

Understanding the Specifics of the Legal Donation Agreements

You decided you want to share the Upside with our community. Congratulations! Your company has a social mission which instantly elevates its potential. Now you want to understand the nitty-gritty of the legal process.

Why do we need to sign a legal agreement?

Today your company is small, and you (and your partners) firmly believe in the social mission you are creating. In a few years, as your company grows, you will have more executives on the team, perhaps a few VCs, and your ownership will likely be diluted due to other investors. Today's social mission intent must be safeguarded legally to ensure the donations will happen in the way you envision in the future. Given the large sums of money involved and complexity of transactions, we spent considerable time in defining the exact legal documents required.

We have customized legal agreements based on our donors' preferences. The agreements were created by Bennett Jones, our legal advisor and supporter, to ensure that the process is smooth and comprehensive.

Do you have an option plan / Employee Stock Ownership Plan (ESOP)?

- **If yes**, you can simply donate options via your ESOP. Just make sure at your next Board meeting to acknowledge that the Upside Foundation is an eligible participant of your ESOP and the options are fully vested. We are happy to supply you with the specific wording for the resolution at your Board meeting.
- **If no**, and you don't intend to create one for a while, you can sign the legal agreement form. You will likely want to create an ESOP plan as your company matures but if you choose not to do that for a while, that's fine. Our legal agreement can be signed now, and if you choose to create an ESOP one day – it will supersede this legal agreement.
- **If no, but you would like to create an ESOP now**: As a valuable benefit to our donors, Bennett Jones LLP has offered a cut rate fee of \$500 to create a customized ESOP. The details of the ESOP will vary based on each company's circumstances. In addition, since Bennett Jones fully understands, and helped to develop, the donation concept, you can be assured that the donation transaction will be seamless. The options can be issued directly to us without any Directors' resolutions to name the Upside Foundation as an eligible participant since the definition of participant in the ESOP includes a registered charity or not-for-profit corporation. And, our eventual exercise of the options – once your company hits the big payoff! – will be cashless.
- **Yes or no but you would like to donate warrants instead of options**: We created a warrant agreement document for you to sign. The advantage of using this document versus one of your own is that 1) it was already created by a team of legal experts, so your legal advisor can do a quick review rather than drafting one from scratch; 2) our agreement includes a clause that states that the Upside Foundation will never be a shareholder of your company. We don't want to have any control or governance and you would not want us to. So, you never need worry about that. 3) Our agreement doesn't put a yearly time limit on when the warrants will expire. They are exercisable when you have a liquidity event. 4) Once you have your payoff when there

is a liquidity event, the exercise of the warrants would be cashless. This way it is a cleaner transaction to get the donation of your Upside to the community. There are also other protective clauses in the agreement that state that we can't transfer the warrants (section 3.1) (why would you want us to?), you won't have to pay for our expenses (section 3.8) and we can send documents to each other via email / PDFs (section 3.10). Some standard warrant agreements might not be as easy to use.

We tried to think of everything we could to make the process as easy for you as possible, yet still safeguard the intent of what you are trying to do – which is to donate some of your Upside to the community. Your company may seem small today, but once you grow and have external advisors, more Board members, another partner or two.... Your intent should be protected. Our team of Venture Capitalists, lawyers and accountants have worked with companies throughout their growth cycles and so we understand that a legal document now might seem a bit onerous. We tried to keep it short and straightforward. If you have any questions, just email us at info@upsidefoundation.ca.