

## Comprehensive M&A due diligence checklist for buyers

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1. General
  - a. Overview
    - i. Read the Letter of Intent and Definitive Agreement
    - ii. Read the latest available interim financial statements related to the Target.
    - iii. Obtain copies of internal financial statements for the historical period. Determine that such financial statements reconcile to trial balances/general ledgers for each period in the historical period
    - iv. Interview Target management and key accounting personnel to obtain an understanding of the operations and the accounting, reporting and control systems
    - v. Understand key terms of all significant customer and supplier contracts
    - vi. Understand key terms of all significant lease agreements
  - b. Accounting policies
    - i. Summarize significant accounting policies adopted by Target, including judgmental reserves and estimates
    - ii. Obtain detail of any changes in accounting policies/restructuring/impairments recorded by the Target.
    - iii. Understand any change in accounting methods or principles during the last five years and the reasons such change was undertaken.
    - iv. Review any letters from the Company's outside tax advisors and accountants during the last five years regarding the Company's accounting controls, method of accounting and other procedures.
    - v. Review any non-GAAP financial measures used in public documents, accompanied by the most directly comparable GAAP financial measure and reconciliation to GAAP, along with reasons for use of non-GAAP measures.
  - c. Audit / Review Workpaper Review
    - i. Identification of scope, audit procedures, control issues, passed adjustments, contingencies, accounting policies, etc., as it relates to Target
    - ii. Read the management representation letter, if applicable
  - d. Contracts
    - i. Review contracts which have a remaining term in excess of one (1) year.
    - ii. Review a schedule of any transactions (including purchase, sale, financing or loan agreements) between the Company and any shareholder, member, officer, director, employee or affiliate of the Company (including spouses, children and

other relatives of any affiliates thereof), and copies of all documents relating to such transactions.

- iii. Analyze contracts or letters of intent for the sale or acquisition of capital assets or securities.
- iv. Review powers of attorney, agency or representation agreements.
- v. Review logistics contracts or warehouse management agreements.
- vi. Understand key terms of license agreements.
- vii. Review any franchise agreements.
- viii. Review any joint venture agreement, partnership agreement or agreement involving a sharing of profits or technology of the Company, or joint marketing, development or distribution efforts by the Company.
- ix. Review any guarantee of the obligations of the Company's customers, suppliers, officers, directors, employees or others.
- x. Review any distribution, dealer, sales agency, advertising or consignment agreement to which the Company is a party or by which it is bound.
- xi. Review any material supply or requirement contracts to which the Company is a party or by which it is bound.
- xii. Review any non-competition, stand-still or confidentiality agreement to which the Company is a party or by which it is bound or any other agreement limiting the Company's ability to engage in any business anywhere in the world.
- xiii. Review a schedule and description of any agreement or contract to which the Company is party or by which it is bound under which the Company or another party is in default or which is in the process of being terminated or modified.
- xiv. Review any note, instrument, agreement, mortgage, lease, license, franchise, governmental permit or judgment, order or decree which involves covenants or other restrictions which could be violated or triggered by an acquisition of the Company or any of its assets.
- xv. Review and understand the key terms of purchase orders and other similar contracts and commitments.
- xvi. Review any professional service agreements.
- xvii. Review contracts relating to capital expenditures in excess of \$\_\_\_\_\_.
- xviii. Review contracts relating to any sale of any significant asset or property, other than inventory in the ordinary course of business.

- xix. Examine agreements or instruments which place restrictions or encumbrances on assets of the Company (including security agreements and judicial or administrative orders or decrees).
- xx. Examine all material contracts with customers.
- xxi. Review building or construction agreements.
- xxii. Understand the company's standard language/form (and any material third-party form used) including, but not limited to warranty agreements or terms, purchase orders, invoices, vendor and customer agreements.
- xxiii. Review purchase or lease agreements for machinery, equipment or other personal property.
- xxiv. Review computer contracts (hardware, service bureau, etc.).
- xxv. Examine all contracts with any governmental entity (including federal, regional, state, local and foreign) which may include, but are not limited to, any contracts with national defense, homeland security, or other national security responsibilities, including law enforcement responsibilities as it relates to defense, homeland security or national security.
- xxvi. Review agreements that may restrict the Company's activities in any significant manner.
- xxvii. Examine written summaries of oral agreements.
- xxviii. Identify material correspondence relating to material contracts.
- xxix. Review all other contracts and agreements involving the Company not otherwise covered by the above list and involving annual payment or receipt by the Company of \$\_\_\_\_\_ or more.
- xxx. Examine any other material contract or contract not entered into in the ordinary course of business.

## 2. Corporate

### a. General

- i. Review the Articles of Incorporation of the Company, as amended to date.
- ii. Review the bylaws of the Company, as amended to date.
- iii. Examine the minutes of the last five (5) years of meetings of the Board of Directors of the Company and any committees thereof and of the stockholders of the Company and copies of written consents in lieu of such meetings.

- iv. Review materials prepared for distribution to shareholders or directors in the past five years.
- v. Examine the list of jurisdictions in which the Company is qualified to do business as a foreign corporation.
- vi. Review a schedule of all states and countries in which the Company has offices, plants, employees, or representatives or in which the Company has annual sales of at least \$\_\_\_\_\_.
- vii. Examine the list of names under which the Company does or has done business.
- viii. Review a summary of the corporate history of the Company and any predecessors, including any mergers, acquisitions, changes in control, divestitures and corporate reorganizations.
- ix. Review documents relating to any past or present ownership interest of the Company in any other enterprise.
- x. Review the stock transfer ledger of the Company and copies of stock certificates of the Company.
- xi. Review the management and investment studies or reports of the Company, including any valuations and appraisals of the Company or divisions during the last five years.
- xii. Examine the brochures and reports describing the Company and its products.
- xiii. Review all organizational charts and policy manuals, including corporate codes of conduct.
- xiv. Review any press clippings and releases relating to the Company for the past three years.
- xv. Review a list of the business associations of which either Company is a member and copies of any documents related to such membership.

- xvi. Review a list of bank accounts (with authorized signers)
- xvii. Review any documents relating to the Company's status as an approved vendor to any party (including the federal government), and evidencing quality awards or designations.
- xviii. Review a list of all transactions or business relationships of the Company with any subsidiary, parent or affiliate including, but not limited to (a) borrowing arrangements or other credit arrangements, (b) joint or shared activities including purchasing, marketing, sales, common offices, common management and (c) staff or other services provided. For each such relationship, provide copies of agreements or other written descriptions of such arrangements, together with fee schedules and amounts involved for each of the last five (5) years.

b. Capitalization

- i. Review a summary of the classes and series of securities authorized and the number of shares or membership interests of each class or series issued and outstanding.
- ii. Review a schedule of all issuances of Company securities and grants of any stock options, warrants, convertible securities, restricted stock awards, stock appreciation rights, phantom stock rights, plans, or other commitments to issue securities. listing the holders thereof, the date of grant, the number of shares entitled to be purchased, vesting schedules, exercise price and fair market value on the date of grant) as well as any associated stock option, performance, or incentive plans.
- iii. Review a schedule of repurchases of capital stock or other securities.
- iv. Review a list of all current security holders (record holder as well as beneficial holder, if they are not the same person or entity), including number and type of securities issued or issuable upon exercise or conversion.
- v. Obtain all governmental permits, notices of exemption and consents for issuance or transfer of the Company's securities and evidence of qualification or exemption under applicable blue sky laws.

- vi. Identify and review all agreements among security holders, or between any security holder and the Company, with respect to voting, grants of proxies, dividend declaration or payment, rights of first offer or first refusal, co-sale or participation rights, observation or information rights.
- vii. Review all agreements among security holders, or between any security holder and the Company, with respect to the management, ownership or control of the Company.
- viii. Examine stockholders agreements, put or call agreements, voting agreements, stock transfer agreements or other arrangements among the shareholders of the Company.
- ix. Review agreements relating to registration rights, preemptive rights, rights of first refusal or co-sale rights.
- x. Examine any contract or agreement to which the Company is a party which contains a change of control provisions.
- xi. Understand the key terms of trust agreements or other documents (if shares are held in fiduciary or entity capacity).
- xii. Examine agreements, offering circulars, private placement memoranda, disclosure letters, and similar documents relating to sales (within past five years) or proposed sales of securities.
- xiii. Review agreements with any broker, finder, or other person or entity relating to the past, present, or proposed offering of securities.
- xiv. Understand any claims made since inception by any person asserting a right to an equity interest in the Company.
- xv. Identify any restrictions on the Company's ability to make dividend payments to its shareholders.

### 3. Financial Results (and Accounting, Tax and Financial Information and Operating Information)

#### a. Historical Trends

- i. ***Two-Year Historical Trends (Fiscal 2009 and 2010) and TTM Period (estimated to be the twelve-month period ended February 28, 2011)***
- ii. Identify unusual trends and current fluctuations with the primary purpose of identifying potential non-recurring income and expense items
- iii. Analyze the seasonality (monthly) of revenue, gross margins, and EBITDA as well as working capital.
- iv. Review copies of any management letters issued by the Company's independent accountants for the last five years.
- v. Analyze historical sales by product/service category for the past three years
- b. Review most recently prepared budget or business plan.
- c. EBITDA
  - i. Analyze EBITDA addbacks/non-recurring charges identified by Target management, including discretionary expenses
  - ii. Identify any additional adjustments to EBITDA as noted
- d. Revenue
  - i. Understand revenue recognition policies/issues, etc.
  - ii. Understand accounting for sales discounts to customers (including volume discounts if applicable)
  - iii. To the extent information is readily available; obtain an analysis of revenues, gross margins and operating income trends by customer, product line and by market. Such analysis to be performed for last two fiscal years and TTM period
  - iv. Analyze the seasonality in revenue and the resulting seasonal working capital requirements
  - v. Understand concentration of customer risks
  - vi. Comment on recent trends in the Target's backlog, if applicable
- e. Cost of Sales
  - i. Understand the trends in major categories of cost of services over last two fiscal years and TTM period
  - ii. Obtain an understanding of how inventory accounting impacts cost of goods sold
  - iii. Understand cost build-up of the operation
  - iv. Understand components of cost of services and if all expenses are properly classified

- v. Understand the trends in the major categories of controllable expenses over the last two years and TTM period (i.e. direct operating expenses, advertising and promotions, utilities, general and administrative, repairs and maintenance, supplies, etc.)
  - vi. Understand the trends in the major categories of non-controllable expenses over the last two years and TTM period (i.e. rent, property taxes, property insurance, G&A costs, etc.)
  - vii. Obtain an understanding of significant third party vendors/suppliers
- f. SG&A
- i. Understand the trends in the major categories of food, beverage and paper costs over the last two fiscal years and TTM period
  - ii. Understand major drivers for significant components of costs (salaries, insurance, rent, utilities, etc.)
- g. Corp Infrastructure / Allocations
- i. Understand procedures performed at corporate vs. at the locations
  - ii. Analyze the significant components of corporate expenses, identifying unusual trends, current fluctuations and any significant non-recurring income and expense items
  - iii. Analyze/understand costs that are allocated/not allocated to individual locations for services performed by corporate (i.e. is management fee only allocation?)
- h. Outside Services
- i. Obtain a listing of outsourced services and discuss with management the relationship and capacity available at these key vendors
- i. Obtain copies of all written investment policies of the Company.
- j. Tax Information
- i. Examine copies of all federal, state, local and foreign tax returns for the last five (5) years, including sales, property, franchise, payroll, excise, withholding and capital tax returns and consolidated returns (if any) of the Company.
  - ii. Review a list of any pending tax matters, including, but not limited to, audits, extensions of time, waivers of statutes of limitations, and deficiency/assessments, and the status of any outstanding tax audits, including a list of all audit adjustments proposed by any taxing authority.
  - iii. Examine copies of all communications and agreements between the Company and any taxing authority for the preceding five years. Describe any undertakings



given by the Company to tax authorities or any special tax rulings or agreements arranged with taxing authorities.

- iv. Describe any preferred tax status or tax benefit which may be adversely affected by the proposed acquisition and any related transactions, including a summary of any available tax attribute carry-forwards.
  - v. Obtain a list of tax years open and indicate whether the IRS or any other taxing authority has indicated that a claim may be asserted with respect thereto.
  - vi. Review audit and revenue agents' reports (federal, state, and local) for last five years
  - vii. Review correspondence regarding any audit or investigation inquiries
  - viii. Examine settlement documents and correspondence for last five years
  - ix. Review agreements waiving statute of limitations or extending time for filing tax returns.
  - x. Review material tax opinions.
  - xi. Identify evidence that all payroll, withholding, sales, use, franchise and real and personal property taxes are paid.
  - xii. Identify evidence that the Company has paid all transfer taxes related to the sale of personal or real property (if applicable) for last five years
  - xiii. Examine tax sharing, tax allocation or related inter-company agreements.
  - xiv. Analyze unemployment tax rate and payment status.
  - xv. Describe any tax abatement or incentive agreements.
- k. Operating Information
- i. Understand the markets served by the Company and the Company's target market segments.
  - ii. Obtain total market size for major products and market forecasts.
  - iii. Prepare a list of major competitors and describe generally their competing products. Provide an assessment of the relative market share of the Company and its major competitors in each of the product lines in which the Company competes.
  - iv. With respect to each product line, understand the Company's existing marketing strategy and any contemplated changes.

- v. Obtain current and historical market research and customer surveys and market research into geographic expansion opportunities or new product development.
  - vi. Determine whether the Company produces or trades in articles or services (including those under development) that may be designated or determined in the future to be defense articles or defense services?
  - vii. Obtain a list or description of each specific product or service the Company has sold or supplied for the past five years. For products, obtain SKU, UPC or other identifying information. Obtain gross margin earned for each product line.
  - viii. Obtain historical sales data by product/service category for the past five years.
  - ix. Review a list of production capacities by facility and discuss current utilization of capacity (e.g., percent of capacity used, number of shifts and plants, etc.).
  - x. Obtain a current price list for all products sold, together with methodology, assumptions, analysis and build up related to the determination of product pricing.
  - xi. Understand any backlog in existing or planned product lines.
  - xii. Review the Company's collection process and the terms extended.
  - xiii. Obtain all information pertaining to quality assurance, including but not limited to compliance manuals, internal memoranda, correspondence, testing reports, agendas and minutes of meetings with heads of operation, safety directors and quality control directors.
  - xiv. Understand the channels of distribution used for each of the Company's products.
  - xv. Review a listing of all international sales/service agreements and relationships.
  - xvi. Review copies of all labels, packaging, advertising, and promotional materials for all products (or services) for the past five years.
  - xvii. Review copies of all warranties applicable to products or services sold or supplied for the past five years.
  - xviii. Obtain a listing of all international sales/service agreements and relationship.
  - xix. Examine copies of the last two external ISO audit results.
4. Customers, Capacity and Vendors
- a. Obtain a schedule of the Company's twenty (20) largest customers, including the amount sold annually, a description of discounts, promotional allowances, payment terms, rebates, or referral fees for each.

- b. Review a complete customer list.
  - c. Provide a detailed breakdown of customer attrition data for the past five (5) years.
  - d. Economic capacity:
    - i. Understand the current operations (e.g., number of shifts, number of hours per shift, number of days operation per week, etc.).
    - ii. Understand the current practical capacity (sales volume) given current organizational, human resource and facility constraints.
5. Suppliers and vendors
- a. Understand the status of the relationships with major suppliers and vendors, including a description of any supplier quality issues.
  - b. Obtain a listing of relationships with major service/installation organizations.
  - c. Obtain a schedule of the Company's twenty (20) largest suppliers and vendors, setting forth annual amounts purchased. Obtain a summary description of the supply arrangement, e.g., pursuant to a written contract or through another arrangement.
  - d. Understand the major production materials required by the Company in the operation of its business.
6. Personnel And Labor Relations
- a. Obtain a schedule of the names of:
    - i. Current officers and directors and other key employees (together with resumes for each); and
    - ii. Any officers and directors and other key employees who have recently resigned or been terminated and all compensation paid during the last five fiscal years to the same, including base salary, bonus program (if any), benefits, prerequisites and length of service.
  - b. Obtain a staff organization chart, listing all employees with titles and grade levels. List any open positions to be filled in the next six months. Include copies of executive resumes, to the extent available. Please indicate if employees are part time.
  - c. Obtain a list of all temporary employees of either Company and copies of contracts or agreements relating to such employees.
  - d. For each employee listed on the organizational chart prepared under 6(b) above, obtain list base salary, bonus potential, and all benefits.
  - e. Review copies of any management and service agreements, employee collective bargaining agreements, employment agreements, deferred compensation agreements or arrangements, severance agreements or arrangements, consulting agreements, change of control agreement, including a description of any oral agreements.
  - f. Obtain a list of any involvement of officers, directors and employees in criminal proceedings and significant civil litigation.

- g. Examine Indemnification agreements with officers or directors.
- h. Obtain a schedule of all loans to any officer, director, employee, or shareholder and copies of all related documents.
- i. Review any employee manuals, employee handbooks, relations policies, programs, practices, agreements, procedures and arrangements or other documents containing employment policies, job descriptions and organizational charts or relating to terms and conditions of employment.
- j. Examine any Patent, trade secret, non-disclosure, confidentiality, non-compete, and non-solicitation agreements with employees, consultants, agents, sales representatives, officers, managers or directors.
- k. Understand the description of any other employment policies, including any unwritten policies.
- l. Obtain a schedule of any prior, pending or threatened (a) unfair labor practice charge or complaint against the Company before the National Labor Relations Board (NLRB), Equal Employment Opportunity Commission (EEOC), Occupational Health and Safety Association (OSHA), State Worker's Compensation Agencies or any other federal, state or foreign labor relations board, (b) employee grievance against the Company, (c) arbitration proceeding against the Company, and (d) human rights complaint against the Company.
- m. Obtain a schedule of all worker's compensation claims experienced by the Company in the last two years showing (a) the amounts paid to date in respect thereof, (b) the current status of such claims, and (c) the amounts, if any, reserved for such claims.
- n. Obtain a schedule of any bonus or special compensation granted or increase in compensation or benefits payable to any directors, officers or employees of the Company for the past five years, other than increases required by the terms of any applicable collective bargaining agreement.
- o. Examine all confidentiality and non-compete agreements.
- p. Review a description of any labor union organizing activity in the last five years.
- q. Review a listing of management employees through department head with experience, responsibilities, years with the Company and compensation (including salary, bonus and fringe benefits).
- r. Review a listing of the number of employees by category, location and department.
- s. Analyze Employee turnover statistics.
- t. Review a schedule of all loans to employees and copies of all related documents.

- u. Review a list of all independent sales persons, consultants or other independent contractors and copies of all agreements relating to such person.
  - v. Obtain a schedule of any employee claims other than worker's compensation claims (including worker's compensation, employment discrimination, unfair labor practices, etc.).
  - w. Review all material labor disputes, strikes or work stoppages which have occurred in the last five years.
  - x. Obtain absenteeism, disciplinary actions, accident records and turnover rates of employees the Company.
  - y. Obtain copies of any special compensation or retention arrangements in connection with the proposed transaction.
7. Payroll & Benefits
- a. Labor Costs
    - i. Understand total employee costs and reconcile to 3<sup>rd</sup> party payroll provider or in-house payroll reports
    - ii. Understand compensation paid to key management and sales personnel over the historical periods
    - iii. Understand the trends in the major categories of Labor and Benefits over the last two years and TTM period (i.e. direct operating labor, payroll taxes and employer benefits)
  - b. Benefits
    - i. Understand the basis for recording benefit costs and liabilities
    - ii. Analyze benefit packages available to employees (i.e., length of time before receiving benefits, management and administrative benefits, fringe benefits, commissions, and bonuses)
    - iii. Review copies of any bonus, pension, profit sharing, stock option, stock purchase or annuity plans affecting the compensation of officers, directors and employees in effect during any portion of the last three years.
    - iv. Understand any thrift, stock purchase, stock option, performance, bonus, incentive, retirement, welfare, hospitalization, disability, life or other insurance plans or programs available to employees and any other employee benefit plan, program, agreement or arrangement.
    - v. Review any administrative service agreements (or other agreements with benefit plan administrators) with respect to any benefit plans.
    - vi. With respect to each pension plan:
      - (a) Review plan and pension trust instruments;

- (b) Understand plan summaries (handouts for employee participants);
    - (c) Examine financial statements and plan evaluations for the last plan year;
    - (d) Review the most recent actuarial evaluation reports;
    - (e) Examine IRS Forms 5500 for each plan for the last three years;
    - (f) Examine financial statements and plan evaluations for the last plan year;
    - (g) Review copies of any and all IRS determination letters; and
    - (h) Understand cost benefit information for the most recent plan year, including administrative costs, employer contributions, employee contributions and benefit distributions.
  - vii. Obtain a description of all severance policies (including any written materials describing such policies).
  - viii. Obtain a description and itemized schedule of all non-salary “perks” offered to officers and employees.
  - ix. Obtain copies of all agreements relating to “rabbi trusts” or other arrangements securing in any way the payment of deferred compensation, severance or other payments to employees or directors.
  - x. Obtain any notices or other communications issued with the past five years relating to blackout periods under any defined contribution plan or regarding any further reductions in medical, pension or other employee benefit or regarding the termination of any employee benefit arrangements.
  - xi. Obtain a list of any multiemployer or multiple employer plans to which either Company has or had in the past an obligation to contribute, including pension or welfare funds, together with copies of all contracts and agreements related to the same.
  - xii. Obtain copies of the most recent report regarding post-retirement liabilities prepared in accordance with FASB and a schedule of life and/or health benefits for retired employees or dependents indicating whether liability for those benefits has been determined, whether and how these benefits have been funded and the number of retirees receiving benefits.
- 8. Balance Sheet
  - a. Assets
    - i. Cash
      - (a) Obtain an understanding of the Target’s treasury function
      - (b) Analyze the corporate bank reconciliation as of the latest balance sheet date
      - (c) Understand and assess the cash management controls and practices related to cash/credit cards received at the store register through to their deposit in the local deposit accounts and subsequently from the local accounts to the corporate accounts
    - ii. A/R
      - (a) Scan accounts receivable to identify unusual items

- (b) Obtain an understanding of the receivable system and controls, walking through a standard transaction through the sales, billing, accounts receivable and collections cycle
  - (c) Analyze recent claims collection rates and compare to Company's allowance for doubtful accounts
  - (d) Comment on any aged receivables in relation to the allowance for doubtful accounts and the bad debt history
  - (e) Analyze accounts receivable ratios at the end of the last two fiscal years and TTM period
  - (f) Obtain aged AR trial balances for Target and agree to financial statements, scanning for unusual items
  - (g) Understand the factoring relationship and fees incurred
- iii. Inventory
- (a) Obtain an understanding of the Company's inventory costing system and reasonableness of reported costs on the Company's financial statements
  - (b) Determine how often the Company takes physical inventories and the methodology used to determine obsolete inventory.
  - (c) Obtain information regarding inventory valuation, turnover, and obsolescence.
  - (d) Obtain listings of historical book-to-physical adjustments for the last two fiscal year-end counts.
  - (e) Review a schedule of any write-down of the value of any inventory or write-off as uncollectible of any notes or accounts receivable made by the Company during the last five years other than immaterial write-downs or write-offs in the ordinary course of business.
  - (f) Understand the Company's accounting for inventory reserves, if any, and the effect on current periods' earnings
  - (g) Obtain inventory aging by category
  - (h) Analyze inventory reserves for reasonableness
- iv. Fixed Assets (Fix Assets)
- (a) Obtain a schedule of fixed assets (quarterly rollforwards since January 1, 20xx) and agree to financial statements
  - (b) Obtain dated copy of latest physical inventory of all equipment and other assets
  - (c) Understand the Company's capitalization policy
  - (d) Determine capital expenditures made in the last two fiscal years and TTM period as well as projected capital expenditure assumptions
  - (e) Consider the depreciation policies adopted
  - (f) Review copy of the most recent fixed asset register.
  - (g) Analyze depreciation methods by asset class.
  - (h) Prepare a legal description of all properties owned or utilized by the Company.
- b. Supplemental balance sheet data
- i. Obtain a copy of most recent aged accounts receivable report.
  - ii. Obtain a copy of most recent aged accounts payable report.

- c. Review a detailed description of any off-balance sheet arrangements, liabilities or obligations of any nature (fixed or contingent, matured or unmatured) that are not shown or otherwise provided for in the Company's current financial statements. Review (i) the nature and purpose of any such off-balance sheet arrangements; (ii) the importance to the Company of such arrangements; (iii) the amounts of revenue, expenses and cash flows arising from such arrangements; (iv) any known event, demand, commitment, trend or uncertainty that is reasonably likely to result in the termination (or reduction in availability to the Company) and the course of action the Company has taken or proposes to take in response to such circumstances.
  
- d. Liabilities
  - i. Leases/Indebtedness
    - (a) Obtain a schedule of equipment and office leases, segmented by capital vs. operating
    - (b) Obtain copies of all significant lease agreements
    - (c) Obtain a schedule of all available credit agreements, credit lines, letters of credit or other financing arrangements involving the Company and a description of any security therefor.
    - (d) Review any agreements or documents evidencing or providing for borrowings by the Company in excess of \$ \_\_\_\_\_, whether on a secured or unsecured basis.
    - (e) Examine material correspondence with lenders of the Company during the last three years including all compliance reports submitted by the Company or its independent public accountants during the last three years.
    - (f) Review mortgages, leases of personal property, security agreements, UCC-1 financing statement filings, indentures, guarantees, installment purchase agreements, letters of credit and financing leases.
    - (g) Identify all encumbrances and restrictions affecting property.
    - (h) Obtain a detailed description of any bad debts and agreements or arrangements that are expected to result in a loss.
    - (i) Obtain a list and description of any contingent liabilities not disclosed or described in financial statements.
  
  - ii. A/P
    - (a) Scan the latest accounts payable aging
    - (b) Identify debit, large or old outstanding balances
  
  - iii. Accrued Liabilities
    - (a) Obtain a list of general accrued liabilities (i.e. identifiable operating liabilities) and scan for completeness and agree to Financial Statements
    - (b) Obtain an understanding of the Company's month-end accrual procedures for each significant accrual
    - (c) Inquire about any "off-the-books" activities
    - (d) Understand and document policies related to accounting for worker's compensation, product warranties, and group insurance.



- iv. Identify all (i) the monetary reserves established for specific risk situations and (iii) disagreements with the Company's outside auditors concerning the Company's financial reporting, including those arising from contracts and agreements, price redetermination or renegotiation, unfunded pension plan liability, antitrust matters, or environmental matters.
- v. Obtain a schedule of any capital expenditures in excess of \$\_\_\_\_\_ made by the Company during the last five years, together with a description of any planned capital expenditures.
- vi. Determine amount of capitalized software and related amortization schedule.

e. Financing

- i. Obtain a schedule of currently outstanding short-term debt, long-term debt, inter-company debt, contingent obligations and capital lease obligations of the Company, including amounts, maturities, balances due, interest rates and prepayment terms, together with copies of correspondence to/from lenders during prior 12 months and compliance reports prepared by the Company or its auditors.
- ii. Review copies of all agreements evidencing borrowings by the Company, whether secured or unsecured, documented or undocumented, including loan and credit agreements, mortgages, deeds of trust, letters of credit, indentures, promissory notes and other evidences of indebtedness, and any amendments, renewals, notices or waivers.
- iii. Understand any financing agreements with or for suppliers/customers.
- iv. Review copies of all documents and agreements evidencing other material financing arrangements, including capital leases, synthetic leases, sale and leaseback arrangements, installment purchases or similar agreements.
- v. Examine all agreements pursuant to which the Company is or will be 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).
- vi. Obtain a summary of currently outstanding interest rate or foreign currency swaps, caps, options, forwards or other derivative instruments or arrangements to which the Company is a party.
- vii. Obtain a current listing of standby letters of credit, performance bonds, performance guarantees and similar credit support obligations (including, without limitation, copies of all letters of credit outstanding under the senior revolving credit facility and the underlying agreement(s) requiring the Company to provide such credit support).
- viii. Review copies of any currently outstanding commitment letters or other correspondence relating to proposed financing or borrowings which may involve amounts in excess of \$\_\_\_\_\_ of indebtedness of the Company.

- ix. Understand all encumbrances and restrictions affecting the Company's assets.
- x. Understand any liabilities retained in connection with the divestiture of assets or operations during the past five (5) years.

#### 9. Real Property

- a. Obtain a list of the address and description of each office, manufacturing, warehouse or other facility that the Company now maintains or has maintained; stating, for each presently maintained facility, its age, type of construction, amount of floor space, estimated remaining life and whether owned or leased.
- b. Review copies of deeds with respect to all owned real estate, including copies of all related title papers, title insurance policies, appraisals and surveys.
- c. Review copies of any leases or similar agreements under which the Company is lessee of, or holds or operates, any real property owned by any third party lessor, including a description of each such lessor and a list of leasehold improvements including cost, depreciated value and ownership.
- d. Examine all contracts for the purchase, sale or lease of real property or any option to purchase or sell real property or any management contract relating to real property to which the Company is a party or by which it is bound.
- e. Review a description of mortgages, liens, pledges and encumbrances.
- f. Review copies of all agreements affecting real property.
- g. Examine certificates of occupancy
- h. Review any engineering reports or studies regarding any facility.
- i. Examine all agreements affecting real property.
- j. Obtain a list of security deposits held.
- k. Review all easements and rights-of-way required for operation of business
- l. Obtain a list of continuing obligations under expired leases or agreements relating to the sale of real property by the Company or any predecessor entities.
- m. Review the options and rights of first refusal to and from the Company.
- n. Examine zoning status and variances.
- o. Review estoppel certificate from landlord with respect to any significant leased real property.

#### 10. Product Liability and Warranty

- a. Obtain a list and summary description of all product liability claims for the last five years.

- b. Obtain a list and summary description of all warranty claims for the last five years.

#### 11. Litigation and Regulatory Matters

- a. Review a documentation relating to and description of all pending, threatened or completed litigation, claims, suits and proceedings in which the Company is, was or could be a defendant for the past five years, including the nature of the litigation, the amount involved and any opinion of counsel as to the probable outcome.
- b. Review copies of all pleadings or substantive filings in the possession of the Company with respect to the matters described in response to Section 12(a)
- c. Review all reports to the Company's Board of Directors, or equivalent managing body, from attorneys, appraisers or others during the last five years regarding unsafe, questionable or illegal matters or practices of the Company.
- d. Examine all letters from the Company's auditors to management, auditors' inquiry letters and all replies to the foregoing for the past 5 years.
- e. Obtain a description by project of all work performed by outside law firms.
- f. Review a schedule of all laws, regulations, rules, ordinances, injunctions, franchises or court orders in respect of which the Company is not in compliance or has received notice of a possible violation.
- g. Review any consent decrees, judgments, other decrees or orders, settlement agreements and other agreements to which the Company is a party or by which it is bound requiring or prohibiting any future activities.
- h. Obtain a list of all audits, inquiries or incidents with respect to regulations relating to the transportation of dangerous goods, including the Transportation of Dangerous Goods Act.
- i. Review all reports, notices or correspondence relating to any violation or infringement by the Company of government regulations, including any regulations relating to occupational safety and health and the transportation of dangerous goods.
- j. Review copies of letters from lawyers to accountants concerning litigation and other legal proceedings, including all attorney audit letters for the last five years.
- k. Review all reports filed with state or federal governmental agencies, including all securities law filings not otherwise available at [www.sec.gov](http://www.sec.gov).
- l. Examine reports of any regulatory body that has audited or reviewed the Company.
- m. Review copies of all lobbying registration or disclosure filings with any governmental entity.

- n. Examine information regarding any bankruptcy, receivership or similar proceedings with respect to the Company or its officers or directors.
- o. Obtain a schedule of all material licenses, permits, registrations, governmental approvals and clearances obtained, pending or otherwise required for the conduct of the business of the Company.
- p. Prepare a schedule of all laws, regulations, rules, ordinances, injunctions, franchises or court orders to which the Company or its operations is subject, the status of compliance with respect to each and a description of all programs, presentations, guidelines, policies or similar documents relating to the Company's compliance with the laws and regulations of any governmental entity.
- q. Obtain a summary of all material governmental agency inquiries, citations, notices of violation, fines or penalties (if any), whether written or oral and including any threatened formal or informal actions or inquiries.
- r. Review reports of any regulatory body that has audited or reviewed the Company.
- s. If applicable, obtain a description of the Company's compliance with Gramm Leach Bliley, Basel Convention and HIPAA, together with any other similar governmental regulations it is subject to in any jurisdiction (e.g., European Union related restrictions on data privacy) with respect to the use, collection, storage, disclosure and transfer of any data or personally identifiable information collected by the Company or by third parties having authorized access to the records of the Company.

## 12. R&D and IP

- a. Obtain a schedule including a list and copies of all technology, inventions, patents, patent applications, utility models, designs, trademarks, service marks, trade names and copyrights , whether registered, unregistered or the subject of a pending application owned by the Company or in which the Company holds any right, license or interest, (hereinafter, "Company Intellectual Property") showing with respect to each: (a) the product, device, process, service or business covered thereby; (b) the registered or other owner; and (c) in the case of any of the foregoing not owned by the Company, a brief description of the nature of the right, license or interest of the Company.
- b. Review copies of all documents, information or other materials pertaining to the application or registration of the Company Intellectual Property.
- c. Obtain a schedule including a list copies of any intellectual property searches or any clearance, availability, validity or other opinions concerning either Company Intellectual Property.
- d. Obtain a schedule including a list and copies of all agreements involving the licensing, assigning or granting of any security interest or other right or ownership interest in any of either Company Intellectual Property rights to a third party.

- e. Obtain a schedule including a list and copies of all agreements involving the licensing, assigning or granting of any security interest or other right or ownership interest to either Company in a third party's intellectual property rights.
- f. Obtain a schedule including a list and copies of all documents and other information or materials related to any charges of intellectual property infringement or any other intellectual property dispute made against the Company.
- g. Review copies of any license agreements, including, but not limited to, computer software; other agreements, including research and development agreements.
- h. Review copies of any royalty agreements (whether the Company pays or receives the royalty).
- i. Obtain a summary of annual royalties paid or received by the Company and projections for such payments in the future.
- j. Obtain a summary of research and development expenditures over the last five (5) years.
- k. Obtain a summary of significant new products, technologies or processes currently under development.
- l. Obtain a summary of significant computer software used or acquired by the Company and copies of related licensing agreements.
- m. Review agreements (or standard form of agreement) with employees regarding assignment of intellectual property and confidentiality
- n. Review documentation or information relating to any dispute regarding intellectual property rights.
- o. Obtain a summary of research and development expenditures over the last five (5) years.
- p. Obtain a summary of significant computer software acquired by the Company and copies of related purchasing, licensing and other agreements or documents.
- q. Obtain a summary of all third party computer software, databases and other intellectual property which are used by the Company in the conduct of its business and copies of related license or other agreements or documents.
- r. Examine forms of the Company's assignment of IP rights and confidentiality agreements, along with a description of the Company's policy as to which employees and consultants are required to execute such agreements, and confirmation that the Company has, as a general matter, complied with such policy. Please indicate whether or not the Company has been involved in any disputes with any current or former employees or consultants over the past five years in which any employees or consultants have claimed to have rights in any Company IP.

- s. Review copies of nondisclosure or any other agreements restricting disclosure, sharing or other dissemination of intellectual property.
- t. Prepare a listing and copies of all consent or other agreements involving any of the Company's intellectual property rights not otherwise encompassed by the above provisions in this Article 13.
- u. If the Company is engaged in research and development, production or sale of technology, goods, software or services subject to U.S. export controls, obtain the applicable U.S. Munitions list categories, ECCN numbers or other information identifying the subject matter of the export and all applicable export control policies and related procedures employed by the Company.
- v. Review opinions for patents including right to use, patentability, blocking patents, infringement and validity. Review opinions for trademarks including registrability and infringement.
- w. Review documents relating to third-party development and/or testing of the Company's products, services and/or proprietary products/information, including third-party certifications or testing.
- x. Obtain a list of the Company's internet sites and newsgroups
- y. Obtain copies of all legal opinions, "cease and desist" letters or other communications relating to alleged or actual infringement
- z. Review assignments involving Company Intellectual Property.
- aa. Examine the use of copyright notice.
- bb. Describe all patent proceedings and other administrative proceedings in the U.S. Patent and Trademark Office (including, for example, opposition proceedings, cancellation proceedings), as well as any consents, judgments, settlements, or decrees relating to same.
- cc. Obtain a schedule of all trade secrets and descriptions thereof, together with a list of third party claims with respect the same and a description of procedures used to protect trade secrets.
- dd. Obtain a list and copies of all agreements pursuant to which source code of the Company is held in escrow.
- ee. Review all material pending, threatened and resolved claims, disputes, suits, actions, litigations or proceedings concerning the value, validity, enforceability, ownership, registration, infringement or use of any Company IP or alleged infringement of any third party intellectual property.

### 13. Personal Property

- a. Obtain a list of all personal property, such as office equipment, automobiles, etc., and copies of leases or conditional sales agreements relating to such property.
- b. Confirm that all assets are at the facility.
- c. Review most recent personal property appraisal.
- d. Review maintenance contracts related to Company personal property.
- e. Examine service records related to Company personal property.
- f. Examine documents of title related to Company personal property.

#### 14. Insurance

- a. Obtain a list of insurance coverages in force (e.g., business interruption, directors and officers, fire or casualty, extended coverage, general liability, key man, motor vehicle, professional liability, product liability, unemployment compensation, etc.), including names of carriers, brokers, description of coverage, amounts of coverage, amounts of premiums, expiration dates and significant conditions and benefits.
- b. Examine copies of any insurance analyses or reports prepared for the Company.
- c. Obtain a list of bonding arrangements.
- d. Obtain a schedule of loss and claims experience for the past five years.
- e. Description of areas in which the Company is self-insured, and methods of self-insurance.
- f. Describe any potential uninsured or underinsured liabilities.
- g. Review copies of cover sheets of policies and binders.
- h. Provide an analysis of worker's compensation coverage and claims experience for the last five years.
- i. Describe any changes in coverages during the last five years.
- j. Review of actuarial evaluations.

#### 15. Environmental

- a. Review all information and correspondence regarding compliance with federal, state, local or foreign environmental laws and regulations (including, without limitation, permits, permit applications, notices of violation, compliance orders and agreements, pollution control capital expenditure reports, and information relating to the presence of UST's, PCB's or asbestos).
- b. Review all information and correspondence regarding generation, treatment, storage and disposition of hazardous substances (including, without limitation, permits, spill reports

and notifications, manifests, financial estimates and reserves for environmental liabilities, and a list of on-site and off-site waste disposal sites).

- c. Examine all internal Company reports concerning environmental matters relating to current or former Company properties or properties formerly owned or operated.
  - d. Review all material documents relating to regulatory proceedings (including, without limitation, information requests under CERCLA '104(e) and similar federal, state, local or foreign laws or regulations).
  - e. Examine copies of all other environmental studies and surveys, including any Phase I or Phase II reports.
  - f. Examine copies of all notices, complaints (whether formal or informal), suits or similar documents sent to, received by or served upon the Company by any environmental regulatory or protective agency, whether federal, state or local.
  - g. Review a description of any past or ongoing remediation efforts.
  - h. Obtain a list of all environmental permits and permit applications of the Company, together with copies of related correspondence and consideration of transferability.
  - i. Obtain a description of the condition of neighboring areas (landfills, Superfund or Part 201 sites, spills, relations with neighbors, common drainage of waste treatment areas)
  - j. Review regulatory lists and files (state records and Part 201 List; National Priority List, state policy, fire marshal underground storage tank records).
  - k. Obtain copies of all waste manifests related to real estate for which Company has environmental responsibility.
  - l. Obtain a list of former Company properties and properties formerly owned or operated by the Company. With respect to current or former Company properties or properties formerly owned or operated, provide evidence of chain of title for at least the last 50 years, together with a history of the property's use during that period.
16. Risk Management
- a. Obtain copy of the Company's disaster recovery plans for (i) any hosted products sold to customers, and (ii) for internal office systems, development systems, etc.
  - b. Obtain copy of the Company's information security policy (if any).
  - c. Obtain copies of the Company's documentation retention or destruction policy.
  - d. Obtain copy of all information security programs, procedures and metrics.
  - e. Identify the person primarily responsible for the Company's information security programs and indicate the percentage of that person's time which is dedicated to security programs.



- f. Identify the person primarily responsible for the Company's physical security programs and indicate the percentage of that person's time which is dedicated to physical security.
- g. Obtain copies of any security assessments performed by or with respect to the Company.

#### 17. Information Technology

- a. Obtain schedule of all IT assets owned or leased by the Company, including PCs, servers, telephones, and other general telecommunications equipments (e.g., PBXs, routers, switches), together with copies of the relevant agreements.
- b. Understand the applications used to run the Company's business and support important internal departments and functions including, but not limited to: (i) human resources; (ii) finance; (iii) customer service; (iv) product provisioning; (v) email / fax / mobile devices; and (vi) intranet.
- c. Understand technological infrastructure, including servers, network and data centers, which are used to run the Company's and support important internal departments and functions including.
- d. Understand how the technologies in Section 18(a) and 18(c) are supported including, but not limited to, helpdesk, application support and infrastructure support.
- e. Identify who is responsible for software and hardware asset management. Describe how this management is performed.
- f. Review a reconciliation of all deployed desktop software. Are invoices available for all software deployed?
- g. Understand the internal authentication security mechanism (Active Directory, etc) for regular office use, development and remote access.
- h. Determine what metrics are tracked for internal systems and infrastructure. Obtain a recent copy of such reports.
- i. Review copies of all IT policies and procedures (development process, security (both physical and electronic), back up and recovery, data privacy, trade secret policies, Acceptable Use Policies, regulatory compliance, export control, internal controls, etc.).
- j. Obtain copy of the Company's data (including consumer data) privacy policy.

#### 18. Other Information

- a. Review documentation relating to acquisitions or divestitures in the past five years.
- b. Understand current plans or negotiations relating to potential acquisitions or divestitures.
- c. Review other documents viewed by the Company as material to its business, prospects, assets, results of operations or condition (financial or otherwise).

- d. Review any other material information or document.

#### 19. Special Industry Considerations

##### a. Software

##### i. Revenue

- (a) Understand revenue recognition policies and issues related to multiple revenue elements (i.e., hardware, software reselling, software development, training, maintenance, etc.)
- (b) Obtain an understanding of the Company's contract accounting policies and procedures
- (c) Obtain an analysis of sales and margins by major product group and contract components (i.e., hardware, software reselling, software development, training, maintenance, etc.)

##### ii. Software Development Costs

- (a) Understand the Company's policies surrounding the capitalization of software development costs

##### iii. Deferred Revenue

- (a) Understand the calculation of deferred revenue balances, if applicable, at the end of the last two years and TTM period

##### b. IT Target

- i. Obtain high level architectural descriptions of each of the Company's products and major product components including size (lines of code).
- ii. Understand development environment in which products (including applications, user interfaces and intermediate tier programs) are written.
- iii. Identify databases (including versions) deployed.
- iv. Understand, for each product, typical hardware requirements for (a) client; (b) middle tier(s); and (c) database.
- v. Understand major engines and components of the products.
- vi. Understand how security is implemented in the products, including but not limited to (a) use of separate architectural layer; (b) access control; (c) role based and field level controls; and (d) encryption techniques.
- vii. Understand methodologies and technologies utilized in product development and delivery.
- viii. Understand release schedules for each product and current status of each upcoming product.
- ix. Attach bug/defect lists for each product at the end of each of the last five calendar years.
- x. Identify third party controls, tools or public domain utilities utilized used in development or deployment of products.
- xi. Understand third party product use at a component level.
- xii. Indicate whether the Company has source code for all of its developed technology and describe the quality of the source code and related documentation.
- xiii. Understand data and network security measures taken by the Company and whether the Company's products are recognized security standard compliant.

- xiv. Indicate whether the Company has been subject to SAS 70 audits; and copies of any reports resulting from such audits.
  - xv. Do they assess application development capability using the Software Engineering Institute's Capability Maturity Model (CMM)? If so, what CMM level (1-5) have they reached?
  - xvi. If offshore outsourcing is utilized, understand processes and controls.
  - xvii. Understand release management and version control processes and procedures, including products used for control.
  - xviii. Understand your build process including level of automation and frequency of builds.
  - xix. Understand source code control procedures including products used for control.
  - xx. Understand QA metrics established.
  - xxi. Understand QA automated tools and test procedures employed.
  - xxii. Understand new product launch cycle and methods.
  - xxiii. Understand how this product is used in a multi-tenant online (ASP) environment.
    - (a) What limitations are envisioned in this type of environment;
    - (b) Understand current owned or leased online ASP data center environment;
    - (c) Obtain list of current customers (if any) running in online ASP mode; and
    - (d) Understand plans to convert existing customers from local to online ASP mode.
  - xxiv. Understand the software development life cycle used from beginning to end.
  - xxv. Understand the process for hiring and training new development employees. If this differs by role please describe the process for each role.
  - xxvi. Understand the implementation process for customers.
  - xxvii. Obtain a sample project plan for a new customer implementation.
  - xxviii. Understand the Company's account management process.
  - xxix. Understand the customer support process that is in place for servicing customers. Understand how escalation is handled.
  - xxx. Obtain a summary of the volume and type of customer issues over a reasonable period of time, as well as the resolution of those issues.
  - xxxi. Understand the process for hiring and training new implementation, account management and support employees
  - xxxii. Understand which products are hosted and provided in a SaaS environment.
  - xxxiii. Understand the hosting environment:
    - (a) Technology infrastructure
    - (b) Outsourcing vendors
    - (c) Architectural limitations or challenges of the products in this environment.
    - (d) Technical support (application and infrastructure) in this environment.
  - xxxiv. Obtain Service Level Agreements, either internal goals or contractual commitments.
  - xxxv. Determine if the Company hosts SPII (sensitive personal identifiable information) on behalf of its customers. This would be data that would require a consumer disclosure if a data breach occurred. If so, determine which persons has responsibility to provide the consumer disclosure. Determine if there have been any data breaches and response to the same.
- c. Retail
- i. Revenue

- ii. Analyze returns (as a percentage of sales) during the last fiscal year by prepaid, credit card and open account orders, and reasonableness of reserves, if any
- d. Construction
- i. Obtain an understanding of the Target's policies and procedures surrounding contract accounting
  - ii. Obtain an understanding of external auditor's procedures surrounding contract accounting, if applicable
  - iii. Obtain detailed support for a sample selection of open contracts at December 31, 2004, and analyze the sufficiency and accuracy of the Company's estimation process related to contract margins
  - iv. Obtain detail concerning any loss contracts open at the end of the TTM period
  - v. Understand the Company's backlog of contracts at the end of the TTM period
- e. Restaurants
- i. Overview
    - (a) Understand key points for all significant franchisor / franchisee agreements
    - (b) Understand Company's policy for accounting for franchise fees and [Franchisor]'s franchise rights.
    - (c) Obtain schedule of capitalized franchise fees and capitalized [Franchisor]'s franchise rights (roll-forwards for last three fiscal years through TTM period) and agree to financial statements.
  - ii. Revenue
    - (a) Understand the trends in major categories of food, beverage and paper costs over last two years and TTM period
    - (b) Understand revenue recognition policies/issues, etc. including tracking of discounts to employees/customers and deferred revenue related to food or beverage vendors
    - (c) Understand Company's policies for tracking cash and credit card sales and procedures followed at individual stores as well as at corporate that result in cash deposits (try to develop some procedures to verify deposits on a scope basis)
    - (d) Perform a proof-of-revenue assessment, comparing cash deposits to revenue recorded for a certain period of time
    - (e) Understand the trends in major categories of food, beverage and paper costs over the last two years and TTM period.
- f. Customs
- i. Obtain copies of representative Entry Summary for each different type of article imported by the Company within the past year, including documents showing country of origin, exporter, importer of record, Harmonized Tariff Classification and duty paid.

- ii. For any imported article subject to preferential duty treatment based on the country of origin or export, obtain all documents verifying or confirming the country of origin for the article, its component parts and materials.
- g. Export Control Compliance
- i. Review copies of correspondence to or from the Bureau of Industry and Security (BIS), Office of Defense Controls (ODC), or Office of Foreign Assets Control (OFAC).
  - ii. Review copies of all export compliance policies and procedures.
  - iii. Review copies of all export recordkeeping procedures.
  - iv. Obtain representative sample of export documents, including shipper export declarations.
  - v. Review copies of any licenses provided by BIS or ODC and any license applications for past five years.
  - vi. Review copies of any registration records with ODC.
  - vii. Review copies of any commodity jurisdiction rulings.
  - viii. Review copies of any reports of internal investigation reports of potential violations of International Traffic In Arms Regulations (ITAR), Export Administration Regulations (EAR), or OFAC regulations.
  - ix. Review copies of any voluntary disclosures of violations of export regulations.
  - x. Determine whether the Company sells (directly or indirectly through sales representatives) or exports any goods directly to customers in any of the following countries: Cuba, Iran, Burma, Sudan, countries of the Balkans region, Belarus, Cote d'Ivoire, Democratic Republic of the Congo, Iraq, Liberia, North Korea, Sierra Leone, Syria, or Zimbabwe.
  - xi. Determine whether the Company has screened all suppliers, customers, and agents against (i) OFAC's list of denied persons and Specially Designated Nationals, (ii) persons denied export privileges by BIS or ODC, and (iii) list of BIS entities involved in weapons proliferation.
  - xii. Determine if any of the Company's products defense articles included in the U.S. Munitions List. If so, indicate whether the Company registered with the ODC as a defense article manufacturer or exporter.
  - xiii. For each product that is not a defense article controlled under the U.S. Munitions List, obtain the product's commerce control list classification.
  - xiv. Determine if the Company been the subject of any civil or criminal enforcement action or investigation by BIS, ODC, or OFAC.

xv. Determine whether any employees are foreign persons (i.e., neither U.S. citizens nor permanent residents).

h. Sarbanes-Oxley (SOX) Matters

- i. Review corporate governance policies and procedures, including but not limited to copies of all codes of ethics/conduct, whistleblower policies, document retention policies and other material corporate governance policies and procedures.
- ii. Review corporate governance committees, and copies of all charters and meeting minutes thereof.
- iii. Obtain a schedule of all whistleblower complaints and actions taken.
- iv. Review director independence / nonindependence.
- v. Review internal controls and procedures.
- vi. Understand any deficiencies in the Company's internal control structure reported to the audit committee or the Board of Directors by the Company's independent auditors, and descriptions of resolutions of same.

**For more information on the guidance provided in this M&A due diligence checklist for buyers please contact:**



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