Startup Documents:

<http://startuplawyer.com/incorporation/startup-docs-from-thefunded-com>

Incorporation:

* Delaware C-Corp
  + Raising capital
  + Give equity to employees

Right of First Refusal – provides a startup with the right to step in place of a prospective 3rd party purchaser when a current stockholder desires to sell their stock. That is, the startup has the right to purchase and redeem any of its stock prior to such stock being sold to another prospective stockholder.

Convertible Notes:

* Convertible notes contain a maturity date provision at which point the notes are to be repaid with interest. This is usually set at 18-24 months after the first convertible note investment. However, repayment of the notes upon the maturity date is usually not a great scenario for the company or the investors.  First, the startup likely does not have the aggregate principal plus interest available to repay the convertible note investors. Second, the investors weren’t in the startup investment for the 2-8% interest rate.  In reality, from the outset, neither startup nor investor is looking for repayment upon the maturity date.  Both startup an investor are hoping that the convertible notes will convert at the next equity round.
* One school of thought is that the convertible notes should automatically convert into equity upon the maturity date, and therefore convertible notes should be drafted with a maturity date **automatic conversion** provision (or worst case, such conversion at the maturity date is at the option of the investors). In practice, however, this is usually a mistake as such a maturity date automatic conversion term is likely not a company-favorable term….and therefore such a term favors the investors.  So, if you are a startup, don’t agree to a convertible note maturity date conversion provision for the following reasons:
  + First, the maturity date conversion term will add an extra layer of negotiation to the convertible note process.  One of the desirable characteristics of the convertible note is that it is a quick and easy way in which to raise capital, and adding this term will prolong the process.  This added term opens the door for important questions that will have to be answered, including:
    - Into which kind of stock will the notes convert at the maturity date? -- Most investors do not want to receive **common stock**, ever, so if you agree to a maturity date conversion provision you’ll have to come up with some type of **preferred stock** the notes would convert into at the maturity date. you’ll end up wasting time negotiating both convertible note terms AND a preferred equity round terms at the same time.
    - At what pre-money valuation should the notes convert at the maturity date? --

Advisors & Boards:

* Advisors:
  + By the time a startup compensates an advisor with incentive equity, it is best practice for startups to also have a written agreement typically called an “Advisor Agreement” or “Advisor Letter” in place to protect the startup. The Advisor Agreement also has the side benefit of managing expectations on both sides.
  + A typical advisor agreement defines the startup-advisor relationship. For example, the Advisor Agreement will typically set forth the advisor’s incentive equity amount and type (i.e. options or restricted stock grant) and a vesting schedule. (Note that the Advisor Agreement is not a substitute for the Stock Option Agreement or Stock Grant Agreement.) More importantly, the Advisor Agreement should include, or have attached, various terms and conditions.
  + Confidential InformationClause – The protection of confidential information should be addressed. To be useful as an advisor, they will have to know all about your startup including some or all of the confidential information and/or technology you may have. Advisors aren’t in the business of divulging confidential information, but worst case scenario you will have an agreement in place and set the expectation that your startup’s confidential information is not to be disclosed or used for any other purpose. This type of clause is usually non-negotiable, except maybe for the duration of the obligation. Meaning, if a potential advisor will not agree to the confidential information clause, it’s time to let that ship sail and find a new advisor.
  + If you want to take a very informal advisor relationship to the next level, your startup should consider granting incentive equity to the advisor. Most often, this incentive equity is given in the form of stock options (but can be an outright stock grant). The usual range for an advisor grant is the 0.10% to 0.50% range of the startup’s fully-diluted capitalization. The most common size of the grant is 0.25% and vesting is usually over 1 or 2 years, monthly, and without a cliff.
* Boards:
  + The startup can include language in both its charter and bylaws that indemnifies directors for expenses and losses incurred as a result of the director’s position. Indemnification is available only if permitted by the laws of the startup’s state of incorporation. Thus, language requiring the Company to indemnify its directors “to the fullest extent permitted by [State] law” is frequently incorporated into charters and bylaws.

*Glossary*

**The Dual Class Common Stock Setup** – The usual method to create super-voting rights for a founder is to implement a dual class common stock structure, generally the “Class A” and the “Class B”.  The Class A and Class B will be identical (economically at least) except for one thing: voting power.  Usually it is the Class A that will have a multiple of votes per share; and most typically we see a 10-to-1 multiple.  For example, the Class A Common Stock will have 10 votes per share and the Class B Common will have 1 vote per share.  Then at the outset of the startup, one or more of the founders would be issued Class A Common Stock, and everyone else such as employees, advisors, consultants would receive the Class B Common Stock. In order to properly implement the dual class structure, it needs to be in your Certificate of Incorporation.  And when your startup issues common stock, it needs to be very clear which class is being issued. seriously consider installing various mechanisms that convert the super-voting shares (the Class A) to normal voting shares (both optionally and automatically).  Some examples of this are: (i) optional conversion at the option of the holder, (ii) **automatic conversion** upon the majority vote of the super-voting shares and (iii) automatic conversion upon any transfer of the shares. In general, I wouldn’t recommend as a **default** that startups implement the dual class common stock structure.  If you have leverage, you’ll be able to install it at a later date.

**Convertible Note** – A Convertible Note is a debt instrument that can be converted into equity automatically upon certain conditions and/or at the option of the holder or the issuer. Although not the main purpose of investing in Convertible Notes, they do earn interest, and 2-8% is standard. Usually, the investor will convert the principal of the note plus the interest automatically into equity when an institutional investor (such as a Venture Capitalist) makes an investment of a certain threshold amount. Convertible Notes are generally converted into equity with a conversion discount or price cap mechanism.

**Restricted Stock** – Restricted Stock is a type of stock that cannot be traded in the public markets and can only be transferred if certain regulations are met. Most startups issue Restricted Stock during financings, and to founders and employees.

**Vesting Schedule** – Vesting Schedule is the mechanism that measures the amount of vested equity that a co-founder or startup employee has at any given time. Usually the vesting schedule is time-based (e.g. 4 years with a one-year cliff), but a vesting schedule can be based on milestones.