

DUE DILIGENCE CHECKLIST

[ACQUIRING COMPANY/TARGET COMPANY]

[NOTE; Response against all columns is necessary. "NA" can be used against columns where the subject matter is Not Applicable. Additional information can be provided by attaching a separate sheet after a reference against a particular item in the Checklist]

In addition to those definitions set forth elsewhere in this Due Diligence Checklist, the following capitalized terms shall have the meanings as set forth below:

“**Company**” means _____, the target company.

“**ACQUIRING COMPANY**” means _____.

“**Intellectual Property Rights**” or “**IPR**” means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

	Will Provide	Will Not Provide	Does Not Exist
A. Intellectual Property			
1. Samples of all of the products of the Company and all supporting documentation and past versions.			
2. Copies of all agreements which convey, assign or otherwise transfer any past, present or future right, title or interest in the Intellectual Property Rights of the Company to any third party including, but not limited to sales, licensing and development agreements.			
3. Copies of all agreements which convey, assign or otherwise transfer any past, present or future right, title or interest in the Intellectual Property Rights of any third party to the Company including, but not limited to, sales, licensing and development agreements.			
4. List of all the Intellectual Property Rights of any third party that is incorporated into, appears in, or is otherwise associated with any of the products or services that the Company currently sells, offers for sale, or maintains or is in the process of developing for sale.			

	Will Provide	Will Not Provide	Does Not Exist
5. List all of the Intellectual Property Rights of any third party that is used by the Company (e.g., a software development tool) to develop its products or perform services for customers.			
6. List all products or services currently sold or offered for sale by the Company in which open source code appears.			
7. All source code information for each of the Company's products or services including, but not limited to, the code itself, all annotations, related documentation and all information in any source code repository (Source code information is to be reviewed by _____ of _____.)			
8. Copies of all Intellectual Property Rights escrow (e.g., source code escrows) agreements under which the Company has deposited source code or to which the Company is a party or a beneficiary.			
9. The contents of all Intellectual Property Rights escrows (e.g., source code escrows) agreements under which the Company has deposited source code or to which the Company is a party.			
10. List of all United States patents of the Company including patent number, issue date, inventor(s), title, dates on which maintenance fees were paid and identity of parties paying maintenance fees.			
11. List of all United States patent applications of the Company including the application number, filing date, inventors and title.			
12. List of all foreign patents including, for each patent, the country, grant number, grant date, expiration date, publication number, publication date, inventors and title.			

	Will Provide	Will Not Provide	Does Not Exist
13. List of all United States copyright registrations owned by the Company including (a) Registration Number; (b) Registration Date; (c) Title as listed in Registration; (d) Publication Date; (e) Creation Date; (f) Author (if anonymous work, list each employee who prepared any portion of the work); (g) Subject matter covered; (h) Description of deposit filed in support of the registration; (i) Name and current address of each person who participated in creation of the subject matter from whom a written assignment has been obtained; (j) Name and current address of each person who participated in creation of the subject matter from whom a written assignment has not been obtained; (k) Identification of circumstances which would support the subject matter, or any part thereof, being considered a work made for hire.			
14. Copyright registrations and files listed above for each copyright registration.			
15. List of all relevant non-registered works, which are nevertheless protected via copyright, which have ever been offered for license, use or sale by the Company, including (a) the name and version of the work; (b) release date; (c) list of previous versions and their release dates; (d) creation date; (e) name and current address of each person who participated in the creation of the work from whom a written assignment has been obtained; and (f) name and current address of each person who participated in the creation of the work from whom a written assignment has not been obtained.			
16. List of all registered and unregistered trademarks, servicemarks, and domain names of the Company.			

	Will Provide	Will Not Provide	Does Not Exist
17. All trademark/service mark/domain name files, including (a) U.S. and foreign registration, application and assignment files, including prosecution histories; (b) Licenses and Registered User Agreements and license files, including quality control files; (c) Rejected applications; (d) Protest letters (sent and received); (e) Litigation files (e.g., past infringements, disputes, demands or language in court orders may impact future litigation); (f) Settlement agreements, administrative or judicial decisions affecting ownership or validity of the marks (e.g., may restrict expansion of mark geographically or to other goods); (g) Trademark search report files on current marks; and (h) Concurrent use agreements.			
18. All files regarding the trademark record maintenance of the Company, including maintenance and status report on all registrations, pending applications, licenses Registered User Agreements, assignments, etc.			
19. Advertising, brochures, packaging and other materials which may disclose, inter alia: (a) Style and secondary marks that are protectable or which may infringe third party uses; (b) Slogans that are protectable or which may infringe third party uses; (c) Misuse of marks (e.g., use as generic terms; misuse of ® or failure to use ®); (d) Protectable or infringing trade dress.			
20. Sample products and packaging for evidence of proper/improper trademark markings.			
21. List of all other registered or unregistered Intellectual Property Rights of the Company not disclosed above.			
22. All correspondence including, but not limited to, demand letters that the Company has sent regarding third party infringement of the Company's Intellectual Property Rights.			
23. All correspondence including, but not limited to, Demand letters that the Company has received regarding real or alleged infringement of an third party's Intellectual Property Rights.			
24. Files for any actual or threatened litigation involving the Company's Intellectual Property Rights or the Company's alleged infringement of any third party's Intellectual Property Rights.			
25. The Company makes the following representations and warranties:			

	Will Provide	Will Not Provide	Does Not Exist
(a) The Company has disclosed all registered and unregistered Intellectual Property Rights owned by the Company.			
(b) The Company is the owner of all Intellectual Property Rights set out in the schedule, free from all liens, charges and encumbrances, and has not assigned or transferred all or any part of such rights to any person.			
(c) The Company has not granted any person the right to make any use of the Intellectual Property Rights except for the licenses of which details have been disclosed.			
(d) The Company does not use any Intellectual Property Rights in respect of which any third party has any right, title or interest except for the licenses granted to the Company of which details have been disclosed.			
(e) The Company is not in breach of any licenses disclosed pursuant to warranties; All necessary fees have been paid, renewals made and other steps taken for the maintenance of each of the registered Intellectual Property Rights disclosed, each of which is presently used and in full force and effect.			
(f) Each of the registered and material unregistered Intellectual Property Rights disclosed is valid, in good standing, in active use and has not been abandoned.			
(g) None of the Intellectual Property Rights is subject to any use, claim, application, opposition or attack by any other person.			
(h) The Company is not using any Intellectual Property Right which infringes any Intellectual Property Right of any third party and the Company has not received any actual or threatened claim that any of the Intellectual Property Rights is invalid.			
(i) There is no infringement of the Intellectual Property Rights by any third party; The Company is entitled to use all information in its possession and is not subject to any restriction as to its use			

	Will Provide	Will Not Provide	Does Not Exist
(j) The Company has not disclosed any know-how, trade secrets or customer lists to any third party other than subject to confidentiality agreements of which details have been disclosed.			
(k) The Company owns or has the right to use all Intellectual Property Rights required in connection with the conduct of its businesses as presently carried on expected to be carried on in the future.			
(l) There is need to do a current evaluation of Intellectual Property Right portfolio being transferred to determine the commercial value and to devise licensing strategy and devise program for ongoing Intellectual Property Right protection to enhance legal protection and value.			
(m) Current research and development plans and budgets, including a distinction between internal and external projects.			
B. Customer Information			
1. List of all customers and suppliers for each product or service of the Company. by Software, Hardware, Maintenance, 3 rd Party Software, Professional Services, Other)			
2. Listing of top 10 Customer problem account – brief details of outstanding issues			
3. The names of internal contacts at all of the Company’s customers so that _____ can conduct due diligence interviews.			
4. List of major competitors for each business segment or product or service line.			
5. Copies of all contracts, including, but not limited to, all sales, royalty, licensing, 1 Contractor/Consultant Agreement (s) maintenance, support and service and reseller contracts with the Company’s customers.			
6. Written consents from all of the Company’s customers to the assignment or transfer of existing contracts from the Company to _____.			
7. Copies of all express or implied written modifications or amendments to any of the Company’s contracts with customers.			

	Will Provide	Will Not Provide	Does Not Exist
8. Description of any express or implied oral modifications or amendments to any of the Company's contracts with customers.			
9. All invoices sent to customers for the past three (3) years, including identification of any invoices that have not been paid by the customer and concessions or discounts given by the Company regarding a particular invoice.			
10. A history of extended payment terms and timing in the month of sale.			
11. Summary of the standard contract terms offered to the Company's customers (e.g., pricing, standard payment terms discounts offered, etc.) and the underlying revenue recognition policy for each major product family.			
12. List of all contracts with the Company's customers containing terms which place any limitations whatsoever on assignment of such contracts, including a summary of such terms.			
13. List of all contracts with the Company's customers containing terms which create any right of termination upon a change in ownership or control of the Company, including a summary of such terms. List of contracts with changes in control provisions			
14. List of all distributors, including the amount of sales and specifics of related revenue recognition policy.			
15. Copies of all agreements with distributors.			
16. Copies and a description of any barter transactions, including the related accounting.			
C. Human Resources and Employment			
1. Employment and non-competition agreements between the Company's key technical and management personnel and _____ including, <i>inter alia</i> , terms to limit such personnel from competing with _____ or the Company, or holding an ownership interest in a competitor of the Company, during his or her employment and for a period of three (3) years thereafter.			

	Will Provide	Will Not Provide	Does Not Exist
2. Copies of all employment, consulting, independent contractor, non-compete, termination and severance agreements relating to any employee, consultant, or independent contractor of the Company, all employment contracts for officers and any special arrangements with employees, (e.g., retention bonuses, golden parachutes, etc.).			
3. Copies of all agreements between the Company and any of its employees, consultants, and independent contractors conveying Intellectual Property Rights to the Company.			
4. Copies of all invention development memoranda regarding any of the Intellectual Property Rights of the Company.			
5. Copies of the Company's written policy on employee Intellectual Property Rights, if any.			
6. A description of any and all material labor disruptions and any claim of unfair labor practices or petitions filed with the National Labor Relations Board or a similar state agency with respect to the Company's employees, agents and independent contractors in the last five years.			
7. Copies of all OSHA examinations, reports or complaints.			
D. Corporate Information			
1. Legal entity organization stock holdings chart			
2. Outline of the history of the Company including major restructurings, acquisitions, mergers or divestitures and their financial/tax/accounting treatment.			
3. Copies of all contracts relating to any completed (during the past 5 years) or proposed reorganization, acquisition, merger, or purchase or sale of substantial assets (including all agreements relating to the sale, proposed acquisition or disposition of any and all divisions, subsidiaries or businesses) of or with respect to the Company.			
4. Description of the corporate or other structure of the legal entities that comprises the Company, including a list of the officers and directors of the Company and a brief description of their duties.			
5. Charter documents, by-laws and related documents of the Company and any subsidiaries.			

	Will Provide	Will Not Provide	Does Not Exist
6. Minutes of meetings of the stockholders and Boards of Directors, minutes of each Committee of the Boards of the Company and any subsidiaries and all written actions or consents in lieu of meetings thereof.			
7. Summary of the equity structure of the Company and any subsidiaries showing the number of authorized and issued and outstanding shares of each class or series of common and preferred stock and any other capital stock, together with information regarding all related options, warrants and other rights to acquire capital stock, including conversion rights.			
8. List of security holders of the Company (including option and warrant holders), setting forth class and number of securities held.			
9. Copies of any voting agreements, stockholder agreements, proxies, transfer restriction agreements, rights of first offer or refusal, preemptive rights, registration agreements or other agreements regarding the ownership or control of the Company.			
10. List of states and countries in which the Company and any subsidiary (a) is qualified to do business; (b) leases property; or (c) has employees.			
11. Long-form certificate of good standing and articles or certificate of incorporation from Secretary of State or other appropriate official in the Company's jurisdiction of incorporation, listing all documents on file with respect to the Company, and a copy of all documents listed therein.			
12. Copies of the certificate of authority, good standing certificates and tax status certificates from all jurisdictions in which the Company is qualified to do business.			
13. List of all companies and other entities in which the Company holds a direct or indirect equity interest, showing for each entity the equity percentage owned by the Company; Any agreements relating to the Company's interest in any such entity; Copies of related corporate policies and procedures with respect to internal controls, disclosure controls and procedures, insider trading and similar matters.			
14. Copies of all joint venture and partnership agreements to which the Company is a party.			

	Will Provide	Will Not Provide	Does Not Exist
15. Schedule of all investments in other entities (excluding marketable securities) including a roll-forward of the Company's investment in each entity since inception of the investment, including partnerships.			
16. Analysis of changes in the goodwill account in the past five (5) years.			
17. Copies of any goodwill impairment analyses performed.			
E. Group Composition			
1. Provide list of persons (individuals / firms / companies etc.) having interest in the business and the nature of interest including an overall group management & organizational structure.			
2. Provide a summary of the Entities/Groups history along with major products & business activities, key suppliers/ customers along with their trading terms.			
3. Provide a brief description of the Target entities/Groups business (e.g. business areas, main products within each business areas, market position, geographical presence, competitors etc.)			
F. Property, Plant & Equipment			
1. A list of facilities or other properties currently or formerly owned, leased, or operated by the Company and its predecessors, if any.			
2. Schedule of property, plant and equipment by category including gross asset value, accumulated depreciation, range of depreciable lives, depreciation methods.			
3. Copies of all real property leases relating to the Company (whether the Company is lessor or lessee), and all leasehold title insurance policies (if any).			
4. Copies of all leases of personal property and fixtures relating to the Company (whether the Company is lessor or lessee), including, without limitation, all equipment rental agreements.			
5. List of all leases of property to others, a description of the activities conducted by these tenants and sublessees, and the applicable terms and conditions.			
6. Schedule of additions and retirements over the past three years. Summary of all outstanding capital purchase commitments.			

	Will Provide	Will Not Provide	Does Not Exist
7. Summary of all outstanding capital purchase commitments.			
G. Reports			
1. Copies of any studies, appraisals, reports, analyses or memoranda within the last three years relating to the Company (i.e., competition, products, pricing, technological developments, software developments, etc.).			
2. Current descriptions of the Company that may have been prepared for any purpose, including any brochures used in soliciting or advertising.			
3. Descriptions of any customer quality awards, plant qualification/certification distinctions, ISO certifications or other awards or certificates viewed by the Company as significant or reflective of superior performance.			
4. Copies of any studies prepared by the Company regarding the Company's insurance currently in effect and self-insurance program (if any), together with information on the claim and loss experience thereunder.			
5. Any of the following documents filed by the Company or affiliates of the Company and which contain information concerning the Company: annual reports on SEC Form 10-K; quarterly reports on SEC Form 10-Q; current reports on SEC Form 8-K.			
H. Compliance with Laws			
1. Copies of all licenses, permits, certificates, authorizations, registrations, concessions, approvals, exemptions and other operating authorities from all governmental authorities and any applications therefor, and a description of any pending contemplated or threatened changes in the foregoing.			
2. Specifically, provide copies of all licenses, certificates, authorizations, registrations relating to insurance regulatory provisions as or if, made applicable to Company by any and all State(s) in the United States where Company conducts business and/or any other part of the world where Company is subject to Insurance related regulatory laws.			

	Will Provide	Will Not Provide	Does Not Exist
3. A description of any pending or threatened proceedings or investigations before any court or any regulatory authority.			
4. Describe any circumstance where the Company has been or may be accused of violating any law or failing to possess any material license, permit or other authorization. List all citations and notices from governmental or regulatory authorities.			
5. Schedule of the latest dates of inspection of the Company's facilities by each regulatory authority that has inspected such facilities.			
6. Description of the potential effect on the Company of any pending or proposed regulatory changes of which the Company is aware.			
7. Copies of any information requests from, correspondence with, reports of or to, filings with or other material information with respect to any regulatory bodies which regulate a material portion of the Company's business. Limit response to the last five years unless an older document has a continuing impact on the Company.			
8. Copies of all other studies, surveys, memoranda or other data on regulatory compliance including: spill control, environmental clean-up or environmental preventive or remedial matters, employee safety compliance, import or export licenses, common carrier licenses, problems, potential violations, expenditures, etc.			
9. State whether any consent is necessary from any governmental authority to embark upon or consummate the proposed transaction.			
10. Schedule of any significant U.S. import or export restrictions that relate to the Company's operations.			
11. List of any export, import or customs permits or authorizations, certificates, registrations, concessions, exemptions, etc., that are required in order for the Company to conduct its business and copies of all approvals, etc. granted to the Company that are currently in effect or pending renewal.			
12. Any correspondence with or complaints from third parties relating to the marketing, sales or promotion practices of the Company.			
I. Litigation			

	Will Provide	Will Not Provide	Does Not Exist
1. List of all litigation, arbitration and governmental proceedings relating to the Company to which the Company or any of its directors, officers or employees is or has been a party, or which is threatened against any of them, indicating the name of the court, agency or other body before whom pending, date instituted, amount involved, insurance coverage and current status. Also describe any similar matters which were material to the Company and which were adjudicated or settled in the last ten years.			
2. Information as to any past or present governmental investigation of or proceeding involving the Company or the Company's directors, officers or employees.			
3. Copies of all attorneys' responses to audit inquiries.			
4. Copies of any consent decrees, orders (including applicable injunctions) or similar documents to which the Company is a party, and a brief description of the circumstances surrounding such document.			
5. Copies of all letters of counsel to independent public accountants concerning pending or threatened litigation.			
6. Any reports or correspondence related to the infringement by the Company or a third party of intellectual property rights.			
7. Summary of all legal costs incurred by the Company during the past two (2) years, including those reimbursed by third parties.			
8. Summary of any lawsuits initiated by the Company- claimed damages, brief history and anticipated outcome			
9. Settlement documentation (If Any)			
10. Copies of insurance policies possibly providing coverage as to pending or threatened litigation.			
11. All outstanding claims made against the Company, whether or not a lawsuit has been filed with respect to such claims			
J. Significant Contracts and Commitments			
1. All material agreements encumbering real or personal property owned by the Company including mortgages, pledges, security agreements or financing statements.			

	Will Provide	Will Not Provide	Does Not Exist
2. Guarantees or similar commitments by or on behalf of the Company, other than endorsements for collection in the ordinary course and consistent with past practice.			
3. Indemnification contracts or arrangements insuring or indemnifying any director, officer, employee or agent against any liability incurred in such capacity.			
4. Loan agreements, notes, industrial revenue bonds, compensating balance arrangements, lines of credit, lease financing arrangements, installment purchases, etc. relating to the Company or its assets and copies of any security interests or other liens securing such obligations.			
5. No-default certificates and similar documents delivered to lenders for the last five (or shorter period, if applicable) years evidencing compliance with financing agreements.			
6. Documentation used internally for the last five years (or shorter time period, if applicable) to monitor compliance with financial covenants contained in financing agreements.			
7. Any correspondence or documentation for the last five years (or shorter period, if applicable) relating to any defaults or potential defaults under financing agreements.			
8. Contracts involving cooperation with other companies or restricting competition.			
9. Contracts relating to other material business relationships, including: (a) any current service, operation or maintenance contracts; (b) any current contracts with customers; (c) any current contracts for the purchase of fixed assets; and (d) any franchise, distributor or agency contracts.			
10. Without duplicating Section A above, contracts involving licensing, know-how or technical assistance arrangements including contracts relating to any patent, trademark, service mark and copyright registrations or other proprietary rights used by the Company and any other agreement under which royalties are to be paid or received.			
11. Description of any circumstances under which the Company may be required to repurchase or repossess assets or properties previously sold.			
12. Data processing agreements relating to the Company, if any.			

	Will Provide	Will Not Provide	Does Not Exist
13. Copies of any contract by which any broker or finder is entitled to a fee for facilitating the proposed transaction or any other transactions involving the Company or its properties or assets.			
14. Management, service or support agreements relating to the Company, or any power of attorney with respect to any material assets or aspects of the Company.			
15. List of significant vendor and service providers (if any) who, for whatever reason, expressly decline to do business with the Company.			
16. Samples of all forms, including purchase orders, invoices, supply agreements, etc.			
17. Copies of all insurance and indemnity policies and coverages carried by the Company including policies or coverages for products, properties, business risk, casualty and workers compensation. A description of any self-insurance or retro-premium plan or policy, together with the costs thereof for the last five years. A summary of all material claims for the last five years as well as aggregate claims experience data and studies.			
18. List of any other agreements or group of related agreements with the same party or group of affiliated parties continuing over a period of more than six months from the date or dates thereof, not terminable by the Company on 30 days' notice.			
19. Copies of all supply agreements relating to the Company and a description of any supply arrangements.			
20. Copies of all contracts relating to marketing and advertising.			
21. Copies of all construction agreements and performance guarantees.			
22. Copies of all secrecy, confidentiality and nondisclosure agreements.			
23. Copies of all agreements related to the development or acquisition of technology.			
24. Copies of all agreements outside the ordinary course of business.			
25. Copies of all warranties offered by the Company with respect to its products or services.			
26. List of all major contracts or understandings not otherwise previously disclosed, indicating the material terms and parties.			

	Will Provide	Will Not Provide	Does Not Exist
27. For any contract listed in this Section J, state whether any party is in default or claimed to be in default.			
28. For any contract listed in this Section J, state whether the contract requires the consent of any person to assign such contract or collaterally assign such contract to any lender (NOTE: Remember to include all amendments, schedules, exhibits and side letters. Also include brief description of any oral contract listed in this Section J)			
K. Tax Matters			
1. Agreements waiving statute of limitations or extending time involving the Company.			
2. List of all state, local and foreign jurisdictions in which the Company pays taxes or collects sales taxes from its retail customers (specifying which taxes are paid or collected in each jurisdiction).			
L. Miscellaneous			
1. Information regarding any material contingent liabilities and material unasserted claims and information regarding any asserted or unasserted violation of any employee safety and environmental laws and any asserted or unasserted pollution clean-up liability.			
2. Any plan or arrangement filed or confirmed under the federal bankruptcy laws, if any.			
3. Description of principal banking and credit relationships (excluding payroll matters), including the names of each bank or other financial institution, the nature, limit and current status of any outstanding indebtedness, loan or credit commitment and other financing arrangements.			
4. All documents relating to the debt arrangements of the Company, including, but not limited to, _____.			
5. Summary and description of all product, property, business risk, employee health, group life and key-man insurance.			
6. Copies of any UCC or other lien, judgment or suit searches or filings related to the Company in relevant states conducted in the past three years.			
7. Copies of all filings with the Securities and Exchange Commission, state blue sky authorities or foreign security regulators or exchanges.			

	Will Provide	Will Not Provide	Does Not Exist
8. All other information material to the financial condition, businesses, assets, prospects or commercial relations of the Company.			

Dated.....

Submitted by

Signature

Name