

SAMPLE LEGAL DUE DILIGENCE REQUEST LIST

Following is a sample of a legal due diligence request Checklist, that may be pertinent to a potential buyer in a corporate acquisition (M&A) transaction, or to an underwriter required to do due diligence on an issuer of securities in a proposed initial public offering.

The target company or the issuer is referred to, together with its subsidiaries, as the “Company”.

This checklist is intended as a sample, for information only. It should not be used in an actual transaction. The due diligence request checklist presented in an actual transaction must be tailored to that particular transaction and to the particular Company (the target company in an M&A transaction or the issuer in an offering of securities). This should be done by counsel for the buyer or the underwriter, as the case may be, who should be competent and experienced in matters of these kinds.

Some of the documents listed below may not pertain to a particular Company involved in an actual proposed transaction and its business. Where blanks are shown in this sample checklist, numbers pertinent to the particular transaction involved would typically be filled in.

In an actual transaction, the Company would typically be requested to respond to the due diligence checklist presented, and to provide an indication of which documents exist and will be produced by the Company. The Company would also be requested to indicate in its response if any of the requested documents do not exist or if a particular request does not pertain to the Company or its business. The Company would typically be instructed to read references below to the Company to include the Company, its subsidiaries and each of its predecessor corporations, if any.

Corporate Documents

1. Articles of Incorporation and By-laws of the Company, as amended to date.
2. Minutes of the meetings of the Company’s Board of Directors, any committee of the Board of Directors and stockholders of the Company.
3. Written consents relating to actions by the Board of Directors, any committee of the Board of Directors, and stockholders of the Company since inception.
4. Stock ledgers and records of the Company.
5. Samples of stock certificates, option certificates and certificates representing any other outstanding securities.
6. A current list of all stockholders, warrant holders and option holders showing name, address, amount held, price paid, date of purchase, name of seller (if other than the Company), exercise price and expiration date.

7. A schedule of all outstanding conversion privileges, including date of issuance, exercise or conversion prices and amount exercised.
8. A list of each jurisdiction (domestic and foreign) in which the Company does business (e.g., in which the Company makes sales or operates a sales office or in which its employees reside and in which the Company contemplates undertaking business, either directly or through other parties).
9. A list of each jurisdiction in which the Company is qualified to do business.
10. Any licenses relating to the Company's authority to do business in particular jurisdictions, including facilities licenses.
11. Any stockholder agreements, including any buy-sell or voting trust agreements.
12. A list of all subsidiaries of the Company.
13. Any stockholder agreements relating to any subsidiary.
14. A list of all foreign sales offices of the Company.

Customers and Suppliers

15. Copies of all outstanding agreements with customers and suppliers, including any service, support or maintenance agreements, involving annual revenues or expenses in excess of \$_____[amount pertinent to the particular transaction would be filled in].
16. List of the Company's top ___ customers for the last two fiscal years (including addresses and telephone numbers, if possible), and a breakdown by revenue per customer.
17. List of the Company's top ___ suppliers (including addresses and telephone numbers, if possible), and, if available, a breakdown by purchases per supplier and indicating any sole-source supplier or limited source supplier.
18. Any form contract or license used with suppliers or customers, including form license agreement, distribution agreement, reseller agreement and support/maintenance agreement.
19. List of distributors and resellers, including addresses and sales data for the last _____ fiscal years.
20. Description of any significant customer relationship terminated within the last _____ years.
21. A breakdown by geographic region of the Company's revenues for the last _____ fiscal years.

Material Contracts

22. Any material sales, agency, distribution or marketing contracts to which the Company is a party.
23. Any contract purporting to limit the Company's business activities or ability to compete in any market.

24. Any agreement restricting the Company's payment of dividends.
25. Any material joint venture, participation, partnership or cooperative agreements to which the Company is a party.
26. All material documents relating to any major acquisition, disposition, reorganization or other extraordinary corporate event of material significance to the Company.
27. Any agreements with any officer, director or holder of ____% of the outstanding shares of stock of any class, including any loan agreements whether or not currently outstanding.
28. Any other contracts which, in the Company's view, are material to its business.
29. All employment agreements for executive officers.

Real and Personal Property

30. Documents of title for the Company's material assets.
31. List of all offices and facilities.
32. Schedule of all deeds and title reports and policies for all real property owned or occupied by the Company.
33. A schedule of all leases of real property and all leases of any material amount of personal property to which the Company is a party, as lessor, sublessor or sublessee, including rental payment amounts, expiration dates, renewal options and other material terms.
34. Copies of the leases described in item 33 above.
35. Any appraisals of the Company's real property obtained within the past _____ years.
36. All title insurance policies for material properties owned or leased by the Company.
37. All material equipment purchase agreements.

Intellectual Property

38. List and copies of all patents and applications pending, held or being prosecuted by the Company in the United States or elsewhere, with descriptive titles, numbers and jurisdiction, and copies of all correspondence to or from examining authorities or other parties regarding such patents and patent applications.
39. List and copies of all copyright registrations and applications pending, held or being prosecuted by the Company in the United States or elsewhere, with descriptive titles, numbers and jurisdiction, and a list of all copyrightable materials (including software and documentation) material to the Company's business, as to which there is no copyright registration or application therefor pending.
40. List and copies of all trademarks, registered or unregistered, used in connection with the business of the Company, whether or not such trademarks are owned by or licensed to the Company, with a

description of products or services associated therewith, and numbers, jurisdiction and status of any registration applications pending, if any, and copies of all state and federal registration and recordation documents and certifications pertaining to each (including associated affidavits).

41. List of all categories of technology (whether or not patented or patentable) that are material to the business of the Company, together with a brief description of how each such technology was developed or acquired.
42. Copies of all agreements pursuant to which the Company has assigned or licensed any technology or intellectual property rights to, or obtained any technology or intellectual property rights from third parties.
43. Copies of all agreements pursuant to which the Company's products are manufactured or assembled by, or pursuant to which the Company acquires products or components for products from, third parties.
44. Copies of all research and development agreements to which the Company is a part.
45. Copies of all escrow agreements relating to the Company's technology or intellectual property.
46. Copies of all other agreements relating to technology or intellectual property that are material to the business of the Company.
47. List of engineers and other employees who have participated or contributed in a material way to the development of the Company's intellectual property, a brief description of their roles, and copies of their resumes or other evidence of previous job history.
48. Copies of the Company's standard form of agreements with employees and independent contractors regarding confidentiality, nondisclosure, and assignment of inventions, and a list of all employees and all independent contractors who have executed the agreements, and a list of all employees and all independent contractors who have not executed the agreements.
49. Copies of confidentiality, nondisclosure, and assignment of invention agreements, between the Company and employees, and between the Company and independent contractors, the contents of which differ from those set forth in the standard form.
50. Copies of the Company's standard form of confidentiality and nondisclosure agreements, between the Company and persons or organizations other than employees and independent contractors, and a list of persons or organizations who have executed the agreements.
51. Copies of confidentiality and nondisclosure agreements, between the Company and persons or organizations other than employees and independent contractors, the contents of which differ from those set forth in the standard form.
52. All documents, correspondence, memoranda, notes, and other papers relating to the Company's written policies on intellectual property.
53. Copies of all security agreements pursuant to which a lender or creditor has taken a security interest in specific intellectual property assets or "general intangibles."

54. Uniform Commercial Code filings, or other state and federal filings, that relate in any way to any of the Company's technology or intellectual property.
55. All documents, correspondence, pleadings, memoranda, notes, and other papers relating to any pending or threatened intellectual property litigation or claim against the Company, or any other assertion, suggestion, or inquiry by a third party that the Company is infringing its intellectual property rights.
56. Flow charts, technical specifications, and other design documents relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 55 above.
57. Materials referred to during the process of developing any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 55 above.
58. A list of journal articles, published papers, and textbooks relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 55 above.
59. Notes or design meetings relating to any Company technology or product that is the subject of any pending or threatened litigation, claim, assertion, suggestion or inquiry of the type described in item 55 above.
60. All documents, correspondence, memoranda, notes, and other papers relating to any development by the Company that involves the derivation or use of specifications or technical information derived from the products of third parties.
61. All documents, correspondence, memoranda, notes, and other papers analyzing or assessing the validity or scope of any Company copyright, patent, or trademark.
62. Copies of all existing material licenses to which the Company is a party, either as a licensor or licensee, or any of the companies listed under item 15 above. Also, include all existing material contracts or leases conveying to the Company rights regarding any facility, equipment, hardware, software or other material asset or service used in or relating to the Company's business.
63. Documents relating to any claims of infringement of intellectual property rights of others.
64. List of proprietary processes controlled by the Company and other trade secrets.

Corporate Financings

65. All agreements relating to current or future debt (including reimbursement) obligations for borrowed money, including agreements to acquire any such debt obligation of others or for a leasing transaction of a type required to be capitalized in accordance with generally accepted accounting principles.
66. All agreements with respect to obligations or liabilities as guarantor, surety, co-signer, endorser, co-maker, indemnitor or otherwise in respect of the obligation of any other person.

67. All agreements by which the Company is subject to any obligation to provide funds to or to make investments in any other person (in the form of a loan, capital contribution or otherwise).
68. All material correspondence with and from lenders in the past three years.
69. All documents purporting to create liens, mortgages, security interests, pledges, charges or other encumbrances on real or personal property in favor or against the assets of the Company.
70. All Uniform Commercial Code financing statements filed with respect to the Company's real or personal property.
71. List of any person or entity whose consent to the proposed offering will be required and copies of relevant documents.

Securities Matters

72. All agreements, private placement memoranda, prospectuses or offering circulars relating to sales or attempted sales of equity or debt securities of the Company within the past five years, including without limitation all agreements relating to registration rights, and copies of any written proposals and memoranda of any oral proposals for the acquisition of the Company's securities within the past five years.
73. All material communications to stockholders.
74. All permits to issue securities, including copies of the applications for all permits, whether or not a permit was issued with respect to such application, and all federal securities filings.
75. All agreements containing preemptive or similar rights or the assigning of such rights.
76. List of any stop transfer orders/legends.

Insurance

77. A schedule of all policies of insurance or self-insurance arrangements, including professional liability, officers' and directors' liability and key-man life insurance, with coverage limits and other significant terms.
78. A schedule of insurance claims experience over the last three years.

Litigation

79. Description of, and all material documents relating to, all present or threatened litigation, administrative proceedings, governmental investigations or inquiries, arbitration or claims affecting the Company. The description should include the name of the proceeding, the other parties, the relief demanded and the current status.
80. All letters from attorneys to the Company's independent public accountants regarding litigation in which the Company is or may be involved.

81. All consent decrees, judgments, other decrees or orders, settlement agreements and other agreements to which the Company is a party or is bound, requiring or prohibiting any future activities.

Tax Matters

82. Copies of all federal, state, local and foreign income tax returns and copies of any IRS determination letters.
83. Copies of all correspondence, including, without limitation, applications for private letter rulings and opinions of counsel, regarding the tax treatment of any transaction to which the Company is a party.
84. Reports of IRS auditors, state franchise tax auditors, and related materials, including claims for refunds, investigations, audits or disputes, for any fiscal year not barred by the applicable statute of limitations.

Financial Information

85. Most recent projected financial and cash flow statements.
86. Description of any change in accounting policies or procedures.
87. Audited financial statements.
88. Description of any off-balance sheet liabilities and financial derivative instruments held or issued by the Company, if any, including a description of the purpose for which such derivatives are held or issued (e.g., trading, hedging).
89. Back-up numerical data for the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's prospectus.
90. Accounts payable and accounts receivable aging reports for the last _____ years.

Government Regulation

91. List of all material designations and governmental licenses, authorizations, consents and approvals that the Company has obtained in connection with the operation of its business, together with copies of such permits.
92. Schedule of contracts with the United States government or any agency or contractor thereof.
93. Correspondence and notices relating to contracts with any governmental entity (by the Company directly or indirectly or through any prime contractor, subcontractor or vendor) to the extent related to: (a) any alleged violation or omission; (b) any negative determinations of responsibility issued against the Company with respect to any bid, quotation or proposal submitted by the Company; (c) any disallowance or questioning by the federal government of material costs incurred by the Company and any assessment of penalties or damages of any kind against the Company arising out of any material irregularities, misstatements or omissions relating to any of the Company's contracts, bids, quotations or proposals, past or present; (d) any audit; and (e) any denial of security

clearances and permits necessary for the execution of the Company's obligations under any contract, past or present.

94. Reports filed and significant correspondence with any state or federal regulatory agencies during the past _____ years, as such reports and correspondence relate to the Company's operating procedures (as opposed to reports and correspondence which relate solely to the operations of the Company's clients). In connection with this request, all material in the files of the Company regarding possible environmental pollution, including correspondence with all governmental agencies and internal and consultant reports regarding same.
95. Summary of any pending or threatened OSHA, EPA or Department of Labor inquiries or proceedings.

Employees

96. All material employment agreements, consulting agreements, non-competition agreements and salesperson commission agreements.
97. Any material agreements regarding severance pay or other benefits to employees of the Company.
98. Schedule of all compensation paid during the previous _____ fiscal year(s) to officers, directors and key employees showing separately salary, bonuses and non-cash compensation (e.g., use of cars, property).
99. List of all current employees of the Company or its subsidiaries with an aggregate annual compensation in excess of \$_____, including brief job description and current rate of compensation for each such employee.
100. Schedule of names of all employees by category (e.g., sales, administration, part-time/full-time).
101. A management organization chart.
102. Any labor or collective bargaining agreements.
103. Details of material grievances, terminations, union activities, etc.
104. Any indemnification agreements with any employees or directors.

Benefit Plans

105. All stock options, bonus, retirement, profit sharing, incentive compensation, pension and other employee benefit plans or agreements to which the Company is a party. Such documents would include (a) any stock purchase plans, and all purchase agreements and promissory notes relating to purchases thereunder and a schedule showing each purchaser and amounts paid in cash and notes, (b) any stock option plan, related stock option agreements, and a schedule of options showing name of employee, date of grant, exercise price, vesting schedule and exercises, and (c) any defined benefit retirement plan.
106. Any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) which is subject to any provision of ERISA, is

maintained, administered or contributed to by the Company and covers any employee or prior employee of the Company.

107. Any plan or arrangement providing for insurance coverage (including any self-insured arrangement), workers' compensation, disability benefits, supplemental unemployment benefits, severance pay, vacation pay, deferred compensation, bonuses, profit sharing, stock options or other forms of incentive compensation or post-retirement insurance, compensation or other benefits which has been promised, by any officer or any other employee authorized to do so, or entered into, maintained or contributed to the Company and covering any employee or prior employee of the Company.

Miscellaneous

108. All material information in the Company's possession relating to companies in the same industry or the industry in general, including copies of reports, articles and analyses to be relied upon for industry information in the prospectus (such as size of market, status of competitors, etc.).
109. Reports to the Company by:
 - (a) independent public accountants, including all letters from independent public accountants regarding control systems, methods of accounting, etc.;
 - (b) internal auditors;
 - (c) actuaries;
 - (d) marketing consultants;
 - (e) appraisers;
 - (f) management consultants; and
 - (g) other consultants or outside experts hired with respect to operations.
110. Copies of recent sales or marketing literature, including any price schedules currently in effect.
111. Copies of all market research or marketing studies prepared by or for the Company.
112. News releases issued by the Company.

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113. All other documents and information which, in the Company's judgment, are significant or material with respect to any portion of its business or which should be considered and reviewed in making disclosures regarding the business and financial conditions of the Company [to prospective investors and the Securities and Exchange Commission] or [to a prospective buyer of the business of the Company].



Constance R. Barnhart, Attorney at Law, is the Managing Member of Barnhart Law PLC. After 12½ years as a Partner in the law firm of Holland & Knight LLP and more than 30 years of practicing law with large law firms, she founded Barnhart Law PLC (www.BarnhartLawPLC.com) in March, 2009. At Barnhart Law PLC, Ms. Barnhart represents Scandinavian, European, and U.S. clients in U.S. and international business matters, including corporate, commercial, M&A, financial, and contracts matters, as well as technology and intellectual property licensing. In over 30 years of practice, she has handled as lead attorney many substantial mergers & acquisitions, securities offerings (including Regulation S offshore offerings, as well as Regulation D private placements), and corporate, commercial, securities, and financial transactions, as well as technology and intellectual property-related matters for U.S. and international clients.

Ms. Barnhart is fluent in English, Spanish, and Norwegian, and conversant in Swedish and Danish. She is admitted and licensed to practice law in four U.S. States – New York, Florida, Texas, and Minnesota. **Ms. Barnhart may be reached at CBarnhart@BarnhartLawPLC.com or by telephone at +1-954-545-4994.**