

DUE DILIGENCE CHECKLIST

**INFORMATION REQUEST FOR LEGAL REVIEW**

The following is the information that we require for the conduct of a legal review of matters pertaining to the Project/Engagement/Collaboration/Agreement. /

Further questions may be raised following a review of the documents and information received in response to this document.

**CORPORATE STRUCTURE OF THE COMPANY AND RELATED ISSUES**

1. ***Identity of the Company/Entity, Organization and Ownership***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document Received** | **Action/Comments** |
| 1.1 | Please provide the Official name, and legal status together with certified copies of the Company’s Certificate of Incorporation/ Registration Certificate. |  |  |  |
| 1.2 | Please provide the physical and postal address of the Entity/Company as registered in the company’s registry. |  |  |  |
| 1.3 | Please provide copies of the Company’s Memorandum and Articles of Association and all the by-laws and any amendments thereto. |  |  |  |
| 1.4 | Please provide the Minute book (containing ownership and board meeting minutes). |  |  |  |
| 1.5 | Please provide details of all subsidiaries (including any associated companies) of the Company, including name, country of incorporation/registration, place of business, nature of business, and the extent of the Company’s shareholding therein (i.e. partnerships and joint venture agreements) (optional). |  |  |  |
| 1.6 | Please provide all jurisdictions where the company is authorized to conduct business i.e. Where the company owns/leases property, maintains employees, and/or conducts business, and include applicable details like the occupancy rate and number of workstations. |  |  |  |
| 1.7 | Please provide any documents relating to the reincorporation or restructuring of the entity if any. |  |  |  |
| 1.8 | Please provide the Business plan (executive summary, market analysis and plan, operational plan, and complete financials). |  |  |  |
| 1.9 | Please provide details of the shareholders of the Company/entity and the most recent CR12 form where applicable and include the number of shares, dates of issuance, and type of consideration received. |  |  |  |
| 1.10 | Please provide documentation of past and current shareholder agreements, rights, and other matters concerning ownership i.e. Copies of any voting agreements, trusts, or proxies, Copies of right of first offer or refusal and preemptive rights, and Transfer restriction agreements and registration agreements. |  |  |  |
| 1.11 | Please provide the mandate of the entity/company |  |  |  |
| 1.12 | Please provide Minutes of all meetings of directors, committees of directors, and shareholders, including copies of any written notices (if given) or waivers thereof and any written consent to action without a meeting. |  |  |  |
| 1.13 | Please provide all quarterly and annual reports and any other communications to the Company's shareholders within the past five years. |  |  |  |
| 1.14 | Please provide the name, age, function, and nationality of the directors and beneficial owners of the Company including lists of other directorships. |  |  |  |
| 1.15 | Please confirm that none of the directors of the Company has been declared bankrupt or has been a director, officer, or shareholder of an insolvent company. |  |  |  |
| 1.16 | Please provide details of any claims, investigations, or proceedings of any nature against any of the directors of the Company, which may result in such director being found unfit to act as a director of the Company, whether under the Company’s articles of association, any shareholders’ agreement, the Capital Markets Act and regulations, the Companies Act or otherwise. |  |  |  |
| 1.17 | Please provide details of any changes in the senior management of the Company over the past six months, and provide in as much detail the impact this change has had on the business of the Company. |  |  |  |
| 1.18 | Please provide details of any persons who have authority to bind the Company (including pursuant to any powers of attorney) in any matter whatsoever and the nature and extent of such authority. |  |  |  |
| 1.19 | Please provide details of whether any Director, Partner, or Associate has ever been employed by or been engaged in any other capacity by Strathmore University. Please enclose relevant supporting documentation. |  |  |  |
| 1.20 | Please provide details of any of the Directors, Partners, or Associates who has been involved in any Organisation that has been liquidated, or gone into receivership or administration. |  |  |  |
| 1.21 | Are the values of the Directors, CEO, beneficial owners and other top management officials in line with Strathmore University’s values and mission? |  |  |  |

1. ***Contracts***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document received** | **Action/Comments** |
| 2.1 | Please provide copies of any agreements relating to:   * loan, credit, and security arrangements; * loan facilities agreements; * debentures; * letters of credit; and * swaps and options   which may likely restrict the Company from creating additional debt. |  |  |  |
| 2.2 | Please provide details together with copies of contracts or arrangements which: |  |  |  |
|  | 1. are unduly onerous (e.g. as to payment terms, default provisions, reporting requirements, or notice periods) or of a material long-term (i.e. last for more than one year); |  |  |  |
|  | 1. restrict the freedom of the Company to carry on its business in such manner as it may think fit, or restrict the ability of the Company to transfer the whole or part of its business; and |  |  |  |
|  | 1. are material capital commitments (i.e. any commitment to make a capital payment).   Material for this purpose means 10% of the net asset value of the Company shown by its latest audited financial statements. |  |  |  |
| 2.3 | Please provide details of any material contingent liabilities arising under any contract or arrangement.  Material for this purpose means 10% of the net asset value of the Company shown by its latest audited financial statements. |  |  |  |
| 2.4 | Please provide contracts involving cooperation with other companies or restricting competition. |  |  |  |
| 2.5 | Please provide contracts relating to other material business relationships, including:  a) any current service, operation, or maintenance contracts;  b) any current contracts with customers;  c) any current contracts for the purchase of fixed assets; and  d) any franchise, distributor, or agency contracts. |  |  |  |
| 2.6 | Without duplicating 2.5 above or the intellectual property due diligence section hereto, please provide contracts involving licensing, know-how, or technical assistance arrangements including contracts relating to any patent, trademark, service mark and copyright registrations or other proprietary rights used by the Company and any other agreement under which royalties are to be paid or received. |  |  |  |
| 2.7 | Please provide Data processing agreements relating to the Company. |  |  |  |
| 2.8 | Please provide Management, Service, or Support Agreements relating to the Company or any Power of Attorney with respect to any material assets or aspects of the Company. |  |  |  |
| 2.9 | Please provide Copies of all insurance and indemnity policies and coverages carried by the Company including policies or coverages for products, properties, business risk, casualty, and workers' compensation. |  |  |  |
| 2.10 | Please provide a list of any other agreements or group of related agreements with the same party or group of affiliated parties continuing over a period of more than six months from the date or dates thereof, not terminable by the Company on 30 days' notice. |  |  |  |

1. ***Litigation***

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| --- | --- | --- | --- | --- |
| **Item** | | **Index No.** | **Comment** | |
| **Document**  **received** | **Action/Comments** |
| 3.1 | Please provide details of any completed or ongoing material litigation, mediation or arbitration, or any other disputes with third parties including the Kenya Revenue Authority, trade unions, and employees in which the Company is involved, which may lead to material litigation, arbitration, mediation, or other dispute resolution procedures. |  |  |  |
| 3.2 | Please provide details of any unfulfilled judgments, decrees, awards, or other orders of any court, tribunal, quasi-judicial or governmental bodies in any proceedings in which the Company was a party. |  |  |  |
| 3.3 | Please provide details of any current or pending investigation by any competent authority or any notifications or request from any regulatory or governmental agency affecting the Company. |  |  |  |
| 3.4 | Please provide copies of any notices received by the Company from any government authority relating to allegations of non-compliance with any rules, regulations, or laws applicable to the Company. |  |  |  |
| 3.5 | Please provide copies of any material actions or threatened actions (for or involving breaches or alleged breaches of rules, regulations, codes of conduct, or negligent conduct) by clients, customers, or borrowers, including litigation, interlocutory proceedings, or arbitration. |  |  |  |
| 3.6 | Please provide any correspondence, citation, notice or documents relating to any proceedings of any regulatory agency. |  |  |  |
| 3.7 | Please provide Copies of any governmental licenses, permits or consents. |  |  |  |
| 3.8 | Please provide a Copy of the company’s compliance policy and written standards of conduct. |  |  |  |
| 3.9 | Are any of the company's directors/ senior management part of any completed or ongoing material litigation, mediation or arbitration or any other disputes with third parties including the Kenya Revenue Authority, trade unions and employees in which the Company is involved, which may lead to material litigation, arbitration, mediation or other dispute resolution procedures. |  |  |  |

1. ***Borrowings***

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| --- | --- | --- | --- | --- |
| **Item** | | **Index No.** | **Comment** | |
| **Document**  **received** | **Action/Comments** |
|  | Please confirm that the Company has not entered into any material debt factoring or similar arrangements. |  |  |  |
|  | Please describe any other material contingent liabilities, off-balance sheet commitments, or other material borrowings of the Company. |  |  |  |
|  | Please provide a Schedule of borrowings (secured and unsecured) segregated into short-term and long-term debt indicating lender, limit, drawdown to date, repayment terms, interest rates, security etc. Details of default in repayment of loans and interest, if any. |  |  |  |
|  | Please provide Copies of loan agreements/sanction letters. |  |  |  |
|  | Please provide Repayment schedules, as currently applicable for each of the loan accounts indicating principal and interest details. |  |  |  |
|  | Please provide a Computation of provision for interest as for outstanding loans as of [date] |  |  |  |
|  | Please provide the purpose for which the loan is taken and utilized. |  |  |  |

1. ***Financial and Tax***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document received** | **Action/Comments** |
| 5.1 | Please provide copies of the audited accounts of the Company for the last three financial years as well as unaudited accounts for comparison |  |  |  |
| 5.2 | Please provide a copy of all recent Kenya Revenue Authority tax clearance certificates. |  |  |  |
| 5.3 | Please provide Settlement documents and correspondence for the last six years involving the Company. |  |  |  |
| 5.4 | Please provide Agreements waiving the statute of limitations or extending time involving the Company. |  |  |  |
| 5.5 | Please provide a Description of accrued national and local withholding taxes and all relevant taxes for the Company. |  |  |  |
| 5.6 | Please provide a list of all national, county, and foreign jurisdictions in which the Company pays taxes or collects sales/income taxes from its customers (specifying which taxes are paid or collected in each jurisdiction). |  |  |  |
| 5.7 | Please provide the future financial projections of the company. |  |  |  |
| 5.8 | Please provide any auditor communication to management for the past five years. |  |  |  |
| 5.9 | Please describe depreciation and amortization methods and changes in accounting methods over the past five years |  |  |  |
| 5.10 | Please provide Copies of any debt financing documents (i.e. loan agreements, credit agreements, promissory notes, compliance certificates, etc.) |  |  |  |
| 5.11 | Please provide Copies of any equity financing documents (i.e. stock purchase agreements, subscription agreements, etc.). |  |  |  |
| 5.12 | Please provide a list of internal control procedures and a Schedule of any deferred revenue. |  |  |  |

1. ***Consents and Licences***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | | **Index No.** | **Comment** | |
| **Document received** | **Action/Comments** |
| 6.1 | Please provide copies of all registrations, approvals, licences, consents, permits and exemptions (together, for the purposes of this checklist, "**consents**") at any time required with respect to the business carried on by the Company and its operating subsidiaries and confirmation that all fees due in relation to such consents have been paid and any conditions thereof, complied with. |  |  |  |
| 6.2 | Please provide details with regard to any threat to remove any consent, attach a new condition to any consent or suspend any consent by any of the relevant respective parties. |  |  |  |

1. ***Intellectual Property***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document Received** | **Action/Comments** |
| 7.1 | Please provide a list of all patents issued, applied for, and in preparation, along with invention disclosures for the Company and all entities previously acquired by the Company |  |  |  |
| 7.2 | Please provide the Intellectual Property rights included in the project/engagement/collaboration and their protection. |  |  |  |
| 7.3 | Please obtain assurance and/or warranty that the list obtained in 7.1. above is a complete list of patent assets related to the transaction. |  |  |  |
| 7.4 | Please obtain assurance and/or warranty that all patents have been properly assigned to the Party and that such assignment has been properly recorded. |  |  |  |
| 7.5 | Please obtain a warranty that the patent assets have been maintained through payment of annuity or maintenance fees. |  |  |  |
| 7.6 | Please obtain disclosure of all infringement proceedings, oppositions, re-examinations, or re-issues of the patents or any other challenges to their validity or enforceability. |  |  |  |
| 7.7 | Please obtain a copy of the Company’s Trade Secret policy and procedure and assurance that the policy has been implemented to the best of the Company’s knowledge. |  |  |  |
| 7.8 | Please obtain a description of all Trade Secret (know-how) assets being transferred. |  |  |  |
| 7.9 | Please obtain assurance and/or warranty that the list obtained in 7.1 above is a complete list of Trade Secret (know-how) assets related to the transaction. |  |  |  |
| 7.10 | Please obtain copies of any communications related to the validity of a claim that the subject matter constitutes legally protectable trade secrets and copies of all Confidentiality and Trade Secret (know-how) agreements currently enforceable by or against the Company. |  |  |  |
| 7.11 | Please identify whether the rights under any agreement or contract are affected by a change in ownership (i.e. non-assignable or non-transferable). |  |  |  |
| 7.12 | Please obtain a list and copy of all Joint Venture (JV) and/or Joint Development (JD) agreements which include a transfer or sharing of intellectual property rights between the Company and another party to the JV or JD agreement. |  |  |  |
| 7.13 | Please describe any past litigation or settlements related to the transferred property and the assignability of any settlement. |  |  |  |
| 7.14 | Please obtain disclosure of corporate policies regarding IP ownership. |  |  |  |
| 7.15 | Please obtain a disclosure of transfer and IP created by consultants and determine their ownership status or rights to the technology, as well as any outstanding payments which may be required under an agreement or under national laws. |  |  |  |

1. ***Environmental, Health and Safety***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document Received** | **Action/Comments** |
| 8.1 | Please provide information regarding any material contingent liabilities and material unasserted claims and information regarding any asserted or unasserted violation of any employee safety and environmental laws and any asserted or unasserted pollution clean-up liability. |  |  |  |
| 8.2 | Please provide copies of any violations, complaints or requests for information regarding environmental, workplace safety and health (from private parties or governmental authorities). |  |  |  |
| 8.3 | Please provide all permits and records relating to environmental matters such as underground storage tanks, air quality, water use, solid/liquid wastes and hazardous waste storage or disposal. |  |  |  |
| 8.4 | Please provide details of any risks associated with the company's facilities or equipment, such as safety or environmental risks. |  |  |  |
| 8.5 | Please provide the environmental regulations that apply to the company's business, and how the company ensures compliance. |  |  |  |
| 8.6 | Please provide the company's potential environmental liabilities, such as contamination or remediation costs. |  |  |  |
| 8.7 | Please provide details of any ongoing or past litigation related to environmental issues, and if so, what is the status? |  |  |  |
| 8.8 | Please provide details of any insurance coverage for environmental, health and safety risks. |  |  |  |
| 8.9 | What environmental management systems and procedures does the company have in place, such as waste management or pollution prevention? |  |  |  |
| 8.10 | Please provide details of the Company’s environmental management or sustainability program and its goals and metrics. |  |  |  |

1. ***Information and Technology***

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document Received** | **Action/Comments** |
| 9.1 | Please provide a summary of the company's IT infrastructure and disclose the age and condition of its hardware and software. |  |  |  |
| 9.2 | Please provide a summary of the company's network architecture, and how is it designed to support the business. |  |  |  |
| 9.3 | Please provide the security measures the company have in place to protect its IT systems and data. |  |  |  |
| 9.4 | Please summarize the company's disaster recovery and business continuity plan, and whether it been tested. |  |  |  |
| 9.5 | Please provide the company's policy on data privacy and protection, and how is it being implemented. |  |  |  |
| 9.6 | Please provide the company's policy on information security, and how it aligns with industry best practices. |  |  |  |
| 9.7 | Please provide the company's policy on data retention, and how is it being implemented. |  |  |  |

1. **Political Exposure**

| **Item** | | **Index No.** | **Comments** | |
| --- | --- | --- | --- | --- |
| **Document Received** | **Action/Comments** |
| 10.1 | Does any Public Official or government entity have any financial, management or controlling interest in your organisation/company? If so, provide details and level of interest below. |  |  |  |
| 10.2 | Are any key employees/ senior management/ shareholder/ partner member of the organization/company a Public Official or related to a public official? |  |  |  |
| 10.3 | Does the organization/company frequently interact with government officials, government agencies or government-controlled entities**?** |  |  |  |
| 10.4 | Are any of the Directors/senior management of the organization/company representatives of political parties or political organizations or closely connected to political organization? |  |  |  |
| 10.5 | Does any key employee or senior management member of the organization/company provide financial or any other benefits to a Public Official or a member of a Public Official’s family? |  |  |  |