

**This form Due Diligence Request List is provided for illustrative purposes only. Additional requests not included herein may be appropriate for specific industries. You should always consult with legal counsel when preparing or responding to due diligence requests.**

### **Due Diligence Request List**

In connection with the potential acquisition of [NAME OF TARGET] (together with all of its subsidiaries and any predecessors, collectively, the “**Company**”), please provide us with the following materials. If certain materials have already been provided or are unavailable or inapplicable, please indicate so in your response to this request. Please note that our due diligence investigation is ongoing and we will submit supplemental due diligence requests as necessary.

Unless otherwise indicated, documents should be made available for all periods subsequent to [DATE] and should include all amendments, supplements and other ancillary documents. Unless otherwise indicated, the word “material” means an item involving payments (to or from the Company) or liabilities in excess of \$[DOLLAR AMOUNT]. Please do not hesitate to contact us at [CONTACT INFORMATION] with any questions or concerns regarding this request.

#### 1. Corporate Records.

(a) Organizational documents of the Company and each of its subsidiaries (e.g. certificates of incorporation, by-laws, certificates of partnership, partnership agreements, certificates of formation, limited liability company agreements).

(b) Minute books of the Company and each of its subsidiaries, including minutes of meetings and actions by written consent of the board of directors (or its equivalent) of the Company and any of its committees and minutes of meetings and actions by written consent of the stockholders of the Company.

(c) Communications with stockholders, including annual reports, proxy statements and correspondence.

(d) Summary of the corporate history of the Company and any predecessors, including any mergers, acquisitions, changes in control and divestitures.

(e) Organizational structure chart of the Company and its subsidiaries identifying the legal name, type of entity, ownership and jurisdiction of organization.

(f) List of all corporations, partnerships, joint ventures and other entities that are not subsidiaries of the Company, but in which the Company owns an interest. Include the number of authorized shares or interests, the number of shares or interests owned by the Company, and the percentage of voting securities or interests (and economic interests, if different) owned by the Company. Provide any agreements to which the Company is a party relating to these investments.

(g) List of special purpose entities in which the Company, or any of its current or former executive officers or directors have a significant interest (on an individual or an aggregate basis) or that have purchased assets or assumed liabilities from the Company or that have significant obligations to the Company (each an “**SPE**”). Include a brief description of each SPE’s primary purpose or activities. Any agreements or documents setting forth any arrangements (or if not memorialized, a description of any such arrangement) between or among the Company and any SPE.

(h) List of places where the Company is qualified to do business.

(i) List of places where the Company operates its business or maintains inventory, owns or leases property or has employees, agents or independent contractors. Include the number of employees and a description of operations or services performed at each location.

(j) List and description of all transactions between the Company and any stockholder, director, officer, employee or affiliate of the Company (or any entity or person formerly having the status thereof), including amounts and names of parties involved, during the past [NUMBER] years.

## 2. Stockholder Information.

(a) Stock certificate books and stock transfer ledgers or other records that show all issuances, grants and cancellations of Company stock, options, SARs (stock appreciation rights), restricted stock units, profits interests, warrants and other actual, derivative or phantom equity interests, including names and addresses of record and beneficial holders, dates of issuance, payment information, grant or cancellation, and number of securities. For options and warrants include the date of grant, the fair market value of the underlying stock on the grant date, exercise price, number of shares subject to the option, SAR or warrant and vesting terms and, identifying by jurisdiction, grants made to persons located outside the US.

(b) List of any oral or written agreements to grant or issue stock, options, SARs (stock appreciation rights), restricted stock units, profits interests, warrants or any other form of actual, derivative or phantom equity interest in the Company.

(c) Stockholders agreements, put or call agreements, voting agreements, stock transfer agreements or other arrangements among the stockholders of the Company.

(d) All documents known to the Company relating to outstanding proxies, powers of attorney (with respect to any stock of the Company), voting trusts, or other assignment of rights attaching to any securities of the Company.

(e) All outstanding agreements or other instruments that may in any way limit the Company's ability to declare and pay dividends.

## 3. Securities Issuances.

(a) Documents generated in connection with all equity financings of the Company, including stock purchase agreements and related documentation, such as offering circulars, private placement memoranda and prospectuses relating to the offer or sale of equity securities.

(b) Documents generated in connection with any convertible debt financings of the Company.

(c) Samples of common stock certificates, warrants, options, debentures and any other outstanding securities.

(d) Stock option and purchase plans and equity incentive plans of any type, including forms of option and purchase agreements which have been or may be used for these plans, and any options or warrants not under an equity plan.

(e) Agreements and other documentation relating to repurchases, redemptions, exchanges, conversions or similar transactions involving the Company's securities and schedule of any dividends paid or declared.

- (f) Agreements relating to registration rights.
- (g) Agreements relating to preemptive rights, rights of first refusal or co-sale rights.
- (h) Forms D or any other forms filed to qualify for an exemption under the Securities Act of 1933.
- (i) Governmental permits, notices of exemption and consents for issuance or transfer of the Company's securities, and evidence of qualification or exemption under applicable blue sky laws.

#### 4. Financing Documents.

- (a) Summary of currently outstanding short-term debt, long-term debt, inter-company debt, contingent obligations and capital lease obligations of the Company, including amounts, maturities and prepayment terms.
- (b) Summary of currently outstanding interest rate or foreign currency swaps, caps, options, forwards or other derivative instruments or arrangements to which the Company is a party.
- (c) Copies of any currently outstanding commitment letters or other correspondence relating to proposed financings or borrowings which may involve amounts in excess of \$[DOLLAR AMOUNT] of indebtedness of the Company.
- (d) All correspondence and documents relating to contingent liabilities exceeding \$[DOLLAR AMOUNT].
- (e) All documents purporting to create liens, mortgages, security agreements, pledges, charges or other encumbrances on the stock of the Company, on any real or personal property of the Company or in favor of the Company. Copies of all Uniform Commercial Code financing statements filed with respect to the above.
- (f) Agreements evidencing borrowings by the Company, whether secured or unsecured, documented or undocumented, including loan and credit agreements, mortgages, deeds of trust, letters of credit, indentures, promissory notes and other evidences of indebtedness, and any amendments, renewals, notices or waivers.
- (g) Documents and agreements evidencing other material financing arrangements, including capital leases, synthetic leases, sale and leaseback arrangements, installment purchases, or similar agreements.
- (h) All agreements pursuant to which the Company is or will be subject to any obligation to provide funds to or to make investments in any other person (in the form of a loan, capital contribution or otherwise).
- (i) Documents and agreements relating to any guarantees by the Company or releases of guarantees.
- (j) Bank letters or agreements confirming lines of credit, including any amendments, renewal letters, notices, waivers, etc.
- (k) Copies of notes payable to or notes receivable from any employee, director, affiliate, agent or stockholder of the Company outstanding at any time during the past year. Copies of all other financing agreements relating, directly or indirectly, to the Company or any person who is, or is proposed to become, an officer, director, key employee, or

significant stockholder (including affiliates) of the Company (including loans, leases, purchases and sales of property).

5. Other Material Contracts.

(a) Any partnership, joint venture, distributorship, franchise, licensing, management, research and development, or similar agreements or contracts to which the Company is a party.

(b) Contracts with customers or suppliers.

(c) List of the Company's [NUMBER] largest customers for the last [NUMBER] years, indicating amounts and nature of services provided.

(d) List of the Company's suppliers (other than suppliers of goods and services generally required by all businesses, e.g. office supplies, utilities, etc., unless in excess of \$[DOLLAR AMOUNT] from an individual supplier during any 12-month period) including for each supplier, indicating the amount and nature of products supplied.

(e) Material agreements relating to the sale or lease of the Company's personal property (including equipment) and any related financing arrangements.

(f) All material warranty and service agreements.

(g) Installment sales agreements.

(h) Any agreement which prohibits or restricts the Company's ability to compete in any business anywhere in any geographic area, or the customers with which the Company may do business or the prices the Company may charge for its services.

(i) Any inter-company agreements between the Company and its subsidiaries.

(j) Any agreements between the Company and its affiliates (if not already provided pursuant to clause (i) above).

(k) Any material purchase agreements and other significant documents relating to any reorganization, any going private transactions, mergers, consolidations, spin-offs or reincorporation in the past [NUMBER] years or currently proposed.

(l) Any material purchase agreements and other significant documents relating to any acquisitions or dispositions by the Company in the past [NUMBER] years or currently proposed.

(m) Any indemnification agreements.

(n) Any other material agreements or drafts of proposed material agreements of the Company.

(o) Details of any material negotiations currently in progress.

6. Management/Employees.

(a) All corporate policy and employee manuals covering hiring, employee benefits, regulatory compliance and internal controls.

(b) Organizational charts of management by department and by legal entity.

(c) Number of employees by department and by functional area.

(d) Copies of offer letters, employment contracts, bonus guarantees, severance agreements, change-of-control agreements, independent contractor agreements, nondisclosure and confidentiality agreements, non-competition agreements, management and consulting contracts.

(e) Union contracts, collective bargaining agreements and a summary of any ongoing negotiations with unions.

(f) Documents relating to all profit sharing and savings plans, pension or retirement plans, supplemental retirement plans, retiree medical arrangements, deferred compensation plans, severance, medical, flexible spending, dental or other health and welfare plans and any bonus, incentive, performance or other employee compensation/benefit plans or arrangements and related agreements (that provide benefits to current or former directors, officers or employees and their respective beneficiaries); materials describing any of the foregoing or contemplated amendments; and the applicable trust accounting, IRS determination letters, Form 5500 filing, plan audit reports, actuarial reports and other applicable financial statements for the three most recent years. Summary plan descriptions for each of the foregoing, to the extent available.

(g) Copies of all filings and correspondence with the IRS, the DOL and the PBGC (not covered in the preceding paragraph) made during the three most recently completed plan years.

(h) Copies of complaints and other material pleadings and court filings in connection with any pending lawsuit involving any employee benefit plan or benefits thereunder, or any such lawsuit filed within the past three years.

(i) Any notices or other communications issued within the past three years relating to blackout periods under any defined contribution plan or regarding any future reductions in medical, pension or other employee benefit or regarding the termination of any employee benefit arrangements.

(j) Cost/benefit information for each current plan for the most recent plan year, including (i) administrative costs, (ii) employer contributions, (iii) employee contributions, and (iv) benefit distributions.

(k) Copies of any Section 280G calculations performed with respect to potential parachute payments.

(l) Description of any threatened or pending labor disputes, work stoppages, work slowdowns, walkouts, lockouts or union organizing activities. Copies of any National Labor Review Board or US Department of Labor filings.

(m) Any indemnification agreements with any directors, officers, employees or agents.

(n) Schedule of all compensation paid during the last fiscal year to officers, directors and key employees, showing separately salaries, bonuses and non-cash compensation, including bonuses paid or accrued, direct or indirect benefits or

perquisites, and all benefits paid or accrued under all employee benefit plans.

(o) Description of commissions paid to managers, agents or other employees of the Company.

(p) Copies of all agreements relating to “rabbi trusts” or other arrangements securing in any way the payment of deferred compensation, severance or other payments to employees or directors.

(q) A listing of all outstanding loans to employees in excess of \$[DOLLAR AMOUNT] (including loans granted under any 401(k) plan) including the amount of the loan, its rate of interest and whether or not it is secured.

(r) Absenteeism, disciplinary actions, accident records and turnover rates of the Company and its Subsidiaries.

(s) Copies of any special compensation/retention arrangements in connection with the proposed transaction.

## 7. Financial Information.

(a) Historical financial statements for the last [NUMBER] years. Include summary of significant accounting policies used by the Company.

(b) Interim financial statements prepared since the end of the most recent fiscal year.

(c) Most recent projected financial statements (by month for current year and projections for next [NUMBER] years) including supporting assumptions.

(d) Management letters or special reports by auditors and any responses.

(e) Description of and reasons for any change in accounting methods or principles.

(f) Detailed aging schedule for accounts receivable and accounts payable at end of each fiscal quarter of last five years.

(g) Detailed description of critical accounting policies, and explanation of revenue and cost recognition methods.

(h) Information on planned acquisitions and dispositions.

(i) Information on bad debt reserves and unusual charges to operations for the past [NUMBER] fiscal years.

(j) If applicable, inventory schedule and valuation assumptions and inventory valuation, turnover and obsolescence review.

(k) List of assets (fixed and unfixed).

(l) Detailed description of any off-balance sheet arrangements, liabilities or obligations of any nature (fixed or contingent, matured or unmatured) that are not shown or otherwise provided for in the Company's current financial statements. Please include: the nature and purpose of any such off-balance sheet arrangements; the importance to the Company of the arrangements; the amounts of revenue, expenses and cash flows arising from the arrangements; and any known event, demand, commitment, trend or uncertainty that is reasonably likely to result in the termination (or reduction in availability to the Company) if any such arrangement and the course of action the Company has taken or proposes to take in response to such circumstances.

(m) Description of any non-GAAP financial measures, accompanied by the most directly comparable GAAP financial measure and a reconciliation to GAAP, along with the reasons for use of non-GAAP measures.

(n) Any reports on internal accounting controls.

(o) Detailed explanation of any change in or disagreement with auditors on accounting and financial matters in the last [NUMBER] fiscal years.

(p) Copies of all business plans, including a summary of any ongoing or proposed plans for capital expenditures in excess of \$[DOLLAR AMOUNT].

(q) Written investment policies of the Company.

## 8. Sales and Marketing.

(a) List of third party developers showing total and type of project for each developer during the last and current fiscal years and forms of agreements entered into with third party developers.

(b) List of the Company's competitors.

(c) Pertinent market research or marketing studies (including any studies or reports relied on or commissioned or prepared by the Company).

(d) Any recent analyses of the Company prepared by investment bankers, engineers, management consultants, auditors or others.

(e) Recent presentations to industry, trade or investment groups.

(f) Marketing and sales literature and forms, including price lists, catalogs, purchase orders, technical manuals, user manuals, etc.

(g) Marketing agreements and material agency and advertising contracts.

(h) All agreements or proposed agreements with distributors, dealers and sales representatives.

(i) Describe warranty and return policies and procedures. Include any related written materials and any documents

creating any express or implied warranties for products manufactured or distributed by the Company.

(j) Distribution agreements.

9. Real Property.

(a) List of real property owned by the Company, including size, location and use of each parcel. Provide documents of title, title insurance, mortgages, deeds of trust, leases and security agreements for these properties.

(b) Any appraisals or surveys of the Company's real property obtained within the past [NUMBER] years.

(c) Outstanding leases for real property to which the Company is either a lessor or lessee, including ground leases and subleases, estoppel certificates and related subordination or non-disturbance agreements.

(d) Any option or development agreements involving real property to which the Company is a party.

(e) Certificates of occupancy relating to any real property owned or leased by the Company.

(f) List of all material encroachments, liens, easements or other encumbrances on any real property owned or leased by the Company.

10. Intellectual Property.

(a) List of all US and foreign patents and patent applications owned or held for use by the Company, indicating in each case, as applicable, the record owner, the dates of invention, application, issue, reexamination and reissue, the patent number or application serial number, and copies of all related prosecution files.

(b) List of all US and foreign copyright (and mask work) registrations and applications owned or held for use by the Company and material unregistered copyrights, indicating in each case, as applicable, the record owner, the dates of authorship, publication, application, registration and renewal, registration number, and copies of all related documents and files.

(c) List of all US and foreign trademark, service mark and trade name registrations and applications and unregistered trademarks, service marks and tradenames owned or held for use by the Company, indicating in each case, as applicable, the record owner, the date of first use, application, registration and renewal, registration number or application serial number, and copies of all related prosecution files.

(d) List of all domain names owned or held for use by the Company, indicating in each case, the record owner, the registrar, registration and renewal date.

(e) List describing all proprietary technology and computer software owned, held for use by or being developed by or for the Company.

(f) List describing all:



- (i) material third-party computer software used by the Company or incorporated into any software or product of the Company; and
  - (ii) open source, freeware or other software having similar licensing or distribution models used by the Company or incorporated into any software or product of the Company.
- (g) List describing all [material] trade secrets and other proprietary know-how or processes owned or held for use by the Company.
- (h) Copies of all [material] agreements, proposed agreements or arrangements pursuant to which any third-party intellectual property is assigned to or licensed by the Company by any third party.
- (i) Copies of all [material] agreements and proposed agreements pursuant to which any intellectual property is assigned, sold or otherwise transferred to, or licensed by the Company to any party or subject to a covenant not to sue.
- (j) Copies of all research and development, joint venture or other agreements relating to product, process or technical research, development and testing to which the Company is a party.
- (k) Copies of all current and historical documents, policies and procedures relating to the development and protection of the Company's intellectual property, including, without limitation, form invention and proprietary rights agreements.
- (l) Copies of all nondisclosure agreements, settlement agreements, administrative or judicial decisions or orders, consent orders, releases, covenants not to sue, security agreements and other agreements or decisions restricting or encumbering the intellectual property of the Company.
- (m) Copies of all freedom-of-use advice, validity or infringement analyses, and legal opinions of counsel regarding the intellectual property of the Company.
- (n) Copies of all correspondence from third parties regarding alleged or potential infringement or other violation by the Company of intellectual property rights of others.
- (o) Descriptions of, and copies of all communications relating to, all:
  - (i) pending or threatened claims, judicial or administrative proceedings, or litigation brought against the Company alleging the infringement or other violation of any third party's intellectual property or challenging the ownership, validity or enforceability of the Company's intellectual property or any intellectual property exclusively licensed to the Company; or
  - (ii) past disputes of such nature active in the last [NUMBER] years.
- (p) Descriptions of, and copies of all communications relating to, all:
  - (i) potential, pending or threatened claims, judicial or administrative proceedings, or litigation brought or contemplated by the Company alleging the infringement or other violation of intellectual property of the Company or any intellectual property exclusively licensed to the Company by a third party or challenging the ownership,

validity or enforceability of a third party's intellectual property; or

(ii) past disputes of such nature active in the last [NUMBER] years.

11. IT Systems and Networks.

(a) Copies of all agreements relating to the provision of IT, data or internet-related products or services to or by the Company.

(b) A description of all computer systems, software packages, networks and service bureaus ("Computer Systems") in use by the Company, by location.

(c) Copies of the most recent strategic plans for the Company's Computer Systems.

(d) A description of any back-up and disaster recovery arrangements, facilities management and ongoing support arrangements, including details of service levels and charges.

(e) A description of and copies of documents relating to whether the Company has access, or rights of access, to the source code of material licensed software in order to ensure adequate maintenance and updating of that software.

(f) A description of any Company procedures to monitor compliance with the terms of software licenses, including whether these procedures monitor the use of software by the Company to ensure that multiple copies of any software are not used in breach of the relevant license terms.

(g) A description of and copies of the Company's website and web services security policies and procedures.

(h) Confirm whether the Company owns all intellectual property in the design and content of its websites.

(i) A description of any insurance coverage for business losses related to the Company's Computer Systems.

(j) A Description of any [material] interruptions of the Company's Computer Systems in the past [NUMBER] years.

12. Privacy and Data Security.

(a) Copies of all current and historical privacy and data security policies and practice manuals of the Company, including, without limitation, all privacy policies and procedures for the Company's use and disclosure of customer or personal information.

(b) Copies of all policies, procedures and written information security programs for compliance with data protection and privacy legislation.

(c) Copies of all reports or audits (internal or external, including any SAS 70 and SSAE 16 audits) that have been performed on the Company's information security programs or any other reports prepared by or for the Company concerning the implementation of information security programs.

(d) Copies of any other documentation and information regarding the Company's collection, use, storage or disposal of customer or personal information (whether the Company's or a third party's).

(e) Copies of all agreements that the Company has with any third parties that act as the Company's agents or contractors

and receive customer or personal information subject to any statutory or regulatory data privacy or security requirements from or on behalf of the Company. Please provide copies any reports or audits (internal or external, and including any SAS 70 and SSAE 16 audits) that have been performed on the information security programs of such third parties.

(f) Details of any actual or potential data and information security breaches, unauthorized use or access of the Company's Computer Systems or data, or data and information security issues impacting the Company that have been identified in the past [NUMBER] years.

13. Environmental.

(a) Description of any toxic chemicals used in production and manner of storage and disposition.

(b) Description of any Environmental Protection Act, Toxic Substances Control Act or other investigation or claim.

(c) Environmental surveys, site assessments or reports (including copies of any Phase I and Phase II reports) concerning any real property currently or formerly owned or leased by the Company.

(d) Environmental, health and safety compliance verification reports (e.g. compliance audits) and quality assurance documents.

(e) Copies of any internal reports or memoranda prepared by the Company or third parties relating to hazardous materials, health and safety or other environmental matters.

(f) Correspondence, memoranda, notes or notices of violation from foreign, federal, state or local environmental, health and safety authorities.

(g) Any "potentially responsible party" letters or other similar notices or requests for information from any governmental or regulatory authority.

14. Governmental Regulations and Filing.

(a) Summary of material inquiries by any foreign, federal, state or local governmental agency.

(b) Copies of all contracts between the Company and any foreign or domestic government (including regulatory bodies and other agencies with governmental authority).

(c) Status of foreign and domestic government contracts subject to renegotiation.

(d) Material foreign and domestic governmental permits, licenses and certificates which the Company holds and current status.

(e) List and description of all permits necessary for the Company to operate its business in the ordinary course.

(f) Material filings made and significant correspondence by the Company with any state, federal or foreign governmental or regulatory agencies since the Company's inception.

(g) Any franchise filings and all material correspondence relating to the filings.

15. Litigation and Audits.

(a) List of all litigation for past [NUMBER] years.

(b) Letters from counsel sent to auditors for year end for the past [NUMBER] years and current interim audits.

(c) Current list of all litigation, administrative or regulatory proceedings, investigations or governmental actions involving the Company or its business with a brief description of the claim for each matter. Include name of court or agency in which the litigation proceeding is pending, date instituted, docket number and principal parties to the action.

(d) Description of currently threatened litigation, legal claims, regulatory actions or other actions or proceedings, including any correspondence relating to any threatened governmental investigation or alleged violation of law or regulation.

(e) Any currently effective consent decrees, judgments, other decrees or orders, settlement agreements and other similar agreements to which the Company is a party or by which the Company or any of its assets is bound (or to which any stockholder of the Company is a party or by which any such stockholder or any of its assets is bound and which relates, directly or indirectly, to the Company).

(f) Correspondence, memoranda or notes concerning inquiries from governmental tax authorities, occupational safety, health and hazard officials, environmental officials or authorities regarding equal opportunities violations, antitrust violations, or violations of any other law, rule or regulation.

(g) Description of any warranty claims that have been made against the Company, any subsidiary, or any partnership or joint venture and the resolution of such claim.

16. Insurance.

(a) A schedule of all policies or binders of insurance or self-insurance arrangements, including medical, workers compensation, disability, automobile, general liability, fire and casualty, products liability, professional liability, business interruption, officers' and directors' liability and key-man life insurance, with deductibles, coverage limits, and other significant terms. Please indicate the name and address of all insurance agents, brokers and companies.

(b) A schedule of insurance claims in excess of \$[DOLLAR AMOUNT] over the last [NUMBER] years, and summary of loss history for such period.

(c) Analysis of premium payments for the past [NUMBER] years and details regarding any cancellations or denials of insurance during this period.

(d) Summary of self-insurance programs or other risk retention.

(e) A schedule of threatened or potential claims.

17. Taxes.

(a) Federal, state, local and foreign tax returns for all open tax years, including sales, property, franchise, payroll, excise, withholding and capital tax returns and consolidated returns of the Company. Copies of tax elections, consents, agreements or waivers (other than as attached to tax returns).

(b) Information with respect to any foreign, Internal Revenue Service, state or local tax examination or audit of the Company's or any of its subsidiaries' or their respective predecessor's returns and the results of each audit.

(c) Copies of all documents relating to pending tax litigation or any appeals process or hearing.

(d) Correspondence between the Company and the Internal Revenue Service or any foreign, state or local tax authority.

(e) Description of any undertakings given by the Company to tax authorities or any special tax rulings or agreements arranged with tax authorities.

(f) Copies of any and all tax sharing, tax allocation or inter-company agreements relating, in whole or in part, to the Company.

(g) Description of any preferred tax status or tax benefit which may be adversely affected by the proposed acquisition and any related transactions, including a summary of any available tax attribute carry-forwards.

(h) Information to analyze tax positions taken in connection with acquisitions, dispositions, restructurings, reorganizations, or the like and any tax strategies in connection with any transactions currently proposed including any ongoing tax indemnities.

(i) Any notices, elections, or other correspondence with foreign, federal, state and local tax authorities regarding the reorganization of the Company and its predecessors to the extent material.

(j) Copies of correspondence from outside tax advisors and accountants for the past three years.

(k) Copies of any tax provision work papers and memos supporting calculations and risks.