

REPRESENTATION AND WARRANTY COVERAGE
 Sample Questions for Buyer’s Due Diligence Team

I. TRANSACTION OVERVIEW

1. Why is Buyer interested in buying the Company?
2. Why, in your opinion, is the Company being sold?
3. How did you learn of this opportunity? Why do you believe that you were selected as the chosen Buyer?
4. Was an investment bankers involved in brokering the deal? If yes, who? Will banker fees be paid from transaction expenses at closing?
5. What is the purchase price? How was the purchase price determined?¹ Did it change during the auction process? If the purchase price was determined using a multiple of adjusted EBITDA:
 - a. Adjusted EBITDA amount: _____
 - b. Time period: _____
 - c. Purchase multiple: _____

How does this compare to like-kind deals?

6. How is the acquisition being financed?

a. Buyer Equity (Cash)	=	_____	=	_____	%
b. Buyer Equity (Equity)	=	_____	=	_____	%
c. Revolving Debt	=	_____	=	_____	%
d. Senior Debt	=	_____	=	_____	%
e. Subordinated Debt	=	_____	=	_____	%
f. Seller Rollover	=	_____	=	_____	%
g. _____	=	_____	=	_____	%
TOTAL				100.00	%

7. Explain what senior management will be post-closing (e.g., CEO, CFO, COO, etc.). Will new employment agreements be entered into with any Company employees (senior management, key sales team members, etc.)? Did you perform background checks on the Company’s key management? Who will sit on the board of directors?
8. Will rank-and-file employees all be staying on (or re-hired) post-closing?
9. Confirm whether the Company’s third-party debt will be paid at closing pursuant to pay-off letters? Will any debt be assumed? Are there any warrants, options, accrued severance, deferred dividends, or bonuses?

10. Confirm that all of the required consents are expected to be obtained prior to closing (customers, suppliers, regulators, landlords, *etc.*). Are there other material conditions to closing?
11. What is the status of the HSR filing? What is the status of any other required regulatory approval, including those outside the US (e.g., CFIUS, *etc.*)?
12. Describe the negotiation and drafting of the purchase agreement and D/S in terms of any significant issues or sticking points. Were there any specific representations that were heavily negotiated or difficult for the Company to make (e.g., IP reps)? Were there any representations that the Company would not agree to make (and therefore, risks that you agreed to assume)? Have there been any amendments to the purchase agreement or D/S since the signing date?
13. Are you aware of any breaches of the representations and warranties? Explain if any potential liabilities were found in due diligence that may constitute a breach of a representation that have not been included in the D/S. Are you aware of any matters that may lead to a breach?
14. Why is R&W insurance being used for this transaction?
15. When is the deal expected to close?

Organization of Due Diligence

16. Please describe the Buyer's key internal due diligence team members and the external experts hired to perform due diligence for their respective areas. When did due diligence take place? Has there been any updated due diligence performed since the purchase agreement was signed?
17. Are there any documents or information requested that you did not receive? Were diligence requests tracked on a list? If yes, please send the latest version of the list to Insurer.
18. Did you have satisfactory time to complete your due diligence?
19. How would you assess the completeness and accuracy of the files and documents placed in the data room? Who was responsible for preparing D/S? How thorough are the D/S?

II. FINANCIAL/ACCOUNTING

1. How long has (accounting firm) been auditing the Company's F/S?
2. What are the major actions made by the Company or other developments since the latest annual audited F/S were issued?
3. Are there any issues with the Company's ERP system? Does the Company have an experienced CFO and adequate support staff? Has there been much turnover among finance/accounting staff?
4. Have you reviewed the latest annual audit work papers of the Company's auditors? Have the Company's auditors noted any significant deficiencies or material weaknesses in the Company's accounting internal controls? Were any audit adjustments proposed for the audited financial statements over the past two years? If yes, were they all accepted? If not, which were rejected and why?
5. Describe the Company's revenue recognition process (e.g., sales rebates, discounts, write-offs, returns, deferred revenue, *etc.*). Discuss the aging of the Company's A/R and the Company's

reserving practices regarding the allowance for doubtful accounts. Do you have concerns regarding the Company's revenue recognition/accounts receivable policies and accounts payable policies?

6. Discuss the Company's reserving practice in terms of adequacy, accuracy and timeliness for any other material accruals (e.g., bonus, PTO/vacation, payroll, deferred revenue, etc.).
7. How does the Company account for R&D (expensed, capitalized, etc.)?
8. Please explain if you identified any contingent type of liabilities that the Company may owe as of closing or thereafter (e.g., transaction bonuses, earn-out payments, etc.).
9. Has an impairment analysis for the Company's intangible assets been conducted?
10. What is the latest operational report, key performance indicators or financial statement reviewed by you? Are they meeting their projections?
11. Describe any procedures implemented to verify that there are no other undisclosed liabilities that should be scheduled.

III. **TAX**

1. Describe the scope of your due diligence review of tax matters (federal, state/local, foreign).
2. Who are the current tax advisors to the Company? How long have they been the tax advisors?
3. Discuss the Company's tax analysis, if any. Is a reserve necessary?
4. Does the Company have any tax liens?
5. Discuss the Company's recent tax audit history. Are there any pending tax audits or inquiries?
6. Does the Company comply with federal income tax return filing requirements?

State and Local Tax Issues

7. Is there a formal state nexus analysis? In what states does the Company have nexus / taxable presence (e.g., sales, payroll or property)? Does the Company comply with **state income/franchise tax** return filing requirements in every state that it has a nexus / taxable presence? Why doesn't the Company file state income tax returns in states where sales tax return were filed?
8. Does the Company comply with municipal **income/franchise tax** filing requirements in every state that it has a nexus / taxable presence? If no, what is your estimate of the outstanding income/franchise tax liability in those municipalities where it does not file tax returns?
9. Does the Company comply with **sales and use tax filing** requirements rules in every state that it has nexus / taxable presence (e.g., car rentals, SaaS sales)? What type of nexus analysis was done to support the Company's filing position with respect to sales and use tax filings? Please describe the Company's process for determining whether sales are taxable in each relevant state. Does the Company have procedures in place to collect sales tax exemption certificates when applicable?

Have you received and reviewed any exemption certificates?

10. Does the Company comply with real and/or personal property tax return filing requirements?
11. Does the Company comply with unclaimed property report filing requirements?

Employer/Employee/Independent Contractor Tax Issues

12. Does the Company comply with payroll tax filing and employee withholding requirements (e.g., out-of-state traveling employees)? Does the Company use a third-party payroll service provider?
13. Does the Company use long-term independent contractors? Does the Company comply with Form 1099 reporting requirements for its independent contractors? Please discuss any (a) payroll tax withholding exposure or (b) unemployment tax exposure for any improper classification of individuals as independent contractors rather than employees.

Employee Compensation Tax Issues

14. What due diligence was performed relating to taxes owed under Section 409A?
15. Was a 280G analysis prepared? Will an excise tax be due?

IV. LEGAL

1. Has Buyer reviewed the Company's board minutes?
2. Does the Company have an experienced general counsel or chief compliance officer and adequate support staff? Has there been much turnover among legal/compliance staff?
3. Were all contracts and agreements, *i.e.*, equipment, landlord leases, employment agreements, independent contractor agreements, vendor agreements, license agreements, joint venture agreements, affiliate agreements, regulatory issues or notices reviewed?
4. Do oral contracts exist or are oral contracts typically used by the Company? If so, please confirm that there has been a process to determine which oral agreements exist and that all have been set forth on the D/S.
5. Confirm that a litigation search, lien search or judgment search was performed in the jurisdictions that the Company does business and that all discovered litigation matters have been properly listed in the D/S? Please discuss any open, pending or threatened litigation matters. Are currently pending or recently settled litigation matters properly set forth in the D/S?
6. Describe Buyer's due diligence regarding the Company's compliance with FCPA, OFAC, anti-bribery laws, anti-kickback laws, import/export laws, etc.
7. Are there any surviving earn-outs, seller notes, indemnification obligations, purchase price adjustments, or rights from previous acquisitions or recapitalizations made by the Company?

8. Have there been write-downs of goodwill or indemnification claims in previous acquisitions?
9. Are there any related party agreements/transactions (e.g., leases, management agreements, etc.)? If yes, are they based on market value and appropriate market terms?

V. INTELLECTUAL PROPERTY / INFORMATION TECHNOLOGY

1. Please describe due diligence performed on IP and IT. Was any IP suspended or denied approval? Are all IP maintenance/registration fees current?
2. What is the Company's most material IP? Does the Company have any trade secrets? Describe the products based on this IP and how they are delivered and licensed. Have you verified chain of title for any patents? Are there any source code escrows?
3. Describe the Company's most material in-bound licenses (both commercial and open source) on which Company software was built. Any exclusive licenses? Have there been any licensing disputes? Does the Company own or license any patented technology? Any compulsory or collective licensing arrangements? Any potential OSS licensing problems?
4. Describe the process for the incorporation of new code or IP. Were "freedom to operate" studies or clearance searches conducted? Does legal counsel review licensing terms, new code, new features, etc.? Do the programmers certify that the code has been independently developed?
5. Who manages the Company's IP portfolio? How does the Company police its IP? Describe any IP disputes in which the Company has been engaged (e.g., cease and desist letters, enforcement actions, etc.). Have there been any infringement claims against the Company or licensing requests? Does the Company audit for seat/license count?
6. Do all employees or third-party consultants involved in the development of Company IP sign IP assignment agreements, non-disclosure agreements, work-for-hire agreements, etc.?
7. Describe any procedures taken to examine the Company's IT infrastructure (e.g., privacy, redundancy, regular data back-up, disaster recovery, data security, storage, etc.). Have there been any incidences of unauthorized access, data breach or system failure? Have you or the Company carried out any penetration testing?
8. Describe the nature of PII stored by the Company? Have you received and reviewed the Company's privacy policies with regard to the data collected and stored by the Company? Is the Company in violation any federal or state privacy protection acts or the Digital Advertising Alliance's Self-Regulatory Principles?
9. Is the Company PCI-DSS complaint? Does the Company store credit card, debit card, bank account information on its IT assets? Does the Company use a third-party payment processor?

10. Discuss the Company's internal quality assurance (QA) process (e.g., inspections, audits, testing, ISO certification, etc.). Describe the Company's QA process for domestic and overseas vendors (e.g., site visits, 3rd-party audits, etc.).

VI. ENVIRONMENTAL

1. Briefly discuss the scope of the environmental due diligence and any environmental issues discovered during your due diligence activities. Are there any RECs, CRECs, HRECs, other business environmental risks, asbestos or PCBs present at Company properties?

VII. EMPLOYEE MATTERS

1. What is the number of hourly (non-exempt) employees eligible for O/T and the number of salaried (exempt) employees? Does the Company have a process or procedure to properly classify individuals as exempt or non-exempt? How many employees are located in California?
2. Has any employee asserted non-compliance with federal fair labor standards (FLSA), state or foreign wage & hour laws (e.g., misclassification, O/T, on-call requirements, pay statement requirements, etc.), family medical leave requirements (FMLA), disability standards (ADA), discrimination laws (e.g., Affirmative Action), human rights and equal opportunity laws (EEOC), unemployment insurance laws, or National Labor Relations Board (NLRB) requirements, etc.? Are workers given required meal breaks or rest periods?
3. What is the turnover rate? Is employee turnover an issue?
4. Does the Company have adequate procedures to comply with applicable immigration laws in the hiring of employees? Does the Company use e-verify and obtain I-9's? Does the Company employ foreign individuals/sponsor any to work in the U.S.? Any past history of non-compliance with immigration laws?
5. Does every employee receive orientation and sign-off that they have read the employee handbook or policy manual? If yes, has Buyer reviewed copies of the signature pages? Do the Company's policies in the handbook follow applicable law and best practices?
6. Are employees drug-tested and are background checks performed as part of the hiring process? If yes, are such procedures in compliance with applicable federal, state or foreign law?
7. Have you received and reviewed details of any inspection reports, violations or notices relating to employee health and safety and information relating to any occupational injuries (including OSHA injury reports), workers' compensation claims and short and long term disability benefits for the last five years? Are there any work place safety concerns (e.g., explosions, fires, etc.)?
8. Have you received and reviewed the Company's bonus and commission plans? Are purely commissioned employees (if any) paid in compliance with applicable federal and state laws?
9. Where there any RIFs in past three years? If yes, discuss and explain what due diligence was performed regarding compliance with the WARN Act or similar state or foreign law.
10. Discuss the Company's severance obligations (if any) or outstanding obligations to any former employees.

11. Discuss your review of any individual independent contractor or consulting agreements (e.g., review of 1099s, job duties, etc.). Does the Company have a process or procedure to properly classify individuals as independent contractors versus employees? Is there misclassification risk?
12. Discuss your review of the Company's use of temporary workers? Are there any co-employer liability issues with temporary workers sourced from any staffing agency?
13. Are any of the Company's employees represented by a union or have any unions made efforts to represent your employees? Describe the Company's relationship with any unions or works councils. Are any collective bargaining or similar labor agreements set to expire? Describe any terms you think may be a material issue in renegotiating such agreements.
14. Discuss the agreements in place which protect the Company's interests, e.g., confidentiality agreements, non-competition or non-solicitation agreements. What level of employee is required to sign such agreements? Do you have copies of these agreements for all such employees? Have any restrictive covenant agreements been found unenforceable?
15. Has the Company been found in breach of any employment agreements?

VIII. EMPLOYEE BENEFITS

1. Confirm the Company has reviewed the health plan documentation, SPDs, Forms 5500, participation rates, and whether the Company's health (including dental and vision) plan meets coverage standards and affordability minimums to the extent required by law (e.g., PPACA, etc.). Are there any issues? Is the waiting period for the Company's health care plan(s) in compliance with PPACA? Are the Company's COBRA notice procedures in compliance with COBRA requirements?
2. Confirm Buyer has reviewed the 401(k) plan documentation, Forms 5500, fidelity bond (if applicable), timing of deposits, participation rates, and nondiscrimination testing results and whether they are in compliance. Are there any issues?
3. Has the Company confirmed that there were no employees who were improperly classified as independent contractors and who were then improperly excluded from either 401(k) plan or health plan coverage?

IX. OPERATIONS

Facilities

1. Have you conducted one or more site visits of the Company's facilities? Were management staff present and available for discussion? Do the operations appear to be in good working order?
2. Are there any leased facilities that are particularly important to the Company's business? If so, does the Company have good relations with the landlords in these locations? Are any of the Company's leased facilities difficult to replace?
3. How many of the leases require notifications or landlord consent? Have they been acquired or are any still outstanding?
4. Discuss the Company's history of workplace safety regulatory violations or penalties.

5. Is the Company required to obtain any permits/licenses and is the Company in compliance with such permits/licenses (e.g., insurance producer licenses)? Are all federal/state/local permits/licenses properly set forth on the D/S?

Customer / Supplier Relations

6. Discuss the due diligence performed regarding maintaining relationships with major suppliers and customers? Is the Company dependent on a particular supplier or customer? How long are average customer and supplier relationships?
 - a. Have you spoken with top customers to ensure that the relationship will remain the same post-closing? Have you collected any customer call notes with regard to the proposed transaction? If yes, please provide any customer call notes to Insurer. Are there customer contracts? If yes, do they have favorable indemnification provisions? Is there customer concentration (for any business unit)? What is the Company's market share?
 - b. What type of materials or services do the Company's top suppliers provide? Can the Company's top suppliers be replaced readily? Are there long-term supplier contracts? If yes, do they have favorable indemnification provisions? Can the Company pass through supplier costs to its customers without the renegotiation of contracts? Have you directly spoken with top suppliers to ensure that the relationship will remain the same post-closing? Have you collected any supplier call notes with regard to the proposed transaction? If yes, please provide any supplier call notes to Insurer.
7. What is the Company's liability exposure regarding the MFN/exclusivity/volume requirement or restriction clauses in its customer, supplier or broker contracts?

Sales and Product Development

8. Does the Company use any distributors or external sales agents? What portion of sales is internally generated? How are the external and internal sales agents compensated?
9. Discuss the importance of new product development to the Company. Is there a need for new service offerings or substantial capital expenditure to maintain any existing customers or to grow?

X. P&C INSURANCE

1. Are all reviewed policies were current and in force? Were there any instances of a carrier not renewing policies in the past or of submitted claims being denied? Has there been any lapse or gap in coverage?
2. Are the Company's insured values and limits of coverage for its facilities and business (e.g., property, auto, GL, WC, inland / ocean marine, environmental / pollution legal liability, product liability, equipment break-down, crime, D&O, EPL, fiduciary, Tech E&O, cyber, etc.) sufficient? Is there an insurance coverage type the Company should have that it does not?
3. Discuss the due diligence of the Company's 5-year P&C loss runs. Any negative claims trends?
4. Have any insurers made recommendations to reduce safety hazards? What is the Company's current worker compensation experience modifier rate?
5. Will an additional six years of "tail" or "run-off" coverage for D&O/EPL/Fiduciary "claims-made" insurance policies be purchased on or before closing?