

STARTING POINT

Template Document Platform For Efficient M&A Transactions



No business acquisition is simple, and smaller M&A transactions (with an enterprise value of less than \$5 million) often take as much effort and professional time as much larger transactions. That is where Starting Point can help.

For more than a decade Transaction Commons has offered its transaction management platform to keep transaction documents and information organized and available to the transaction teams. Neutrality is a key element of our platform. Transaction Commons is not under the exclusive control of either the buyer or the seller. We have built on that neutrality with Starting Point.

An efficient transaction depends on a well-ordered due diligence process and clear organization and communication in the transaction agreement drafting and negotiation process. Time and money spent on routine early stage transaction document creation can be particularly wasteful, especially for smaller M&A transactions. The Starting Point templates for key transaction documents streamline the initial effort. This saves professional time for the truly unique and complex parts of the transaction.



For many smaller acquisition transactions, inefficiency starts with the use of a poorly written confidentiality agreement or term sheet. It builds with confusion and disorganization through the due diligence process. The inefficiency continues with the use of a mediocre acquisition agreement. It could range from an agreement from a different transaction, to a template found on the Internet, to a cobbled-together patchwork of provisions from various other transactions.

Sophisticated parties, with competent advisers, will eventually end up with adequate transaction documentation. Sneaky or sloppy provisions from one party will be caught and fixed by the other - but time is wasted. The negotiation process inevitably involves the exchange of drafts, and even small mistakes with document exchange (like looking at the wrong version in a discussion) will have a big impact on transaction efficiency.

Sometimes a party thinks a "fair" first draft will make the transaction more efficient, but that is rarely the case. The transaction process is a negotiation. A first draft from one party - even if they attempt to be "fair" - will be countered by the other party.

Transaction Commons' Starting Point provides a neutral set of initial documents that are available to both parties. With input from legal counsel and M&A advisors, the parties can make changes to the initial documents using the Transaction Commons platform - with its organized visibility and tracking of all document revisions. The disorganization that often results from the haphazard due diligence process is addressed with a standardized due diligence checklist and a corresponding "virtual data room" folder structure within Transaction Commons.

Our Starting Point service will drive a more fair, organized, and efficient transaction process.



Step 1 - The Confidentiality Agreement

The first step in every transaction is putting in place a confidentiality agreement (sometimes called a non-disclosure agreement or NDA). A confidentiality agreement is critical because nonpublic (and often very valuable and proprietary) information will be disclosed by one or both parties.

Although the parties may try to treat the confidentiality agreement step as quick, simple and routine – it often is not. Both parties may have legitimate concerns about the scope of the obligation and the protection of their secrets. Despite statements about "standard" agreements, an agreement is almost always slanted in favor of the party who proposed it. So, there will usually be multiple versions exchanged between the parties.

The confidentiality agreement negotiation process often creates delay at the beginning of the transaction when speed is important. And, in some cases, the confidentiality agreement negotiation process can create undesirable initial contention between the parties.

Transaction Commons views the confidentiality agreement negotiation process as being important for two reasons:

- It sets the tone for the transaction. Consider this an opportunity to begin the transaction in an efficient and coordinated way.
- It is the first of a series of documents (hopefully followed by the letter of intent and definitive agreements). So, it is a good time to get all transaction parties on the same page by using the Transaction Commons platform.

A neutral confidentiality agreement, customized by the parties to fit their particular situation, can start the transaction off on a level playing field. Transaction Commons' Starting Point confidentiality agreement serves as a beginning draft that can be utilized and commented on by both parties and their counsel.

Step 2 - The Letter of Intent

While this step may not be part of every transaction, we believe it is part of every efficient transaction. The letter of intent serves to focus the parties on key transaction terms and document agreements that will apply during the transaction process (in addition to the confidentiality agreement discussed in Step 1).

Whether it is called a letter of intent, term sheet, indication of interest, or something else, this document has the same basic components:

- A nonbinding outline of transaction terms. Any ambiguity around whether the terms are binding wastes everyone's time.
- Any binding exclusivity provisions (during a defined time frame for the transaction) and possibly other terms restricting the activities of one party or the other.
- Clarity on the need for signed definitive agreements to create a binding transaction obligation. Discuss this risk with legal counsel and consider what factors may impact it.
- A commitment (even if not "binding") to a timeline for moving ahead with the transaction.

It is likely that the letter of intent will go through many more revisions than the confidentiality agreement. Proper tracking of proposed versions with a streamlined and organized transaction platform is critical.

Step 3 - The Due Diligence Checklist

Due diligence checklists are everywhere. Some checklists are generic and others have been customized for specific transactions. Active buyers and investors often have their own template. Ideally, everyone would follow the same checklist format, but that is never the case.

A prudent and sophisticated seller will do a significant amount of pre-transaction due diligence preparation and document collection. The seller will then organize the results according to their preferred format. But once a buyer is identified, they may insist on "conversion" to their own due diligence checklist and organization structure, which results in wasted time for the seller.

Our Starting Point service is built around the expectation that a standardized due diligence checklist will be followed and the document organization (e.g. virtual data room organization) will follow that checklist structure. (We recognize there will be supplemental requests and follow up responses, and we discuss those below in Step 4.)

Step 4 - Due Diligence Efficiency

Building on a straightforward and standardized due diligence checklist, an organized platform for collection of the due diligence responses – tailored to the due diligence checklist - drives transaction efficiency.

Undoubtedly, there will be supplemental requests and questions and responsive information will be provided. Organizing this process is the fourth element of an efficient due diligence process. We believe the best practice is managing a versioned document with the buyer's supplemental requests and the seller's text responses. Any additional documents that are provided should be referenced in those text responses and provided in the due diligence folder structure under a new category titled Supplemental Responses.

About Transaction Commons:

For more than a decade, Transaction Commons® has provided a cloud-based solution for the secure, organized, and neutral exchange of documents and information to complete negotiated business transactions. Transaction Commons combines agreement version management with virtual data room capability, all available to a defined transaction team. With its simple interface and no software to download, Transaction Commons drives transaction efficiency for all parties.

