

Financing Due Diligence Checklist

[Note to User: Customize this list as appropriate. We prepared this list with the following fact pattern in mind: a startup organized as a corporation seeking its first fixed price round of institutional capital.]

ORGANIZATIONAL MATTERS

- A copy of the complete file from the Secretary of the State of the state in which the Company was formed, showing all filings of Certificates or Articles of Incorporation and all amendments thereto, file-stamped by the Secretary of the State.
- A copy of the Company's currently in place Bylaws and all amendments thereto.
- All minutes of directors' and stockholders' meetings, and all written consents of directors and stockholders.
- Copy of the Company's Equity Incentive Plan and all amendments to the Plan, and copies of the standard form agreements under the Plan.
- All Shareholder or Voting Agreements or similar agreements and all amendments thereto.
- A list of the Company's directors.
- A list of the Company's officers and a description of how they are being compensated for their services to the Company. If any officers are not currently devoting 100 percent of their business time to the Company, please note them on this list.
- Good standing certificate from the Company's state of incorporation.
- Copies of qualifications to do business in any foreign jurisdictions.
- If the Company was initially formed as an LLC and then converted to a corporation, the records evidencing the incorporation.
- Similar information for any subsidiaries, if any.

FOUNDER MATTERS

- Copies of the Founder Stock Purchase Agreements.
- Description of Founder Vesting Schedules.
- Copies of IP assignment agreements executed by the Founders.

- Copies of 83(b) elections filed by the Founders, with proof of filing with the IRS.

FINANCIAL STATEMENTS

- Financial statements for the last three (3) years or for as long as the Company has been in existence if a shorter period. If the Company's financial statements have not been prepared in accordance with GAAP, please note that on the financial statements.
- Ensure the balance sheet reflects all unreimbursed expenses or unpaid salary or wage amounts to all persons to whom such amounts are owing.
- A description of any “deferred compensation” arrangements the Company has in place with team members.
- A copy of the Company's most recent 409A valuation report, if any.

SECURITY ISSUANCES/AGREEMENTS CONCERNING SECURITIES

- Copies of closing books for any prior financings.
- A copy of the Company's stock ledger, including a ledger of all convertible notes or convertible equity instruments outstanding. The ownership ledger should list all of the Company's stockholders, optionees, convertible note and equity holders, including issuance dates and original issuance price.
- Copies of agreements relating to outstanding shares, options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition of any of the Company's securities.
- All securities law filings with the SEC or any state securities enforcement agencies (e.g., Forms D, Forms 25102(f); Form 25102(o); any similar filings).

EMPLOYEE/SERVICE PROVIDER AGREEMENTS AND ARRANGEMENTS

- A list of all persons who have provided services to the Company since the Company's inception, and copies of all proprietary rights assignment agreements executed by such persons.
- Copies of the Company's standard form employee confidentiality and proprietary rights assignment agreement, and standard form independent contractor and Advisory Board agreements.
- A list of all current employees.
- A list of all current independent contractors.
- A list of all Board Advisors.

- Any agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.
- Copies of all employment agreements or offer letters.
- A description of any severance plans or agreements, if any.
- Employee handbook, if any. Any employee policies.
- A description of employee benefit plans, including, without limitation, fringe benefit plans, bonus plans, etc.

INTELLECTUAL PROPERTY

- A list of all of the Company's registered intellectual property (e.g., patents, trademarks, copyrights).
- A list of all of the Company's domain names.
- A summary of any intellectual property or domain names related to the Company's business which are not owned by the Company.
- Any licenses or agreements of any kind with respect to the Company's or others' patent, copyright, trade secret or other proprietary rights, proprietary information or technology (i.e, all in-bound and outbound license, except for licenses for standard off-the-shelf commercial technology).
- A copy of the Company's current Terms of Service and Privacy Policy.
- A copy of the Company's standard form customer facing agreement.
- Any standard forms of agreements used by the Company.
- A description of any open source software used in the Company's business.
- Any confidentiality and nondisclosure agreements.

MATERIAL AGREEMENTS

- Any agreements, understanding, instruments, contracts or proposed transactions to which the Company is a party or by which it is bound which involve obligations of, or payments to, the Company in excess of \$50,000.
- A description and summary of any insurance policies held by the Company or of which the Company is a beneficiary.
- Any standard forms of agreements used by the Company.

LEASES

- Any real property leases, including any amendments and all exhibits.

INFORMATION REGARDING INDEBTEDNESS OF THE COMPANY

- A description of any debts of the Company.
- Any documents evidencing any loans or advances made by or to the Company.
- Any security agreements.
- Any UCC filings.

INFORMATION REGARDING DISPUTES AND POTENTIAL LITIGATION

- Any correspondence or documents relating to any pending or threatened action, suit or proceeding or investigation.
- Any correspondence or documents relating to allegations of the Company's infringement of the proprietary rights of others.
- Any correspondence or documents relating to any labor agreements or actions, union representation, or strike or other labor dispute.
- Describe any settlement agreements reached with third parties over the life of the Company.
- Copies of any judgment, order, writ or decree by which the Company is bound or to which it is a party.

REGULATORY MATTERS

- Describe any special regulatory approvals or licenses required in the Company's business.
- Copies of any written inquiries by regulatory agencies, or a summary of any non-written inquiries by governmental agencies.

TAXES

- Name of the CPA firm preparing the Company's tax returns, if any.
- Copies of tax returns for the last three (3) years (or such lesser time period as the Company has been in existence).
- Summary of any ongoing tax audits.
- Has the Company redeemed any shares which would disqualify the Company from issuing qualified small business stock?