

DUE DILIGENCE DATA ROOM CHECKLIST

The following pages contain a detailed due diligence checklist that has been compiled from many years of M&A projects. While this is one of the most extensive and comprehensive due diligence checklists available for free on the internet, you should consult with your lawyer and investment banker as they will likely have a few additional suggestions.

I. GENERAL COMPANY DATA DUE DILIGENCE CHECKLIST

1. A list of each direct or indirect subsidiary of the Company.
2. Capitalization of the Company showing the number of authorized shares of each class or series of capital stock, the number of issued and outstanding shares of such stock, and the record owners of such shares. Certificate or articles of incorporation and bylaws of the Company, or articles of organization and operating agreement in effect.
3. Minutes of meetings of the Company's stockholders or members, board of directors, or any committee thereof, for the last 3 years.
4. All agreements among stockholders or members of the Company relating to management, ownership, or control of the Company.
5. All documents entered into with respect to or related to any prior financings or equity issuances of the Company, including, but not limited to, Stock Purchase Agreements, Stockholders Agreements and Registration Rights Agreements.
6. All correspondence and agreements between or among the Company and the directors or officers of the Company relating to indemnity, employment, loans, or advances.
7. Stock books, stock transfer ledgers, and other stock records of the Company.
8. A list of options, purchase rights, and warrants issued by the Company specifying the name of the holder, the number of options, rights or warrants issued, the date granted, the option or purchase price, and the position of the holder with the Company, together with copies of option, right or warrant agreements.
9. An address list of the locations of all land, buildings, and other improvements either leased or owned by the Company.
10. All material governmental permits, licenses or authorizations, and related correspondence, of the Company.
11. Other than customer contracts, any agreements with any federal, state, or local regulatory authorities to which the Company is a party.

II. FINANCIAL INFORMATION DUE DILIGENCE CHECKLIST

1. Audited financial statements for each of the Company for the last three fiscal years, with the auditor's opinion and all footnotes.
2. Un-audited financial statements for each of the Company for the most recent month or quarter end.
3. Comparison of last two (2) years forecasted budgets compared to actual performance.
4. Copies of the financial packages delivered to management and the Board of Directors of the Company during the past three (3) years.
5. Detail of capital expenditures for the last three (3) calendar years.
Receivables aging schedule.
6. All correspondence between the Company and the Company's auditors for the last three (3) years.
7. The Company's forecast projections for performance for the next three years.

III. CORPORATE AGREEMENTS DUE DILIGENCE CHECKLIST

1. All agreements or documents relating to or evidencing borrowings (other than accounts payable incurred in the ordinary course) of the Company or any Subsidiary, whether secured or unsecured, including credit agreements, other senior debt agreements and instruments, surplus or other subordinated debt agreements and instruments, hedging or derivative agreements, guarantees and letters of credit.
2. Bank letters or agreements confirming any other lines of credit in favor of the Company or any Subsidiary.
3. All documents and agreements evidencing other financing arrangements to which the Company or any Subsidiary is a party or under which the Company or any Subsidiary is otherwise obligated, including sale and leaseback arrangements, capitalized leases, real estate and other installment purchases, make-whole agreements (or covenants) and guarantees.
4. All acquisition agreements and related documents and schedules regarding the Company's acquisition of its Subsidiaries.
5. All documents relating to any material acquisition or disposition of assets by the Company or any Subsidiary in the last ten years (whether or not the Company or any Subsidiary retains the related property or assets).
6. All material agreements encumbering real or personal property owned by the Company or any Subsidiary, including all mortgages, deeds of trust, and security agreements.
7. All real estate contracts of the Company and each Subsidiary.
Deeds and title policies relating to any real property owned by the Company or any Subsidiary.

8. All leases of real or material personal property (including computer leasing agreements) to which the Company or any Subsidiary is lessee or lessor or to which the Company or any Subsidiary proposes to become a lessee or lessor.
9. All joint venture, partnership, or other management, operating, or consulting agreements relating to the Company or any Subsidiary.
10. All franchise, conditional sales contracts and consignment agreements to which the Company or any Subsidiary is a party.
11. All agreements between the Company and its 20 largest customers, and a form (or forms) of any agreement typically used by the Company in provided goods or services to its customers, together with copies or descriptions of significant variations from such form (or forms) in the case of particular customers. All material customer purchaser orders.
12. To the extent not duplicative of L, all agreements related to the distribution by the Company or its Subsidiaries of products in the ordinary course of business.
13. All contracts under which the Company (or any of its Subsidiaries) has agreed to refrain from competing with any other person or entity or otherwise to refrain from engaging in any particular business activity (whether in a particular geographic area or otherwise).
14. All contracts between the Company (or any of its Subsidiaries) and any affiliate. A written description of any oral agreement between the Company (or any of its Subsidiaries) and any affiliate.
15. Any agreement providing for participation in the Company's equity, other than options, rights or warrants.
16. A list of any agreements to which the Company or any Subsidiary is a party that cannot be disclosed due to any non-disclosure covenant or agreement.
17. All material contracts relating to the Company or any Subsidiary, not otherwise described above, to which the Company or any Subsidiary is a party.
18. A list of the Company's 20 largest customers and vendors, determined by annual revenues and expenditures, respectively.
19. Other than customer contracts, any agreements with any federal, state, or local regulatory authorities to which the Company is a party.

IV. LEGAL & GENERAL COMPANY DATA DUE DILIGENCE CHECKLIST

1. A list of each direct or indirect subsidiary of the Company.
2. Capitalization of the Company showing the number of authorized shares of each class or series of capital stock, the number of issued and outstanding shares of such stock, and the record owners of such shares. Certificate or articles of incorporation and bylaws of the Company, or articles of organization and operating agreement in effect.
3. Minutes of meetings of the Company's stockholders or members, board of directors, or any committee thereof, for the last 3 years.

4. All agreements among stockholders or members of the Company relating to management, ownership, or control of the Company.
5. All documents entered into with respect to or related to any prior financings or equity issuances of the Company, including, but not limited to, Stock Purchase Agreements, Stockholders Agreements and Registration Rights Agreements.
6. All correspondence and agreements between or among the Company and the directors or officers of the Company relating to indemnity, employment, loans, or advances.
7. Stock books, stock transfer ledgers, and other stock records of the Company.
8. A list of options, purchase rights, and warrants issued by the Company specifying the name of the holder, the number of options, rights or warrants issued, the date granted, the option or purchase price, and the position of the holder with the Company, together with copies of option, right or warrant agreements.
9. An address list of the locations of all land, buildings, and other improvements either leased or owned by the Company.
10. All material governmental permits, licenses or authorizations, and related correspondence, of the Company.
11. Other than customer contracts, any agreements with any federal, state, or local regulatory authorities to which the Company is a party.

V. INTELLECTUAL PROPERTY RIGHTS & PRODUCT INFORMATION DUE DILIGENCE CHECKLIST

1. Schedule of all trademarks, service marks, trade names, copyrights and patents that relate to the products, services, operations or names of the Company.
2. For each product presently or previously marketed, or presently being developed, by the Company or its Subsidiaries:
 - a) *the name of each individual who performed work on the product, its documentation, and/or its enhancements and modifications;*
 - b) *the status of each such individual when the work on the product was performed and whether such individual signed an agreement with the Company assigning all rights in such work to the Company;*
 - c) *any and all information concerning the development of the product, including whether the product is based, in whole or in part, on any other product, public domain, open source or otherwise; and*
 - d) *any reviews or critiques of the product.*
3. All agreements concerning confidentiality, nondisclosure and assignment of inventions with employees, contractors, visitors or other parties.

4. Date of first use of all unregistered trademarks, and date on which copies of any material copyright first released to the public.
5. All documents concerning registration of trademarks and service marks, including registration certificates, applications, correspondence and searches, and the results of any trademark or service mark searches conducted by the Company.
6. All documents concerning registration of patents, patent applications, and the results of any patent searches conducted by the Company.
7. All R & D agreements, including agreements with independent contractors who participated in development of any product.
8. All agreements and documents concerning assignment, purchase, sale or license of proprietary rights, royalties or maintenance, including patents, copyrights, trade secrets, and trademarks.
9. Manual or other written documents detailing the procedures for maintaining the secrecy of trade secrets.
10. Copies of all "End User License Agreements" associated with any products delivered.
11. Copies of all escrow agreements or descriptions of escrow agreements relating to any computer source code.
12. Blank form of end user agreements.
13. Documents relating to claims or disputes concerning products, services or proprietary rights owned or used by the Company.
14. Product literature distributed to the public over the last 2 years.
15. Product maintenance logs and error reports for the last 12 months.
16. A schedule of any exclusive rights granted by the Company.
17. All agreements with computer on-line service providers and internet access providers relating to services or data provided by or to the Company.
18. Copies of all agreements with third parties relating to the development of company products and software.

VI. INSURANCE COVERAGE DUE DILIGENCE CHECKLIST

1. Description of each property, general liability, automobile, worker's compensation, and umbrella liability insurance policy issued to the Company, specifying:
 - o Name of insurance carrier(s)
 - o Annual Premium
 - o Coverage
 - o Claims within the last 3 years
 - o Self-insured retention, co-payment, or deductible
 - o Whether the policies are "occurrence" or "claims made" policies.

VII. LITIGATION AGREEMENTS DUE DILIGENCE CHECKLIST

1. A list of any litigation or judgments settled within the last 5 years in which the company was involved either directly or indirectly.
2. A list of all pending or threatened litigation or administrative proceedings, inquiries, or investigations, including copies of petitions or complaints.
3. A list of names and addresses of all legal counsel who are currently acting on behalf of the Company.
4. A list of all consent decrees, judgments, injunctions, other decrees, orders, settlement agreements, arbitrations, and arbitration findings to which the Company is subject or bound

VIII. EMPLOYEES AND HUMAN RESOURCE DUE DILIGENCE CHECKLIST

1. All management employment contracts, "golden parachute agreements," severance agreements, consulting agreements, "stay" agreements, and agreements not to compete to which the Company is a party.
2. All labor contracts, collective bargaining agreements, union agreements, and any consents, waivers or amendments.
3. An organizational chart which lists the name and title of each divisional Vice President and Director. Include the number of direct reports by functional area under each Manager.
4. A list of the executive employees of the Company, and employees of the Company whose total annual compensation is in excess of \$100,000, including the dollar amount of each such employee's total annual compensation.
5. With respect to each employee benefit plan:
 - a) copies of such Employee Benefit Plan and any related trust, insurance policy, annuity contract, or other funding vehicle;
 - b) the most recent favorable determination letter or tax exemption letter issued by the Internal Revenue Service ("IRS");
 - c) all applications for IRS determination or tax-exemption with respect to which a favorable determination letter has not yet been received;
 - d) the most recent summary plan description and any subsequent summaries of material modifications;
 - e) the three most recently filed Forms 5500, including all attached schedules;
 - f) a description of the funding status and non-funded liability of each Employee Benefit Plan, including but not limited to executive compensation, severance pay, and retiree medical plans; and

g) all actuarial and financial reports prepared during the last three years with respect to such Employee Benefit Plans.

6. A summary of liability for termination payments to employees.
Copies of all bonus, severance, employee option and employee equity participation plans or agreements.
7. Details of all other employee plans and arrangements that do not constitute Employee Benefit Plans.
8. List of employees including both active and inactive employees employed by the company for the last three years.
9. A description of any order or decree to which any senior executive of the Company is subject that does or could impact the business or the Company as currently conducted or contemplated to be conducted in the future.
10. Discuss number of employees and average tenure.

IX. ENVIRONMENTAL MATTERS DUE DILIGENCE CHECKLIST

1. A list of all environmental permits under which any facilities owned or leased by the Company operate.
2. All written reports made in the last five years regarding any environmental testing or environmental matters affecting the operations or properties of the Company.
3. All written estimates prepared in the last five years concerning future expenditures for environmental programs relating to the operations or properties of the Company.
4. All notices and demands of environmental authorities relating to the operations or properties of the Company.
5. All records regarding compliance history with environmental permits including air, water, waste, and sewer permits under federal, state, and local rules and regulations.
6. Locations of any on-site hazardous waste disposal sites.
7. Locations of any underground tanks and lines including those no longer used, specifying any history of spillage or leakage.

X. CORPORATE AGREEMENTS DUE DILIGENCE CHECKLIST

1. All federal, state, local, and other tax returns and reports filed by or on behalf of the Company for the last three fiscal years and for all open years.
2. All information related to any audit of any return or report filed by or on behalf of the Company for the last five fiscal years or related to any pending audits or administrative or judicial disputes

relating to taxes for any open periods.

3. All tax allocation, sharing, or preparation agreements involving the Company
4. Agreements which waive or extend the period for assessment or collection of any federal, state, local or other taxes.
5. All ruling requests filed with the Internal Revenue Service relating to the Company.
6. Any tax elections which may have a material effect on the Company.

XI. CUSTOMER AND MARKETING INFORMATION DUE DILIGENCE CHECKLIST

1. Total customer counts by major product year for each of the last 3 years.2. Listing of any customer that constituted more than 1% of total sales during the last three years.
2. Total number of web site visitors by month for the last 2 years
3. Total number of product evaluation requests by month for the last 2 years.
4. Discuss primary sales channels including Internet and reseller, as it pertains to the following:
5. For each of the Company's products, discuss target customer and marketing strategy. How are sales efforts organized?
 - a) Internet sales as a percentage of total sales, currently and over time
 - b) Resellers as a percentage of total sales, currently and over time
 - c) Number of resellers
 - d) Structure of reseller agreements
 - e) Resellers by geography
6. Describe how new business is generated and the process of entering into arrangements with the customer.
7. Absent any significant sales expenditures, how does the Company drive:
8. Discuss the importance of individual customer relationships in the business; how are purchase orders processed (i.e., via the web/fax/mail)?
9. Regarding market share, discuss the size of both the international and domestic market segments for which the company's products are sold.
 - a) Brand awareness
 - b) Product upgrades

c) New product introductions

10. List the company's top competitors, their market share and how the company differentiates itself from each of these competitors including competitor products, market focus and pricing.
11. How does the Company's customer base differ from its competitors?
12. Who are the Company's primary competitors?
13. Does the Company have any strategic alliances or business relationships with other industry participants? How are they structured.

XII. INTERNAL CONTROLS & INFORMATION SYSTEMS DUE DILIGENCE CHECKLIST

1. Breakdown of sales by channel (distributors, direct, e-commerce) by month for the last 3 years.
2. Listing of top 20 resellers or distributors and revenue by reseller for the last 3 years.
3. Written statement of annual revenue derived from new customers verses existing customers as well as revenue from new product sales verses recurring maintenance contracts for the last 3 years.
4. If any revenue was a result of international sales include a written statement detailing the amount of annual revenue by country for the top 10 countries placing orders for each of the last 3 years.
5. Provide information related to the Company's planned new product releases (i.e., expected timing of release, related product and service margins and markets targeted).
6. Discuss any new business the Company might have been awarded and comment on any business which may have been recently lost.
7. Are there particular areas of the Industry that the Company would identify as significant growth opportunities?
8. Discuss the Company's major partnerships, if any, and how these help drive revenue growth.

XIII. SALES OPERATIONAL INFORMATION DUE DILIGENCE CHECKLIST

1. Breakdown of sales by channel (distributors, direct, e-commerce) by month for the last 3 years.
2. Listing of top 20 resellers or distributors and revenue by reseller for the last 3 years.
3. Written statement of annual revenue derived from new customers verses existing customers as well as revenue from new product sales verses recurring maintenance contracts for the last 3 years.
4. If any revenue was a result of international sales include a written statement detailing the amount of annual revenue by country for the top 10 countries placing orders for each of the last 3 years.

5. Provide information related to the Company's planned new product releases (i.e., expected timing of release, related product and service margins and markets targeted).
6. Discuss any new business the Company might have been awarded and comment on any business which may have been recently lost.
7. Are there particular areas of the Industry that the Company would identify as significant growth opportunities?
8. Discuss the Company's major partnerships, if any, and how these help drive revenue growth.

XIV. SUPPORT SERVICES & PRODUCT PRICING DUE DILIGENCE CHECKLIST

1. Discuss the economics behind (1) Product fees, (1) license fees and (2) maintenance fees, (3) other revenue producing fees.
2. Discuss current margins and growth in margins for (a) Products and (b) maintenance services.
3. What pricing advantages does the Company have versus its competitors?
4. Discuss the Company's pricing strategy and contract terms.
5. Describe the Company's proprietary products, systems and technologies with specific reference to economics underlying the offering.
6. How are upgrades delivered to the customer?
 - a) Are customers charged for upgrades or is this tied to a maintenance contract?
 - b) Are upgrades made available via the web, on a CD or both?
7. Does the Company perform any product customization? If so, discuss the economics behind this offering.
8. Describe the Company's support function. Is this 24/7?