

Form:

Contents of Online Data Room

Description:

In many M&A transactions, an online data room is prepared to house key documents that a buyer will want to review as part of its due diligence process. This document sets forth a comprehensive list of what documents might be appropriate to include in the online data room.

Contents of Online Data Room

Note: this is a sample list of what would be contained in an online data room in connection with a potential M & A transaction. Additional documents may be appropriate in the context of a particular company or transaction. Do not include any attorney-client privileged documents into the data room. The information here should generally apply to the company and each of its subsidiaries and predecessors. Also, consider whether any information that is highly confidential (e.g., customer pricing) should be redacted. Consider the sensitivity of any term sheets or letters of intent from potential acquirers.

1. Basic Corporate Documents

- 1.1. Certificate of Incorporations and Amendments thereto
- 1.2. Corporate Bylaws and Amendments thereto
- 1.3. List of Subsidiaries and ownership percentage
- 1.4. Subsidiary Certificates and Bylaws
- 1.5. Shareholder Minutes and Consents
- 1.6. Business Licenses
- 1.7. Business Permits
- 1.8. Board Committee Minutes and Consents
- 1.9. List of Jurisdictions Where Company is Qualified to do Business, owns or leases real property, or is otherwise operating
- 1.10. Good standing certificate in jurisdiction of incorporation
- 1.11. Franchise tax board certificate in jurisdiction of incorporation
- 1.12. List of current officers and directors

2. Capital Stock and Other Securities

- 2.1. Shareholder List (name, amount, date of issuance, consideration received, common or preferred, etc.)
- 2.2. Optionholder List (name, amount of options, date of grant, vesting schedule)
- 2.3. Warrantholder List
- 2.4. Cap Table
- 2.5. Convertible Note Register
- 2.6. Stock Purchase Agreements
- 2.7. Voting Agreements
- 2.8. Registration Rights Agreements
- 2.9. Management Rights Agreements
- 2.10. Stock Option Agreements
- 2.11. Stockholder Agreements

- 2.12. Stock Certificates
- 2.13. Proxies
- 2.14. Buy-Sell Agreements
- 2.15. Securities law filings and permits
- 2.16. Recap and organization documents, including reincorporations
- 2.17. Disclosure documents used in private placements of company securities
- 2.18. Term sheets signed in connection with prior securities issuances

3. Financial and Tax Matters

- 3.1. Audited Financial Statements
- 3.2. Unaudited Financial Statements
- 3.3. Monthly Financials
- 3.4. Quarterly Financials
- 3.5. Letters from Auditors
- 3.6. Projections and Assumptions/Operating Plans (current)
- 3.7. Federal Income Tax Returns
- 3.8. State Income Tax Returns
- 3.9. Foreign Income Tax Returns
- 3.10. Other Tax Returns/Filings
- 3.11. Reassessment or deficiency or audit notices
- 3.12. Banking Accounts and Signatories
- 3.13. Loans and Promissory Notes
- 3.14. Capital Leases
- 3.15. Security Agreements
- 3.16. Accounts Receivable Aging Schedule
- 3.17. Accounts Payable Schedule
- 3.18. Description of any changes to accounting methods or principles
- 3.19. 409A Valuations
- 3.20. Guarantees
- 3.21. Bridge Financings
- 3.22. Inventories: (i) inventory summary by major product as of most recent practicable date; (ii) schedule of consigned inventory; (iii) copies of the Company's policies for providing for obsolete and slow-moving inventory and summary of obsolescence write-offs and provisions for slow-moving inventory for the last year; and (iv) description of the Company's methods of inventory control.
- 3.23. Schedule of material prepaid expenses and "other assets" as of most recent practicable date

- 3.24. Schedule of property, plant and equipment and accumulated depreciation broken down into category (i.e., land, buildings, equipment, etc.) for the last year (indicating beginning balances, additions (or provisions), retirements and ending balances)
- 3.25. Cash flow and working capital analysis as of most recent practicable date
- 3.26. Pricing policies, including commission and rate schedules
- 3.27. Product return rate analysis for last fiscal year and current fiscal year to date
- 3.28. Capital expenditure programs for last and current fiscal year
- 3.29. List and copies of all tax sharing and transfer pricing agreements currently in effect (if there are no written transfer pricing agreements, explain the transfer pricing methodology used between affiliated entities).
- 3.30. Schedule of the amount, origin and status of any U.S. net operating losses or credit carryforwards (including information on any ownership changes or other events to date which might affect such items)
- 3.31. Copy of most recently filed Form 5500 for 401(k) plan
- 3.32. Agreements waiving statutes of limitation or extending the time during which suit might be brought with respect to taxes
- 3.33. Correspondence regarding any tax liens

4. Property and Assets

- 4.1. Schedule and summary of all owned real property
- 4.2. Schedule and summary of all leased property
- 4.3. Real property mortgage and loan documents
- 4.4. Security agreements, pledges, and encumbrances on assets
- 4.5. List of material personal property assets
- 4.6. Documents relating to any environmental matters concerning leased or owned property
- 4.7. Real property leases and amendments and consents related thereto
- 4.8. Personal property leases and amendments

5. Intellectual Property

- 5.1. Summary of Patents and Patent Applications
- 5.2. Patent Applications
- 5.3. Patents Issued
- 5.4. Summary of contracts where Company IP is licensed to a third party, and actual contracts
- 5.5. Software License Agreements summary
- 5.6. Software License Agreements
- 5.7. Employee Non-Disclosure and Proprietary Inventions Assignment Agreements
- 5.8. Consultants Non-Disclosure And Proprietary Inventions Assignment Agreements
- 5.9. IP litigation summary

- 5.10. IP litigation case filings
- 5.11. Claims or communications against the Company for IP infringement
- 5.12. Claims or communications against third parties for IP infringement
- 5.13. List of open source software used
- 5.14. Trademarks
- 5.15. Service marks
- 5.16. Technology license agreements
- 5.17. IP transfer or sale agreements
- 5.18. IP escrow agreements
- 5.19. Third party non-disclosure or confidentiality agreements (consider redaction of names)
- 5.20. Internal policies to protect IP
- 5.21. List of registered copyrights
- 5.22. List of domain names, with expiration dates
- 5.23. Schedule of mask work registrations and applications
- 5.24. Clinical trial information (for biotech companies)

6. Material Agreements

- 6.1. Summary of Material Agreements
- 6.2. Summary of agreements needing consent in the event of change in control
- 6.3. Material Sales Agreements
- 6.4. Intellectual Property Agreements (see Section 4)
- 6.5. Distribution Agreements
- 6.6. Partnership or Joint Venture Agreements
- 6.7. Leases (see Section 3)
- 6.8. Non-competition Agreements
- 6.9. Employment Agreements
- 6.10. Change in Control Agreements
- 6.11. Inter-company agreements
- 6.12. Agency agreements
- 6.13. Prior M & A agreements
- 6.14. Investment Banker engagement letters
- 6.15. Indemnification Agreements
- 6.16. Loan or Credit Agreements
- 6.17. Mortgages
- 6.18. Privacy Policy
- 6.19. Terms of Web Site Use Agreement
- 6.20. Other material agreements

7. Customers, Sales and Marketing
 - 7.1. List of Customers and key metric information
 - 7.2. Form of Sales Agreement
 - 7.3. Accounts Receivable summary
 - 7.4. Sales Commission Plan
 - 7.5. Sales allowances and return policies
 - 7.6. Reseller information
 - 7.7. Credit and collection policies and processes
 - 7.8. Backlog
 - 7.9. Sales projections and assumptions
 - 7.10. List of products and summary
 - 7.11. Product roadmaps
 - 7.12. Marketing materials and sales literature
 - 7.13. Product campaigns and launches (summary)
 - 7.14. Industry and analyst reports
8. Suppliers and Manufacturers
 - 8.1. List of key suppliers and products supplied
 - 8.2. Supplier agreements
 - 8.3. OEM agreements
 - 8.4. List of key manufacturers and manufacturing summaries
 - 8.5. Manufacturing agreements
9. Customer and Product Support
 - 9.1. Customer satisfaction surveys
 - 9.2. Current sales brochures
10. Regulatory Matters
 - 10.1. Government permits
 - 10.2. Notices of violations from governmental or regulatory bodies
 - 10.3. Government licenses
 - 10.4. OSHA, EPA, ERISA, COBRA, FLSA, EEOC, NLRB, etc. notices
11. Litigation/Disputes
 - 11.1. Summary of any litigation or arbitration matters
 - 11.2. Copies of all litigation complaints
 - 11.3. Copies of all arbitration filings

- 11.4. List of all orders, writs, decrees, injunctions, judgments or rulings by any court or agency
- 11.5. Documents related to any threatened litigation, arbitration or governmental action
- 11.6. Environmental claims and actions
- 11.7. Copies of lawyers' letters to auditors
- 11.8. Past settlement agreements

12. Insurance

- 12.1. Summary of all insurance policies
- 12.2. Copy of D & O policies
- 12.3. Copy of liability policies
- 12.4. Copy of key person insurance policies
- 12.5. Copy of workers' comp policies
- 12.6. Other insurance policies
- 12.7. Insurance claims pending
- 12.8. Description of any self-insurance programs or captive insurance programs

13. HR/Employees/consultants

- 13.1. List of all employees by title, salary, commission, options, non-cash compensation, bonus, date of hire, severance obligations
- 13.2. Organization chart
- 13.3. Employment agreements
- 13.4. Standard offer letter to employees
- 13.5. Non-competition and non-solicitation agreements
- 13.6. Benefit plan summary
- 13.7. 401(k) plan
- 13.8. Health and Medical Plan
- 13.9. Life insurance plan
- 13.10. Dental plan
- 13.11. Retirement plan
- 13.12. Disability plan
- 13.13. Vision plan
- 13.14. Childcare plan
- 13.15. Other benefit plans
- 13.16. Employee handbook
- 13.17. Employee policies not reflected in handbook
- 13.18. Collective bargaining agreements
- 13.19. Bonus plans

- 13.20. Profit sharing plan
- 13.21. Incentive plans
- 13.22. Change in control plans or agreements
- 13.23. Stock option or restricted stock plan
- 13.24. Listing of consultants and independent contractors and summary of arrangements
- 13.25. Consulting and independent contractor agreements
- 13.26. Severance plans
- 13.27. Description of any pending or threatened labor or employment disputes or work stoppages during the last three years
- 13.28. Other benefit plans

14. Press and PR

- 14.1. Press releases
- 14.2. Newspaper articles
- 14.3. Analyst reviews

15. Related Party Transactions

- 15.1. Written agreements (and description of oral arrangements) between the Company and any current or former stockholder, officer, director or employee of the Company
- 15.2. Description of any direct or indirect interest of any stockholder, officer, director or employee of the Company in any corporation or business that competes with, conducts any business similar to or has any present (or contemplated) arrangement or agreement with (whether as a customer or supplier) (i) the Company or (ii) the acquirer
- 15.3. Documents not covered by the above relating to agreements of the Company in which either current or former stockholders, officers, directors or employees of the Company are or were materially interested
- 15.4. List identifying any stockholders, officers, directors or employees of the company who have an interest in any of the assets of the Company