

# SAMPLE DUE DILIGENCE REQUEST LIST

The following is an illustrative example of a due diligence request list that the Company will be asked to respond to via the population of applicable documents in a virtual dataroom. The due diligence exercise is a critically important liability exercise, and in the lead-up to an IPO process the Company should begin gathering responsive diligence materials. You should expect legal counsel for both the underwriters and company may ask for additional supplemental materials after reviewing the initial documents populated in the virtual dataroom. Depending on your business type or other circumstances, there may be other key areas of document production not covered in this list.

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[Company]

## **Diligence Request List**

The following is a preliminary list of materials that we will need to review in performing our due diligence investigation in connection with the proposed Form S-1 registration by [Company] of its Common Stock. As our review of these materials proceeds, we may need to request additional materials.

Please provide us with copies of the documents under this checklist relating to [Company] and/or any of its subsidiaries (collectively, the “Company”).

It is important that we know the categories in which no responsive materials exist, so please respond to every category listed. If any materials responsive to the listed categories exist but are not readily available, please let us know and we can discuss how best to proceed.

### **Corporate Records**

1. The Company's Certificate of Incorporation, together with all amendments to date, and any amendments that will be filed prior to the closing of the offering.
2. By-Laws of the Company, as currently in effect and as will be in effect at the time of the closing of the offering.
3. Minutes of meetings of the Board of Directors (including signed resolutions or written consents in lieu thereof) of the Company and any standing committees thereof (e.g., Audit, Nominating and Compensation Committees) since inception.

4. Minutes of the meetings of the Board of Directors of all significant subsidiaries of the Company and any committees thereof (including signed resolutions or written consents in lieu thereof) since inception.
5. Minutes of meetings of the shareholders of the Company (including signed resolutions or written consents in lieu thereof) held since inception.
6. Minutes of meetings of the shareholders of all significant subsidiaries of the Company (including signed resolutions or written consents in lieu thereof) held since inception.
7. Form of the Company's stock certificates.
8. Annual reports, quarterly reports and any other communications to stockholders of the Company, whether sent at the behest of the Company or by a third party.
9. Press clippings and releases relating to the Company and its products since its inception.
10. Incorporation proceedings of the Company and stock books, stock ledgers and other records of stock issuance since inception.
11. List of the names and addresses of officers and directors, including background and biographical material, business experience, a list by date of all positions held during the past five years and any arrangements regarding the payment of directors' fees and expenses.
12. Corporate Organization Chart.
13. All offering circulars, private placement memoranda or equivalent documents in connection with any offering of securities (including debt securities) by the Company or any predecessors prepared since inception.
14. Any report to the Board of Directors or any committee thereof of the Company since inception reflecting upon internal corporate controls or foreign payments.
15. List of each jurisdiction in which the Company or any of its significant subsidiaries (i) does business or (ii) is qualified to do business.
16. Copies of any officers' and directors' questionnaires.

#### Capitalization

17. Any documents and agreements evidencing or relating to the Company's outstanding equity securities, borrowings (whether secured or unsecured) and other material financing arrangements, including stock purchase agreements, shareholder and voting trust agreements, pre-emptive rights agreements, agreements relating to restrictions on transfer of the Company's securities, right of

- first refusal agreements, registration rights agreements, loan and credit agreements, promissory notes and other evidences of indebtedness, security agreements, pledge agreements, other agreements encumbering real or personal property owned by the Company, guarantees, sale and leaseback arrangements, installment purchases, redemption or purchase agreements, etc.
18. A schedule showing authorized, issued and outstanding shares of capital stock of each class and showing the record owners of such capital stock.
  19. A schedule of warrants, options, convertibles, rights and other agreements to issue shares of capital stock of any class and the record and beneficial owners thereof. With respect to compensatory equity securities, please provide a schedule detailing grantee, grant date, exercise price and vesting schedule of each grant.
  20. A schedule of any contingent or other obligations (such as appraisal rights or rights of first refusal) relating to any shares of capital stock or other securities of any class of the Company.
  21. A schedule of any registration rights regarding any of the Company's securities.
  22. A schedule of outstanding bonds, notes, debentures and other debt instruments, showing the record and beneficial owners thereof (including affiliated corporate debt, whether or not evidenced by an instrument).

#### Governmental Regulations and Filings

23. Communications with and articles in any peer-reviewed journals regarding the Company's key products and technologies.
24. All regulatory history-related documents, including any special arrangements or decrees to which the Company or any of its officers or directors is a party
25. Reports filed with or prepared by and significant correspondence with any other local, state, federal or foreign government or governmental regulatory agency regarding the business, assets or stock of the Company.
26. All material governmental permits, licenses, certificates, applications and permits, etc., of the Company.

#### Financings

27. All notes and agreements evidencing outstanding borrowings by the Company or unfunded commitments to lend to the Company, including loan and credit agreements, mortgages, deeds of trust, promissory notes, debentures, letters of credit and other evidences of indebtedness and all guarantees.
28. Bank letters or agreements confirming lines of credit of the Company or any direct or indirect shareholder of the Company.

29. Correspondence with lenders for the last two years including all compliance reports submitted by the Company, its subsidiaries or its independent public accountants.
30. A description of the Company's debts and liabilities, including the total amount of said debts and liabilities, a description of the Company's outstanding notes and other indebtedness, the due dates of major debts and liabilities, and their respective rates of interest.
31. Copies of the consolidated U.S. and state income tax returns of the Company filed since inception.
32. Information with respect to any pending government audit of the Company's tax returns.
33. All documents and agreements evidencing other material financing arrangements, such as sale and leaseback arrangements, equipment leasing lines, security agreements, installment purchases, etc.

#### Material Agreements of the Company

34. All leases of real property and all leases of any substantial amount of personal property (whether as lessor or as lessee).
35. All contracts with any affiliates.
36. All material agreements with customers, suppliers, distributors, subcontractors, licensees and licensors.
37. All contracts with any director, officer or shareholder of any affiliate of any such persons, including, without limitation, any agreement or plan to make or repay loans and any agreement or plan for stock ownership by employees.
38. All material contracts regarding collaborations, licenses, research agreements or similar agreements with third parties, including but not limited to contracts that may restrict the Company from doing business in any geographical area, in any business or with competitors of the Company's current customers.
39. All material contracts for the purchase, future purchase or use of any materials, supplies, parts, components, machinery, equipment, goods or services.
40. All material contracts relating to the sale or supply or future sale or supply of products to customers or the provision of services, including all varieties of sale transactions, such as lease, loan, demonstration or trial sale, conditional sale or option.
41. All material contracts regarding the distribution of the products or services of the Company (whether with sales agents, distributors or others).

42. All repurchase and other agreements with dealers or wholesalers of the products of the Company.
43. All material contracts with agents or others to use or promote the products of the Company or of any other Company or business.
44. All material contracts under which the Company acts as distributor or sales agent.
45. All material contracts providing technical support to or by the Company.
46. All other material contracts relating to the manufacture, production, sale, distribution, development, design, storage, advertising or promotion of the products or services of the Company or with respect to products of other companies or businesses.
47. All other material contracts with independent contractors.
48. All guarantees.
49. All sale and leaseback arrangements.
50. All mortgages, indentures, security agreements, pledges and option agreements.
51. All material contracts involving post-delivery obligations not now fully performed and discharged, including, without limitation, indemnities, warranties, patent infringement obligations, trade-in or repurchase (or cancellation) obligations, return or allowance rights or other commitments.
52. Deeds and easements to all material real estate owned in whole or in part by the Company, copies of title reports and title policies relating thereto and copies of all surveys of any such property.
53. All material contracts regarding the use, lease, loan, bailment, conditional sale or other encumbrance of any equipment.
54. All significant capital construction contracts.
55. All material consulting or management services contracts.
56. All contracts relating to any investments or investment commitments.
57. All contracts relating to consolidated tax filings, sharing of tax attributes, tax indemnities or tax refunds.
58. All settlements, waivers or consents with governmental authorities (including the IRS, environmental regulatory authorities or others) or with private parties, whether or not the settlement was made after litigation or only after threat of claim.

59. All agreements, contracts or commitments limiting the freedom of the Company or any key employees to engage in any line of business or to compete with any other person or to maintain the confidentiality of any matters.
60. All indemnification agreements.
61. All joint venture or partnership agreements to which the Company is a party.
62. All significant contracts involving sponsorship of, or donations to, any event, organization of individual.
63. All contracts not made in the ordinary course of business or which relate to matters outside the ordinary course of business.
64. A list of all material contracts which may be affected by change of control of, or sale of shares or assets of, the Company, indicating the effect thereof with respect to each such contract.
65. Information and correspondence on any material existing or potential defaults under any contracts.
66. A list of any contracts where the Company has made or received payments in advance of performance.
67. Repurchase agreements relating to shares owned by employees of the Company.
68. All agreements, contracts or commitments relating to material capital expenditures or the sale, marketing, referral, licensing, distribution and purchase of any products or services.
69. All government contracts, including any grants, sponsored research agreements or similar agreements.
70. All loan agreements or all documentation relating to loans or advances to, or investments in, any other person or any agreements, contracts or commitments relating to the making of any such loan, advance or investment.
71. All documents relating to any transactions between the Company and any of its subsidiaries or affiliates.
72. All contracts, documents or agreements with or pertaining to the Company and to which present or former directors, officers or shareholders are parties.
73. All documents pertaining to any receivables from or payables to present or former directors, officers or shareholders.

74. All agreements, contracts or commitments, the loss of which might reasonably be expected to have a potential adverse impact on the business, operations, condition or prospects of the Company.
75. Any contracts, instruments, judgments, orders or decrees which materially adversely affect, or might reasonably be expected to materially adversely affect, the business practices, operations, condition or prospects of the Company or any of its assets or properties or which would prevent consummation of the stock offering.
76. All material options, proposals, letters of intent or other offers to sell or to purchase goods, products or services.
77. All material contracts involving barter, offset, countertrade, counterpurchase or similar obligations.
78. Any agreement, or option in favor of another person, to enter into any of the foregoing.

#### Employee Materials

79. Employee stock purchase plans, employee stock option plans and other stock plans, e.g., bonus, phantom, etc. as amended to date.
80. Pension/retirement plans and actuarial evaluation reports since inception for each pension or other retirement plan, including multi-employer plans, if any.
81. Profit-sharing, savings, 401(k) and ESOP plans.
82. Deferred compensation plans.
83. Cash bonus and incentive compensation plans.
84. Other employee insurance benefit plans and agreements (e.g., dental insurance, medical insurance).
85. All employment agreements, consulting agreements, material collective bargaining agreements to which the Company is a party.
86. Schedule of salary and any compensation plans or benefits (including bonus compensation) paid to any director or executive officer who received more than \$100,000 in cash compensation during the Company's last fiscal year; specify the salary and other compensation payable to officers, directors and key employees during the current fiscal year; describe employee benefits not listed above, including vacation pay and severance policies.
87. Advise us as to the number of salaried employees and hourly employees.

88. Indicate the fringe benefits which may be enjoyed by executives, such as the use of Company-owned automobiles, club dues, expense allowances, etc.
89. A description of employee loans and copies of documents evidencing such loans.
90. All nondisclosure, noncompetition and similar agreements between employees and the Company or any of its subsidiaries or with respect to standard form agreements signed by employees, a form of such agreement and list of any employees who have not signed such agreement.
91. Employee handbooks and policy manuals.

### Intellectual Property

***[Ask your Ropes & Gray team for a tailored due diligence request list related to your business's specific intellectual property portfolio]***

### Proceedings and Investigations

92. A schedule of all litigation, arbitration, administrative proceedings or governmental investigations or inquiries, pending or threatened, affecting the Company or its subsidiaries. Documents relating to material pending or threatened litigation, administrative proceedings, governmental investigations or inquiries filed by or against the Company or any of its subsidiaries.
93. Any agreements or correspondence with appropriate counsel relating to material patents, trademarks, licenses or other similar matters. A description of any challenge or threatened challenge against the Company regarding the validity or use of any patent, trademark, trade name, service mark, software, franchise, license or any intellectual property owned or used by the Company. A description of any notice of, or any investigation regarding, any violations or potential violations of the present or future rights of the Company in any patent, trademark, trade name, service mark, software, franchise, license or intellectual property owned or used by the Company.
94. All letters sent to or received from counsel since inception, in connection with the annual audits or otherwise, reporting on pending or threatened claims or litigation involving the Company.
95. All consent decrees, judgments, closing agreements, settlement agreements or orders of any court or other governmental authority to which the Company or any of its present or former officers, directors or principal shareholders is a party or is bound, requiring or prohibiting any future activities.



Miscellaneous

96. A schedule of each of the Company's products, including a description of development status, and key future development milestones.
97. Any documentation relating to the Company's compliance or non-compliance with regulations regarding (i) manufacturing practices or (ii) use, storage and disposal of hazardous substances.
98. Any documentation relating to the Company's compliance or non-compliance with environmental protection acts, including copies of all environmental permits necessary for the operation of the Company's businesses; a description of any claims under environmental protection laws and any notices of violation with respect thereto; a description of the Company's generation, treatment and disposition of hazardous substances and/or solid wastes; a description of the Company's history of problems with pollution control and environmental contamination and any communications with federal or state environmental agencies with respect thereto.
99. A list of the principal competitors of the Company in each market segment in which the Company does business or proposes to do business.
100. ERISA Form 5500 reports, any determination letters and the latest actuarial valuations for all benefit plans of the Company.
101. A description of any legal compliance program of the Company, together with a list of all documents distributed to employees regarding legal compliance (such as conflicts of interest, insider trading, etc.).
102. Information with respect to any violations, citations or outstanding enforcement proceedings under the Occupational Safety and Health Act of 1970 or other applicable federal or state statutes.
103. A schedule showing all outside counsel used by the Company and a brief description of the responsibilities of such counsel.
104. Any affirmative action plan of the Company, together with any related data or information pertaining to efforts to comply with applicable anti-discrimination laws.
105. A summary of all insurance policies carried by the Company, including a brief description of the type of policy, carrier, agent and coverage limits.
106. A description of any strike, lockout or labor disturbance since inception.
107. A description of (and sample documents relating to) any product warranties, assurances or disclaimers for past, current or future sales.

108. All management letters from the Company's independent public accountants to the Company regarding the Company's control systems, methods of accounting, etc.
109. All letters from the Company's attorneys to the Company's independent public accountants.
110. Recent analyses of the Company or its industries prepared by investment bankers, engineers, management consultants, accountants or others, including marketing studies, credit reports and other types of reports, financing or otherwise.
111. Projections, budgets or business plans since the Company's formation and for any future periods.
112. Most recent lien search on material property belonging to the Company.
113. A list of the material properties of the Company indicating those scheduled for repairs and the cost of such repairs.
114. Backlog and order records of the Company.
115. Schedule of major customers, suppliers and subcontractors, giving annual dollar amounts sold or purchased, as the case may be, and a description of the type of business transacted with each such customer and each such supplier.
116. Any memorandum or correspondence prepared by the Company, outside legal counsel or independent consultants relating to anticipated, proposed or recently enacted legislation or regulations that may affect the Company.
117. Any other documents or information which are significant with respect to the business of the Company or which should be considered and reviewed in making disclosures regarding the business and financial condition of the Company to prospective investors.

#### Sarbanes-Oxley Act

118. Copies of all charters of any committees of the Board of Directors including, but not limited to, the audit, compensation, nominating and governance committees.
119. Copies of any written policies regarding consideration of director candidates nominated by shareholders.
120. Copies of any written pre-approval policies and procedures of the audit committee.
121. A copy of the Company's code of ethics.
122. Any analyses relating to the independence of the Company's directors.
123. Any analyses relating to whether members of the Company's audit committee are "audit committee financial experts."

124. Any policies, procedures, plans or reports with respect to the Company's disclosure controls and procedures and the Company's internal control over financial reporting.

If you have any questions regarding the foregoing, please do not hesitate to call [Attorney] at [Phone Number].

For more information, please contact your usual Ropes & Gray attorney or reach out to a member of our capital markets team below.

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