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LEVEL I – INTANGIBLE ASSET EXAMINATION CHECK LIST

A Level I Intangible Asset Examination seeks to identify, and ensure the protection of your intangible assets.

This is important for several reasons:

- ✓ General business planning
 - ✓ Maximizing value in the event of sale of the business
 - ✓ Maximizing value in the event of outside investment
- ✓ Preparation for "due diligence" for merger, acquisition or investment
 - ✓ Succession planning
- ✓ Validation of appropriate internal controls for audit purposes

	What to look for	Why look
1. <u>Corporate and Organizational Data.</u>		
1.1 Articles of Incorporation and by-laws of the Company, as amended since the formation of the Company.	Name on articles is same as company, if not look for fictitious name statements or amendment of articles	Gaps in "good standing" can affect sale price, company can be using something other than legal name which may bring ownership of certain assets into question
1.2 By-laws	Have they been updated recently? Does the board hold email or electronic meetings, and if so are	Not abiding by your own by-laws can be the start of "piercing the corporate veil" or can cause serious problems if there is ever a dispute among the

	they authorized in the by-laws.	founders.
1.3 Minutes or other records of all meetings and actions of the stockholders, board of directors and committees of the board of directors.	At this point we're looking to see if they are orderly and look complete.	Lack of minutes can hurt during an audit, cost for preparing lost minutes during an investment or sale period is very high, best to do it now. Provides parallel cross reference to all major events.
1.4 A list indicating each state or jurisdiction in which the Company is qualified to do business, conducts business, or owns, leases, or licenses real property.	Do you have offices in other states, sales reps, etc. Unless it's just an outside rep, you should have a filing from the Secretary of State of every state where the company is are.	Corporations, but not sole props or LLCs must qualify to do business in any state where they conduct business, own or lease real property
1.5 A list of subsidiaries and other corporations, partnerships or other entities in which the Company has an equity investment.		This is usually asked for on insurance applications, if not provided correctly it could lead to denial of coverage
2. <u>Securities Information.</u>		
2.1 Description of all securities of the Company presently outstanding, including options, warrants, convertible securities and other.	This should be in the form of a chart showing number of shares authorized, issues, subject to options, warrants or other agreements, of each class of stock	Founders and other principles often don't keep track of their majority position (or lack thereof) or how many directors they can elect
3. <u>Material Agreements.</u>		
3.1 Significant documents relating to any mergers, acquisitions or dispositions by the Company or currently proposed transactions.	Actual Contracts, but often nothing available	Mostly we're looking for residual rights that might throw a wrench in the works of a subsequent deal, also we need to see if there are any lock up agreements

<p>3.2 Joint venture and partnership agreements to which the Company is a party.</p>	<p>Actual Contract</p>	<p>Mostly we're looking for residual rights that might throw a wrench in the works of a subsequent deal, also we need to see if there are any lock up agreements</p>
<p>3.3 Agreements with suppliers or customers of the Company.</p>	<p>Samples of the Agreements that the Company uses itself. List of suppliers and customers and whether each uses the company's agreement or the other party's agreement</p>	<p>Make sure there IS an agreement. Look for attorneys fees clauses, check for assignability in case of sale. Make sure the contract shows the right business name and isn't in the founder's name.</p>
<p>3.6 Non-competition, confidentiality, non-disclosure, assignment of invention and similar agreements with employees, officers, directors, consultants or independent contractors of the Company.</p>	<p>Make sure you have samples of contracts used. Create a list of all employees who have done any IP work and cross reference to the contract they signed.</p>	<p>Make sure everyone is subject to a non-compete and confidentiality agreement – make sure everyone who's worked on IP has assigned it to company</p>
<p>3.7 Non-competition, confidentiality, non-disclosure, assignment of invention and similar agreements with suppliers, outsourcing companies, customers etc.</p>	<p>Samples of Agreements that Co uses, and the agreements done by other party.</p>	<p>Make sure everyone is subject to a non-compete and confidentiality agreement – make sure everyone who's worked on IP has assigned it to company</p>
<p>3.8 A list of all patents, registered and <u>material unregistered</u> trademarks, service marks and trade names and all registered copyrights and all applications for any of the foregoing. List of all names used.</p>	<p>Maintain a list of all patents and registered trademarks</p>	

4.9 Copies of insurance policies (casualty, property, liability, errors and omissions, officers and directors, “key man”, etc.). Please summarize any claims filed.	Actual Policy	Ensure that all assets are protected to the extent possible, good for succession planning
4.10 Marketing agreements, including sales agent or representative, dealer and distributor agreements, consignment and pricing agreements.	Actual Contract	Name and IP protection issues
4.11 Government contracts and subcontracts, if any.	Actual Contract - only need to see "ownership of work product" section if that can be located	Because government often has unusual provisions on IP ownership either granting or taking away ownership
4.12 License agreements.	Actual Contract	
4.13 Franchise agreements.	Actual Contract	
4.14 Advertising agreements.	Actual Contract	Track who owns logo and art work.
4.15 LEVEL II only		
4.16 Contracts outside the ordinary course of business.		
4.17 Samples of forms of purchase orders and invoices, and customer credit applications.	Samples of forms customer uses, front and back, and a list of standard forms they encounter where they accept the other party's forms. Eg: purchase orders will usually be on customer's forms	Reduce A/C and collections, ensure customer wins "battle of the forms"
4.18 LEVEL II only		
5. <u>Litigation, Disputes and Compliance with Laws.</u>		

<p>5.1 A schedule of all suits, actions, litigations, administrative proceedings or other governmental investigations, pending or threatened or resolved within the last 3 years, relating to the Company, its business or its operations, except minor collections matters. As to collections matter, list the total number in the last 5 years both as Defendant and Plaintiff.</p>		<p>This show trends in A/R and A/P and might highlight other problems</p>
<p>6. <u>Personnel Matters</u></p>		
<p>6.1 Any agreements with independent contractors not already submitted in section 4.6 and 4.7.</p>	<p>4.6 and 4.7 only look for discrete NDAs and non-competes. Here we look for those items imbedded in an independent contractor agreement.</p>	<p>We want to make sure that any independent contractor's work is transferred to the company and that ICs can't compete or steal employees</p>
<p>6.2 Personnel manual</p>		<p>This is used for cross referencing and often has confidentiality issues in it.</p>
<p>6.3 Policy manual or instructions concerning employee and contractor use of computers</p>	<p>Often these are in the personnel manual, but sometimes they are separate letters or flyers. Sometimes they are posted in a place such as the lunch room.</p>	<p>Computers make intellectual property easy to steal. Various safeguards need to be in place to counteract this fact.</p>
<p>6.4 Level II only</p>		
<p>7. <u>Additional Information.</u></p>		
<p>7.1 Any other documents and information that are significant with respect to any portion of the business of the Company.</p>		