

## THE EXITMAP® DUE DILIGENCE CHECKLIST

Disclaimer: This list represents careful review of numerous other instruments, some meant for large companies and some for smaller transactions. We believe it is as comprehensive as any list available.

That said, no list can anticipate every situation, error, omission, falsification or subterfuge possible in the documentation of an operating business. *Caveat Emptor!*

### I. ORGANIZATION AND GOOD STANDING DOCUMENTATION

- A brief history of the Company, including date of founding, previous iterations and founders.
- A timeline highlighting the major milestones in the Company's history.
- The Company's Articles of Incorporation or Organization, and all subsequent amendments.
- The Company's Bylaws or Operating Agreement, and all subsequent amendments.
- The Company's minute book, including all minutes and resolutions of shareholders and directors, executive committees, and other governing groups.
- The Company's list of shareholders/members and ownership held by each.
- A record of the issuance, redemption and current ownership of all shares or interests in the Company since its formation.
- Any warrants, options or agreements to sell or purchase ownership interest or other obligations of the Company, specifically including non-qualified deferred compensation plans or synthetic equity.
- A list of any voting agreements, proxies or similar assignment of equity holder rights.
- A Certificate of Good Standing from the Secretary of State of the state where the Company is incorporated.
- Copies of active status reports in the state of incorporation for the last three (3) years.
- A list of all jurisdictions where the Company is authorized to do business.
- A list of all jurisdictions where the Company owns or leases property.
- A list of all of the Company's assumed names (DBAs), both current and former, with copies of their registrations.
- The Company's organizational chart showing ownership, governance, subsidiaries and affiliates.
- Description of any common business ownership or joint ventures between the Company and any entity owned or controlled by family members, employees or partners of current equity holders.
- A schedule of all notifications, consents and/or approvals required to any third party, including any governmental body, customer or vendor, in connection with a change of control or ownership in the Company or related entities.

## II. PROFESSIONAL

A schedule of all outside professionals engaged within the last five (5) years, including the name, address, email, website and key contact for:

- Accountants
- Attorneys
- Benefits Brokers
- Business Consultants
- Computer or Technology Consultants
- Financial Planners
- Insurance Agents
- Third Party Administrators

## III. FINANCIAL INFORMATION

- Financial statements for three (3) years, together with any CPA Reports and management letters.
- The most recent financial statements, with comparable statements to the prior year.
- CPA's letters and any replies by management or the Company's attorneys for the past five (5) years.
- Sales and expense projections, capital budgets and strategic plans.
- A breakdown of fixed and variable expenses.
- A list of any personal expenses paid by the Company.
- Cash flow projections for the next 12 months.
- Three (3) years' historical comparison of budgets to actual performance.
- A detailed description of one-time charges or expense abnormalities.
- A schedule of all indebtedness and contingent liabilities.
- A schedule of inventory.
- A list of all non-performing assets owned by the Company (land, vehicles, etc.).
- A schedule of accounts receivable.
- A schedule of accounts payable, with discussion of ageing methodology, historical write-offs and provision for losses.
- A list of the bank accounts belonging to the Company or its affiliates.
- A description of depreciation and amortization methods and changes in accounting methods used.
- A description of the Company's internal control procedures.
- Copies of all insurance policies, with details of any pending or settled claims in the last five (5) years regarding:
  - Property
  - Product liability

- Life
  - Directors, officers or errors and omissions
  - Workers' Compensation
  - Employment practices
  - Accident, indemnity, casualty
  - Business interruption
  - Key man or buy/sell funding
- Documentation on all indebtedness, including loans, loan commitments, letters of credit, bonds, mortgages, deeds of trust, security agreements, guarantees, debt securities, leases, and installment sales or purchase agreements.

## IV. PHYSICAL ASSETS

- A schedule of fixed assets and the locations thereof.
- All U.C.C. filings, if any.
- All leases of equipment.
- A schedule of sales and purchases of major capital equipment during last three (3) years.
- Copies of all real estate leases, deeds, mortgages, title policies, surveys, abstracts, certificates of occupancy, zoning approvals, variances, use permits or other similar compliance certificates.
- A schedule of all vehicles and other motorized equipment including lease provisions (if any), year made, year of ownership, state of registration, registration number, acquisition cost, estimated remaining life and insured value.
- A list of officers, directors or equity owners who hold an interest in such properties or leases.

## V. INVENTORIES

- Inventory composition, e.g. raw materials, work-in-process, finished goods and age by product line.
- Summary of inventory controls.
- Schedule of inventory reserves and provision for losses.
- Inventory write-offs for the last three (3) years.

## VI. TECHNOLOGY

- A listing of all electronic technology assets including cost, date of acquisition, operating system, version or same.
- A list of all social media sites maintained by or contributed to by the Company or any of its employees, officers or directors (excluding personal sites.)
- A list of websites maintained by or contributed to by the Company, including:
  - Domain registration information
  - Purpose

- Traffic history for the last year
  - Hosting company
  - Software platform
  - Updates and maintenance records
- Complete list of all major software packages being used by the Company, their version numbers, annual maintenance costs, number of users and how interfaced to other company systems.
  - Licenses – number of valid software licenses that are paid for and number of actual users.
  - Customizations – any modifications to third-party programs and whether they are maintained under service agreements.
  - IT Outsourcing agreements – copy of any IT outsourcing agreements in place including baseline services provided, costs and any changes of control clauses.
  - Capacity – listing of current IT system(s) capacity and age of equipment.
  - Cloud capability and use, including server hosting arrangements, automated backups and secure storage.
  - Interfaces – describe the existing system interfaces currently used and how external linkage could be done.
  - Disaster recovery plans – current system backup and recovery plans along with disaster recovery plan, frequency of system testing and any backup IT facility identified.

## VII. INTELLECTUAL PROPERTY

- Any proprietary technology the Company includes in its products, and their origins.
- A schedule of copyrights, patents, trademarks, registrations, related licenses and any applications for same.
- Copies of any licenses, reseller, distribution or other agreements under which the Company receives or sells the proprietary property of others.
- Any “work for hire” agreements, and the property that was generated as a result of same.
- Manual or procedures for maintaining the secrecy of proprietary property and information.
- A schedule and summary of any claims or threatened claims by or against the Company regarding intellectual property.

## VIII. TAXES

- Federal, state, local, and foreign income, sales or use tax filings for the last six (6) years.
- A schedule of all state, local and foreign income tax status, including any correspondence with tax authorities for the last five (5) years.
- Copies of any agreements, consents, elections or waivers filed with the IRS or other taxing authorities.
- A list of any NOL carryforwards and limitations on their use.
- Dates of most recent audits by any governmental or regulatory authority.

- Any audit and revenue agency reports.
- Any tax settlement documents for the last three (3) years.
- Any correspondence from governmental or other regulatory authorities concerning adjustments or compliance.
- Employment tax filings for the last three (3) years.
- Excise tax filings for the last three (3) years.
- Any tax liens.

## IX. EMPLOYEES AND EMPLOYEE BENEFITS

- Organizational chart listing divisions, departments and reporting relationships.
- List of employees including:
  - Location
  - Job Title (exempt or non-exempt)
  - Date of Hire
  - Attendance record for the last three (3) years
  - Salary and bonuses for the last three (3) years
- I9 and E-Verify records.
- A standard set of new hire documents executed by employees.
- Biographies of all officers and directors.
- Officer and director compensation and incentives for the last three (3) years.
- Sales commissions, payment policies and incentives.
- Travel and entertainment expense policies.
- All employment, consulting, nondisclosure, non-solicitation or noncompetition agreements between the Company and any of its employees.
- The Company's personnel handbook and any personnel literature describing terms and conditions of employment.
- A schedule of all employee benefits with holiday, vacation, and sick leave policies.
- Summary plan descriptions of retirement plans and Form 5500 filings.
- Current census data for any ERISA plans.
- Summary of any IRS or DOL audits of benefit plans.
- A description of any liability assumed by the Company for retiree compensation or benefits.
- Copies of collective bargaining agreements, if any.
- A description of all employee grievances, written complaints, corrective actions, performance improvement plans, or workers' compensation claims within the last three (3) years, including alleged wrongful termination, harassment, and discrimination.
- A description of any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three (3) years.
- A description of any labor organizing efforts experienced in the last three (3) years.
- A description of unemployment insurance claims history.

- Records of laid-off employees rights of recall.
- Contracts with any 1099 vendors, consultants or casual laborers.

## X. PRODUCT AND SERVICE LINES

- A schedule of products of service lines, ranked by annual revenues, and including:
  - Markets (by industry or geography) where they are sold
  - Supplier(s)
  - Average gross margin
  - Estimated market share
  - Forecasted growth rates (3 years out)
  - Special features of proprietary or exclusive nature
- A description of quality assurance methodologies, ISO certification or other quality control systems.
- Subcontractors for any products or services sold under the Company name.
- Cost breakdowns for products by component.
- A list of all existing products or services and products or services under development.
- A summary of all complaints or warranty claims.
- A summary of results of all tests, evaluations, studies, surveys, and other data regarding existing products or services and products or services under development.

## XI. CUSTOMER AND MARKET INFORMATION

- Customer concentration shown as:
  - Top ten (10) customers by revenue for the last three (3) years
  - Top ten (10) customers by gross profit dollars for the last three (3) years
  - Customers comprising 20%, 50% and 80% of the Company's revenue in each of the last three (3) years
- A description of the Company's markets including:
  - Commonality of overlap between markets
  - Synergy between markets, customers or product/service offerings
- A list and explanation for any major customers lost over the last three (3) years.
- Any market or customer surveys from the last three (3) years.
- Key vendors or suppliers (critical relationships).
- A description or copy of the Company's credit policy.
- Samples of customer agreements for services or supply.
- Price list or discount schedules.
- Examples of all display advertising, whether print or electronic.
- The Company's current advertising programs, marketing plans and budgets, and printed marketing materials.

- A schedule of unfilled orders.
- Any loans or advances to customers or vendors.
- All surveys and market research reports relevant to the Company or its products or services.
- A description of the Company's major competitors, defined by lines of product/service and describing their major strengths and weaknesses.
- Membership in trade associations.

## XII. CONTRACTS

- A schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements.
- Copies of all contracts between the Company and any officers, directors, or affiliates.
- All loan agreements, bank financing arrangements, line of credit, or promissory notes to which the Company is a party, including all liens, financing statements and UCC-1 filings.
- All security agreements, mortgages, indentures, collateral pledges, and similar agreements.
- All guaranties to which the Company is a party.
- Any installment sale agreements.
- Any distribution agreements, sales representative agreements, marketing agreements, and supply agreements.
- Any agreements where the Company agrees to indemnify a third party.
- Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures.
- Any options and stock purchase agreements involving interests in other companies.
- The Company's standard quote, purchase order, invoice and warranty forms.
- Copies of any power of attorney granted by or to the Company or any employee or agent thereof.
- All nondisclosure or noncompetition agreements to which the Company is a party.
- All other material contracts.

## XIII. LEGAL AND LITIGATION

- Copies of any product or service warranties or guaranties.
- A list of all material foreign, federal and state regulations and statues to which the Company is subject.
- A list of all licenses or permits required for legal operation.
- A schedule of all pending litigation.
- A description of any threatened litigation.
- Copies of insurance policies possibly providing coverage as to pending or threatened litigation.
- Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any Company products or services.

- Copies of any correspondence regarding claims or complaints against the Company involving:
  - Equal Employment Opportunity Commission
  - Occupational Safety and Health Administration
  - Internal Revenue Service
  - Federal Trade Commission
  - Department of Labor
  - Department of Commerce
  - Department of Justice
  - Securities and Exchange Commission
  - US Patent and Trademark Office
  - Any state or foreign regulatory body
  - Any industry or profession regulatory group
- Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party.
- A list of unsatisfied judgments.
- All records relating to current or prior employee complaints under EEOC guidelines, dispute resolution policies, or company ethics policies.
- Safety record and a list of incidents in the last five (5) years.

#### **XIV. ENVIRONMENTAL ISSUES**

- Environmental audits, if any, for each property leased by the Company.
- A listing of hazardous substances used in the Company's operations.
- A description of the Company's disposal methods.
- A list of environmental permits and licenses.
- Copies of all correspondence, notices and files related to EPA, state, or local regulatory agencies.
- A list identifying and describing any environmental litigation or investigations.
- A list identifying and describing any contingent environmental liabilities or continuing indemnification obligations.
- Any surveys, studies or tests of the Company's products or property.

#### **XV. PUBLIC RELATIONS AND PUBLICITY**

- Copies of all articles and press releases relating to the Company within the past three (3) years.
- Charitable organizations sponsored by the Company.
- Community organizations supported by the Company.
- Policies to encourage employee involvement in community or charitable organizations.