

Form:

Due Diligence Questionnaire

Description:

This is a questionnaire to be sent to a private company as part of the due diligence process in connection with a prospective venture capital investment. It is intended to quickly elicit key material information about the company and to expedite the due diligence process.

DUE DILIGENCE QUESTIONNAIRE

This questionnaire is intended to help us obtain basic information about your business in connection with [describe potential transaction]. Please answer the questions listed below for _____ and its subsidiaries in the spaces provided or use an attachment. Please return the completed questionnaire to _____ at _____ (____)_____, with the other documents that we ask you to furnish. If you need clarification or have questions, please call _____. Once we have reviewed your completed questionnaire and documents, we may need further information.

1. Capitalization

- (a) Who were the founders of the company? _____

- (b) How have you been capitalized? _____

- (c) Who are your major investors? _____

- (d) Please describe and attach a schedule showing by stockholder all outstanding common and preferred stock, options and warrants, and other rights to acquire equity securities, including where applicable exercise prices and vesting dates.
- (e) What vesting arrangements are in place for the founders' shares? _____

2. Banks

- (a) With which banks do you have relationships? _____

- (b) Describe any existing lines of credit, term loans or other debt. Please attach copies of relevant documents. Please describe any security interests in your assets granted to any third party or parties. _____

- (c) What signature authority is required for checks over \$50,000? _____

3. **Employment Agreements**

- (a) Please list any employment or similar agreements. _____

- (b) Have all of your past and existing employees, officers and consultants signed proprietary information and invention agreements? _____

- (i) If not, identify who has not by name, title, and dates of employment or consultancy. _____

- (d) Are all of your employees “at will” and terminable without liability? If not, please give details. _____

- (e) Please attach your form of proprietary information and invention agreement.

4. **Officers, Directors and Employees**

- (a) Please identify your officers, directors and key employees. _____

- (b) Have any of them been subject to a bankruptcy proceeding or been an officer of a firm subject to bankruptcy proceedings? If the answer is “yes”, please identify each individual by name and position. _____

- (c) Have any of them been subject to any criminal proceeding (other than traffic violations or other minor offenses)? If the answer is “yes”, please identify each individual by name and position, and provide a description of the nature of the proceeding(s). _____

- (d) Have any of them been subject to any order, judgment or decree suspending or barring him/her from engaging in any type of business activity? If the answer is “yes”, please identify each individual by name and position, and provide a description of the nature of any such order, judgment or decree. _____

- (e) Have any of them been subject to a civil proceeding or action by the Securities and Exchange Commission or state authority alleging violations of any federal or state securities or commodities law? If the answer is “yes”, please identify each individual by name and position, and provide a description of the nature of the proceeding(s). _____

- (f) Have any of them been involved in any litigation or arbitration action within the last five years? If the answer is “yes,” please provide a description of such matters. _____

- (g) Please attach any résumés or other background information you have for your officers, directors, and key employees.

5. **Facilities**

- (a) Where do you have manufacturing, sales or other facilities? _____

- (b) Do you own or lease these facilities? _____
- (c) Please attach copies of any material leases.

6. **Benefits Plans**

- (a) What benefits plans and stock option plans do you have? _____

- (b) What is the typical vesting schedule for options? _____

- (c) Please attach copies of your benefits plans.

7. **Products or Services**

- (a) What are your main products or services, their uses and target markets? _____

8. **Technology**

- (a) What are your key technologies? _____

- _____
- _____
- (b) What rights do you have in these technologies (*e.g.*, patents, licenses)? _____
- _____
- _____
- (c) Describe any exclusivity arrangements you have with any party, including agreements that restrict you in any way from entering into any business relationship with any third parties. _____
- _____
- _____
- (d) Please attach any significant technology sale or assignment agreements.

9. **Intellectual Property**

- (a) What are your significant trademarks, service marks, patents, copyrights or other intellectual property? _____
- _____
- _____
- (b) What rights do you have in this intellectual property? _____
- _____
- _____
- (c) What other parties have rights in this intellectual property? _____
- _____
- _____
- (d) To whom have you licensed any significant intellectual property? _____
- _____
- _____
- (e) What domain names do you own? _____
- _____
- _____
- (f) Attach any significant license agreements.
- (g) Have there been any claims made against you that you are infringing or violating the rights of any third parties? _____
- _____
- _____

10. **Competitors**

- (a) Who are your principal competitors? _____

- (b) Have any of your employees, officers or directors come from your principal competitors? If so, please describe. _____

11. **Customers**

- (a) Who are your top ten customers and what portion of your revenues for the last twelve months did they account for?

<u>Customer</u>	<u>Percentage of Revenues</u>
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

- (b) Have you had any significant disputes with customers? If so, please describe.

- (c) Please attach copies of any significant contracts with customers.

12. **Suppliers**

- (a) Who are your significant suppliers? _____

- (b) Are any sole source suppliers? If the answer is “yes”, please identify by name and product or service provided. _____

- (c) Are there ready replacement suppliers for your key components? _____
- (d) Please attach copies of any significant contracts.

13. **Joint Ventures, Alliances and Acquisitions**

- (a) Are you involved in any joint ventures or other strategic alliances? _____
- (b) With whom? _____

- (c) Please describe. _____

- (d) Please also attach copies of any agreements governing each joint venture or strategic alliance.
- (e) Have you made any material acquisitions or mergers? If so, please describe and attach a copy of the merger or acquisition agreement. _____

14. **Material Relationships**

- (a) What are your other material relationships and contracts? _____

- (b) Please attach copies of any material contracts not otherwise provided.

15. **Assets**

- (a) What are your other material assets? _____

- (b) Do you own or lease these assets? _____
- (c) Are there any encumbrances on your assets? If so, please describe. _____

- (d) Please describe and attach copies of any material leases. _____

16. **Litigation**

- (a) Have you been involved in any litigation or arbitration during the past five years? _____
- (b) Has anyone threatened to involve you in litigation or arbitration? _____
- (c) Are there any claims that you believe someone might assert against you or any other contingent liabilities of which you are aware? Please describe. _____

17. **Regulations**

- (a) What government regulations are applicable to your business? _____

- (b) Have you been subject to any government action or proceeding or has any government agency threatened you with any proceeding? _____
- (c) Have you received any notices from any governmental agency with regard to compliance or non-compliance with its regulations? _____
- (d) Please attach copies of any of the foregoing.
- (e) In what states do you do business? _____

18. **Liability and Insurance**

- (a) What steps do you take to limit your liability? _____

- (b) What insurance is in place? _____

- (c) Are any of your officers or employees covered by “key man” policies? If so, please provide their names. _____

- (d) Do you have Indemnification Agreements for directors? If so, please provide a copy. _____

- (e) Do you have any potential liabilities not reflected in your latest balance sheet in excess of \$25,000? _____

19. Related Party Transactions

- (a) Please describe any transactions, loans or agreements involving your company and any shareholder, officer, director, employee or affiliate thereof, or any relatives of such persons.

20. Other Material Information

- (a) What other information should we know about your company that would be material to understanding your business? _____

Please also attach copies of the following corporate documents:

- Articles or Certificate of Incorporation
- Bylaws
- Stockholder, Investor and/or Registration Rights Agreements or other similar agreements
- Most recent fiscal year audited balance sheet, income statement of cash flows
- Income statements and cash flows for the past two years, together with year-to-date income statement and cash flows, and balance sheet as of most recent month end.
- Projections and/or budgets for future periods
- Business Plan
- Significant Contracts
- Benefits Plans and Stock Option Plans
- Stock Ledger and Capitalization Table
- Board and Shareholder Minutes and Consents
- Employment Agreements

Date: _____

Signature of Person Filling Out This Form

Title