowed funds and equity. Commonly, the target company assets serve as security for the loans taken out by the acquiring firm, which repays the loan out of the cash flow of the acquired company.

Licensed Intellectual Property – means any Intellectual Property licensed to the company by a third party.

LLP – Limited Liability Partnership – An entity owned by "LLP members" who either manage the business themselves or appoint "managers" to run it for them. All members and managers have the benefit of limited liability, and, in most cases, are taxed in the same way as a general partnership; i.e., the entity is not subject to tax, just the members.

LP – Limited Partnership – A partnership formed by two or more persons for the purposes of carrying on a business in common with a view of profit. It must have at least one general partner (who often has responsibility for managing the business of an LP) and a limited partner (who is required to contribute capital to the LP). In most cases, taxed in a similar way to an LLP, i.e. the LP is not subject to tax, just the members.

Member – An alternative word describing a shareholder in a company.

Mergers and Acquisitions (M&A) – Transactions as part of corporate strategies involving the buying, selling, merging and dividing of companies.

Non-Disclosure Agreement (NDA) – An agreement which precludes disclosure to third parties of private information revealed by one party to another, usually for a fixed term.

Ordinary Shares – These are the most common form of share for a start-up company. In the case of a liquidation of the company, holders are generally entitled to all assets and cash of the company after the payment of obligations such as bank debt, corporate debt, taxes, trade creditors, employee obligations, and preference shares (if applicable). Founders and employees almost always own shares or options for ordinary shares.

Owned Intellectual Property – means any Intellectual Property owned or developed by the Company.

Post-money Valuation – Valuation of a company immediately after a new round of investment, that is, the pre-money valuation plus the total consideration of the new round of investment.

Pre-emptive Rights – The right of a shareholder to provide financing/purchase additional shares in the company on the same terms as offered to other parties up to the amount necessary to maintain such holders pro-rata ownership percentage in the company.

Pre-money Valuation – Valuation of a company agreed upon by the existing owners and the new investors, immediately prior to a new round of investment.

Preference Shares – Most likely class of share for angel or venture capital equity investments. Preference shares rank in priority to ordinary shares but are subordinate to debt. The rights attaching to the preference shares will be detailed in the articles of association of the company. This will often require the adoption of bespoke articles of association. The likely rights attaching to preference shares include voting, dividend, management, conversion and other rights and preferences over and above the rights attaching to ordinary shares.

Private Placement – The sale of shares, bonds or other investments not to the public, sometimes directly to institutional or accredited investors. A private placement does not require the production of a detailed prospectus, as a public offering does.

Put – An investor's right to force company to purchase his/her shares. Used by investors to assure eventual liquidation of their investment. Opposite of a "Call."

Redemption Rights – Rights to force the company to purchase shares ("put") and more infrequently the company's right to force an investor to sell their shares to the company (a "call").

Seed Financing – The initial capital used to start a business. Seed capital often comes from the personal assets of the founders of the company and/or from friends and family. Different stages of seed financing are:

Series A – first round of investment

Series B – second round of investment

Series C – third round of investment

Sophisticated Investor – An investor with the business background and investment experience to be able to obtain the information needed to make reasonable investment decisions about the company in question. In the context of start up financing, for legal purposes whether someone qualifies as a "sophisticated investor" will be determined by reference to certain statutory tests. Please see page 20 for further information.

Start-up Financing – Provided to companies completing product development and for early marketing. Companies may be in the process of organising or may already be in business, but usually have not sold their product commercially.

Share Option – Grants the right to purchase securities (usually ordinary shares) at a stated exercise price over some future period of time.

Subordinated Debt – Debt instrument "subordinated" to amounts lent by institutions such as banks. This type of debt generally does not limit the company's borrowing power with banks.

Subscribe – An application to purchase shares in the company which have not previously been issued to anyone else.

Subscription Price – means the aggregate price paid to purchase new shares in a company.

Termination Event – means any one of the events listed in an agreement, which shall terminate the agreement immediately.

Term Sheet – A preliminary document that often includes the key terms of an investment in a company including agreed-upon valuation of the business, including the proposed capitalisation table; key financial and legal terms; rights of both parties.

Unissued Share Capital – Refers to shares that a company has the power to allot or issue but which it has not done so at this stage.

Venture Capitalist – A financial institution specialising in the provision of equity and other forms of long-term capital to enterprises, usually to firms with a limited track record but with the expectation of substantial growth. The venture capitalist may provide both funding and varying degrees of managerial and technical expertise.

Warrants – Securities that give holders the right, but not the obligation, to buy shares at a price for a given period of time. Similar to share options (for non-employees) and often offered to investors as a bonus for cash investment or to service providers in exchange for fees.

Warranty/Warranties – Specific statements in relation to the company given by the directors of the company (or the sellers) to Investors purchasing shares in the company to give a level of comfort to the purchasers about the state of the company in which they are investing.

A STEP-BY-STEP GUIDE TO SETTING UP A COMPANY IN THE UK

When setting up and starting a business, there are a number of different legal structures available. Whilst the most common entity used by start-ups is a private limited company, this may not be appropriate for all businesses. If you are any doubt, please seek legal and/or tax advice.

This guide provides simple instructions on setting up a private limited company using the online service at Companies House. An alternative would be to instruct a company formation agent to incorporate a company on your behalf (which is a more costly option).

This guide also explains the basic steps to be taken to check the availability of company names and to incorporate a company online.

People are often surprised by just how cheap and simple it is to set up or 'incorporate' a company in the UK. Setting up a private limited company brings a number of advantages, but as it is a formal process, it does need to be taken seriously as, amongst other things, there will be on-going compliance requirements (which include annual and event driven filings). Further details on these on-going obligations can be found on the Companies House website.

How to check whether your preferred company name is available through Companies House

Consideration should be given at the outset to the company name and the likely branding for the business. It should be noted that the registration of a company name will not give trademark protection and separate trademark searches will need to be undertaken.



Please see the **intellectual property checklist** provided in this Start-up Pack for further information.

- Go to the **Companies House WebCheck service**
- Type in all or part of your proposed name in the 'name' box on the screen
- Select the third option below the name box 'Company Name Availability Search' and click 'search'
- The results of the search will now be displayed on the screen in red writing, which will likely be:
 - **“There are no exact matches found. The company name is not currently registered.”** This means that the proposed company name is available for registration; or
 - **“The following are considered to be the “same as” your chosen name so would prevent it being registered.”** This means the proposed company name is not available for registration.



Using Companies House Web Incorporation Service to register with Companies House

- Go to: www.companieshouse.gov.uk/promo/webincs/
- Register as a new customer using the prompts on the right of the screen
- Enter all the necessary company information including the name and registered office of the company (**note:** the company type should be selected as 'Limited' and the region should be 'England and Wales' or 'Scotland')
- Enter the information for the proposed director(s) (this is likely to be the founder(s) of the company), including their personal 'consent' information for security purposes (these will be required for future company filings online). Note, it is possible to add additional directors and/or a company secretary at this stage or at a later date
- Enter the information on the share capital of the company. It is up to the founder to decide on this amount. For a simple start-up company a typical amount would be 100 ordinary shares of £1 each. For this option select 'ordinary' in the 'class of share' box and 100 in the 'number of shares' box
- We recommend that shares be issued as 'fully paid' (i.e. the new shareholders are paying cash for their shares which will need to be paid (in due course) into the company bank account). If this is the case, please enter '100' in the 'paid' column and '0' in the unpaid column)
- Prescribed particulars – leave the current wording that is included in this box and press 'submit'
- Enter the details for the person(s) who will be the first shareholder(s) of the company (also known as 'subscribers'). This information will include the number and class of shares being subscribed for. At this stage, we would expect most start-ups to have one class of share, being ordinary shares

- Accept the statement of compliance (note: the link to the memorandum of association shows the first shareholders of the company)
- Check the overall summary of the company to ensure all of the information is correct, and once confirmed pay the required fee of £15.00
- Done! Once you have received confirmation from Companies House, your company is now up and running

Remember, a private limited company has a separate legal personality from its shareholders and should now be used to enter into contracts, open bank accounts etc

You will also need to bear in mind that there will be annual and event driven filings that will need to be made at Companies House. More detailed information can be obtained from the 'guidance' section on the Companies House website.



SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT

With respect to the governance of a company, one of the most important documents is the subscription and shareholders' agreement ("**SSHA**") (the other being the articles of association).

The SSHA is a private and confidential document that records the commercial terms of the arrangement between the parties and will include specific details of any proposed subscription for shares and any other key terms of the investment.

The SSHA has been prepared on the basis of start-ups receiving seed financing from friends and family and/or other private investors. It can also be adapted for use with multiple investors. The SSHA has two main purposes: a) to provide the legal mechanism for an investor to subscribe for shares in the company (typically including details on price, conditions and number of shares); and b) to define the rights and obligations of the shareholders and to govern their relationship between one another.

The SSHA will need to reflect the commercial agreement between the founders and/or any investors and it is important for the correct balance to be achieved. Founders should give detailed consideration to how much equity to give away to investors as this may have a significant impact at the time further investment is sought. In practice, founders are likely to want to retain as much equity in the company as possible.

You should be comfortable that this SSHA is suitable for the circumstances in which you are seeking to use it, and seek legal advice to ensure it is suitable for your circumstances or if you are unclear of the meaning of any of the particular provisions.

 [Download a precedent of the SSHA here](#)

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this Start-up Pack, we recommend that you seek legal advice before taking any further action.

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Overview of Key Terms

Warranties

Warranties are contractual statements commonly given by the company and the founders of the company (the warrantors) to investors to provide comfort to the investors regarding the condition of the company. The investors are likely to also obtain comfort by undertaking their own financial and legal research (“due diligence”) into the company and its business.

The warranties serve two main purposes: (i) to elicit information from the warrantors of any known problems; and (ii) to potentially provide the investor with a remedy if a statement made about the company later proves to be incorrect. Any known problems should be specified in as much detail as possible in schedule 5 of the SSHA. Please see point 7 of the instructions on page 13 for further guidance.

The warranties in the SSHA are given by the warrantors jointly and severally, meaning that the investors can choose to bring a claim against any one or more of the warrantors for any loss arising from a breach of warranty. The SSHA expressly excludes any right for a warrantor to seek any contribution from another warrantor.

In addition, the majority of the warranties are qualified by the awareness of the warrantors, meaning that the warrantors are only liable for a breach of warranty if they (or any of the other warrantors) were aware of the particular matter or circumstance that gave rise to a breach of warranty at the time the SSHA was signed.

All warranties are subject to financial and time limits on claims (other than in the case of fraud).

In the light of all of the above points, before entering into the SSHA, founders should be completely comfortable with their co-founders. Given the importance of the warranties, the founders (and any key employees) may wish to discuss the warranties (and any known problems) together in detail.

Restrictive Covenant

Detailed consideration should be given to the scope of the restrictive covenant. To be enforceable, the covenants should be reasonable as to geographical area, the length of time the restrictions are expressed to apply and the type of business covered. If they extend beyond what is reasonably necessary to protect the legitimate interests of the company, they may be struck down by the courts as being void or unenforceable. What is reasonable will, of course, depend on the circumstances in each particular case.

Majority Investor Consent

Clause 9 of the SSHA includes a list of items that require the consent of shareholders holding at least 75 per cent. of the share capital of the company. These are designed to protect the investors' financial investment in the company.

All existing shareholders also have the benefit of the statutory pre-emption rights contained in Part 17 of the Companies Act 2006. Generally speaking, any new shares issued by the company for cash will need to be offered to the existing shareholders in proportion to their existing holdings before they are offered to new investors.

Other

In addition, the investors have the right to receive certain financial information in relation to the company. The founders and the company should be wary of the nature and extent of information (financial or otherwise) provided to any new investors from time to time. Once the SSHA has been entered into, most information provided by the company to the investor(s) will be covered by the confidentiality obligations contained in schedule 4.

The founders and the company should always take steps to ensure that any information provided to the investor(s) is correct, as it is important to protect the relationship with the investor(s) and to ensure that no legal liability arises.

Consideration should also be given to whether any tax elections need to be made by any person as part of the investment round. Please see the **tax checklist** for more information in this regard.



INSTRUCTIONS FOR COMPLETING THE DOCUMENT

1. Read the disclaimer on the front page of the SSHA in full.
2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Schedule 1** – Enter full details of the Founders and the Investors.
4. **Schedule 2** – Insert the company details. Much of this information can be obtained on Companies House.
5. **Schedule 3** – The deed of adherence is only required at the time shares are being transferred to a new shareholder. That new shareholder will need to sign the deed of adherence to adhere to the terms and conditions of the SSHA.
6. **Schedule 4** – This schedule contains boilerplate provisions which deal with those generic contractual provisions which are generally found in commercial contracts of this type.
7. **Schedule 5** – The purpose of schedule 5 is to provide the Founders the opportunity to disclose to the investors any matters which qualify or contradict the warranties contained in clauses 4 and 5 of the SSHA. Please carefully read through each warranty individually and consider whether there is anything you are aware of which does (or may) qualify and/or contradict the warranty in some way. Any disclosure contained in Schedule 5 is required to include sufficient explanation and detail to enable the investors to identify the nature, scope and full implications of any matter disclosed.
8. **Review the agreement to make sure you are comfortable with its content, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
9. The founders will need to satisfy themselves that the subscription monies will be forthcoming/are available.
10. Share certificate(s) will need to be distributed to the investors.
11. The SSHA will need to be signed and dated by all parties in accordance with English law. If you are in any doubt as to the formalities for signing the SSHA, please seek legal advice.
12. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



INTELLECTUAL PROPERTY ASSIGNMENT

Intellectual Property (“**IP**”) is often one of the most important parts of a technology company’s business, if not the most important. You should take care when entering into any agreement relating to sharing or using IP, whether it is yours or a third party’s, to ensure that the agreement you are entering into has the effect you think it has.

An assignment of intellectual property transfers the ownership of the IP specified in the agreement from one person to the other. This document is a simple assignment that can be used to transfer the ownership of IP rights belonging to an individual, such as rights created by an employee before they became your employee, a director or shareholder of your company or a consultant you have engaged to your company. As a result, the individual loses his or her rights to the IP assigned. If the individual is to retain ownership of the IP, or is to retain some limited rights to use it, this assignment is not suitable.

This assignment should only be used in straightforward circumstances to transfer existing IP, where the IP is easy to identify and define. Make sure the IP is described in sufficient detail to clearly identify what is being assigned. If the IP is not correctly described in the agreement, the assignment may not be effective or may not transfer the IP that you think it transfers. If you are in any doubt, seek legal advice.

WARNING: It is important to make sure that this assignment is not inconsistent with the terms of any other agreement the individual has with you. If the IP being transferred is particularly important, valuable, difficult to define or if there is any additional complexity you should seek legal advice to ensure it is properly transferred.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this Start-up Pack, we recommend that you seek legal advice before taking any further action.

This Start-up Pack is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted, however, the law may have changed since this date. The information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

This Start-up Pack is subject to the terms and conditions of use stated on the **final page**.

 [Download a precedent IP Assignment here](#)



INSTRUCTIONS FOR COMPLETING THE DOCUMENT

1. Read the disclaimer on the front page of the agreement in full.
2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the agreement to make sure you are comfortable with its terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. **Schedule 1** – Enter the details of the IP being assigned. Ensure that this is entered correctly and in as much detail as possible so that it is clear what is being transferred. Include registration numbers for any registered rights. Include pictures or annex copies of documents where this assists in identifying the rights transferred.
5. **Schedule 2** – Insert details of any licences, previous assignments, security interests, options, mortgages, charges or liens relating to any of the Assigned Rights. However, if any do exist, we strongly recommend that legal advice is taken as to the effect of these on the Assigned Rights and this Assignment.
6. The Employment Contract will need to be signed and dated by all parties in accordance with English law. If you are in any doubt as to the formalities for signing the Employment Contract, please seek legal advice.
7. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.

After completion

For registered rights, it is important that the assignment is recorded at the relevant registry. This ensures that third parties are put on notice of your rights. If the assignment is not recorded, a third party could gain rights in the IP in the registered right in the interim. The costs and formalities for registration vary depending on the registry and relevant right. Contact the relevant registry for further information, and take legal advice on this if you are unsure what to do.

NON-DISCLOSURE AGREEMENT

Before sharing any sensitive information with a third party, you should ensure that you have an appropriate non-disclosure agreement ("**NDA**") in place.



The form of NDA you need, including the safeguards you put in place to protect your confidential information, will depend on the nature of the information you are sharing, who you are sharing it with and the purpose for which you are sharing it.

This NDA is designed to be used in the early stages of a start-up when you are sharing information with another start up in order to decide whether or not you wish to collaborate with each other.

This NDA is not designed to cover the collaboration going forward, should you decide to enter into one. If you decide to collaborate with the other party, you should obtain advice on the form of collaboration arrangements you should put in place to manage your relationship going forward.

These arrangements should contain appropriate confidentiality provisions in place of this NDA.

This NDA is a mutual NDA, which means that both you and the other person promise to keep each other's confidential information confidential. The NDA provides that the same obligations of confidence apply to both parties. The NDA protects confidential information disclosed by you or one of your "Representatives" (as defined) to the other party or one of its Representatives. The NDA provides that at the end of the agreement, or at your request, the other party will return or destroy all confidential information disclosed.

You should be comfortable that this NDA is suitable for the circumstances in which you are seeking to use it, and seek legal advice if you are not sure if it is suitable for your circumstances or if you are unclear of the meaning of any of the particular provisions.

This NDA is not intended to be used for potential investors. For an example of such an NDA, the BVCA has produced a draft outline that investors are likely to be familiar with. Please **click here** for a link to the NDA.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this start-up pack, we recommend that you seek legal advice before taking any further action.

This Start-up Pack is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted, however, the law may have changed since this date. The information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

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Download a precedent NDA here

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2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the NDA to make sure you are comfortable with these terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. The NDA will need to be signed and dated by all parties in accordance with English law. If you are in any doubt as to the formalities for signing the NDA, please seek legal advice.
5. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



A CONTRACT OF EMPLOYMENT

Formal employment agreements between companies and their employees are essential in order to provide both parties with certainty over the terms of the employment. Matters to be addressed in the contract will include an explanation of the employee role (i.e. what they are expected to achieve), their rights and remuneration, and the circumstances in which either party may terminate the agreement.

For a start-up at the early stages of considering expanding its workforce, it is important that they understand specific employment-related clauses and how they could impact on their business. It is usually also beneficial for companies to ensure that a consistent approach is taken to their various employment contracts in order to provide certain standards and expectations that all employees should adhere to. The contract will need to adequately protect the company's interests whilst not being unnecessarily onerous on the employee(s), which could discourage them from joining the company.

The essential terms of the employment contract include role, the date when the employment began and the nature of its term, salary and other benefits, standard hours of work and job location.

For technology start-ups in particular, it will also be vital that the employment contract includes provisions covering confidentiality and ownership of intellectual property. Both of these points have been addressed in the employment contract provided within this pack.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this start-up pack, we recommend that you seek legal advice before taking any further action.

This Start-up Pack is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted, however, the law may have changed since this date. The information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

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Download a precedent Employment Contract here

INSTRUCTIONS FOR COMPLETING THIS DOCUMENT

1. Read the disclaimer on the front page of the employment contract in full.
2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the agreement to make sure you are comfortable with its terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. The Employment Contract will need to be signed and dated by all parties in accordance with English law. If you are in any doubt as to the formalities for signing the Employment Contract, please seek legal advice.
5. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



LEGAL CHECKLISTS

This Start-Up Pack has been designed and prepared by DLA Piper's Technology Sector initiative, which includes lawyers with expertise in intellectual property, corporate, employment and tax matters.

Legal Checklists


IP Checklist

The IP checklist is designed to cover some of the initial considerations that relate to IP and a start-up business, particularly for companies in the technology sector.

Rather than providing comprehensive advice on everything that could apply, the checklist gives a non-exhaustive list of some potential queries and concerns that may arise in relation to IP. However, if there are any particular queries or concerns, we recommend that you seek legal advice.

The IP checklist provides a general overview of a variety of IP matters including brands and trade marks, confidentiality, patents, registered and unregistered IP, third party rights, open source and user generated content, data protection, advertising, consumer protection and websites. The checklist also includes some basic website terms and conditions that can be used as a precedent.

However, as noted and as for the other documents in this Start-up Pack, we would recommend seeking legal advice on any issues where further detail or clarity are needed.

 [Download the IP Checklist here](#)

Tax Checklist

The tax checklist is designed to cover some of the initial considerations that relate to tax and a start-up business.

It includes the types of registrations that a business and/or individual may need to make.

 [Download the Tax Checklist here](#)

Regulatory Checklist

Any start-up company seeking third party investment should be mindful of any legislative restrictions on seeking investment from third party sources. It is likely that any communication made by a person (e.g. a founder) to an investor or potential investor seeking investment in his/her company (a "**Promotion**") will be subject to the financial promotion legislation in the UK.


A Promotion cannot be made by a person unless:

- they are authorised by the Financial Conduct Authority (which is unlikely for a start-up company);
- the Promotion has been approved by a person authorised by the Financial Conduct Authority (which is unlikely to be feasible for a start-up company); or
- the Promotion falls within an exemption (see below).

Breach of this restriction is a criminal offence, punishable by up to two years imprisonment or a fine or both (which can be imposed on the company's officers). In addition, any agreement entered into as a result of a prohibited communication may be unenforceable and the investor may be entitled to recover any money paid and to compensation for any loss.

Commonly used exemptions used by early stage start-ups include communications to persons who are:

- investment professionals (including persons who are themselves FSA-authorised);
- certified high net worth individuals;
- high net worth companies;
- self-certified sophisticated investors; and
- associations of high net worth or sophisticated investors (e.g. business angels).

 [Download the Regulatory Checklist here](#)



START-UP PACK:TERMS AND CONDITIONS OF USE

1. Definitions and Interpretation

In these terms and conditions:

"DLA Piper" means the global law firm known as DLA Piper, operating through various separate and distinct legal entities (including the DLA Piper Entity). Further information in respect of these entities can be found at the Legal Notices page at www.dlapiper.com;

"DLA Piper Entity", "we" or "us" means DLA Piper UK LLP (and words such as "our" shall be interpreted accordingly);

"DLA Piper Group" means the alliance of legal practices known as DLA Piper Group, comprising members which are separate and distinct legal entities and which are affiliated to entities of DLA Piper but are not, themselves, entities of it. Further information in respect of these members can be found at the Legal Notices page at www.dlapiper.com;

"DLA Piper Person" means each and all of the following and each and all of their respective members, partners, directors, employees, representatives and agents (as the case may be):

the DLA Piper Entity;

any other entity of DLA Piper;

any member of DLA Piper Group; and

any body or entity controlled or owned by any entity of DLA Piper (including the DLA Piper Entity) or any member of DLA Piper Group or any of their respective members, partners, directors, employees, representatives or agents (as the case may be).

2. Scope and terms of the Start-up Pack

You should note that:

- 2.1 the Start-up Pack is intended as a general overview of some of the key legal issues that are likely to be relevant to a start-up business in England and Wales and does not claim to be comprehensive or provide specific legal advice or other advice. It is not possible to provide comprehensive advice, whether legal or otherwise, on the matters that may apply in the particular circumstances of your business in this Start-up Pack. Accordingly, matters which you consider to be important, or which may otherwise be considered important, to your particular circumstances or business may not have been addressed in the Start-up Pack, or may not have been addressed in sufficient detail for your purposes. Consequently, the Start-up Pack cannot in any way act as a substitute for obtaining your own legal advice and other advice; and
- 2.2 we have not updated the Start-up Pack since 1 June 2014 to take account of any subsequent events or changes in law, and we have no duty or responsibility to do so.
3. **By downloading and/or accessing and/or reviewing and/or using the Start-up Pack you confirm that:**
 - 3.1 you have fully considered the provisions of these terms and conditions, have obtained such legal advice as you consider appropriate and consider such provisions to be reasonable; and
 - 3.2 you have read and understood these terms and conditions and you understand that they may affect your rights or responsibilities and you agree to be bound by these terms and conditions.
4. **No reliance or claims by you/any other party**
 - 4.1 You acknowledge and agree that these terms and conditions are a condition to our agreement to provide you with access to the Start-up Pack and that neither we nor any DLA Piper Person:
 - 4.1.1 owes or accepts any duty, responsibility or liability to you or any other party, whether in equity, contract, tort or otherwise, in respect of the Start-up Pack or in respect of any information contained in or derived from the Start-up Pack; and
 - 4.1.2 shall be liable in respect of any direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) or other liabilities incurred or suffered by you or any other party arising out of your use, or any other party's use, of the Start-up Pack, or any information contained in or derived from the Start-up Pack, or our provision of the Start-up Pack to you or any other party.
 - 4.2 You agree that you will not rely on the Start-up Pack and will not bring any action, proceedings or claim against us and/or any DLA Piper Person where such action, proceedings or claim in any way relates to or concerns or is connected with your use, or the use by any other party, of the Start-up Pack or any information contained in or derived from the Start-up Pack.
 - 4.3 You acknowledge and agree that by making the Start-up Pack available to you, neither we nor any DLA Piper Person is making any representation, statement, warranty or assurance in relation to the accuracy or completeness of the Start-up Pack or any matters mentioned or information contained in it.
 - 4.4 You agree to indemnify us and each DLA Piper Person and to hold us and each DLA Piper Person harmless against all actions, proceedings and claims brought or threatened against us and/or any DLA Piper Person and against all direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) and other liabilities which we and/or any DLA Piper Person incur or suffer from time to time arising out of or in connection with your failure, or that of any other person to whom you provide a copy of the Start-up Pack in accordance with paragraph 4 of these terms and conditions, to comply with these terms and conditions.

5. No distribution of the Start-up Pack

- 5.1 Subject to paragraph 4.2, you must not copy or distribute the Start-up Pack or otherwise make it available to any other person.
- 5.2 A copy of the Start-up Pack may be provided by you:
 - 5.2.1 if and to the extent required by the laws of any relevant jurisdiction or by any securities exchange or regulatory or governmental body to which you are subject; and
 - 5.2.2 to any person,provided that, in each case, you take all steps necessary to ensure that the recipient understands and agrees that the Start-up Pack is provided to them subject to the same terms and conditions as those set out in these terms and conditions in relation to our provision of the Start-up Pack to you.

6. Subsequent version(s) of the Start-up Pack

You acknowledge and agree that, by making a copy of the Start-up Pack available to you, we do not assume any duty or responsibility to provide you with any subsequent versions of the Start-up Pack (if any).

7. No reliance on supplementary information or explanations

If we, in our absolute discretion, agree to give information and/or explanations to you and/or your professional advisers (to whom we assume no duty or responsibility) in relation to the Start-up Pack, you acknowledge and agree that any such information and/or explanations are given subject to the same terms and conditions as those set out in these terms and conditions in relation to the Start-up Pack.

8. No lawyer/client relationship with you

Our agreement to provide a copy of the Start-up Pack to you does not constitute or create a lawyer/client relationship between us (and/or any DLA Piper Person) and you and/or those persons to whom you make the Start-up Pack available in accordance with these terms and conditions.

9. General

9.1 Liability

Nothing in these terms and conditions shall be applicable to the extent that it constitutes a limitation or exclusion of liability for death or personal injury caused by negligence or constitutes a limitation or exclusion of liability for our fraud or reckless disregard of professional obligations.

9.2 Applicable law and jurisdiction

These terms and conditions and any dispute or claim arising out of or in connection with it, its subject matter or formation (including, without limitation, any non contractual dispute or claim) are governed by and shall be construed in accordance with English law, and you irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

9.3 Entire agreement

These terms and conditions constitute the entire agreement and understanding between us in respect of their subject matter.

9.4 Third party rights

9.4.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999, each and every DLA Piper Person shall be entitled to the benefit of and to enforce the provisions of these terms and conditions.

9.4.2 Except as provided in paragraph 8.4.1, nothing in these terms and conditions shall confer any rights or other benefits on any third parties (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

9.5 Severance

9.5.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of these terms and conditions.

9.5.2 If any illegal, invalid or unenforceable provision of these terms and conditions would be legal, valid or enforceable if some part or parts of it were deleted, such provision shall apply with the minimum deletion(s) necessary to make it legal, valid or enforceable.

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com

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