

Working Farm and On-Farm Agribusiness Acquisition **Due Diligence Request List**

This Due Diligence Request List is to be delivered by Purchaser to Seller (Target) as part of Purchaser's Due Diligence Process related to the acquisition of farm related assets.¹ This Due Diligence Request List is illustrative, not comprehensive, and should be tailored for each transaction with the assistance of counsel. This list is for informational purposes only and does not constitute legal advice.

A. Real Property

1. List of all real property owned, including (a) the vesting deed with legal description, (b) FSA number, (c) existing surveys, (d) existing appraisals, (e) identification of cultivatable, organic and permanent crop acres, and (f) copies of existing leases to third parties.
2. List of all leased or operated real property, including (a) the vesting deed into landlord with legal description, (b) FSA number, (c) existing surveys, (d) identification of cultivatable, organic, and permanent crop acres, and (e) copies (or terms if oral) of existing leases from third parties.
3. Schedule of all buildings, warehouses, cold storage, structures, grain bins and silos, greenhouses, and irrigation equipment on owned or leased property.
4. Copies of property tax records for owned real property for the preceding 5 years.
5. Copies of any certificate of occupancy, "as built" plans and specifications, and any other engineering reports for any improvements on owned or leased property.
6. Copies of all surface or groundwater withdrawal permits, water rights/sharing agreements, usage reports, irrigation flow tests, water district correspondence or other documents related to water rights.
7. Schedule of all liens or encumbrances or judgments on any real property owned or leased by Target.
8. Copies of any documentation, reports or opinions relating to zoning compliance.
9. Copies of all GPS and GIS mappings of owned or leased properties.
10. Copies of surface use agreements, wind or solar agreements, mineral/oil & gas leases, hunting, fishing and recreational leases, pine straw harvest agreements, or similar agreements for owned or leased Target properties.
11. Schedule of all wells, including location, age of pumps, types of pipe, size of pipe, average monthly withdrawal (in gallons per day), primary use, permit status (i.e., permitted or not permitted). If permitted, provide coordinates and name of current permit.
12. Copies of documents evidencing irrigation company shares or other water right certificates, information related to reservoir size and dimensions, and any permits or share agreements associated with any common reservoir usage.

¹ While much on this list may be germane to transactions involving suppliers to, customers of, and service providers for farming and ranching entities, this list generally focuses on farmer-owned agribusiness such as packing houses, storage and cleaning services, and minimal processing facilities.

B. Personal Property

1. List of all equipment, machinery and other tangible personal property, indicating whether it is (a) owned, leased or used by the Target, (b) its location (c) age, model, make, and serial number.
2. Copies of all maintenance records of Target's personal property.
3. For all personal property leased from or to Target, a copy of the lease and related documents.
4. Copies of all certificates of title to any titled tangible property (i.e., vehicles, motor homes, mobile homes etc.).
5. Copies of all tag and title materials (including any tag receipts, if applicable, and IRP apportioned plate receipts) for any of Target's Personal Property.
6. Schedule of all liens encumbrances or judgments on any personal property owned or leased by the Targets.
7. Schedule of all inventory, including crops in ground, ingredients, perishable commodities, spare parts, work in progress, packaging materials, vaccines, breeding materials, and feed stuffs.

C. Production Records (Crop or Livestock)

1. Permission from Target (or its affiliates) for Buyer to talk to the FSA and NRCS re: the Property (Release to be provided to Seller), necessary to obtain: (a) copies of any Conservation/NRCS or other USDA program files (if applicable) and (b) all FSA aerial maps (including Highly Erodible and Wetland designations) and covered crop program history (including basis calculations).
2. Copies of operations records (planting records, historic yields, cropping plans, fertilizer history, rainfall/irrigation, vaccination records, birthing weights, grazing records, Expected Progeny Difference (EPD) records).
3. Any and all production or sales records required to be maintained by a federal or state law and marketing order or agreement.
4. Copies of any soil tests and nematode tests conducted on any owned or leased properties within past 3 years.
5. Schedule of all material incidents whereby a crop, livestock or product, a substantial portion thereof, was destroyed or damaged by virus, infestation, bacteria, fungi, pest, blight, nematode disease, or pesticide drift.
6. Copies of all documents related to organic certification, including documents receiving from certifying agent and Target's Organic Handling Plan.
7. Copies of any audits of grower agreements, packing or processing agreements, or produce broker agreements.
8. Description of any protected plant varieties on Target properties (leased or owned).

D. Other Contracts/Key Relationship Arrangements

1. Any supply agreements, open account credit agreements or the like, whereby Target purchases supplies, including without limitation packing materials, chemicals, fertilizer, rootstock, transplants, seed, fuel, or pollinating insects
2. Copies of contracts with Target's top 20 customers, and any futures contracts.

3. Copies of any partnership, joint venture, franchise, licensing, consulting, management, research and development, or similar agreements or contracts to which the Target is a party.
4. Copies of any service contracts (incl. custom for hire agreements) by which Target provides or receives services, incl. description of services provided and fees, and warranty agreements.
5. Description of any unwritten material contract, agreement, understanding or transaction.
6. Copies of any sales commission, marketing, distributorship, sales representative, or dealer agreements or plans.

E. Environmental

1. List all licenses, permits, consents, permissions, authorizations, registrations or approvals filed with or obtained from any federal, state, or local environmental health and safety authority, including without limitation any such licenses permits, consents, permissions, authorization related to the storage and disposal of waste, discharge of water, storage tanks and hazardous substances used or stored on the Target's properties.
2. Copy of biological or endangered species reports, or schedule of known endangered species on Target's owned or leased property.
3. Schedule of all underground and above ground storage tanks, with locations.
4. Correspondence, memoranda, notes or notices of violation from foreign, federal, state or local environmental, health and safety authorities.
5. Copies of all nutrient management plans, and any related reports, test results, or similar documents.
6. Copies of all documentation regarding any release, spill, or discharge of any hazardous material on any property owned or leased by the Targets, whether reported or unreported.

F. Food Regulation and Safety

1. Copies of all food safety and quality assurance audits conducted during the past 5 years (both internal, third party at the request of Target, and/or on behalf of customers); all HACCP plans; all recall plans; vendor certification programs, if any, and all food safety and quality control manuals and policies.
2. List any notices or communications from any local, state, or federal regulatory authority relating to the condition of any of the Target's properties or the quality of product produced or shipped, including all material communications with the FDA and/or USDA.
3. List of any voluntary recalls initiated by the Target.
4. Copy of Food Facility Registration under the Bioterrorism and Food Safety Modernization Acts and any other similar state or local registration, permit, or license.
5. Copies of any letters of guarantee received from raw material suppliers or provided to raw material customers.
6. Copies of any water safety and/or quality testing reports, certificates of analysis, or audits.

7. Copies of any labels, labeling, marketing, advertising, or other promotional materials.
8. Copies of all standard operating procedures, policies, manuals, or programs relating to the following activities: sanitation; operations; food safety; handling; washing; calibration of equipment; grading; packing; quality assurance; recall prevention and response; foreign supplier verification; testing; traceability; pest management; storage, use, and application of pesticides; employee training; and personal hygiene.

G. Labor

1. Copies of all agreements with any farm labor contractors, including any licenses held by such contractors.
2. Copies of job orders, letters of intent, and corresponding letters, or other support submitted to Department of Labor related to H2A or H2B Program during the past three (3) years.
3. Description of any employee housing arrangements or agreements provided by Target, including address and occupancy of any housing used primarily for migrant or seasonal workers.
4. All maintenance records within past 3 years for vehicles used for transportation of migrant or seasonal labor.
5. Schedule of all operators, including copies of their CDLs, of vehicles used for transportation of migrant or seasonal labor.
6. Results of all water test results for past 3 years for wells used to provide water to migrant or seasonal workers.
7. For seasonal employees: type, status, numbers, compensation, recruitment, turnover; immigration status; list of seasonal employees who have worked full time in the last 6 months.

H. Human Resources

1. List of current employees and organizational chart identifying: date of hire or service; FTE, part-time, those employed for less than 6 months, seasonal, contract; names, start date, job title/position, salary/hourly; amount of compensation; bonus; commission; outstanding employment or similar offers; child workers; date of last performance review, last pay increase, background check, vacation accrual, YTD vacation balance; required licenses such as DOT; subject to drug free restrictions; Time off: sick, vacation, holidays; for each, Y/N, accrual, work locations, and records of promotions and transfers.
2. Employment eligibility verification: I-9s; immigration status; any sponsored immigration applications.
3. All employment or similar (including consulting) agreements, change of control provisions; and any severance agreements, release agreements, offer letters and other commitments related to employment/engagement by the Target (including agreements with prior employees or other service providers who have claimed the right to receive or were receiving payments or benefits at any time within the last 3 years); other agreements (such as non-disclosure or confidentiality agreements, non-competition or non-solicitation, intellectual property assignments, retention bonuses; commission plans or agreements). List of outstanding payouts of separation, if any.

4. All pension, profit sharing, 401(k), non-qualified deferred compensation, health and welfare and cafeteria plan documents (incl. all flexible spending accounts, life, AD&D and disability insurance) and summary plan descriptions thereof (incl. any related trust or funding arrangement or insurance policy or contract and renewal dates for same)
5. Schedule of which job descriptions are exempt, and which are non-exempt for FLSA classification.
6. Copies of all employee policy documents including Employee handbook, guidelines or policies, and signed disclaimers (if any), safety policies.
7. OSHA (and equivalent state) log and any current workers comp claims or claims that have been closed in the last 5 years.

I. Additional Regulatory/Permits/License

1. List all licenses, permits, consents, permissions, authorizations, registrations or approvals filed with or obtained from any federal, state, or local authority related to operation of Target.
2. Copies of all commercial pesticide applicator licenses, pesticide contractor licenses or restricted use pesticide dealer licenses, or private pesticide applicator license.
3. Schedule of any PACA claims or dealer in agriculture product bond claims asserted (against or by Target) in past 5 years

J. Financing Documents

1. Summary of currently outstanding short-term debt, long-term debt, inter-Target debt, contingent obligations and capital lease obligations of the Target, including amounts, maturities and prepayment terms.
2. All documents purporting to create liens, mortgages, security agreements, pledges, charges or other encumbrances on the stock of the Target, on any real or personal property of the Target or in favor of the Target. Copies of all Uniform Commercial Code financing statements filed with respect to the above.

K. Corporate Records

1. Corporate formation/governance documents: articles of incorporation, bylaws, other organizational documents of the Target.
2. Organizational structure chart of the Target identifying the legal name, type of entity, ownership and jurisdiction of organization. On the organizational chart, show lines of reporting for officers, departments and subsidiaries of the Target.
3. List of all corporations, partnerships, joint ventures and other entities that are not subsidiaries of the Target, but in which the Target owns an interest. Include the number of authorized shares or interests, the number of shares or interests owned by the Target, and the percentage of voting securities or interests (and economic interests, if different) owned by the Target. Provide any agreements to which any of the Target is a party relating to these investments.
4. List and description of all transactions between the Target and any stockholder, director, officer, employee or affiliate of the Target (or any entity or person formerly having the status thereof), including amounts and names of parties involved, during

the past 5 years; including without limitation, copies of all agreements between Shareholders, or between any Shareholder and the Target, relating to (a) the management, ownership, or control of the Target, or (b) voting, preemptive rights, repurchase of shares or restrictions on transfer of shares.

L. Intellectual Property

1. List describing all material trade secrets and other proprietary know-how or processes owned or held for use by the , including all recipes and ingredient lists for any packaged, processed, or co-packaged food item
2. List of all US and foreign tradenames, trademarks and service marks registrations and applications, unregistered tradenames, trademarks and service marks, service, patents, patent applications, copyright registrations and applications, IP and goodwill owned or held for use by the Target, indicated in each case, as applicable, the record owner, relevant dates application, registration, renewal, first use, publication, etc., registration number and copies of all related documents and files.
3. If any trade name registered in local superior court, please provide copy of all filings with the clerk office and affidavit of publication.
4. List of all web sites, social media presence (e.g., Facebook, LinkedIn, Twitter, etc.) owned or maintained by the Target or any of its officers, directors or employees purporting containing information about the Target, including a schedule of all claimed intellectual property in the design and content of any websites

M. Miscellaneous

1. Litigation
2. Import/Export
3. Insurance
4. Timber
5. Transportation (if owned)
6. Accounting

Joel McKie grew up on a peanut, cotton, watermelon, swine and cattle farm in Abbeville, Georgia. Instructed by those experiences on the farm, Joel has built his legal practice primarily representing farmers and agribusinesses. A partner in the Atlanta office of Hall Booth Smith, PC, a regional firm with offices in six Southeastern states, Joel leads HBS's agriculture practice group. HBS counsels farm and agribusiness clients, both institutional and family-owned, during every stage of farm land and agricultural operations transactions, including negotiations, due diligence, closing, and post-closing integration. Joel also provides litigation support and regulatory guidance to clients in the agriculture sector. Joel is the President-elect of University of Georgia College of Agricultural and Environmental Sciences Alumni Association.